

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2014-T-0080
CHRISTOPHER KELLEY DELLICK,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Trumbull County Court of Common Pleas, Case No. 13 CR 777.

Judgment: Affirmed.

Dennis Watkins, Trumbull County Prosecutor, and *LuWayne Annos*, Assistant Prosecutor, Administration Building, Fourth Floor, 160 High Street, N.W., Warren, OH 44481 (For Plaintiff-Appellee).

Michael A. Partlow, 112 South Water Street, Suite C, Kent, OH 44240 (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Christopher Dellick, appeals his convictions for Trespass in a Habitation and Felonious Assault following a jury trial in the Trumbull County Court of Common Pleas. The issue before this court is whether the convictions are against the manifest weight of the evidence in light of Dellick’s acquittal of Aggravated Burglary and Kidnapping. For the following reasons, we affirm the decision of the court below.

{¶2} On November 26, 2013, Dellick was indicted by the Trumbull County Grand Jury for Aggravated Burglary (Count 1), a felony of the first degree in violation of R.C. 2911.11(A)(1) and (B); Kidnapping (Count 2), a felony of the first degree in violation of R.C. 2905.01(A)(3) and (C)(1); and Felonious Assault (Count 3), a felony of the second degree in violation of R.C. 2903.11(A)(1) and (D)(1)(a).

{¶3} On December 13, 2013, Dellick was arraigned and entered a plea of not guilty.

{¶4} Between June 23 to 26, 2014, the case was tried to a jury. The following testimony was presented on behalf of the prosecution:

{¶5} Deputy Richard L. Tackett of the Trumbull County Sheriff's Office testified that, on October 1[7], 2013, he responded to a call at 2416 Housel-Craft Road, Bristol, arriving at about 5:15 p.m. He encountered a very excited Dellick in the driveway, who told him that his wife (Rebecca Dellick) and daughter (Christina) were inside the residence and that he was trying to get them out. He located Rebecca in a bedroom of the house. She was "excited" and "hyper." She had a bloody towel wrapped around her left leg and "redness" around her throat and on her face. After taking statements from various witnesses, Tackett placed Dellick under arrest for burglary of the residence.

{¶6} Rebecca Dellick testified that from 1991 until 2008 she was married to Robert Holland and resided with him at 2416 Housel-Craft Road. In 2008, she married Dellick and bore him a daughter, Christina. Between 2012 and 2013 the Dellicks separated. As of September 2013, they were living at Rebecca's residence at 2200

Clearview Drive, Champion. Shortly thereafter, she asked Dellick to leave the residence, which he did not do.

{¶7} On October 17, 2013, Rebecca contacted Robert and asked if she and Christina could stay with him. Robert consented. Rebecca picked Christina up from school and took her to Robert's house, arriving at about 3:00 p.m. Rebecca then returned to the Clearview residence to pick up some belongings.

{¶8} While at the residence, Dellick arrived and assaulted her. Rebecca testified that he put his arm around her neck and choked her until she passed out. He stripped her and put her in the bathtub with the shower on. Dellick was wearing blue rubber gloves and had a pocket knife "probably four inches long." Dellick stripped and climbed in the tub behind her: "He told me I was gonna die one way or another. That if I didn't kill myself he was gonna do it for me and make it look like I had killed myself." With the knife, he cut the inside of her thigh several times. Eventually, Dellick took Rebecca out of the tub and they dressed. He made her hold the knife he had used to cut her. She agreed to go to court with him and sign over her parental rights to Christina. Rebecca set the knife down in her home and left with Dellick in his car.

{¶9} After driving around in Dellick's car, Rebecca suggested that they pick Christina up from Robert's house: "I knew if I got to Rob's house I could get help." When they arrived, Dellick and Robert confronted each other. Rebecca ran from the car yelling that Dellick had tried to kill her and for someone to call 911. She went inside and locked herself and Christina in a bedroom.

{¶10} After police arrived, Rebecca was taken to St. Joseph's hospital where she remained over the weekend. In addition to the cut on her leg, Rebecca had a hole in her trachea and bruises on her neck, chest, arms, and legs.

{¶11} James Patrick Goodlet, a fireman/paramedic with the Bristol Fire Department, testified regarding the location of the femoral artery in the inner thigh. In his fifteen years as a paramedic, Goodlet had encountered at least one instance of murder by cutting the femoral artery, but no instances of suicide by cutting the femoral artery.

{¶12} Goodlet testified that on October 17, 2013, he responded to a reported hemorrhage/laceration at 2416 Housel-Craft Road. Goodlet treated Rebecca for the laceration on her inner thigh and noted swelling to the front of her neck, hoarseness, and stridor in her speech (a high-pitched sound caused by swelling of the airway). Rebecca complained that the injuries were caused by her husband.

{¶13} Robert Holland testified that he was married to Rebecca for seventeen years. He resides at 2416 Housel-Craft Road (the former marital home).

{¶14} Robert testified that, on October 17, 2013, Rebecca had asked if she and Christina could stay at his house because she did not feel safe. Present at the house that afternoon (after Rebecca returned to her house) were Christina, Kim Gourley (Robert's fiancée), and Shannon Holland (Robert and Rebecca's daughter).

{¶15} Robert was alerted to a "ruckus" at his front door between Dellick and Shannon. Robert met Dellick on the front porch. Rebecca jumped out of Dellick's car claiming that he was trying to kill her. Dellick denied that he was trying to kill her and asserted that he was there to pick up Christina. Robert told Dellick that Christina's

mother was there and she could take care of her. Dellick then began to push his way into the residence. Dellick grabbed Robert and they fell over a couch in a room at the end of the entrance hallway. The men separated. Robert repeatedly told Dellick to get out of his house and wait outside. Robert retrieved a gun and Dellick retreated.

{¶16} Kim Gurley testified that, on October 17, 2013, she witnessed the confrontation between Dellick and Robert and Rebecca's injuries.

{¶17} Emily Feldenkris, a forensic scientist for the Ohio Bureau of Criminal Investigation, testified that she conducted DNA analysis on the knife and blue rubber gloves recovered from Rebecca's residence. With respect to the knife blade, there was a mixed DNA sample in which the major profile was consistent with Rebecca's DNA and the minor profile was inconclusive. With respect to the knife handle, the sample was consistent with Rebecca's DNA. With respect to the gloves, the results were inconclusive.

{¶18} Shannon Holland (age sixteen at trial) testified that, on October 17, 2013, Rebecca asked her to watch Christina while she returned home to pick up some clothes. About two hours later, Dellick knocked on the door, asking for Christina. Shannon yelled at him to leave. Rebecca exited Dellick's car, shouting that Dellick tried to kill her, and Robert came to the porch and confronted Dellick. While Robert and Dellick were struggling, Rebecca came in the house. Shannon went with her mother to the bedroom where she observed her mother's injuries and called 911.

{¶19} Patrolman Jason Manes of the Champion Township Police testified that he searched the Clearview residence on October 17, 2013. He found the pocket knife on an end table by the front door. The knife was closed with blood on it. Inside the

bathroom, he noted the following: a pink backpack hanging on a closet door; a towel rack with a belt on it; the shower and bath were wet; bloody socks on the edge of the tub; two towels and a washcloth inside the bath tub; another towel outside the bathtub; adult- and child-sized clothes folded and placed under the sink; a balled-up pair of shorts and white long-sleeved shirt; blue rubber gloves; a bottle of peroxide; a toothbrush and contact solution on the floor; and jewelry.

{¶20} Patrolman Manes also took written statements from Rebecca and Dellick.

{¶21} Christopher Dellick testified on his own behalf. Dellick testified that in the weeks before the October 17, 2013 incident, Rebecca seemed depressed and made comments to the effect that she wished she would disappear or not wake up.

{¶22} On the afternoon of October 17, 2013, Dellick returned to the Clearview residence and found Rebecca “laying in the tub with her inner thigh sliced open” and “nonresponsive.” Dellick revived her and asked her what happened. Rebecca replied, somewhat incoherently, that she was sorry. Dellick then noticed red marks about her neck. As he was about to call 911, Rebecca told him that it would be faster if he took her to the hospital.

{¶23} When Dellick found Rebecca in the tub, she had the pocket knife in her hand. There was a twisted blue towel on the floor. He knocked the knife out of her hand and went to the bedroom to get her some clothes. When he returned to the bathroom, she was standing up with the knife in her hand. After she dressed, they went to his car.

{¶24} On the way to St. Joseph’s hospital, Rebecca said she wanted to pick Christina up. Since she was becoming emotional, Dellick agreed and they drove to

Housel-Craft Road. Upon arriving, she asked Dellick to go get Christina. When Shannon and Robert confronted him at the door, Rebecca exited the car claiming that he had cut her. Shannon and Robert backed Dellick toward the edge of the porch and Rebecca ran into the house. Then, Robert grabbed him and pulled him into the house. After falling over the couch, Dellick called 911. Robert pinned him up against the door by the throat, but he broke free and fled the residence.

{¶25} Dellick has been in jail since the incident. During that time Rebecca has filed for divorce, sought custody of Christina, and requested child support.

{¶26} On June 26, 2014, the jury returned a verdict of Not Guilty as to Aggravated Burglary (Count 1), but Guilty on the lesser included offense of Trespass in a Habitation when a Person is Present or Likely to be Present, a felony of the fourth degree in violation of R.C. 2911.12(B); Not Guilty as to Kidnapping (Count 2); and Guilty on Felonious Assault (Count 3).

{¶27} On August 12, 2014, a sentencing hearing was held. Dellick was sentenced to six years in prison for Felonious Assault, to be served concurrently with an eighteen-month sentence for Trespass in a Habitation when a Person is Present or Likely to be Present. Dellick was advised of post-release control.

{¶28} On August 15, 2014, the written Entry on Sentence was issued.

{¶29} On September 10, 2014, Dellick filed a Notice of Appeal. On appeal, Dellick raises the following assignment of error:

{¶30} “[1.] The appellant’s convictions for Trespass and Felonious Assault are against the manifest weight of the evidence.”

{¶31} In Ohio, “a court of appeals has the authority to reverse a judgment as being against the weight of the evidence.” *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 7. “No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.” Ohio Constitution, Article IV, Section 3(B)(3).

Weight of the evidence concerns “the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.”

(Emphasis sic.) *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *Black’s Law Dictionary* 1594 (6th Ed.1990).

The court [of appeals], reviewing the entire record, 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.

Id., quoting *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983).

{¶32} “In weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact.” *Eastley*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, at ¶ 21; *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984), fn. 3 (“every reasonable intendment and every reasonable presumption must be made in favor of the judgment and the finding of facts”) (citation omitted).

{¶33} “When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony.” (Citation omitted.) *Thompkins* at 387. “When a court of appeals determines that a jury verdict is against the weight of the evidence, it should remand the case for a new trial.” *Eastley* at ¶ 22.

{¶34} Dellick argues that the jury’s verdicts are “somewhat bizarre,” in that the jury concluded he “somehow committed a felonious assault upon Rebecca” but “absolutely **did not** believe that [he] had in any way forced Rebecca to go to Robert’s house with him.” Appellant’s brief at 7.

{¶35} There is no inconsistency in the jury’s verdict. “The several counts of an indictment containing more than one count are not interdependent and an inconsistency in a verdict does not arise out of inconsistent responses to different counts, but only arises out of inconsistent responses to the same count.” *State v. Adams*, 53 Ohio St.2d 223, 374 N.E.2d 137 (1978), paragraph two of the syllabus. Accordingly, “consistency between the verdicts on the several counts of an indictment * * * is unnecessary where

defendant is convicted on one or some counts but acquitted on others, and the conviction will generally be upheld irrespective of its rational incompatibility with the acquittal.” (Citation omitted.) *Id.* at 228; *State v. Totarella*, 11th Dist. Lake No. 2009-L-064, 2010-Ohio-1159, ¶ 121.

{¶36} Dellick further argues that the verdicts, considered in light of other circumstances, demonstrate that the jury did in fact lose its way in not believing Dellick’s testimony. Dellick notes that there was no DNA evidence substantiating Rebecca’s claims and that his account of the incident remained consistent in his statements to the police, before the grand jury, and at trial.

{¶37} The lack of scientific evidence and the consistency of Dellick’s version of events do not compel the conclusion that his convictions constitute a manifest miscarriage of justice. Rebecca’s conduct on the day in question supports her testimony that her intention was to leave Dellick rather than commit suicide. She told Robert that she was leaving Dellick and needed someplace safe to go and she told Shannon that she was returning to the Clearview residence to retrieve clothes and toiletries. Corroborating these statements are the backpack, folded clothes, and scattered toiletries found at the crime scene. Rebecca’s version of events is also consistent with the chronology of the events, i.e., leaving Robert’s house at about 3:00 p.m. and returning with Dellick at about 5:00 p.m. Dellick’s version of events, on the other hand, is the more incredible. The jury clearly rejected Dellick’s testimony that Rebecca tried to hang herself using a twisted bath towel and tried to kill herself by cutting the inside of her thigh. Considering the evidence as a whole, we cannot disagree with the factfinder’s resolution of the conflicting testimony.

{¶38} The sole assignment of error is without merit.

{¶39} For the foregoing reasons, Dellick's convictions for Trespass in a Habitation and Felonious Assault are affirmed. Costs to be taxed against the appellant.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.