

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 12AP-540
Plaintiff-Appellee,	:	(C.P.C. No. 11CR-04-1716)
v.	:	
	:	(REGULAR CALENDAR)
Antonio M. Smoot,	:	
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on February 12, 2013

Ron O'Brien, Prosecuting Attorney, and *Laura R. Swisher*, for appellee.

Todd W. Barstow, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶ 1} Antonio M. Smoot, defendant-appellant, appeals from the judgment of the Franklin County Court of Common Pleas, in which the court found him guilty, pursuant to a jury verdict, of domestic violence, which is a violation of R.C. 2919.25 and a third-degree felony, and abduction, which is a violation of R.C. 2905.02 and a third-degree felony.

{¶ 2} On March 11, 2011, while in the apartment appellant shared with his girlfriend, T.M., appellant accused T.M. of cheating on him. Appellant threw T.M. to the floor, held her down by her neck, and put his knee in her back. After T.M. said she could not breathe, appellant let her turn over, but he continued to hold her by the neck and put his knee in her stomach. After she begged appellant and told him she was sorry, he permitted T.M. to get up, and she ran from the apartment. She then called police using a neighbor's phone. When police arrived, the apartment property manager unlocked the apartment door, but appellant was gone, as were T.M.'s car keys and cell phone. T.M.

spoke with appellant over the phone, but he refused to return to the apartment. After police spoke to him on the phone, appellant agreed to return, but he never did so.

{¶ 3} After the police left, appellant returned to the apartment. Appellant talked about reconciling, and T.M. agreed to talk in hopes appellant would return her car keys and phone. T.M. began to pack her personal items to leave the apartment, but appellant began throwing her clothes outside. T.M. called police and took some of her personal property to her vehicle. When she went back to the apartment, the door was locked. Just as police arrived, appellant exited the door and grabbed T.M. The police arrested appellant.

{¶ 4} Appellant was charged with domestic violence and abduction. On February 27, 2012, a jury trial commenced, resulting in a guilty verdict on both counts. On April 19, 2012, the trial court held a sentencing hearing. In its judgment filed the same day, the trial court sentenced appellant to community control for three years, which included a term of 60 days in prison, and indicated that appellant would receive a prison term of 36 months if he violated community control. Appellant appeals the judgment of the trial court, asserting the following assignment of error:

THE TRIAL COURT ERRED AND DEPRIVED APPELLANT OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE ONE SECTION TEN OF THE OHIO CONSTITUTION BY FINDING HIM GUILTY OF DOMESTIC VIOLENCE AND ABDUCTION AS THOSE VERDICTS WERE NOT SUPPORTED BY SUFFICIENT EVIDENCE AND WERE ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 5} Appellant argues in his assignment of error that the trial court's judgment was based upon insufficient evidence and against the manifest weight of the evidence. This court's function when reviewing the weight of the evidence is to determine whether the greater amount of credible evidence supports the verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). In order to undertake this review, we must sit as a "thirteenth juror" and review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice. *Id.*, citing *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). If we find that the fact finder clearly lost its way, we

must reverse the conviction and order a new trial. *Id.* On the other hand, we will not reverse a conviction so long as the state presented substantial evidence for a reasonable trier of fact to conclude that all of the essential elements of the offense were established beyond a reasonable doubt. *State v. Getsy*, 84 Ohio St.3d 180, 193-94 (1998).

{¶ 6} The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *Thompkins* at 387. When presented with a challenge to the manifest weight of the evidence, an appellate court may not merely substitute its view for that of the trier of fact, but must review the entire record, 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. *Id.* An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*, quoting *Martin* at 175; *State v. Strider-Williams*, 10th Dist. No. 10AP-334, 2010-Ohio-6179, ¶ 12.

{¶ 7} Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *State v. McCrary*, 10th Dist. No. 10AP-881, 2011-Ohio-3161, ¶ 11, citing *State v. Braxton*, 10th Dist. No. 04AP-725, 2005-Ohio-2198, ¶ 15. "[T]hus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." *Id.* In that regard, we first examine whether appellant's conviction is supported by the manifest weight of the evidence. *State v. Gravely*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶ 46 (10th Dist.).

{¶ 8} R.C. 2919.25(A) provides, in pertinent part:

No person shall knowingly cause or attempt to cause physical harm to a family or household member.

{¶ 9} R.C. 2905.02(A)(2) provides, in pertinent part:

No person, without privilege to do so, shall knowingly do any of the following:

* * *

By force or threat, restrain the liberty of another person under circumstances that create a risk of physical harm to the victim or place the other person in fear.

{¶ 10} In this appeal, appellant challenges only the credibility of T.M.'s testimony at trial. Appellant points out that T.M. testified that he held her to the floor and assaulted her; yet, once the police left the apartment, she entered the apartment alone, began packing, and contacted appellant to ask him to return. Appellant also points out that when he returned to the apartment, T.M. did not contact the police despite being aware that criminal charges had been filed against him. Appellant asserts that T.M. contacted police only to assist her in removing her personal belongings from the apartment and not out of any fear of appellant. Appellant argues that T.M. seemed to have no fear of him at all, despite her claims that he assaulted her.

{¶ 11} It is true that an appellate court is able to consider the credibility of the witnesses. *See Martin* at 175. However, in conducting our review, we are guided by the presumption that the jury is best able to view the witnesses and observe their demeanor, gestures, and voice inflections, and use these observations in weighing the credibility of the proffered testimony. *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Thus, a reviewing court must defer to the factual findings of the jury regarding the credibility of the witnesses. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. Concerning the issue of assessing witness credibility, the general rule of law is that "[t]he choice between credible witnesses and their conflicting testimony rests solely with the finder of fact and an appellate court may not substitute its own judgment for that of the finder of fact." *State v. Awan*, 22 Ohio St.3d 120, 123 (1986). The fact finder is free to believe all, part or none of the testimony of each witness appearing before it. *Hill v. Briggs*, 111 Ohio App.3d 405, 412 (10th Dist.1996). If evidence is susceptible to more than one construction, reviewing courts must give it the interpretation that is consistent with the verdict and judgment. *White v. Euclid Square Mall*, 107 Ohio App.3d 536, 539 (8th Dist.1995). Mere disagreement over the credibility of witnesses is not sufficient reason to reverse a judgment. *State v. Wilson*, 113 Ohio St.3d 382, 387, 2007-Ohio-2202.

{¶ 12} The jury heard T.M.'s testimony that appellant caused her physical harm and restrained her on the floor, and the jury obviously found it credible. Although

appellant claims T.M.'s testimony is unbelievable because she returned to the apartment alone after the police left and then telephoned appellant and asked him to return, T.M. explained that she wanted appellant to bring back her car keys and cell phone so she could pack and leave the apartment. She said she listened to appellant's attempt to apologize and reconcile, but her plan was to be nice to him so he would bring back her property and not assault her again.

{¶ 13} Furthermore, in support of the state of Ohio's, plaintiff-appellee's, case, Sergeant Carrie Hollis testified that, when she arrived at the apartment complex, she observed extensive red marks on the back of T.M.'s neck that were extremely red, and she had a scratch on her elbow. Hollis also observed the contents of T.M.'s purse scattered on the kitchen floor. Hollis also identified photographs of the injuries on T.M.'s neck and elbow. In addition, Hollis testified that appellant admitted to her on the telephone that he had held down T.M. by the neck, and he was not surprised she had marks on her neck from it. Officer Bryan Mason testified that, when he arrived at the apartment after the initial altercation, he saw appellant swing open the front door and grab T.M. by her jacket or shirt. Besides the bump on his head that resulted from Mason's tackling him, appellant had no other injuries. Appellant did not present any witnesses in defense and has given this court no reason to question the credibility of Hollis and Mason.

{¶ 14} Based upon the testimony of T.M., Hollis, and Mason, we find the trial court's judgment was not against the manifest weight of the evidence. Also, because we have found the trial court's judgment was not against the manifest weight of the evidence, we also find it was based upon sufficient evidence. Therefore, appellant's assignment of error is overruled.

{¶ 15} Accordingly, appellant's single assignment of error is overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

TYACK and McCORMAC, JJ., concur.

McCORMAC, J., retired of the Tenth Appellate District,
assigned to active duty under authority of the Ohio
Constitution, Article IV, Section 6(C).
