[Cite as *State v. Williamson*, 2021-Ohio-4140.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO,	:	JUDGES:
	:	Hon. Craig R. Baldwin, P.J.
Plaintiff - Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Earle E. Wise, J.
-vs-	:	
	:	
KAMPFER WILLIAMSON,	:	Case No. 21 CAA 04 0019
	:	
Defendant - Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Delaware County Court of Common Pleas, Case No. 20 CR I 05 0237
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	November 16, 2021

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
MELISSA SCHIFFEL Delaware County Prosecutor	ROGER SOROKA JOSHUA BEDTELYON 503 South Front Street Suite 205 Columbus, Ohio 43215
By: ELIZABETH MATUNE Assistant Prosecuting Attorney 149 North Union Street Delaware, Ohio 43015	

Baldwin, P.J.

{¶1} Defendant-appellant Kampfer Williamson appeals his conviction from the Delaware County Court of Common Pleas. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On May 14, 2020, appellant was indicted for the offense of domestic violence in violation of R.C. 2919.25(A), a felony of the fifth degree. At his arraignment on July 6, 2020, appellant entered a plea of not guilty to the charge. Subsequently, a jury trial commenced on February 4, 2021. The following testimony was adduced at trial.

{¶3} K.S. testified that appellant was the father of her two month old son. She testified that she met appellant in 2015 and started dating him. At first, the two kept separate residences but for the first two years, K.S. stayed at appellant's house nearly every night. K.S. testified that the two dated off and on and that they got back together in December of 2018 after breaking up from August of 2018 until then.

{¶4} In early 2020, K.S. moved in with appellant. Shortly after doing so, K.S., in April of 2020, learned that she was pregnant. At the time, K.S. was not in a sexual relationship with anyone else. When K.S. told appellant about her pregnancy, his response was tepid. K.S. testified as follows when asked about appellant's response:

{¶5} A. I could tell he wasn't excited in a good way. He just said wow, we're having a baby, and that's, that's really all he said. So I don't - - I mean I took it as like he's just shocked like because I've had like multiple like pregnancy scares before then cause we were - - I mean I don't know if you could say like trying or whatever. So I mean there's been a lot of instances where we thought that I was pregnant. So I think because

that one was positive that it was just like an initial shock, so that day I didn't really think to much of it.

{¶6} Transcript, Volume II at 171-172.

{¶7} Shortly thereafter, appellant became opposed to the idea of raising the baby. He told K.S. that he did not want another child and "that he doesn't want to stay up like throughout the night with a crying baby and changing diapers and that I didn't know how to be a mom so we can't have a kid." Transcript, Volume II at 172. K.S., however, decided that she was going to have and keep the baby. Appellant, according to K.S., became physically and emotionally abusive to her.

{¶8} When K.S. returned home from work on May 5, 2020, appellant told her that they needed to talk. After arguing about her pregnancy, appellant left the house at around 5:30 or 6:00 p.m. K.S. was already in bed when he returned at around 10:30 or 10:45 p.m. Appellant walked K.S.'s dog and then came back. He then came into the bedroom and turned on the light. K.S. then heard appellant, who had left the room with the light on, in the kitchen making a drink and using the microwave. K.S. asked appellant if he was coming to bed and he said "why does it matter." Transcript, Volume II at 179. After K.S. told appellant that if he was not coming to bed, she was going to turn off the lights, appellant told her that he paid the bills and could leave the lights on all night if he wanted to. K.S. turned off the lights and went back to bed.

{¶9} Appellant then turned the lights back on, telling K.S. "this is my house, bitch; I can leave the light on all night if I want to." Transcript, Volume II at 180. K.S. just laid there in silence and faced the wall away from the doorway.

{¶10} The next thing K.S. knew, appellant was on the bed next to her and hit her three times. K.S. immediately grabbed her phone and called 911 because she was scared. Appellant interspersed the blows with his words, speaking and hitting with what K.S. described as a "cadence" to the physical and verbal abuse. Transcript, Volume II at 182. K.S. testified that appellant mostly made contact with her left cheekbone. Appellant, who was still on top of K.S., grabbed the phone away from her and hung up. While the phone was in appellant's hand, 911 called back and K.S. answered it. She testified that she was able to talk to the 911 dispatcher. The 911 call was played for the jury. She stayed on the phone until officers arrived.

{¶11} Westville Police Department Officers Jeremy Shipman and Eric Everhart responded to the home. While Officer Everhart dealt with appellant outside, Officer Shipman remained inside to talk to K.S. Officer Shipman testified that K.S. was crying and very distraught while she told him what had happened. He testified that while she had no visible injuries, what she described might not necessarily cause a visible injury. When Officer Everhart was finished interviewing appellant, the two officers conferred. Appellant had denied touching K.S., telling Officer Everhart that if he had punched K.S., he would have left marks. The two officers decided that appellant was the primary physical aggressor and decided to arrest appellant. Appellant was very talkative. Once appellant found out that he was under arrest, he got "obviously angry, pretty upset, cussing, …" Trial Transcript, Volume III at 279. Appellant's anger was not directed at the officers, but rather at the situation. Appellant was taken into custody and charged with domestic violence.

{¶12} On February 5, 2021, the jury found appellant guilty to domestic violence. The jury further found that appellant knew that K.S. was pregnant at the time of the crime.

{¶13} Appellant, on February 18, 2021, filed a Motion for New Trial pursuant to Crim.R. 33(A)(1), (2) and (5). Appellee filed a memorandum in opposition to the motion on March 1, 2021. Pursuant to a Judgment Entry filed on March 2, 2021, the trial court denied the Motion for a New Trial.

{¶14} As memorialized in a Judgment Entry filed on March 23, 2021, appellant was sentenced to nine months in prison.

{¶15} Appellant now appeals, raising the following assignments of error on appeal:

{¶16} "I. DEFENDANT'S CONVICTION IS BASED ON INSUFFICIENT EVIDENCE."

{¶17} "II. DEFENDANT'S CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶18} "III. THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION FOR A NEW TRIAL ON THE GROUNDS THAT NO ABUSE OF DISCRETION NOR IRREGULARITIES IN THE PROCEEDINGS MATERIALLY AFFECTED APPELLANT'S SUBSTANTIAL RIGHTS."

I, II

{¶19} In his first two assignment of error, appellant argues that his conviction for domestic violence is against the manifest weight and sufficiency of the evidence. We disagree.

{¶20} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541, paragraph two of the syllabus. The standard of review for a challenge to the sufficiency of the evidence is set forth in *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991) at paragraph two of the syllabus, in which the Ohio Supreme Court held as follows:

> An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The 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.

{¶21} In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as the "thirteenth juror," and after "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 overturned and a new trial ordered." *State v. Thompkins*, supra, 78 Ohio St.3d at 387. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the "exceptional case in which the evidence weighs heavily against the conviction." *Id.*

{¶22} Appellee was required to prove beyond a reasonable doubt that appellant knowingly caused or attempted to cause physical harm to a family or household member. R.C. 2919.25(A). Pursuant to 2901.22, "(B) A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact."

{¶23} We find that based on K.S.'s testimony and the facts as set forth above, a rational trier of fact could have found that appellant knowingly caused or attempted to cause physical harm to K.S., a household member, by hitting her. We find that appellant's conviction is not against the sufficiency of the evidence.

{¶24} Appellant also argues that his conviction is against the manifest weight of the evidence. Appellant notes that K.S.'s testimony that she was hit three times in the face was repeatedly contradicted throughout the trial. He notes that K.S. had no visible injuries and that while K.S. told the officers and the dispatcher that she had no idea if she was hit with an open or closed hand, at trial, she testified that she had been punched with a closed hand. Appellant also notes that he testified at trial that he did not hit K.S. or have physical contact with her and that he was in couples counseling with K.S. so that they could work out their relationship for the sake of the baby. Appellant further notes that there were no eyewitnesses to the crime.

{¶25} We defer to the trier of fact as to the weight to be given the evidence and the credibility of the witnesses. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), at paragraph one of the syllabus. The jury as the trier of fact was free to accept or reject any and all of the evidence offered by the parties and assess the witnesses' credibility. "While the trier of fact may take note of the inconsistencies and resolve or discount them accordingly * * * such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Johnson*, 2015-Ohio-3113, 41 N.E.3d 104, ¶ 61 (5th Dist.), citing *State v. Nivens*, 10th Dist. Franklin No. 95APA09-1236, 1996 WL 284714 (May 28, 1996). The jury need not believe all of a witness' testimony but may accept only portions of it as true. *Id.*

{¶26} The issue of credibility is thus one for the jury. We find that the jury, as trier of fact, did not lose its way in convicting appellant of domestic violence.

{¶27} Appellant's first two assignments of error are, therefore, overruled.

III

{¶28} Appellant, in his third assignment of error, contends that the trial court erred in denying his Motion for New Trial.

{¶29} As is stated above, appellant filed his motion pursuant to Crim.R. 33(A)(1), (2) and (5). Crim R. 33 states, in relevant part, as follows**:**

> (A) Grounds. A new trial may be granted on motion of the defendant for any of the following causes affecting materially his substantial rights:
>
> (1) Irregularity in the proceedings, or in any order or ruling of the court, or abuse of discretion by the court, because of which the defendant was prevented from having a `fair trial;

(2) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;…

(5) Error of law occurring at the trial;

{¶30} A motion for a new trial made pursuant to Crim.R. 33 is addressed to the sound discretion of the trial court and may not be reversed unless we find an abuse of discretion. *State v. Schiebel*, 55 Ohio St.3d 71, 75, 564 N.E.2d 54 (1990). An abuse of discretion implies the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219, 450 N.E.2d 1140. A new trial should not be granted unless it affirmatively appears from the record that a defendant was prejudiced by one of the grounds stated in the rule or was thereby prevented from having a fair trial. *State v. Samatar*, 152 Ohio App.3d 311, 2003-Ohio-1639, 787 N.E.2d 691, ¶ 35 (10th Dist.).

{¶31} Appellant initially argues that that he should have had the ability to cross-examine the 911 operator and his right to confrontation was violated. However, "[t]he Confrontation Clause only protects against the introduction of testimonial statements, and 911 calls placed to "describe current circumstances requiring police assistance" are nontestimonial. Davis v. Washington, 547 U.S. 813, 827, 126 S.Ct. 2266, 165 L.Ed.2d 224 (2006*)." United States v. Cavazos*, 789 Fed. App'x 734, 738–39 (11th Cir. 2019). Thus, we find no violation.

{¶32} Appellant next argues that the admission of testimony regarding his alleged desire to abort the unborn child and alleged disinterest in raising the child prejudiced him and prevented him from having a fair trial. The admission or exclusion of relevant evidence is within the sound discretion of the trial court. *State v. Sage*, 31 Ohio St.3d 173,

510 N.E.2d 343 (1987), paragraph two of the syllabus. "The prosecutor was entitled to present evidence about the context of the alleged crimes to make the actions of the participants understandable to the jurors." *State v. Skatzes*, 104 Ohio St.3d 195, 217, 2004-Ohio-6391, 819 N.E.2d 215, 247, ¶ 113. When defense counsel objected to a question directed to K.S. as to why appellant did not want to have the baby, appellee argued that "[t]his did not happen in a vacuum. There was tension in the relationship, so I think the witness should be allowed to at least explain what their arguments were about." Trial Transcript, Volume II at 172-173. The trial court agreed and we find that the trial court did not abuse its discretion in doing so since the trial court's decision was not arbitrary, unconscionable or unreasonable.

{¶33} Appellant also maintains that repeated testimony regarding inadmissible alleged prior bad acts substantially and prejudicially affected his right to a fair trial. Appellant specifically avers that testimony alluding to alleged past acts of domestic violence by him prejudiced the jury.

{¶34} Appellant points first to a statement made by K.S. that appellant was physically and emotionally abusive to appellant "just day in and day out." Transcript, Volume II at 174. Appellant did not object to such testimony. Where an appellant fails to object to the testimony of a witness, an appellate court may treat those issues as waived. *See AFK Bldg. Systems, LLC v. Cottrill*, 5th Dist. Fairfield No. 02–CA–55, 2003–Ohio–1042, ¶ 10.

{¶35} Appellant next refers to a statement made during K.S.'s testimony that she knew that 911/the police was calling her back "from another incident." Trial Transcript, Volume II at 183. After appellant objected the court ordered such statement stricken.

{¶36} Appellant also points to the following testimony by Officer Shipmen:

{¶37} A. The totality of the, the evidence. Can't talk about prior incidents, but prior incidents at that specific time could be a determining factor of whether or not he could be a primary physical aggressor.

{¶38} Trial Transcript, Volume II at 263.

{¶39} However, when read in context, it is clear that the Officer was not referring to appellant or any incidents in this case, but rather what was taken into consideration in determining in any case whether or not to make an arrest in domestic violence cases.

{¶40} Appellant finally points to the following testimony by Officer Everhart:

{¶41} A. So initially I tried to because I had not talked to her yet, so I was just trying to understand his side of the story about what happened. He [appellant] mentioned before that they basically had argued literally the night before and she shoulder checked him. I asked him if they had any physical contact. He referred to something that happened the day before, said that she like shoulder checked him in crossing and he pushed her and he - -.

{¶42} Transcript, Volume III at 277-278. After appellant objected, the trial court ordered the parties to focus on what happened on May 5th and 6th of 2020. Moreover, as noted by appellees, "[w]hen taken in context, the statement was about K.S. 'shoulder checking' [appellant] and him then pushing her back, and not about his prior abuse."

{¶43} Furthermore, we concur with the trial court that appellant "was not prejudiced by any of the concerns that he has raised,… [or] prevented from having a fair trial.

{¶44} Appellant's third assignment of error is, therefore, overruled.

{¶45} Accordingly, the judgment of the Delaware County Court of Common Pleas is affirmed.

By: Baldwin, P.J.

Hoffman, J. and

Wise, Earle, J. concur.