

[Cite as *State v. Evans*, 2015-Ohio-1828.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101723

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMAL T. EVANS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-13-578371-A and CR-13-579422-A

BEFORE: S. Gallagher, J., McCormack, P.J., and Stewart, J.

RELEASED AND JOURNALIZED: May 14, 2015

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SEAN C. GALLAGHER, J.:

{¶1} Appellant Jamal Evans appeals his convictions in Cuyahoga C.P. Nos. CR-13-578371-A and CR-13-579422-A.¹ Upon our review, we affirm.

{¶2} In Cuyahoga C.P. No. CR-13-579422-A, appellant was convicted of aggravated burglary, kidnapping, felonious assault, and disrupting public service. Appellant was sentenced to a total prison term of three years, along with three years of mandatory postrelease control. The convictions arose from an incident that occurred on August 4, 2013.

{¶3} At the bench trial, the victim testified that she was in a relationship with appellant and that she had tried to end the relationship at least three times, but appellant did not take it well and would scream, ask “why,” and say he did not want it to be over. On August 4, 2013, after driving appellant to work, the victim texted appellant to tell him she thought they needed time apart. About 20 minutes later, she heard a noise outside the home. The victim testified that there was a banging at the front door, she placed her back to the door when it looked like it was going to break in, and she attempted to call the police. She proceeded to testify that appellant broke a window with his fist, climbed inside, hit the phone out of her hand, pulled her to the ground, dragged her by the hair to the living room, and began punching and kicking her. The victim stated that at one

¹ Although the original notice of appeal only referenced Cuyahoga C.P. No. CR-13-578371-A, appellant challenged his convictions in both cases in his brief. In the interest of justice, we sua sponte granted appellant leave to amend the notice of appeal to include the judgment of conviction in both cases.

point, she dove toward the broken window and got part of the way out, but appellant dragged her back inside, continued to hit her, grabbed a curling iron and wrapped the cord around his hand, and threatened the victim. At that point, the victim dove for the window again and was able to get free. She ran to her neighbor's house, and 911 was called. The victim sustained a corneal abrasion and multiple bruises. She also claimed she could not move her hand for a month. Photographs were introduced depicting injuries to the victim's eye, face, and arm, along with her hair that was pulled out. Medical records were introduced, and the 911 tape was also played.

{¶4} The responding officer testified that he observed the front window to the home was broken, he saw signs of a struggle in the home, he noted a large clump of hair that had been pulled from the victim's head, and he noticed the victim's left eye was very red and was swelling. The victim provided a statement to the officer that was consistent with her testimony.

{¶5} Although the victim initially was not cooperative with contacting the detective assigned to investigate the case, she eventually contacted him and explained she had been having second thoughts because appellant had been pressuring her, and she provided a statement to the detective.

{¶6} In Cuyahoga C.P. No. CR-13-578371-A, appellant was convicted of assault and sentenced to 30 days in prison to run concurrent with his sentence in Cuyahoga C.P. No. CR-13-579422-A. The conviction arose from a subsequent incident involving the same victim on September 18, 2014. At the bench trial, the victim testified that she had

spoken to appellant a few times but was unsure about seeing him. Appellant came over, and when the victim received a text alert, appellant grabbed her phone and became upset when he saw it was a text from another guy. The victim got in her car and drove to a nearby gas station to use the phone. The victim testified that while she was on a pay phone, appellant came up to her car, snatched the phone out of her hand, and attempted to force his way into her car. The victim further testified that appellant snatched the keys out of the ignition, the two were arguing, and appellant punched her in the face a couple of times.

{¶7} Thereafter, appellant and the victim drove off to another gas station where the victim was able to ask the attendant to have the police flag her car because she had someone in it that she did not want there. The attendant observed bruises to the victim's face. Although the attendant indicated the marks on the victim did not appear fresh because there was no blood dripping, she further testified that it did appear the victim had been in an altercation. Appellant and the victim then drove to a motel for the night. The victim testified she was tired and that she had been able to calm appellant down. She further testified that she was not kidnapped. The motel employee described the victim's demeanor as normal, and he did not observe anything out of the ordinary. The police arrived in the morning. They observed injuries to the victim's face. Photographs were also introduced depicting a cut and bruise around the victim's right eye and a cut and swelling to her lips.

{¶8} Appellant timely filed this appeal. He raises two assignments of error for our review. Under his first assignment of error, appellant claims the trial court erred in denying his motion for acquittal because the state failed to present sufficient evidence to sustain the convictions.

{¶9} A motion for judgment of acquittal under Crim.R. 29(A) requires a court to consider if the evidence is insufficient to sustain a conviction. When reviewing a claim of insufficient evidence, “[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶10} Appellant’s challenge focuses on the credibility of the victim. He asserts that the victim spent the night with appellant in a motel room within weeks of the first incident and that she evaded the police during their investigation.

{¶11} Our review reflects that the victim testified in detail to both incidents. She testified to the incident on August 4, 2013, in which appellant broke into her home, knocked a phone out of her hand while she was attempting to call 911, physically assaulted her, and caused her to suffer serious physical harm. This testimony was consistent with police observations at the scene and the physical and photographic evidence introduced at trial. Likewise, the victim’s testimony about the incident on September 18, 2013, in which appellant punched her, was consistent with observations and photographs of cuts and bruising to her face. Upon our review, we find the state

presented evidence that, if believed, was sufficient to support appellant's convictions beyond a reasonable doubt. Appellant's first assignment of error is overruled.

{¶12} Under his second assignment of error, appellant challenges his convictions as being against the manifest weight of the evidence. When reviewing a claim challenging the manifest weight of the evidence, the court, reviewing the entire record, must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the exceptional case in which the evidence weighs heavily against the conviction. *Id.* A claim that a jury verdict is against the manifest weight of the evidence involves a separate and distinct test that is much broader than the test for sufficiency. *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, 854 N.E.2d 1038, ¶ 193.

{¶13} Appellant claims there is a lack of physical evidence linking him to the break-in of the victim's home and a lack of credible evidence linking him to the crimes. Our review reflects that the victim testified in detail to the incidents that occurred and identified appellant as the person who caused her injuries. Her testimony was consistent with police observations and the evidence depicting her injuries. Although appellant questions the credibility of the victim and claims she was evasive with police, the victim

testified she had been having second thoughts because appellant had been pressuring her, and she ultimately provided a statement to the police. Further, although the victim at one point answered a call from the detective and pretended to be someone else, she testified appellant was sitting right next to her at the time and she was torn about what to do. Upon a complete review of the record, we are unable to find appellant's convictions are against the manifest weight of the evidence. His second assignment of error is overruled.

{¶14} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed. The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, JUDGE

TIM McCORMACK, P.J., and
MELODY J. STEWART, J., CONCUR