[Cite as *State v. Scott*, 2009-Ohio-5445.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- LARRY SCOTT Defendant-Appellant	JUDGES: Hon. W. Scott Gwin, P.J. Hon. William B. Hoffman, J. Hon. Julie A. Edwards, J. Case No. 08CA144 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Licking County Court of Common Pleas, Case No. 08CR481
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	October 8, 2009

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
KENNETH W. OSWALT Licking County Prosecutor By: KIMBERLY MCCARTY Assistant Prosecuting Attorney 20 S. Second Street, Fourth Floor Newark, Ohio 43055	ROBERT D. ESSEX 1654 E. Broad Street Suite 302 Columbus, Ohio 43203

Hoffman, J.

{¶1} Defendant-appellant Larry Scott appeals his conviction in the Licking County Court of Common Pleas on one count of domestic violence, in violation of R.C. 2919.25. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE AND FACTS

{¶2} Appellant was indicted on one count of domestic violence, in violation of R.C. 2919.25, a felony of the third degree as Appellant had two prior domestic violence convictions.

{¶3} At the trial in this matter, the victim, Sonja Austin, testified she and Appellant had been romantically involved for three years. She testified Appellant stayed at her residence on and off from June 23, 2008, until July 12, 2008, "living there, essentially." She stated there were occasions during which Appellant would stay at her residence seven days a week, and then "be gone three or four days". Appellant often helped her financially with groceries. Appellant did not have a key to the residence, and did not receive mail there.

{¶4} Appellant's daughter, Demea Shanklin, testified at trial Appellant lived with her at her residence, and received mail at her apartment.

{¶5} On July 12, 2008, Austin had planned a birthday party for her son. Appellant did not attend the party, and she was upset with him. The next morning, Appellant came to her house intoxicated, and Austin would not allow him into the residence. Appellant and Austin argued over Austin spending $25 for the party. Appellant then grabbed Austin by the neck and pushed her down. Austin fell and hit her

head on a bed rail. When police officers arrived, Appellant threatened to break Austin's jaw if he "was going down for DV charges."

{¶6} Newark Patrol Officer David Arndt testified he responded to a call at the residence on July 12, 2008. He testified he did not observe any physical injuries on Austin. Officer Arndt stated Appellant appeared intoxicated during the encounter. Officer Arndt stated Appellant told him he had nowhere else to go, and he lived at the residence.

{¶7} On October 16, 2008, a jury convicted Appellant on the sole count of the indictment. The trial court sentenced Appellant to two years incarceration.

{¶8} Appellant now appeals, assigning as error:

{¶9} "I. THE EVIDENCE WAS LEGALLY INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTION FOR DOMESTIC VIOLENCE.

{¶10} "II. THE COURT ERRONEOUSLY OVERRULED APPELLANT'S MOTION FOR ACQUITTAL PURSUANT TO CRIMINAL RULE 29.

{¶11} "III. APPELLANT'S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I, II, and III

{¶12} All three of Appellant's assigned errors raise common and interrelated issues; therefore, we will address the arguments together.

{¶13} Appellant maintains his conviction for domestic violence was against the manifest weight and sufficiency of the evidence, and the trial court erred in overruling his motion for acquittal.

{¶14} Appellant argues the trial court improperly rejected his Crim.R. 29 motion for acquittal. The "relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Williams* (1996), 74 Ohio St.3d 569, citing *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560. Even if reasonable minds could differ as to the essential elements being proven beyond a reasonable doubt, the motion should still be denied. *Id.*

{¶15} Appellant was charged with one count of domestic violence, in violation of R.C. 2919.25, which reads:

{¶16} "(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

{¶17} "(B) No person shall recklessly cause serious physical harm to a family or household member.

{¶18} "(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

{¶19} "(D)(1) Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender as provided in divisions (D)(2) to (6) of this section.

{¶20} "***

{¶21} "(F) As used in this section and sections 2919.251 and 2919.26 of the Revised Code:

{¶22} "(1) 'Family or household member' means any of the following:

{¶23} "(a) Any of the following who is residing or has resided with the offender:

{¶24} "(i) A spouse, a person living as a spouse, or a former spouse of the offender;

{¶25} "* * *

{¶26} "(2) "Person living as a spouse" means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question."

{¶27} Upon review of the evidence presented at trial, viewed in a light most favorable to the prosecution, a rational trier of fact could have found each and every element of the offense charged proven beyond a reasonable doubt. We find the evidence was sufficient to demonstrate Appellant resided with Austin for extended periods of time cohabitating as a couple. Therefore, the trial court did not err in denying Appellant's Rule 29 motion for acquittal.

{¶28} Appellant further maintains his conviction is against the manifest weight and sufficiency of the evidence.

{¶29} Our standard of reviewing a claim the verdict was not supported by sufficient evidence is to examine the evidence presented at trial to determine whether the evidence, if believed, would convince the average mind of the accused's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found

the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259.

{¶30} The Supreme Court has explained the distinction between claims of sufficiency of the evidence and manifest weight. Sufficiency of the evidence is a question for the trial court to determine whether the State has met its burden to produce evidence on each element of the crime charged, sufficient for the matter to be submitted to the jury.

{¶31} Manifest weight of the evidence claims concern the amount of evidence offered in support of one side of the case and is a jury question. We must determine whether the jury, in interpreting the facts, so lost its way that its verdict results in a manifest miscarriage of justice. *State v. Thompkins* (1997), 78 Ohio St.3d 387, citations deleted. On review for manifest weight, a reviewing court is "to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the 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 judgment must be reversed. The discretionary power to grant a new hearing should be exercised only in the exceptional case in which the evidence weighs heavily against the judgment." *State v. Thompkins,* 78 Ohio St.3d 380, 387, 1997-Ohio-52, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Because the trier of fact is in a better position to observe the witnesses' demeanor and weigh their credibility, the weight of the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, syllabus 1.

{¶32} Based upon the evidence set forth above, we find Appellant's conviction is not against the manifest weight or sufficiency of the evidence. The trier of fact did not lose its way in finding the essential elements of the crime charged proven beyond a reasonable doubt.

{¶33} Appellant's conviction in the Licking County Court of Common Pleas on one count of domestic violence is affirmed.

By: Hoffman, J.

Gwin, P.J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin
HON. W. SCOTT GWIN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
LARRY SCOTT	:	
Defendant-Appellant	:	Case No. 08CA144

For the reasons stated in our accompanying Memorandum-Opinion, Appellant's conviction in the Licking County Court of Common Pleas is affirmed. Costs to Appellant.

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HON. WILLIAM B. HOFFMAN

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HON. W. SCOTT GWIN

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HON. JULIE A. EDWARDS