

[Cite as *State v. Some*, 2019-Ohio-3399.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

BAPONKOUN SOME

Defendant-Appellant

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Appellate Case No. 28106

Trial Court Case No. 2017-CRB-8302

(Criminal Appeal from Municipal Court)

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OPINION

Rendered on the 23rd day of August, 2019.

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Attorney for Plaintiff-Appellee

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Attorney for Defendant-Appellant

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TUCKER, J.

{¶ 1} Defendant-appellant Baponkoun Some appeals from his conviction for domestic violence. Some contends that the conviction was against the manifest weight of the evidence.

{¶ 2} We conclude that there was competent, credible evidence upon which the trial court could have relied in finding that Some committed the offense of domestic violence. We further conclude that the trial court, as the trier of fact, did not clearly lose its way in convicting Some. Accordingly, the judgment of the trial court is affirmed.

I. Facts and Procedural History

{¶ 3} Some was charged with domestic violence and assault following an altercation with his wife, Benewende Zombre. The matter proceeded to a bench trial during which Zombre testified¹ that she and Some were married in Africa in 2012, and had two children at the time of the trial. She testified that on December 26, 2017, at her home, she entered the bathroom and discovered her husband masturbating while on a video cellular telephone call with another woman. The next day, the family went out to eat and returned home around 3:00 p.m. At that time, Zombre had not spoken to her husband since the incident the previous day. Some asked Zombre to go into the bedroom in order to speak. While in the bedroom, Zombre told Some that she felt he did not love or respect her and that he was committing infidelity. She stated that she wanted to leave him. According to Zombre, Some responded by stating that he had spent a large sum of money to bring her to the United States from Africa and that she could not

¹ A certified interpreter was used because Zombre, who primarily speaks French, was limited in her ability to speak English.

leave him. He also told her that she belonged to him and that if she tried to leave him “what [she] will see will be [her] corpse.” Tr. p. 10.

{¶ 4} Zombre testified that she attempted to leave the bedroom, but Some began to slap and hit her. Some also used his head to strike Zombre on the forehead. Zombre testified that she was knocked to the floor. She testified that she stayed on the floor the remainder of the night and that Some continued to hit her.

{¶ 5} Zombre testified that, on the following day, Some ordered a pizza. When the delivery driver arrived, Zombre rushed to the door and indicated to the delivery driver that she was “in distress.” Tr. p. 14. She testified that when Some put the pizza down, she was able to run out of the home. The driver let Zombre into the delivery car and took her to the pizza restaurant.

{¶ 6} Dayton Police Officer David Lane testified that on December 28, 2017, he was dispatched to Happy’s Pizza on Salem Avenue for a domestic violence call. Upon arriving at the restaurant, Lane met with Zombre. Lane used “Google Translate” on his cellular telephone in order to communicate with Zombre. Lane was able to ascertain that Zombre was married and that she had been involved in an argument with her husband regarding Some’s phone call with another woman. Lane noticed, and photographed, a knot on the left side of Zombre’s forehead.

{¶ 7} Some also testified at trial. He testified that on December 27, Zombre had his cellular telephone when a woman called him. He claimed that the call made Zombre extremely angry. Some testified that Zombre stated that she wanted to end the marriage and that she threatened to call the police to report an argument in order to get Some in trouble. He testified that when the pizza arrived on December 28, Zombre tried to push

him. He testified that he resisted and held the door because there was “snow at the door [and he] didn’t want to fall in the snow.” Tr. p. 54. Some testified that, when he signed for the pizza, he went into the house and Zombre walked out. During cross-examination, Some testified that no violent acts occurred and that no one had been injured on the dates in question.

{¶ 8} The trial court found Some guilty as charged. During sentencing, the court merged the assault and domestic violence charges, and the State elected to proceed on the domestic violence conviction for purposes of sentencing. The trial court sentenced Some to 180 days in jail. The court credited Some for six days previously served and suspended the balance of the jail term. The court placed Some on supervised probation for a term of one year with the requirements that Some undergo a drug and alcohol assessment with attendant treatment and complete the Stop the Violence program. The court assessed a fine of \$50 and ordered Some to pay court costs.

{¶ 9} Some appeals.

II. Manifest Weight of the Evidence

{¶ 10} The sole assignment of error presented by Some states as follows:

THE TRIAL COURT ERRED WHEN IT CONVICTED MR. SOME AGAINST
THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 11} Some contends that the evidence presented by the victim was neither consistent nor credible and that there was no evidence to corroborate her testimony. Thus, he claims that the trial court erred by finding him guilty of the offense of domestic violence.

{¶ 12} When determining whether a verdict is against the manifest weight of the evidence, “we are required to review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of the witnesses.” *State v. Jackson*, 2015-Ohio-5490, 63 N.E.3d 410, ¶ 48 (2d Dist.), citing *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, 840 N.E.2d 1032, ¶ 39. “In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a ‘thirteenth juror.’ ” *Id.* at ¶ 49, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). “Under this standard of review, the appellate court weighs the evidence in order to determine whether the trier-of-fact ‘clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.’ ” *Id.* “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.” *State v. Hufnagel*, 2d Dist. Montgomery No. 15563, 1996 WL 501470, *5 (Sept. 6, 1996), quoting *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1983), paragraph three of the syllabus.

{¶ 13} Further, “because the factfinder * * * has the opportunity to see and hear the witnesses, the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder’s determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness.” *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684 (Aug. 22, 1997).

{¶ 14} Some first complains that Zombre’s testimony was not corroborated by any witnesses. We conclude that this argument lacks merit as we cannot find, and Some

does not cite, any requirement, statutory or otherwise, that a victim's testimony be corroborated as a condition precedent to conviction. Moreover, it is apparent that there was circumstantial corroboration of Zombre's claims in the testimony presented by Officer Lane, who testified that he observed a large knot and swelling on Zombre's forehead.

{¶ 15} Some next contends that the evidence regarding Zombre's injuries was not credible. In support, he claims that, although Zombre testified that she had multiple bruises, she did not show them to Lane. He further notes that the photograph taken by Lane of Zombre's forehead did not depict an injury. Again, we find no merit to this argument. First, Lane testified that the forehead injury was difficult to see in the photograph he took of Zombre's forehead.² More importantly, he testified that he observed the swelling and knot on Zombre's forehead. Further, Lane testified that Zombre's difficulties with the English language prevented him from getting all the details he would normally get from a victim.

{¶ 16} Some also claims that Zombre's testimony at trial conflicted with her statement to Lane. Specifically, he cites the fact that Lane was unaware of Zombre's claim that she had seen Some masturbating and that he did not know about her claim that Some had kicked her or that she had marks on other parts of her body.

{¶ 17} We again note Lane testified that, because of Zombre's lack of proficiency in English, he was only able to get "the gist" of what Zombre told him at the pizza restaurant, and that he did not get all of the details he normally would with an English-speaking victim. However, Lane testified that he was able to understand that Zombre had gotten into an argument with Some over another woman speaking to him on the

² The picture was not admitted into evidence at trial.

telephone and that she had a knot on her forehead caused by Some. When defense counsel asked whether he agreed that Zombre's testimony was different than what she had told him at the time of the offense, Lane noted that the use of the French translator made a difference and stated that he did not believe Zombre's testimony conflicted with what he was able to understand when he interviewed her.

{¶ 18} Finally, Some claims that Zombre was not credible because she had a motive to lie. In support, he claims that Zombre only brought charges against him because she was angry at his alleged infidelity and she wanted to end the marriage.

{¶ 19} We note that this argument was brought to the attention of the trial court. Some testified that Zombre stated that she did not need to remain married because she had a green card and could be independent. He also testified that she told him she would call the police and have him arrested so that he could not finish nursing school. During closing argument, defense counsel indicated that Zombre lied because she was worried that if a divorce occurred, Some would be given custody of the parties' children, given that Some and the children were United States citizens and she was not.

{¶ 20} The outcome of this case rested on the credibility of the witnesses. "A trier of fact is free to believe all, part or none of the testimony of each witness." *State v. Jackson*, 2015-Ohio-5490, 63 N.E.3d 410, ¶ 50 (2d Dist.), citing *State v. Long*, 127 Ohio App.3d 328, 713 N.E.2d 1 (4th Dist.1998). We must give substantial deference to the trial judge, who acted as the trier of fact, and who had the opportunity to see and hear the witnesses in judging their credibility. We find nothing in the record from which to conclude that the trial judge lost his way in finding Zombre to be a more credible witness than Some and thereby convicting Some of domestic violence.

{¶ 21} The sole assignment of error is overruled.

III. Conclusion

{¶ 22} Some's assignment of error being overruled, the judgment of the trial court is affirmed.

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FROELICH, J. and HALL, J., concur.

Copies sent to:

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Hon. Christopher D. Roberts