[Cite as *Conneaut v. Summers*, 2023-Ohio-262.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY

CITY OF CONNEAUT, Plaintiff-Appellee, - vs - SHAWN SUMMERS, Defendant-Appellant.	**CASE NOS. 2022-A-0037** **2022-A-0038** **2022-A-0039** Criminal Appeals from the Conneaut Municipal Court Trial Court Nos. 2021 CRB 00352 A 2021 CRB 00352 B 2021 CRB 00352 C

O P I N I O N

Decided: January 30, 2023
Judgment: Affirmed

John D. Lewis, Law Director, City of Conneaut, 294 Main Street, Conneaut, OH 44030 (For Plaintiff-Appellee).

Sean P. Martin, 113 North Chestnut Street, Suite A, Jefferson, OH 44047 (For Defendant-Appellant).

JOHN J. EKLUND, P.J.

{¶1} Appellant, Shawn Summers, appeals his conviction of domestic violence, a first-degree misdemeanor, in violation of Conneaut Codified Ordinance ("C.C.O.") 537.14(a). For the following reasons, we affirm the judgment of the Conneaut Municipal Court.

{¶2} After an incident at his ex-girlfriend, Ashley Hess', residence on November 1, 2021, the Conneaut Police Department charged Appellant on three counts: (1) domestic violence, a first-degree misdemeanor, in violation of C.C.O. 537.14(a); (2)

aggravated menacing, a first-degree misdemeanor, in violation of C.C.O. 537.05(a); and (3) criminal damaging, a second-degree misdemeanor, in violation of C.C.O. 541.03(a)(1).

{¶3} On June 27, 2022, the Conneaut Municipal Court held a bench trial. Appellant represented himself. The City offered three witnesses: (1) Ashley Hess; (2) Officer Wade Stitt; and (3) Sergeant Christopher Mackensen.

{¶4} Ashley Hess testified that on November 1, 2021, she and Appellant had been "split" for two months, and he was no longer residing in the home with her and their children. (T.p. 10). Hess testified that she was putting the children to bed around midnight when she heard knocking on the front door. She testified, "I didn't get to the door in time, so [Appellant] kicked the door in and came at me." (T.p. 10). According to Hess, after Appellant entered, he threatened her life, grabbed her by the arm, and pushed her into a chair, resulting in a bruise on her arm. (T.p. 11). She said Appellant "left the house and then came back with a screwdriver" and "[h]e was running at me with it." (T.p.p. 11, 21). Hess testified that her daughter called the police to report the incident. (T.p. 11). The prosecution showed Hess the City's Exhibit A: A photograph taken by the officers showing a "visible red mark" and "fingerprints" on Hess' arm. (T.p.p. 13, 15). Hess stated that the red mark in the photograph was from "[w]hen [Appellant] grabbed my arm, you can still see where he squeezed at my arm." (T.p. 15).

{¶5} Officer Stitt testified that he was dispatched to Hess' residence on November 1, 2021 for a domestic violence disturbance. (T.p. 31). He arrived with Sergeant Mackensen and Officer Patriarco. Officer Stitt stated that when he arrived, he made contact with Appellant outside the home. Officer Stitt testified that Appellant stated

that he and Hess had an argument that night and that "he did break the front door and a piece of door hit [Hess]." (T.p. 32). Officer Stitt stated that he then went inside where Sergeant Mackensen "advised that he saw physical injuries or signs of domestic violence." (T.p. 32). Officer Stitt did not personally see the bruise or red mark on Hess.

{¶6} Sergeant Mackensen next testified. He stated that when he arrived at Hess' residence on November 1, 2021, he went inside to see Hess and that "[s]he was visibly upset and afraid, ah, I'd say almost in shock as she was standing there just shaking, unable to answer my questions in the beginning." (T.p. 40). Sergeant Mackensen then testified that Hess recounted the incident to him, stating:

> [T]hat she was putting the children asleep and that, um, Mr. Shawn Summers had come to the house to pick up some tools but that she didn't get to the door in time, he had kicked in the door and there was some argument ensued there. He grabbed her arm, pushed her into a chair, um, and at that point the kids started yelling at him to stop treating his - - treating their mother that way. Um, she advi - - she stated in her statement that he then started yelling at the children, got up after the children, she got out of the chair to go stop him, and that he grabbed her a second time and pushed her back into the chair.

(T.p. 43).

Sergeant Mackensen then stated that Hess "had mentioned to me that Shawn Summers had threatened to kill her" that night. (T.p. 43). Sergeant Mackensen saw the bruise and mark on Hess' arm. The prosecution rested.

{¶7} Appellant then testified. Appellant testified that he arrived at the residence on November 1, 2021 to get his tools and that when he knocked on the door, Hess "slammed [the door] in my face." Appellant recounted that he kicked the door open and when he walked in, he saw that police cars had arrived at the residence. Appellant denied running at Hess with a screwdriver, pushing her, or threatening her. He rested his case.

{¶8} The court found Appellant guilty on all counts.

{¶9} Appellant timely appeals and raises two assignments of error.

{¶10} It is first important to note that in his brief, Appellant states under his conclusion: "The State of Ohio failed to provide legally sufficient evidence to sustain a conviction against the Appellant by primarily failing to prove beyond a reasonable doubt that the Appellant did not act in self-defense." We cannot discern from the record that Appellant raised self-defense at trial, nor does he argue it in his brief on appeal. The first, and only time, he raises self-defense is in one sentence in the conclusion of his brief. For self-defense to apply, there must be evidence presented at trial that would support a claim of self-defense and a self-defense jury instruction. *State v. Gambino*, 11th Dist. Trumbull No. 2021-T-0018, 2022-Ohio-1554, ¶ 20; *State v. Staats*, 5th Dist. Stark No. 2019CA00181, 2021-Ohio-1325, ¶ 30. We find neither apply here. We will only consider Appellant's arguments articulated in his brief under his assignments of error.

{¶11} First assignment of error: "The State of Ohio failed to produce legally sufficient evidence to sustain a conviction of the Appellant."

{¶12} Second assignment of error: "Appellant's convictions fell against the manifest weight of the evidence."

{¶13} Appellant's first two assignments will be addressed together.

{¶14} "'Sufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the [factfinder] or whether the evidence is legally sufficient to support the [factfinder's] verdict as a matter of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997), citing Black's Law Dictionary (6 Ed.1990) 1433. The appellate court's standard of review for sufficiency of evidence is to determine,

after viewing the evidence in a light most favorable to the prosecution, whether a rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶15} When evaluating the sufficiency of the evidence, we do not consider its credibility or effect in inducing belief. *Thompkins* at 387. Rather, we decide whether, if believed, the evidence can sustain the verdict as a matter of law. *Id.* This naturally entails a review of the elements of the charged offense and a review of the State's evidence. *State v. Richardson*, 150 Ohio St.3d 554, 2016-Ohio-8448, 84 N.E.3d 993, ¶ 13.

{¶16} When evaluating the weight of the evidence, we review whether the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other indicated clearly that the party having the burden of proof was entitled to a verdict in its favor, if, on weighing the evidence in their minds, the greater amount of credible evidence sustained the issue which is to be established before them. "Weight is not a question of mathematics but depends on its effect in inducing belief." *Thompkins* at 387. Whereas sufficiency relates to the evidence's adequacy, weight of the evidence relates the evidence's persuasiveness. *Id*. The reviewing court "weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [factfinder] 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*, 20 Ohio App. 3d 172, 175, 485 N.E.2d 717 (1st Dist. 1983).

{¶17} The trier of fact is the sole judge of the weight of the evidence and the credibility of the witnesses. *State v. Landingham*, 11th Dist. Lake No. 2020-L-103, 2021-Ohio-4258, ¶ 22, quoting *State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964). The trier of fact may believe or disbelieve any witness in whole or in part, considering the demeanor of the witness and the manner in which a witness testifies, the interest, if any, of the outcome of the case and the connection with the prosecution or the defendant. *Id.,* quoting *Antil* at 67. This court, engaging in the limited weighing of the evidence introduced at trial, is deferential to the weight and factual findings made by the factfinder. *State v. Brown*, 11th Dist. Trumbull No. 2002-T-0077, 2003-Ohio-7183, ¶ 52, citing *Thompkins* at 390 and *State v. DeHass,* 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph two of the syllabus.

{¶18} A finding that a judgment is supported by the manifest weight of the evidence necessarily means the judgment is supported by sufficient evidence. *State v. Arcaro*, 11th Dist. Ashtabula No. 2012-A-0028, 2013-Ohio-1842, ¶ 32. So, we begin by analyzing whether it was against the manifest weight of the evidence for the court to find Appellant guilty of violating C.C.O. 537.14(a).

{¶19} In his brief, Appellant only challenges his conviction of domestic violence.

{¶20} Appellant asserts that the evidence presented at trial was "contradictory" and, specifically, that it was "not clear" what caused the markings on Hess' arm.

{¶21} C.C.O. 537.14(a) provides: "No person shall knowingly cause or attempt to cause physical harm to a family or household member."

{¶22} After a review of the record, the only contradictions in this case are Appellant's, Hess', and the responding officers' recounting of events, as summarized above.

{¶23} We cannot say that the trial court, as factfinder, could not have found the testimony of Hess, Officer Stitt, and Sergeant Mackensen more credible than Appellant's version of events. This is not the exceptional case in which the evidence weighs heavily against the conviction. The weight of the evidence supports the finding that Appellant knowingly caused or attempted to cause physical harm to Hess, in violation of C.C.O. 537.14(a). The greater weight of the evidence, including all reasonable inferences and the credibility of all witnesses, demonstrates that the court did not clearly lose its way and create such a manifest miscarriage of justice that the conviction must be reversed, and a new trial ordered.

{¶24} Hence, since it was not against the manifest weight of the evidence for the court to convict Appellant of C.C.O. 537.14(a), that necessarily means the judgment was supported by sufficient evidence. *Arcaro,* 2013-Ohio-1842 at ¶ 32.

{¶25} Appellant's assignments of error are without merit.

{¶26} The judgments of the Conneaut Municipal Court are affirmed.

MARY JANE TRAPP, J.,

MATT LYNCH, J.,

concur.