

[Cite as *Parma v. Singh*, 2018-Ohio-5235.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106935

CITY OF PARMA

PLAINTIFF-APPELLEE

vs.

GURVINDER SINGH

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Parma Municipal Court
Case Nos. 17 CRB 03838 and 17 CRB 04714

BEFORE: E.T. Gallagher, P.J., Laster Mays, J., and Celebrezze, J.

RELEASED AND JOURNALIZED: December 20, 2018

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EILEEN T. GALLAGHER, P.J.:

{¶1} Defendant-appellant, Gurvinder Singh, appeals from his domestic violence convictions following a bench trial. He raises the following assignment of error for review:

Appellant's convictions for domestic violence were against the manifest weight of the evidence.

{¶2} After careful review of the record and relevant case law, we affirm Singh's convictions.

I. Procedural and Factual History

{¶3} Singh was charged in the city of Parma with two counts of domestic violence in violation of R.C. 2919.25(A). The charges arose from two separate altercations between Singh and his wife, H.K., at their shared residence on August 16, 2017, and October 3, 2017. The

charges were consolidated without objection, and the matter proceeded to a bench trial in January 2018.

{¶4} At the time of the alleged incidents, Singh and his wife, H.K., resided together in a home located in Parma, Ohio. With respect to the altercation occurring on August 16, 2017, H.K. testified that she and Singh had a verbal argument that became physical. She stated that Singh slapped her in the face five or six times while she was sitting on the couch in the basement, and later punched her in the shoulder as she was washing dishes in the kitchen. Following the argument, H.K. left the house with her children and went to a nearby park, where she used her cell phone to contact the Parma police.

{¶5} Upon responding to the scene, Parma police officers spoke with H.K. and took photographs of her face and body. Officer Philip Sellie of the Parma Police Department testified that H.K. was visibly upset. She was shaking, crying, and very emotional. Officer Sellie testified that he was present in court during the state's direct examination of H.K. He stated that, in his opinion, H.K.'s description of the altercation during her testimony was consistent with the statement she provided to the responding officers. Officer Sellie admitted that he did not observe any physical injuries to H.K. However, he explained that, in his experience, an individual could be slapped or punched "without there being evidence of a welt or a mark or a bruise." Officer Sellie further testified that at the time of his arrest, Singh "was confused [about] what was going on," and maintained that "he works really hard and would never do something" like what was alleged by H.K.

{¶6} During his cross-examination, Officer Sellie was questioned at length regarding his opinion that H.K.'s testimony at trial was consistent with the statements she made to the police on the night of the incident. Officer Sellie admitted that at the time she made her statement to

the police, H.K. stated that she was punched in the forearm, not her shoulder, and that she only mentioned being assaulted in the kitchen, not the basement. He further conceded that the photographs taken inside Singh's residence did not depict signs of a struggle. Thus, when presented with the foregoing distinctions, Officer Sellie agreed that H.K.'s testimony at trial was inconsistent, in some respects, with her statement to the police in August 2017. However, he clarified that while H.K.'s testimony contained inconsistencies, it was "not wholly inconsistent" with her allegations of physical abuse. For example, Officer Sellie testified that H.K. consistently alleged that Singh slapped her multiple times in the face with an open hand and punched her several times. Officer Sellie stated that it is possible that the inconsistency with whether she was punched in the shoulder or the forearm may have been the product of a "language problem." Officer Sellie testified that the police had trouble understanding H.K. and required a family member to translate her statement to the police.

{¶7} With respect to the incident occurring on October 3, 2017, H.K. testified that at approximately 7:00 p.m., Singh returned home and began "yelling and abusing" her. She stated that Singh grabbed her neck and threw food at her. Later that evening, H.K. was in her bedroom when Singh came into the room and dragged her to another room by her legs. Singh pulled off her pants and told her that he was going to get a rope to "tie [her up] and keep [her] like bitches are kept at home." H.K. testified that she was scared and ran out of the house to call the police when Singh went to find a piece of rope.

{¶8} Officer Ryan Garrison of the Parma Police Department testified that on October 3, 2017, he responded to Singh's home upon receiving a report of a domestic disturbance. Officer Garrison testified that when he arrived at the scene, it appeared no one was home. Approximately five or ten minutes later, Singh pulled into the driveway in his vehicle. Singh

admitted that he and his wife had a verbal argument and that he was in his car looking for her because she ran from the house on foot. Officer Garrison testified that he eventually had the opportunity to speak with H.K. According to Officer Garrison, H.K. did not initially make complaints of a physical altercation and therefore, Singh was not arrested that evening. She stated that she left the house because she and Singh “were arguing and he was yelling at her and was intoxicated.” However, Officer Garrison admitted that there was a language barrier and that H.K. was pointing at her legs in an effort to communicate with the officers.

{¶9} The following day, Officer Garrison was asked to take a second statement from H.K. at the county prosecutor’s office. At that time, H.K. alleged that the October 3, 2017 incident was physical. Officer Garrison testified that H.K. stated that “when the argument calmed down she was in the master bedroom laying down when the defendant entered the bedroom and grabbed her by her legs and dragged her to another bedroom.” Officer Garrison testified that H.K. also stated that Singh threatened to tie her up with a rope. In addition, H.K. reported that Singh “struck her in the neck and pushed her to the ground.”

{¶10} During his cross-examination, Officer Garrison testified that Singh did not appear to be intoxicated and that H.K. did not have visible injuries that would be consistent with an assault. Officer Garrison further admitted that after speaking with Singh and H.K. on the night of the incident, it was his determination that no crime had been committed and that “it was a verbal argument only.” The decision to arrest Singh was only made after obtaining a more detailed statement from H.K. the following day at the prosecutor’s office.

{¶11} Singh testified on his own behalf. He denied his wife’s allegations of abuse and stated that the arguments were merely verbal. He testified that on August 16, 2017, he laid down in his bedroom because he had a headache after having a short verbal argument with his

wife regarding whether he attended an alcohol treatment facility. A short time later, he got up and realized that H.K. and their children had left their home. Singh testified that he began calling family members to see if they knew where H.K. had gone. While he was on the phone, the police arrived at his home and informed him that H.K. had contacted the police and filed a victim's complaint. Singh testified that he "had no clue what [was] going on" when the police placed him under arrest.

{¶12} With respect to the October 3, 2017 incident, Singh admitted that he and H.K. got into a verbal argument concerning money and bills in general. He denied physically assaulting H.K. or threatening to cause her physical harm. Singh testified that after the argument ended, he and his son went into the basement and watched television for a period of time. When he took his son upstairs to go to bed, Singh and H.K. began arguing again. After the argument ended, Singh heard a door slam and then observed H.K. "running down the street." Singh testified that he got into his vehicle and began driving up and down his street looking for H.K. Singh was unable to locate H.K. and returned home. When he pulled into his driveway, he noticed that the police were in his front yard. Singh testified that he cooperated with the police and agreed to spend the night somewhere else based on H.K.'s allegations that he had assaulted her.

{¶13} At the conclusion of trial, the court found Singh guilty of both charges. Singh was sentenced to 180 days in jail, a fine of \$200, and 24 months of probation on each count. The jail terms were suspended.

{¶14} Singh now appeals from his convictions.

II. Law and Analysis

{¶15} In his sole assignment of error, Singh argues his domestic violence convictions are against the manifest weight of the evidence. He contends that “the testimony provided by the alleged victim in these matters was inconsistent, unbelievable, and not supported by any physical evidence.”

{¶16} A manifest weight challenge attacks the credibility of the evidence presented and questions whether the state met its burden of persuasion at trial. *State v. Whitsett*, 8th Dist. Cuyahoga No. 101182, 2014-Ohio-4933, ¶ 26, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 13. Because it is a broader review, a reviewing court may determine that a judgment of a trial court is sustained by sufficient evidence but nevertheless conclude that the judgment is against the weight of the evidence.

{¶17} In evaluating a challenge to the verdict based on the manifest weight of the evidence in a bench trial:

[T]he trial court assumes the fact-finding function of the jury. Accordingly, to warrant reversal from a bench trial under a manifest weight of the evidence claim, this court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether in resolving conflicts in evidence, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered.

Cleveland v. Welms, 169 Ohio App.3d 600, 2006-Ohio-6441, 863 N.E.2d 1125, ¶ 16 (8th Dist.), citing *Thompkins*. Reversal on manifest weight grounds is reserved for the ““exceptional case in which the evidence weighs heavily against the conviction.”” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983).

{¶18} In this case, Singh was convicted of domestic violence in violation of R.C. 2919.25(A), which prohibits a person from knowingly causing or attempting to cause physical

harm to a family or household member. “Physical harm to persons” is defined as “any injury, illness, or other physiological impairment, regardless of its gravity or duration.” R.C. 2901.01(A)(3). However, to be convicted of domestic violence, actual physical harm is not required; the statute criminalizes someone for knowingly attempting to cause someone physical harm. *Cleveland Hts. v. Brewer*, 109 Ohio App.3d 838, 673 N.E.2d 215 (8th Dist.1996).

{¶19} On appeal, Singh argues that his domestic violence convictions cannot stand because H.K.’s testimony lacked credibility. He contends that H.K. “provided a simply unbelievable description of events that lack specificity, is at times contradictory, and is not supported by any physical evidence.”

{¶20} Unquestionably, there are several inconsistencies between the testimony H.K. provided at trial and the statements she made to the police on the night of each incident. For instance, Officer Sellie admitted that when H.K. made her statement to the police, she indicated that she was punched in the forearm, not her shoulder. Similarly, she only mentioned being assaulted in the kitchen, not the basement. Singh also correctly notes that H.K.’s second statement to the police varies from her original statement, which was limited to allegations of a verbal abuse.

{¶21} With that said, however, we are constrained to adhere to the principle that the credibility of witnesses and the weight to be given to their testimony are matters for the trier of fact to resolve. *See State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). We are mindful that the determination regarding witness credibility rests primarily with the trier of fact because the trier of fact is in the best position to view the witnesses and observe their demeanor, gestures, and voice inflections — observations that are critical to determining a witness’s credibility. *State v. Clark*, 8th Dist. Cuyahoga No. 94050, 2010-Ohio-4354, ¶ 17, citing *State v.*

Hill, 75 Ohio St.3d 195, 205, 661 N.E.2d 1068 (1996), and *State v. Antill*, 176 Ohio St. 61, 66, 197 N.E.2d 548 (1964). The trier of fact is free to accept or reject any or all the testimony of any witness. *State v. Smith*, 8th Dist. Cuyahoga No. 93593, 2010-Ohio-4006, ¶ 16. As this court has previously recognized, a defendant is not entitled to a reversal on manifest-weight grounds merely because inconsistent evidence was presented at trial. *State v. Gaughan*, 8th Dist. Cuyahoga No. 90523, 2009-Ohio-955, ¶ 32, citing *State v. Raver*, 10th Dist. Franklin No. 02AP-604, 2003-Ohio-958, ¶ 21.

{¶22} In this case, it is evident that many of the perceived inconsistencies between the written police reports and H.K.'s testimony at trial were the product of a significant language barrier and the difficulties H.K. had communicating with the officers. Regarding the August 16, 2017 incident, Officer Sellie testified that while a language barrier may have caused his written report to vary from H.K.'s testimony in some respects, she consistently alleged that Singh slapped her with an open hand and punched her several times. Officer Garrison also noted the language barrier in his written report of the October 3, 2017 incident. He explained that the communication problem prevented him from understanding why H.K. was pointing to her legs while giving her statement to the police. During his redirect examination, however, Officer Garrison testified that he later learned that H.K. was trying to tell him that Singh had "grabbed her by her legs and dragged her on the floor from one bedroom to the other."

{¶23} In our view, defense counsel's thorough cross-examination of the state's witnesses provided the trier of fact with all the necessary information needed to sufficiently weigh the credibility of H.K.'s allegations of physical and emotional abuse. Deferring to the trial court's assessment of the witness's credibility, as we must, we find Singh's domestic violence convictions are not against the manifest weight of the evidence.

{¶24} Based on the foregoing, we are unable to conclude that this is the exceptional case where the jury clearly lost its way and created a manifest miscarriage of justice such that a new trial should be ordered. Singh's sole assignment of error is overruled.

{¶25} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Parma Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

EILEEN T. GALLAGHER, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
FRANK D. CELEBREZZE, JR., J., CONCUR