

[Cite as *State v. Brown*, 2010-Ohio-1059.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93297

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GREGORY BROWN

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-516128

BEFORE: Jones, J., Kilbane, P.J., and Cooney, J.

RELEASED: March 18, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

LARRY A. JONES, J.:

{¶ 1} Defendant-appellant, Gregory Brown (“Brown”), appeals the decision of the lower court finding him guilty of one count of domestic violence. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the judgment of the lower court.

STATEMENT OF THE CASE

{¶ 2} Brown was indicted by the grand jury in a two-count indictment in Case No. CR-516128. The indictment alleges that the offenses occurred on September 1, 2008. Brown was charged with one count of domestic violence in violation of R.C. 2919.25(A), with a specification that he had previously been convicted of the same offense, and one count of endangering children in violation of R.C. 2919.22(A).

{¶ 3} On December 8, 2008, a pretrial hearing was held on Brown’s motion to modify the terms of a domestic violence order that was previously issued by the Euclid Municipal Court. The motion was denied. On March 19, 2009, a voluntary waiver of jury trial was memorialized. The case proceeded to trial, and at the close of the state’s evidence, Brown made a Crim.R. 29 motion. The motion was denied. Brown rested his case without presenting any evidence and renewed his Crim.R. 29 motion, that was again denied.

{¶ 4} The trial court found Brown guilty and referred him to the probation department for a presentence investigation. When court reconvened on April 29, 2009, Brown was sentenced to one year of community control sanctions.

STATEMENT OF THE FACTS

{¶ 5} On or about June 30, 2008, Brown and Tonya Black (“Black”) began cohabitating. The couple was unmarried and were the parents of 3½- month-old twins. On September 1, 2008, at approximately 2:30 a.m., Black was at home with her 16-year-old daughter and the twins when Brown returned home. To Black, it appeared that Brown had been drinking. The couple began arguing and shouting, and one of the babies was awakened. Black went into the kitchen to put the baby’s bottle in the warmer, and then returned to the couch in the living room to change the baby’s diaper.

{¶ 6} Brown followed Black from the kitchen into the living room, and after an exchange of words, slapped her on the back of her head. Black began to cry and stated “I’m calling the police.” She bent over the couch to pick up her cell phone, while still holding the baby, and as she stood back up, Brown pushed into her with his chest. Simultaneously, he grabbed the back of her hair with his left hand and started to drag her. Afraid, Black called out to her 16-year-old daughter who was upstairs. When Brown heard the daughter coming he let go of Black’s hair. Brown returned to the kitchen where he verbally taunted Black.¹ Black called the police, and they arrived in approximately 10 to 15 minutes.

¹Tr. 8.

ASSIGNMENTS OF ERROR

{¶ 7} Brown assigns two assignments of error on appeal:

{¶ 8} “[1.] The evidence was insufficient to sustain a finding of guilt because the state failed to present evidence to establish beyond a reasonable doubt the elements necessary to support the conviction.

{¶ 9} “[2.] The verdict was against the manifest weight of the evidence.”

LEGAL ANALYSIS

Insufficient Evidence and Manifest Weight

{¶ 10} Due to the substantial interrelation between appellant’s first and second assignments of error, we shall address them together.

{¶ 11} “The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different.

{¶ 12} “With respect to sufficiency of the evidence, ‘sufficiency’ is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law. In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law. In addition, a conviction based on legally insufficient evidence constitutes a denial of due process. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541. (Internal citations omitted.)

{¶ 13} “Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may, nevertheless, conclude

that the judgment is against the weight of the evidence. Weight of the evidence concerns ‘the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other. It indicates clearly to the jurors that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the *greater amount of credible evidence* sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.’

{¶ 14} “When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a ‘thirteenth juror’ and disagrees with the fact-finder’s resolution of the conflicting testimony.” *Id.*

{¶ 15} As to a claim that a judgment is against the manifest weight of the evidence, the court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. 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. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717. The weight to be given the evidence and the credibility of the

witnesses are primarily for the trier of fact to determine. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212.

{¶ 16} Brown was found guilty of domestic violence, in violation of R.C. 2919.25(A), which provides: “(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.” R.C. 2919.25(F)(1)(a)(1) defines family or household member as “a spouse, a person living as a spouse, or a former spouse of the offender.” A person living as a spouse is defined as “a person who is cohabitating, or who has cohabitated with the offender within five years preceding the offense.” R.C. 2919.25(F)(2). The term, “physical harm to persons,” means “any injury, illness, or other physiological impairment, regardless of its gravity or duration.” R.C. 2901.01(A)(3).

{¶ 17} Here, the evidence demonstrates that Brown was guilty of domestic violence as charged. There was significant testimony to support the lower court’s conviction. A review of the record shows that Black testified (1) that she and Brown began cohabitating on or about June 30, 2008, (2) that at approximately 2:30 a.m. on September 1, 2008, she was at home with her 16-year-old daughter and 3½-month-old twin sons, (3) that Brown returned home and they began arguing loudly, waking up one of the babies, (4) that Black went into the kitchen to put a bottle in the warmer and returned to the the living room to change the baby’s diaper, (5) that while holding the baby, Brown struck her in the back of her head, (6) that Brown pushed into Black with his chest, and (7) that Brown grabbed Black

by her hair and dragged her across the floor with such force that she felt the need to call out for help and ultimately soiled her shorts.²

{¶ 18} In addition to Black's testimony, Patrolman Kocisis ("Kocisis"), of the Euclid Police Department, testified that he responded to the scene and found Black to be quite distraught. Moreover, Black's testimony was corroborated by Kocisis. Black's daughter also testified that her mother was hysterical, in tears, and had visibly soiled her shorts.

{¶ 19} Accordingly, we find the evidence legally sufficient to sustain the trial court's finding Brown guilty of the crime of domestic violence. In addition, when the evidence is viewed in a light most favorable to the state, we find that all essential elements of Brown's conviction were proven beyond a reasonable doubt. Moreover, nothing in the record demonstrates that the trial court lost its way in convicting Brown.

Judgment affirmed.

It is ordered that appellee recover of 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 common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

²Tr. 56, 57.

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

LARRY A. JONES, JUDGE

MARY EILEEN KILBANE, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR