

[Cite as *State v. Snowden*, 2017-Ohio-960.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104339

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JACK SNOWDEN, JR.

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-15-596326-A

BEFORE: Keough, A.J., E.A. Gallagher, J., and McCormack, J.

RELEASED AND JOURNALIZED: March 9, 2017

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KATHLEEN ANN KEOUGH, A.J.:

{¶1} Defendant-appellant, Jack Snowden, Jr. (“Snowden”), appeals his conviction for domestic violence. For the reasons that follow, we affirm.

{¶2} In June 2015, Snowden was named in seven-count indictment charging him with two counts of kidnapping (Counts 1 and 2), two counts of felonious assault (Counts 3 and 4), disrupting public services (Count 5), domestic violence (Count 6), and endangering children (Count 7). Prior to trial, the state dismissed Count 3, felonious assault that alleged serious physical harm.

{¶3} The case was tried before a jury who heard about an altercation between Snowden and the mother of his child, Melissa Shoup, that occurred during the early morning hours of May 29, 2015. The evidence regarding what actually happened that morning is conflicting.

{¶4} According to Shoup, she had been trying to end the six-year relationship for some time, and she would make herself unavailable when Snowden would need a ride to and from work. On this particular morning, she did not pick up Snowden from work, which Snowden testified did not bother him. Shoup testified that she was awakened by the sound of Snowden pounding on the door to their residence. When she answered the door, Snowden was upset that she had not answered her cell phone when he called. To prove that he had called her, Snowden went into Shoup’s bedroom — where their daughter was sleeping — and picked up Shoup’s cell phone. Shoup, knowing that text messages were on her phone from another man who she had been talking to, attempted to

grab the cell phone away from Snowden. Shoup testified that Snowden threw the phone down on the floor after seeing some of the text messages, but Snowden claimed Shoup knocked the phone out of his hand when she lunged for it.

{¶5} Nevertheless, when the cell phone fell on the floor, the glass from the screen shattered. According to Snowden, Shoup bent down and picked up a piece of the glass and started acting like she was going to cut him with it. Shoup denies this occurred. However, they both agree that Snowden picked up a toddler's wooden chair — Snowden stated he picked it up to put space between them because Shoup had the glass shard pointed at him. Snowden testified he told Shoup that “if you cut me, it was on.” (Tr. 872.) It is undisputed that Snowden was cut and bled profusely, leaving droplets of blood on the floor and saturating his white t-shirt. Snowden testified that Shoup cut him in the head with the piece of glass, whereas Shoup testified that Snowden must have hit himself in the head with the chair after he struck her with it in the back and arm. Shoup stated that he hit her so hard that the chair broke. Snowden claimed the chair broke when he threw it to the floor after Shoup cut him. He testified further that Shoup used the broken chair leg to hit him in the hand.

{¶6} Shoup testified that she was in excruciating pain and was disoriented. She attempted to go outside to escape, but Snowden brought her back into the house. In an attempt to diffuse the situation, she agreed to let Snowden pour a jug of his urine over her head. However, she claimed that after she let him do this, he dragged her by the neck to the living room floor where he then urinated on her head. According to Shoup, Snowden

then held her down, gouged her eye, and then kicked, punched, and hit her with a belt. She stated that Snowden bit her nose, and then using scissors, cut her hair so close to her scalp that she was bleeding. She stated that he also bit her hair and pulled the hair out with his teeth. According to Shoup, after the attack, Snowden threatened to kill himself in front of her. To prevent this, she wrapped the scissors in her shirt, and fled out of a window to escape. She ran down the street shouting for help while Snowden chased after her.

{¶7} Snowden denied that he poured urine over Shoup, urinated on her, kicked or punched her, choked her, gouged her eyes, struck her with the toddler's chair, or cut her hair. Snowden could provide no explanation about how Shoup sustained cuts to her head and face. He testified that after he was struck in the hand with the broken chair leg, he went outside to remove himself from the situation and tend to his head wound. He told the jury that moments later, Shoup came outside and indicated that they could work things out, so he went back inside. Snowden testified that after he suggested that she should move back with her parents while he cared for their daughter, Shoup became outraged and began screaming. He stated that he turned to go upstairs, but then heard a "bloodcurdling scream" and saw Shoup run out of the house. He testified that he chased after her to calm her down.

{¶8} The downstairs neighbor, Mary Orozco, testified that in the early morning hours of May 29th, she heard a noise like someone was pounding on her door. When she looked out her window, she saw Snowden running off her porch chasing after Shoup,

who was yelling for help. After Orozco called the police, she saw Snowden catch up to Shoup grab her from behind, and try to bring her back toward the house. According to Orozco, Shoup's face was bloody, her hair was shorter, and her shirt was drenched. (Tr. 489.) As they came back toward the house, Shoup told Orozco to call the police; Orozco told Shoup that she already contacted police. Shoup stayed on Orozco's porch until the police arrived. According to Orozco, Shoup was shook up, frantic, could barely speak, and smelled of urine.

{¶9} Neighbor Jennifer Sposit testified that she observed and heard the incident that morning. She stated she heard Shoup screaming for Snowden to "let her go," "get away from me," "leave me alone," and Snowden asking her to "calm down" and telling her that she "could cut his hair." (Tr. 587.) Sposit denied that Snowden was dragging Shoup back to the house, but characterized it as him "trying to guide her back into the house." However, she testified that Snowden forcefully grabbed Shoup from behind once he caught up to her. (Tr. at *id.*)

{¶10} Officers Michael Patton and Raymond Halas responded to a dispatch call and found Shoup on Orozco's porch. After the police ensured that Orozco would watch Shoup's child, Shoup was taken by ambulance to the hospital for treatment.

{¶11} Officer Halas testified that he entered the apartment and took some pictures of the scene, including a turned over chair, a broken toddler's chair, blood droplets on the floor, and the bloody t-shirt. He also took pictures of Shoup, which depicted injury to her arm, face, and head. However, he did not take any photographs of a broken cell

phone, the jug that contained urine, Shoup's cut hair, scissors, or any areas where urine would be present. Officer Halas testified that no physical evidence was taken from the residence.

{¶12} Shoup's friend, Lindsey Morella, testified that she picked up Shoup from the hospital and took her home to get her belongings. Although they went back to the house with the police, she testified that she took pictures of Shoup's cut hair on the floor and the broken cell phone found in Shoup's bedroom. Both pictures were shown to the jury. Morella described Shoup's hair as a "buzz-cut. There were pieces that were a little uneven all over. * * * [T]here was nothing left here at all. It was just completely fur." (Tr. 549.) She further stated that Shoup's house smelled like urine.

{¶13} Leslie Fishel, a Lakewood Hospital nurse, testified that Shoup was crying, shaking, made no eye contact, and spoke softly while being examined in the emergency room. Fishel stated that Shoup's hair was choppy, describing it as a "bad hair cut." She stated that Shoup had some bruising on her upper arm and lacerations on her nose and head. Fishel testified that Shoup told her that she was struck in the arm and shoulder area with a chair. On cross-examination, Fishel admitted that if she had been told that the lacerations were bite marks, she would have administered a tetanus shot. She further stated that she would have noted in her report any additional injuries if she observed them or was made aware of them.

{¶14} Snowden was arrested two days later at a friend's house. According to Officer Patton, Snowden was found in a closet and arrested without incident. After his

arrest, Snowden was treated for a fractured hand. Snowden's medical records also depicted a laceration on his forehead.

{¶15} Following the state's case, the trial court granted Snowden's Crim.R. 29 motion for judgment of acquittal on Count 2, kidnapping in violation of R.C. 2905.01(A)(2). The jury found Snowden not guilty of the remaining kidnapping count (Count 1), felonious assault with a deadly weapon (Count 4), disrupting public services (Count 5), and child endangering (Count 6). The jury did, however, find Snowden guilty of Count 6, domestic violence, a first-degree misdemeanor. The trial court sentenced Snowden to 180 days in jail, suspending all but 26 days and giving him credit for time served. He was also ordered to pay a \$1,000 fine, but \$900 was suspended.

{¶16} Snowden appeals, raising as his sole assignment of error that his conviction for domestic violence is against the manifest weight of the evidence.

{¶17} In contrast to a sufficiency argument, a manifest weight challenge questions whether the state met its burden of persuasion. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 12. A reviewing court "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury 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, 388, 678 N.E.2d 541 (1997). A conviction should be reversed as against the manifest weight of the evidence only in the most "exceptional case in which the evidence weighs heavily against the conviction." *Id.*

{¶18} Snowden was convicted of domestic violence, in violation of R.C. 2929.15(A), which prohibits a person from knowingly causing or attempting to cause physical harm to a family or household member. “Physical harm to persons” is defined as “any injury, illness, or other physiological impairment, regardless of its gravity or duration.” R.C. 2901.01(A)(3). However, to be convicted of domestic violence, actual physical harm is not required; the statute criminalizes someone for knowingly attempting to cause someone physical harm. *Cleveland Hts v. Brewer*, 109 Ohio App.3d 838, 673 N.E.2d 215 (8th Dist.1996).

{¶19} In this case, Snowden contends that his conviction is against the manifest weight of the evidence because (1) the jury acquitted him of felonious assault, disruption of public services, and child endangering, apparently not believing Shoup’s claims that Snowden hit her with the toddler’s chair and purposely destroyed her phone in front of their child; (2) no one testified that Snowden assaulted and caused injury to Shoup outside of the house, and (3) the medical records and the lack of physical evidence recovered by police do not support Shoup’s allegations of being tortured for over a hour.

{¶20} In this case, it is undisputed that this case hinges on the credibility of the witnesses. It is also undisputed that some physical altercation occurred between Snowden and Shoup where Snowden suffered a laceration to the head and Shoup suffered lacerations to the nose and head, and bruising to the arm.

{¶21} Although we review credibility when considering the manifest weight of the evidence, we are cognizant that determinations regarding the credibility of witnesses and

the weight of the testimony are primarily for the trier of fact. *State v. Bradley*, 8th Dist. Cuyahoga No. 97333, 2012-Ohio-2765, ¶ 14, citing *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967). The trier of fact is best able “to view the witnesses and observe their demeanor, gestures, and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 24. The jury may take note of any inconsistencies and resolve them accordingly, “believ[ing] all, part, or none of a witness’s testimony.” *State v. Raver*, 10th Dist. Franklin No. 02AP-604, 2003-Ohio-958, ¶ 21, citing *State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964).

{¶22} The jury heard Snowden’s statement to police that he picked up the toddler’s chair and told her that “If you’re going to cut me, it’s on.” (Tr. 699.) Snowden also testified about this statement:

Q: What did you tell the detective went through your head after you picked up that chair?

A. It was on. I said, If you cut me, it was on.

Q. It was on?

A. Yes, ma’am.

Q. What does that mean?

A. To me?

Q. Yeah. What does it mean to you?

A. If you cut me, it’s on. It’s — it’s on. It means —

Q. What’s on? The lights? What’s on?

A. Oh. If you cut me, I'm going to throw the chair down to the ground, and it's on. If you cut me, it's — I'm going to have to either call the police, or I'm going to have to get you out of the home from your erratic behavior this past week. That would definitely be the last straw, you know, if you cut me with that piece of glass.

(Tr. 872.)

{¶23} Because both Shoup and Snowden testified that Snowden suffered a laceration on the head and was bleeding profusely, the jury could have reasonably concluded — based on Snowden's own statement that after he was injured by Shoup — that he followed through with his threat that "it was on" and inflicted physical harm to Shoup.

{¶24} The jury saw photographs taken of Shoup after the altercation that depicted small lacerations to her nose and head, with dried blood on her lips. The photographs are consistent with the testimony of Ms. Orozco, who said she saw blood on Shoup's face while she was running away from Snowden and calling for help. The jury also saw a photograph of Shoup's upper arm showing discoloration. This photograph is consistent with the testimony of Ms. Fishel who noted bruising on Shoup's arm at the emergency room. The jury also saw photographs of Shoup's hair, depicting uneven and patchy areas, where lacerations on her scalp were present.

{¶25} Based on the photographs, the jury could have reasonably concluded that the injuries sustained by Shoup were caused by Snowden. While the jury may have been unconvinced by Shoup's testimony regarding the use of the toddler's chair, it was reasonably persuaded by other aspects of her testimony and the supporting evidence.

The jury's verdict demonstrates that it carefully considered all the evidence, weighed the credibility of the witnesses, reviewed the physical evidence, and followed the court's jury instructions in its deliberations. Therefore, this is not the exceptional case where the evidence weighs against the verdict. Based on the evidence in this case, Snowden cannot demonstrate this is the exceptional case calling for this court to disturb the trier of fact's resolution of which testimony and witness to believe.

{¶26} Finally, Snowden contends that the jury's exposure to irrelevant prejudicial information may have contributed to the jury losing its way in finding him guilty of domestic violence. Although not argued in a separately assigned error, we note that the complained of information was either sustained by the court following objection, or the court provided a curative instruction or explanation following some of the complained-of information. Moreover, even if this court removes this evidence and testimony from consideration, Snowden's conviction is not against the manifest weight of the evidence. The jury did not lose its way in finding him guilty of domestic violence. The assignment of error is overruled.

{¶27} 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.

KATHLEEN ANN KEOUGH, ADMINISTRATIVE JUDGE

EILEEN A. GALLAGHER, J., and
TIM McCORMACK, J., CONCUR