

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WILLIAMS COUNTY

State of Ohio

Court of Appeals No. WM-11-005

Appellee

Trial Court No. CRB1000892

v.

Albert A. Babcock, III

DECISION AND JUDGMENT

Appellant

Decided: April 27, 2012

* * * * *

Rhonda L. Fisher, Bryan Municipal Prosecuting Attorney,
for appellee.

Clayton M. Gerbitz, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Bryan Municipal Court, Williams County Ohio, which found appellant guilty of one count of domestic violence, in violation of R.C. 2919.25(A), a misdemeanor of the first degree. Appellant was sentenced to 180 days incarceration, suspended in its entirety on the condition of no

probation violations. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Albert A. Babcock III, sets forth the following sole assignment of error:

I. THE VERDICT FINDING THE APPELLANT GUILTY WAS
AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 3} In April 2010, appellant and the victim were an engaged couple residing in Stryker, Ohio and had purchased a home together. Shortly thereafter, their relationship deteriorated and was characterized by numerous incidents reflecting the growing discord in their relationship. On July 31, 2010, appellant threw a dinner plate at the victim during the course of an argument. The victim broke off her engagement to appellant. She returned her engagement ring to him. Following this incident, she left the home and proceeded to go to work.

{¶ 4} While the victim was at work, appellant remained at home and consumed alcohol while lounging in the pool. After work that day, she went home and then left again in order to attend a family function. Appellant went out with friends later that evening and continued to consume alcohol. While appellant was still out partying with friends, the victim finished her family function and returned to the house.

{¶ 5} Given their earlier altercation and the ending of their engagement, the victim locked the exterior door to the house, locked the door between the garage and the kitchen, locked the door into the bedroom, and placed items in front of the bedroom door in an

effort to prevent appellant's entry into the bedroom. In addition, she placed appellant's clothing in the living room and disposed of appellant's remaining alcohol in the home.

{¶ 6} Upon returning that night, appellant ignored the victim's efforts to avoid another incident by locking him out. Appellant forced his way into the locked bedroom and physically lifted the victim from the bed against her will. He began to forcibly carry her out of the house. In the course of appellant's physical removal of the victim from the home, she was injured. The victim, dressed in her pajamas, flagged down a passing motorist and was transported to the Stryker Police Department. Her injuries were photographed.

{¶ 7} On August 2, 2010, appellant was charged with one count of domestic violence in the Bryan Municipal Court. On February 16, 2011, jury trial commenced. On February 17, 2011, the jury found appellant guilty of one count of domestic violence. On March 9, 2011, appellant was sentenced to a 180-day suspended term of incarceration. In addition, a fine and costs were imposed and probation was ordered, including a domestic violence program. This appeal ensued.

{¶ 8} In the sole assignment of error, appellant asserts that the jury verdict was against the manifest weight of the evidence. In determining whether the verdict is against the manifest weight of the evidence, the appellate court must weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). The court then makes a determination as to whether, in resolving conflicts in the evidence, the factfinder clearly lost its way and

created a manifest miscarriage of justice necessitating the conviction be reversed and a new trial ordered. *Id.*

{¶ 9} The underlying inquiry we must resolve is whether a rational trier of fact could have found the elements of the crime established beyond a reasonable doubt. *State v. Wilson*, 8th Dist. No. 84593, 2005-Ohio-511.

{¶ 10} We have carefully reviewed and considered the record of evidence. We note that while appellant does not deny the underlying incident, appellant goes to great lengths to maintain that the victim somehow bears responsibility for any injuries she suffered due to her actions and reactions during the course of being physically, forcibly removed from her locked bedroom at night in her pajamas by appellant. We are not persuaded.

{¶ 11} The record clearly reflects that appellant, while under the influence of alcohol, forced his way into a locked, blocked bedroom and proceeded to forcibly remove the victim from the home. Despite her resistance to being physically removed from her home at night, appellant persisted. The victim's scrapes and bruises sustained in the course of these events would not have occurred but for appellant's actions in forcing open the bedroom door, grabbing the victim from the bed, and carrying her through the house.

{¶ 12} When police officers arrived at the home following these events, they discovered appellant sitting on the tailgate of a vehicle drinking alcohol. They further observed a friend of appellant inexplicably hiding behind a nearby tree stump. The responding officers observed appellant to exhibit red eyes, a flush complexion, and the

odor of alcohol permeated from appellant's breath and his person. The officers also observed a multitude of damaged and broken household goods disbursed on the driveway of the premises.

{¶ 13} The record of evidence in this matter clearly reflects a troubled relationship between the parties. The record reflects that shortly prior to these events the victim ended her engagement with appellant and returned her engagement ring to him. The record also reflects that, prior to this incident, appellant had spent the day and evening consuming alcohol. The record further establishes that upon returning home and observing his clothes in the living room appellant forced his way into the bedroom, forcibly lifted the victim from her bed, and forcibly carried her from the home. During appellant's forcible removal of the victim, she was injured. Appellant's self-serving testimony attributing culpability of any injuries sustained by the victim to her resistance to appellant's physical and verbal aggression is unpersuasive. The record encompasses ample evidence from which a rational trier of fact could clearly properly weigh the credibility of the testimony and other evidence furnished by the victim and the police officers as establishing the elements of domestic violence and supporting the guilty verdict.

{¶ 14} We find no evidence reflecting that the factfinder lost its way or created a manifest miscarriage of justice. On the contrary, the record contains sufficient evidence in support of conviction. Appellant's sole assignment of error is found not well-taken.

Wherefore, the judgment of the Bryan Municipal Court, Williams County Ohio, is hereby affirmed. Pursuant to App.R. 24, appellant is ordered to pay the costs of this appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
