[Cite as *State v. Culver*, 2019-Ohio-1650.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 107465
v.	:	
LAWRENCE CULVER,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: May 2, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-15-600980-A

Appearances:

Brian R. McGraw, *for appellant*.

Michael C. O'Malley, Prosecuting Attorney, and Jeffrey Schnatter, Assistant Prosecuting Attorney, *for appellee*.

MARY EILEEN KILBANE, A.J.:

{¶ 1} Defendant-appellant, Lawrence Culver ("Culver"), appeals his conviction for sexual battery. For the reasons set forth below, we affirm.

{¶ 2} On February 9, 2017, Culver, a corrections officer, was charged in an eleven-count indictment alleging he engaged in sexual conduct with three women

("Jane Does I, II, and III"), who were confined in the Northeast Reintegration Center ("NERC"). Counts one through five pertained to Jane Doe I, and alleged sexual battery; Counts six through nine, pertained to Jane Doe II, and alleged sexual battery; and Counts ten and eleven pertained to Jane Doe III, and alleged attempted sexual battery and attempted rape.

{¶ 3} On May 14, 2018, the matter proceeded to a jury trial. Prior to the start of the trial, the state informed the trial court that it had been notified that Jane Doe II had committed suicide in her jail cell the previous night. As a result, the trial court granted the state's motion to dismiss Counts six through nine of the indictment, pertaining to Jane Doe II, and renumbered Counts ten and eleven as Counts six and seven, pertaining to Jane Doe III.

{¶ 4} The following relevant testimony was adduced at trial.[1] Jane Doe I, testified that she first interacted with Culver in 2012, shortly after he began working at NERC. At the time, Jane Doe I was serving a four-year prison sentence for robbery. Jane Doe I testified that her first encounter with Culver was unpleasant, that a verbal altercation ensued regarding another inmate, but that the two became friendlier to each other over time.

{¶ 5} Jane Doe I testified that while she was living in the E Unit, she would occasionally talk with Culver, who was assigned to that block, while he was sitting at his desk. At first, Culver would give her words of encouragement, recite verses from

[1] The testimony pertaining to Jane Doe III is not relevant to the instant appeal because the trial court granted Culver's motion of acquittal on Count 6 and the jury found him not guilty of Count 7.

the Bible, and give her reassurance that she was a good person. Jane Doe I testified her conversations with Culver and her visits to his desk became more frequent and longer. Jane Doe I testified that during this period, Culver would frequently stop by her room.

{¶ 6} Shortly thereafter, Jane Doe I was moved out of the E Unit and relocated to another unit. Jane Doe I testified that she suspected she was moved because of her increasing interactions with Culver. After approximately two months, Jane Doe I was eventually moved back to the E Unit. Jane Doe I testified that when Culver discovered that she had moved back to the E Unit, he stopped by her room, grabbed the back of her head, and "open mouth kissed her." Jane Doe I described this as a turning point in their relationship.

{¶ 7} Jane Doe I testified that after the kiss, she thought of her relationship with Culver as "boyfriend and girlfriend." She began to skip meal time and stay in her room, so Culver could visit. Jane Doe I testified that on one of those occasions, they engaged in oral sex, and that Culver digitally penetrated into her vagina.

{¶ 8} During her testimony, Jane Doe I described several instances of sexual encounters with Culver throughout the remainder of her incarceration, at various locations, including the porter closet. Jane Doe I testified that during the times that she was moved out of the E Unit, Culver would volunteer to take another correction officer's shift, so that they could see each other at her new location. Jane Doe I testified that when she was questioned by prison officials about her relationship with Culver, she denied any sexual relationship.

{¶ 9} Jane Doe I testified that after her release from prison, she sent Culver a cryptic message on Facebook. Culver responded to the message, later called her, and the two met in Canton, Ohio, where she was visiting her sister. After they met in Canton, Culver later invited her to his home in Akron. Jane Doe I described this as another turning point in their relationship. She testified that Culver gave her a "burner" or untraceable cell phone, so the two could avoid detection while communicating.

{¶ 10} During this time she visited Culver's home multiple times, where she would cook for him, and where they would drink, watch television, listen to music, and engage in "crazy sex." At trial, Jane Doe I was able to describe details of Culver's home, and how it was furnished.

{¶ 11} Jane Doe I admitted that she was arrested a number of times in 2016, and that she was charged with various crimes, including shoplifting, theft, grand theft, assault, and robbery. Jane Doe I also admitted that she was on parole at the time these charges arose. In addition, Jane Doe I admitted that it was during this time period that Investigator Sharon Luke ("Luke") contacted her about the sexual relationship with Culver, which she had denied having when she was incarcerated.

{¶ 12} Jane Doe I testified that when she met with Luke in 2016, she admitted that she had been sexually involved with Culver while she was incarcerated. Jane Doe I also admitted that the relationship had continued after her release from prison. Jane Doe I informed Luke about the "burner" phones

Culver and she used to communicate with each other. Jane Doe I called Culver on the "burner" phone in the presence of Luke, who recorded the conversation.

{¶ 13} Luke testified she is an investigator with the Ohio Department of Rehabilitation and Corrections ("ODRC") and was stationed at NERC. Culver was employed as a corrections officer between 2012 and 2017. Luke stated that Jane Doe I arrived at NERC from the Ohio Reformatory for Women ("ORW") on May 24, 2012. Luke testified that not too long after Jane Doe I's arrival, suspicions arose that she was engaged in an unauthorized relationship with Culver.

{¶ 14} Luke testified that her review of the camera footage generated by the GPS bracelets worn by the inmates revealed and noted that Jane Doe I spent a substantial amount of time in the vicinity of Culver's desk and also behind his desk.

{¶ 15} Luke explained that the cameras in use at that time did not depict the images of the inmates, but only a representative stick-like image. Luke also explained that a similar representative stick-like image would not appear on the camera for Culver because he was not wearing a GPS monitor.

{¶ 16} Luke testified that on numerous occasions she confronted Jane Doe I about the suspicions of an unauthorized relationship with Culver, but Jane Doe I repeatedly denied she was engaged in such a relationship. Luke testified that as a result of the suspicions, Jane Doe I was moved in and out of several different units at NERC. Luke stated that Culver would work overtime in the units in which Jane Doe I had been transferred.

{¶ 17} Luke testified that Jane Doe I was transferred from NERC back to the ORW on February 27, 2014, because of the suspicions of an unauthorized relationship with Culver. Luke stated that on June 17, 2014, Jane Doe I was transferred from ORW to the Dayton Correctional Institution, where she completed the remainder of her sentence, and was released on three years of postrelease control.

{¶ 18} In January 2016, Luke received a telephone call from Jane Doe I seeking assistance. Luke testified that Jane Doe I explained that she was on parole and did not want to go back to prison. Luke offered to help and asked Jane Doe I directly about her relationship with Culver. Luke testified it was then that Jane Doe I finally admitted that she had engaged in a sexual relationship with Culver while she was incarcerated and that the relationship continued after she was released from prison.

{¶ 19} Luke subsequently met with Jane Doe I at the office of the Adult Parole Authority in Stark County. During the meeting, Jane Doe I provided details of the sexual relationship she had engaged in with Culver while incarcerated and after her release. During this meeting, Jane Doe I placed a call to Culver. Luke testified she recorded the conversation between Jane Doe I and Culver.

{¶ 20} The jury found Culver guilty of two counts of sexual battery against Jane Doe I, and not guilty on the remaining counts. On June 21, 2018, the trial court conducted a sexually violent predator hearing and found that Culver was not a

sexually violent predator. The trial court then sentenced Culver to a total of four years in prison and imposed a fine of $5,000.

{¶ 21} Culver now appeals assigning the following error for review:

Assignment of Error One

Culver's Convictions are against the manifest weight of the evidence.

{¶ 22} In the sole assignment of error, Culver argues his convictions are against the manifest weight of the evidence.

{¶ 23} Analyzing a claim under the manifest weight standard requires us to "review the entire record, weigh all of the evidence and all of the reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in evidence, the factfinder clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed[.]" *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), citing *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983).

{¶ 24} We are required to give "due deference" to the factfinder's conclusions because "the demeanor of witnesses, the manner of their responses, and many other factors observable by [the factfinder] * * * simply are not available to an appellate court on review." *State v. Vicario*, 8th Dist. Cuyahoga No. 106373, 2018-Ohio-4217, ¶ 9, citing *State v. Miller*, 8th Dist. Cuyahoga No. 100461, 2014-Ohio-3907, ¶ 58, citing *Thompkins*; *State v. Bailey*, 8th Dist. Cuyahoga No. 97754, 2012-Ohio-3955, ¶ 11, quoting *State v. Bierbaum*, 3d Dist. Seneca No. 13-88-18, 1990 Ohio App. LEXIS 1204 (Mar. 4, 1990).

{¶ 25} In the instant case, Culver was convicted of two counts sexual battery in violation of R.C. 2907.03(A)(11), which states as follows: "[n]o person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply * * * (11) The other person is confined in a detention facility, and the offender is an employee of that detention facility."

{¶ 26} R.C. 2907.01(A) defines "sexual conduct" as "vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse."

{¶ 27} Culver argues Jane Doe I's testimony is not trustworthy because she was facing further sanctions from the justice system and was motivated to cooperate with law enforcement,

{¶ 28} 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. Burks*, 8th Dist. Cuyahoga No. 106639, 2018-Ohio-4777, ¶ 48, citing *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).

{¶ 29} Furthermore, 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." *Id.*, citing *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." *Id.* at ¶ 48, citing *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).

{¶ 30} In the instant case, we cannot say that the jury lost its way simply because it chose to believe the testimony of Jane Doe I. The jury was able to assess the credibility of all the witnesses who testified at trial, including Jane Doe I, and assess her credibility despite her criminal history and lingering criminal problems. Jane Doe I's testimony, if believed, detailing her sexual relationship with Culver, while incarcerated and after her release, is sufficient to convict Culver of sexual battery.

{¶ 31} Culver also argues the jury's verdict was inconsistent because it found him not guilty on three of the five counts of sexual battery.

{¶ 32} In *State v. Frierson*, 8th Dist. Cuyahoga No. 105618, 2018-Ohio-391, we addressed a similar claim and stated:

> [a]n appellate court is not permitted to speculate about the reason for the inconsistency when it determines the validity of a verdict. *State v. Wingfield*, 2014-Ohio-2053, 11 N.E.3d 732, ¶ 31 (8th Dist.). Further, "[c]onsistency between verdicts on several counts of a criminal indictment is unnecessary[.]" *State v. Eason*, 8th Dist. Cuyahoga No. 103575, 2016-Ohio-5516, ¶ 68, 69 N.E.3d 1202. "[A]n 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. Lovejoy*, 79 Ohio St. 3d 440, 1997-Ohio-371, 683

> N.E.2d 1112 (1997), citing *State v. Hicks*, 43 Ohio St.3d 72, 538 N.E.2d 1030 (1989). "This is so because the several counts of an indictment are independent, and a verdict responding to a designated count will be construed in the light of the count designated, and no other." *State v. Brown*, 8th Dist. Cuyahoga No. 89754, 2008-Ohio-1722, ¶ 29. "Inconsistent verdicts often reflect a factfinder's attempt to avoid redundancy or to grant leniency" and "may work against the government as well as the defendant[.]" *Id.*, citing *United States v. Powell*, 469 U.S. 57, 105 S.Ct. 471, 83 L.Ed.2d 461 (1984); *Lovejoy* at 444. "A defendant who benefits from a compassionate acquittal on one charge cannot fairly complain that it is inconsistent with his proper conviction on another." *Wingfield* at ¶ 31, citing *Powell*. Accordingly, a defendant's conviction will stand "irrespective of its rational incompatibility with the acquittal." *Eason* at ¶ 68, citing *State v. Woodson*, 24 Ohio App.3d 143, 24 Ohio B. 231, 493 N.E.2d 1018 (10th Dist.1985).

{¶ 33} In the instant case, each count of sexual battery represented a separate act. Therefore, we are not dealing with a situation of an inconsistent response to the same count. Since each count of sexual battery required proof of a separate act, the verdicts returned by the jury were not inconsistent. As a result, this claim is unpersuasive.

{¶ 34} Culver further argues there was no corroborating evidence that he committed these crimes.

{¶ 35} A review of the record reveals Luke suspected Jane Doe I and Culver were engaged in an unauthorized relationship, which prompted her to review camera footage. The camera footage indicated that Jane Doe I spent a significant amount of time around Culver's work area. Luke also testified that because of the suspicion, Jane Doe I was moved several times within NERC. Luke further testified that Culver would work overtime in the units where Jane Doe I had been transferred.

{¶ 36} Finally, the jury was at liberty to view Jane Doe I's ability to send Culver a cryptic message on Facebook and get a response as proof that they had engaged in an unauthorized relationship, while she was incarcerated. In addition, the jury was free to believe Jane Doe I's ability to describe Culver's house, and its contents, as corroborating evidence that the two engaged in an unauthorized relationship in violation of R.C. 2907.03(A)(11).

{¶ 37} After reviewing the record, we cannot say that Culver's convictions are against the manifest weight of the evidence. The jury heard the witnesses' testimony and was able to take into account any inconsistencies and assess the credibility of the witnesses. Thus, we cannot say that this is the exceptional case where the evidence weighs heavily against the convictions, nor that the jury clearly lost its way and created a manifest miscarriage of justice.

{¶ 38} Accordingly, the sole assignment of error is overruled.

{¶ 39} Judgment is 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 of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending 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.

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MARY EILEEN KILBANE, ADMINISTRATIVE JUDGE

SEAN C. GALLAGHER, J., and
PATRICIA ANN BLACKMON, J., CONCUR