

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-190249
		C-190250
Plaintiff-Appellee,	:	TRIAL NOS. 18CRB-31709A
		18CRB-21709B
vs.	:	
SARA E. ROGERS,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Bringing forth two assignments of error, defendant-appellant Sara E. Rogers appeals the trial court’s judgment convicting her of aggravated menacing in violation of R.C. 2903.21(A) and domestic violence in violation of R.C. 2919.25(A). We affirm the trial court’s judgments.

At the bench trial, Michael Sizemore, the victim, testified that Rogers was his girlfriend and that they had been living together for 11 months. On the day of the incident, they had gone out for lunch and had had a few drinks, but upon returning home, Rogers had argued with her father over the telephone and then left to go for a walk. Sizemore testified that she had returned home in the middle of the night, intoxicated, sporting a black eye and an arm that “was all screwed up.” Rogers kept yelling at Sizemore, saying that he had hurt her. They argued for over an hour, with Sizemore urging Rogers to go to bed. She did not, and instead punched herself in the nose, causing it to bleed. She said if Sizemore called “the cops,” then “he was going to jail for domestic violence.” She eventually ran around Sizemore, dove for the nightstand where Sizemore kept his gun, and “faceplanted” into the nightstand. She grabbed the gun and pointed it at him. Sizemore testified that at the time he was “afraid of being shot or death.” He testified that he was taught that whenever a gun

was in play, to always consider it a loaded weapon. After he gained control of the gun, he realized it was not loaded. Sizemore testified that Rogers then hit and punched him and dug her nails into his skin, which was painful and left marks. A photograph of his injuries was admitted into evidence. Eventually, Sizemore went outside to call the police. Rogers followed him, continuing to hit him. When the police arrived, she ran away.

On cross-examination, Rogers's trial counsel pointed out inconsistencies between Sizemore's trial testimony and his statements to the police and the 911 dispatcher. By using the recording of the 911 call ("the recording") and the responding officer's body-camera video ("the video") as evidence of prior inconsistent statements, Rogers pointed out that Sizemore had told the 911 dispatcher that he did not know what had caused Rogers's bloody nose and that he had woken up to a gun in his face, contrary to the testimony about Rogers grabbing the gun from his nightstand. Sizemore then explained that he did not actually wake up with a gun in his face, but because there was so much going on at the time, "it was a slip of words, I guess you could say." Finally, Rogers pointed out, by using the video as evidence, that Sizemore had told police officers, with respect to the gun, "I know it was unloaded."

At the conclusion of the testimony, the trial court stated, "I listened to Mr. Sizemore. There were some inconsistencies with his testimony. I believe a little embellished at times, forgetful at times. However, after seeing the videos, listening to the 911, the basic elements of the crime are consistent that she did point a gun at him and threaten to shoot him, that she did hit him several times, dug her nails into his side, causing physical injuries. Those are consistent throughout. So the finding is guilty."

In her first assignment of error, Rogers contends the trial court erred when it used the recording and the video as substantive evidence to support Rogers's convictions, when neither had been admitted into evidence and had only been used

to demonstrate that the victim had made statements to the 911 dispatcher and the responding officers that were inconsistent with his trial testimony.

The use of a prior inconsistent statement is limited. “[W]hen a prior inconsistent statement is offered for the purpose of impeachment, the trier of fact may only consider the prior statement as substantive evidence if the prior statement is not inadmissible as hearsay.” *State v. Heard*, 1st Dist. Hamilton No. C-130789, 2014-Ohio-4643, ¶ 11.

In reviewing the record, we note that the recording and the video were not proffered for review. It appears from the record that the majority of the video and recording had been played for the trial court. Accordingly, we do not know what else the trial court may have heard. Because this was a bench trial, we presume that the trial court did not consider improper evidence in reaching its verdict, and that the court considered “only relevant, material, and competent evidence,” unless the record affirmatively discloses otherwise. *State v. Pennington*, 1st Dist. Hamilton Nos. C-170199 and C-170200, 2018-Ohio-3640, ¶ 46, quoting *State v. Post*, 32 Ohio St.3d 380, 384, 513 N.E.2d 754 (1987).

Although Sizemore admitted at trial that he made some inconsistent statements, those inconsistencies did not contradict Sizemore’s trial testimony that Rogers had pointed a gun at him and threatened to harm him, or contradict testimony that she had hit him and dug her nails into his underarm, causing injuries.

Accordingly, Rogers has not demonstrated that the trial court improperly relied on the recording or the video, instead of merely the victim’s testimony, to find her guilty of the charged offenses. The first assignment of error is overruled.

In the second assignment of error, Rogers contests the sufficiency and weight of the evidence underlying her convictions for aggravated menacing and domestic violence.

In reviewing a challenge to the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime had been proved beyond a reasonable doubt. *State v Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991); *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229. To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice in finding the defendant guilty. *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 549 (1997).

After reviewing the record, we hold that sufficient evidence supports Rogers's convictions for aggravated menacing and domestic violence, and we cannot say that the trial court lost its way in finding Rogers guilty of the charged offenses.

With respect to aggravated menacing, Sizemore testified that Rogers pointed a gun at him, threatening to harm him, and that he had been in fear for his life. *See* R.C. 2903.21(A). Rogers argues that the trial court's statement at sentencing that "[it] did not know what happened," demonstrates that the aggravated-menacing conviction was based on insufficient evidence. We disagree. The trial court's statement was in reference to whether the gun had been loaded, not whether Sizemore had believed the gun was loaded. There was sufficient evidence to support that Sizemore had feared for his safety. He said he was fearful, and he said that he had been taught that if a gun is in play, to always consider it loaded. Given the chaos in the home at the time the gun was pointed at Sizemore, it is reasonable to believe that Sizemore was uncertain as to whether the gun was loaded and that he was in fear of being shot.

With respect to Rogers's conviction for domestic violence, Sizemore testified that he and Rogers were in a romantic relationship and had been living together for 11 months at the time of the incident. Sizemore testified that Rogers had hit him and

OHIO FIRST DISTRICT COURT OF APPEALS

dug her nails into his underarm, which was painful. *See* R.C. 2919.25(A). The photograph of his injuries admitted at trial supported his testimony.

Based on the foregoing, we overrule Rogers's second assignment of error, and affirm the trial court's judgments.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on August 19, 2020

per order of the court _____.

Presiding Judge

