

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

STATE OF OHIO,	:	APPEAL NOS. C-160779
		C-160780
Plaintiff-Appellee,	:	TRIAL NOS. C-16CRB-11421A
		C-16CRB-11421B
vs.	:	
GWENDOLYN BLAND,	:	<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.

After a jury trial, Gwendolyn Bland was convicted of assault, in violation of R.C. 2903.13, and resisting arrest, in violation of R.C. 2921.33. The trial court sentenced Bland to consecutive 90-day jail terms and stayed the imposition of her sentences pending appeal. Bland now challenges her convictions and sentences in seven assignments of error.

The evidence at trial demonstrated that Bland attacked Cheryl Piper in the late evening on May 2, 2016. Bland pulled Piper’s hair, caused an injury to her lip requiring stitches, and attempted to choke her. After arriving at the scene, Lockland Police Officer Drew Jones observed Piper on her back crying with a bloodied lip and Bland sitting on top of her and “flailing” on her. Officer Jones identified himself as a police officer and ordered Bland to get off of Piper. When Bland ignored his order, he told her she was under arrest and repeatedly demanded that she get off of Piper. Bland continued to refuse and

struggled with the officer, requiring the officer to forcefully remove her. Bland continued to struggle with the officer after he got her to her feet, forcing him to wrestle her to the ground to place handcuffs on her.

Bland testified that Piper had animosity towards her stemming from her relationship with Bob Wize, her employer and Piper's "boyfriend," and had attacked her on the evening of May 2. Bland further claimed she was defending herself when Officer Jones observed her on top of Piper, and could not comply with the officer's order to stand up because Piper was biting her hand.

Bland's first assignment of error relates to the prosecutor's closing argument. Bland argues the trial court erred by allowing the state to raise new arguments in the rebuttal portion of closing argument and by refusing to permit defense counsel to respond to those new arguments. Bland, however, has failed to identify any new arguments raised in rebuttal and to demonstrate any unfairness or prejudice resulting from the trial court's refusal to vary the order of proceedings mandated in R.C. 2945.10. *See State v. Jenkins*, 15 Ohio St.3d 164, 473 N.E.2d 264 (1984), paragraph 11 of the syllabus. Accordingly, we overrule the first assignment of error.

We overrule Bland's second assignment of error challenging her sentences as contrary to law. From the record, we can only presume that the trial court, when imposing jail terms within the statutory ranges for the offenses, considered the appropriate misdemeanor-sentencing considerations set forth in R.C. 2929.21 and 2929.22. *See State v. Frazier*, 158 Ohio App.3d 407, 2004-Ohio-4506, 815 N.E.2d 1155, ¶ 15 (1st Dist.); *State v. Black*, 1st Dist. Hamilton No. C-060861, 2007-Ohio-5871. And given the nature of the assault and ferocity of Bland's resistance to the arrest, as well as Bland's prior conviction for disorderly conduct, we cannot say that the trial court abused its discretion when sentencing Bland to consecutive 90-day jail terms.

In Bland's third assignment of error, she argues the trial court erred by ordering her to stay away from the Elks Run Lodge, where Piper volunteered, as a condition of "probation" or her bond. The record reflects the trial court did not place Bland on "probation," but did ban Bland from the lodge as a condition of her appellate bond. On this record, however, Bland has not demonstrated that the trial court abused its discretion in ordering this condition. See R.C 2953.03(B)(1); App.R. 8; Crim.R. 46(B)(2), (4), and (7). Accordingly, we overrule the third assignment of error.

We overrule Bland's fourth assignment of error, challenging the trial court's exclusion of the complaint document. Even if, as Bland contends, the complaint could be considered an inconsistent statement of Officer Jones, the court did not abuse its discretion in excluding it where Officer Jones admitted to making the statements contained in the complaint. See *State v. Theuring*, 46 Ohio App.3d 152, 155, 546 N.E.2d 436 (1st Dist.1988).

We overrule the fifth assignment of error because any error by the trial court in excluding Bland's proffered testimony that Piper had called her a "dike" and "bitch" was harmless beyond a reasonable doubt. See Crim.R. 52(A); Evid.R. 103(A); *State v. Gilmore*, 28 Ohio St.3d 190, 503 N.E.2d 147 (1986), syllabus. The exclusion of this testimony did not affect Bland's substantial rights, where its exclusion could have had no impact on the verdict, considering the strength of the state's evidence and the fact that Bland was permitted to testify that Piper had "said some words to me, I'll put it that way."

Likewise, we overrule the sixth assignment of error, because Bland failed to demonstrate that the testimony she sought to introduce from Wize related to a present state of mind, emotion, sensation or physical condition, as required to qualify under the hearsay exception of Evid.R. 803(3).

Finally, in her seventh assignment of error, Bland contends that the trial court erred “by preventing defense counsel from arguing credibility of witnesses.” In closing argument, neither the prosecutor nor defense counsel may express his or her personal belief or opinion as to a witness’s credibility, but counsel “may comment on the truthfulness and credibility of a witness so long as it is based on the witness’s testimony.” *State v. Bevins*, 1st Dist. Hamilton No. C-050754, 2006-Ohio-6974, ¶ 27-28. Here, the trial court sustained the prosecutor’s objection to defense counsel’s expression of his personal opinion with respect to the credibility of Bland and Piper. Bland argues that defense counsel was not improperly vouching, but even if she is correct, she cannot demonstrate any prejudice from the trial court’s alleged error because defense counsel subsequently told the jury, without any correction, “I’m not vouching for her credibility. I’m saying the way I observed their testimony, I believe and you believe that [Bland] was honest and [Piper] was not.” Consequently, we overrule the seventh assignment of error.

Therefore, we affirm the trial court’s judgments.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and DETERS, J.J.

To the clerk:

Enter upon the journal of the court on December 22, 2017
per order of the court _____.
Presiding Judge