

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

CITY OF GARFIELD HEIGHTS,	:	
	:	
Plaintiff-Appellee,	:	No. 108076
	:	
v.	:	
	:	
DAVID EDGE,	:	
	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 14, 2019

Criminal Appeal from the Garfield Heights Municipal Court
Case No. CRB 1801096

Appearances:

Joseph P. Morse, City of Garfield Heights Prosecuting
Attorney, *for appellee*.

Richard H. Drucker, *for appellant*.

SEAN C. GALLAGHER, J.:

{¶ 1} David Edge appeals from the verdict finding him guilty of domestic abuse, claiming his misdemeanor conviction is against the weight of the evidence. We affirm.

{¶ 2} Edge and the victim shared Edge's residence for several months. One morning an argument between the couple became physical. The victim claims that Edge picked her up by the throat and violently threw her into the hallway outside of their bathroom. The victim testified that a scratch on her finger occurred while she tried to pry Edge's hands off her neck. Edge claims that he awoke to the victim hitting him, screaming at him, and smashing his television and cell phone. Edge testified to entering the hallway bathroom to remove himself from the victim's aggression. According to Edge, the victim forced her way into the bathroom to continue the fight and Edge then pushed her into the hallway. Edge called for police assistance, and around the same time, the victim called Edge's mother. Although the victim initially testified to calling the police, she quickly clarified that she had done so on another occasion and confirmed that she called Edge's mother on the day in question.

{¶ 3} When police officers responded, they did not observe any injuries to the victim except for a small scratch on her finger with a small amount of dried blood. During trial, Edge claims that the bloodied finger was likely caused by the victim's alleged tirade that included smashing Edge's television. In this appeal, Edge claims the dried blood was not evidence of anything in light of the fact that the dried blood indicated an older wound that would have occurred well before the altercation and, in addition, that the victim is inherently unreliable because there were no observable injuries reported by the responding police officers.

{¶ 4} After the bench trial, Edge was convicted of domestic abuse under R.C. 2919.25(A), which provides that “no person shall knowingly cause or attempt to cause physical harm to a family or household member.” In this appeal, the sole issue is whether the weight of the evidence supports the guilty verdict. According to Edge, the victim was incredible because the responding officer observed no signs of trauma to the victim’s body but noted that the television was indeed broken. Edge claims that latter point corroborates his version of the events.

{¶ 5} When reviewing a claim challenging the manifest weight of the evidence, the court reviewing the entire record, must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, 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. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the exceptional case in which the evidence weighs heavily against the conviction. *Id.* Weight-of-the-evidence review, unlike sufficiency review that tests the adequacy of the evidence in a light most favorable to the state, addresses the “evidence’s effect of inducing belief.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25, citing *Thompkins* at 386-387. In undergoing this review, appellate courts must “ask whose evidence is more persuasive — the state’s or the defendant’s?” *Id.* Appellate courts do not defer to the trier of fact when reviewing the weight of the evidence. We sit as the thirteenth

juror with the ability to disagree with the factfinder's resolution of the conflicting testimony. *Thompkins* at 387, citing *Tibbs v. Florida*, 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652 (1982).

{¶ 6} In this case, there is nothing inherently unreliable about the victim's testimony such that this case presents the exceptional case warranting appellate intervention. Edge's claim that the victim lacked observable injuries, as a basis to discredit her testimony, is unpersuasive. The victim never claimed that Edge caused observable injuries; she simply testified as to the events that transpired, which included testimony that Edge grabbed her by the throat to forcibly remove her from the bathroom. Although her lack of observable injuries weighs on the credibility analysis, it is not, in and of itself, dispositive. In this case, the victim's trial testimony was consistent with her initial reporting, which supports a finding of credibility, and there are no other reasons provided to discredit the victim's testimony.

{¶ 7} Edge also argues that had the victim been grabbed by the throat and tossed into the hallway as the victim described, "there certainly would have been injuries to her neck." That argument, however, is not derived from any evidence introduced at trial. There is no way for us to determine whether the conduct of the offender should have led to visible injuries without resorting to rank speculation. On this point, the lack of observable injuries weighs on the victim's credibility but is not dispositive. As already discussed, the victim did not claim to have incurred visible injuries from Edge's conduct and there is nothing inherently unreliable about her testimony to warrant the extraordinary step of remanding for a new trial.

{¶ 8} We affirm.

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 out of this court directing the municipal court to carry this judgment into execution. 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.

SEAN C. GALLAGHER, JUDGE

RAYMOND C. HEADEN, J., CONCURS;
EILEEN T. GALLAGHER, P.J., CONCURS IN JUDGMENT ONLY