

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 25CA3
	:	
v.	:	
	:	
RICHARD A. BOST,	:	<u>DECISION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	
Defendant-Appellant.	:	

APPEARANCES:

Elizabeth R. Miller, Ohio Public Defender, and R. Jessica Manugo, Assistant Public Defender, Columbus, Ohio, for appellant.

Anna Villarreal, Chillicothe City Law Director, and Andrew Anastasi, Assistant Law Director, Chillicothe, Ohio, for appellee.

Smith, P.J.

{¶1} Appellant, Richard Bost, appeals the judgment of the Chillicothe Municipal Court convicting him of one count of cruelty against a companion animal after a bench trial. On appeal, he contends that his conviction is against the manifest weight of the evidence. Because the State presented substantial credible evidence upon which the trier of fact reasonably could conclude, beyond a reasonable doubt, that the essential elements of the offense had been established, we find no merit to the arguments raised under appellant’s sole assignment of

error. Accordingly, his assignment of error is overruled, and the judgment of the trial court is affirmed.

FACTS

{¶2} On October 1, 2024, a criminal complaint was filed against appellant charging him with one count of cruelty against a companion animal, a first-degree misdemeanor in violation of R.C. 959.131(B). The complaint stemmed from an incident that occurred on September 24, 2024, involving a Siberian Husky puppy owned by appellant and his wife, Kelly Edwards. Appellant pled not guilty to the charge and the matter proceeded to a bench trial on January 13, 2025.

{¶3} At trial, the State presented the testimony of Kelly Edwards as well as Ryan Waites, a deputy dog warden. Edwards testified that in the early morning hours on the date of the incident, she was lying in bed with her daughter when she heard loud thumps, her dog yelp, and appellant scream “You stupid dog.” She then heard the door shut and the garage door go up and down, at which point she and her daughter ran to the kitchen. Her 25-year-old son came up the basement stairs at the same time. She testified that, out of fear, she waited until appellant left the house before going to check on the dog. She found her dog lying by its water bowl with blood on its fur. She also saw blood splattered on the wall. She testified that the dog was bleeding from its nose and that it took about two and half hours to get the bleeding to slow down.

{¶4} Edwards testified that she put the dog on the table and took photos.

Three black and white copies of photos were admitted into evidence. Two photographs show the dog with some speckles on its white fur and what appears to be either a towel or paper towel lying beside it with spots that appear to be blood on it. A third photo depicts what appears to be blood splatters on the floor and wall.

{¶5} Edwards explained that once she got the bleeding to slow down, she went to the Sheriff's Office, where she was told they could not help her. She then went to the dog warden. After that, she took the dog to the veterinarian, where he was treated and released with antibiotics. She testified that it took about six hours for the bleeding to completely stop. She also testified that after the incident, she had to rehome the dog due to the fact that the dog thereafter would hide or hunker down and appeared to be afraid of appellant.

{¶6} Waites testified that he arrived at the house about two and a half hours after Edwards came into the office and made the complaint. He testified that he did not see any blood on the dog when he got there. He further testified that he had not received any prior related complaints and that appellant was charged based upon Edwards' statement.

{¶7} Appellant testified on his own behalf at trial. He stated that things were tense between himself and Edwards at that time and that Edwards had been

asking for a divorce. He testified that on the morning in question, he got up between 5:15 and 5:30 a.m. as usual to get ready for work. When he entered the kitchen to make his lunch, he found that the dog had peed on the floor. He conceded that he said “stupid dog.” He testified that as he bent down to wipe up the mess, the dog grabbed the towel out of his hand and took off with it. He stated that the dog ran behind a recliner in the sunroom with the towel. Appellant testified that he had to bend down around the recliner to get the towel, at which point he “tap[ped]” the dog on the top of the snout and said “bad.” He then finished cleaning up the mess, got his lunch, and left the house. He testified that the dog was still behind the recliner when he left. Appellant conceded that no one else was up that morning and that the couple’s other two dogs were in a different room when the incident occurred. Appellant denied doing anything to hurt the dog.

{¶8} The trial court ultimately found appellant guilty. In issuing its decision from the bench, the trial court stated that it was convinced that appellant hit the dog. The court stated that in its view, appellant had gotten up early to find a mess during what was essentially a tense time period when his wife wanted a divorce, and he lost his temper. The court found that appellant hit the dog and caused the dog pain. The court also found that the fact that Edwards waited until appellant

left the house to go to the dog demonstrated her fear of him and that she knew he had a temper.

{¶9} The trial court recited the testimony regarding what Edwards heard and found, how she went to law enforcement, the dog warden, and then the vet. The trial court expressly stated that it found Edwards' testimony reliable and believed that she was telling the truth. The trial court also cited the dog's subsequent behavior as well as the fact that it had to be rehomed in support of its reasoning. When appellant verbally disputed the findings during the hearing, the trial court informed appellant that it had heard his testimony, but that it didn't accept his testimony.

{¶10} Appellant was ordered to pay a fine of \$500, plus costs, and was put on probation for one year. Appellant was also ordered to pay the vet bill, which the State estimated to be \$200.¹ The trial court filed an entry of sentence on January 13, 2025. It is from this judgment that appellant now brings his timely appeal, setting forth a single assignment of error for our review.

ASSIGNMENT OF ERROR

I. RICHARD BOST'S CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

¹ The State did not offer any bills or vet records into evidence but estimated the vet bill to be \$200 when the trial court inquired as to whether there was a bill.

{¶11} In his sole assignment of error, appellant contends that his conviction is against the manifest weight of the evidence. More specifically, he argues that the State's evidence was inconsistent and lacked credibility and that it was also fragmented and inadequately corroborated. Appellant further argues that the State's evidence fell short of the statutory and case law standard for "cruelty." The State responds by arguing that the trial court properly exercised its function as the trier of fact and did not lose its way. For the following reasons, we agree with the State.

Standard of Review

{¶12} When an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court must dutifully examine the entire record, weigh the evidence and all reasonable inferences, and consider the witness credibility. *See State v. Dean*, 2015-Ohio-4347, ¶ 151, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). A reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. *See State v. Issa*, 93 Ohio St.3d 49, 67 (2001); *State v. Murphy*, 2008-Ohio-1744, ¶ 31 (4th Dist.). “ ‘ “ Because the trier of fact sees and hears the witnesses and is particularly competent to decide ‘whether, and to what extent, to credit the testimony of particular witnesses,’ we must afford substantial deference to its determinations of credibility.” ’ ” *State v. Kuntz*, 2024-Ohio-1680, ¶ 20 (4th Dist.),

quoting *Barberton v. Jenney*, 2010-Ohio-2420, ¶ 20, quoting *State v. Konya*, 2006-Ohio-6312, ¶ 6 (2d Dist.), in turn quoting *State v. Lawson*, 1997 WL 476684 (2d Dist. Aug. 22, 1997).

{¶13} As the Court explained in *Eastley v. Volkman*, 2012-Ohio-2179:

“ ‘[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts.

* * *

If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.’ ”

Eastley, supra at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, FN. 3 (1984), in turn quoting 5 Ohio Jurisprudence 3d, Appellate Review, Section 60, 191-192 (1978).

Thus, an appellate court will leave the issues of weight and credibility of the evidence to the factfinder as long as a rational basis exists in the record for its decision. *See State v. Picklesimer*, 2012-Ohio-1282, ¶ 24 (4th Dist.); *see also State v. Howard*, 2007-Ohio-6331, ¶ 6 (4th Dist.) (“We will not intercede as long as the trier of fact has some factual and rational basis for its determination of credibility and weight.”).

{¶14} Once the reviewing court finishes its examination, the court may reverse the judgment of conviction only if it appears that the fact-finder, when

resolving the conflicts in evidence, “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. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). *See also Thompson, supra*, at 387. If the prosecution presented substantial credible evidence upon which the trier of fact reasonably could conclude, beyond a reasonable doubt, that the essential elements of the offense had been established, the judgment of conviction is not against the manifest weight of the evidence. *See State v. Eley*, 56 Ohio St.2d 169 (1978), syllabus, superseded by state constitutional amendment on other grounds in *State v. Smith*, 80 Ohio St.3d 89 (1997); *see also Eastley* at ¶ 12 and *Thompson* at 387 (explaining that a judgment is not against the manifest weight of the evidence when “the greater amount of credible evidence” supports it). Thus, “ ‘[w]hen conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the jury believed the prosecution testimony.’ ” *State v. Cooper*, 2007-Ohio-1186, ¶ 17 (4th Dist.), quoting *State v. Mason*, 2003-Ohio-5785, ¶ 17 (9th Dist.). Instead, a reviewing court should find a conviction against the manifest weight of the evidence only in the “ ‘ “exceptional case in which the evidence weighs heavily against the conviction.” ’ ” *State v. Lindsey*, 87 Ohio St.3d 479, 483 (2000), quoting *Thompson* at 387, in turn quoting *Martin* at 175.

Legal Analysis

{¶15} Appellant was convicted of cruelty against a companion animal in violation of R.C. 959.131(B), which provides that “[n]o person shall knowingly torture, torment, needlessly mutilate or maim, cruelly beat, poison, needlessly kill, or commit an act of cruelty against a companion animal.” The statute further provides that “ ‘[c]ruelty,’ ‘torment,’ and ‘torture’ have the same meanings as in section 1717.01 of the Revised Code.” R.C. 959.131(A)(2). R.C. 1717.01(B) states that “ ‘[c]ruelty,’ ‘torment,’ and ‘torture’ include every act, omission, or neglect by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief.”

{¶16} Furthermore, R.C. 2901.22(B) provides:

A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person subjectively believes that there is a high probability of its existence and fails to make inquiry or acts with a conscious purpose to avoid learning the fact.

State v. Crumpton, 2024-Ohio-5064, ¶ 28 (4th Dist.).

{¶17} As set forth above, appellant contends that the State’s evidence was inconsistent and lacked credibility. Appellant concedes that he “tapped” the dog but posits that the central issue is whether he caused the alleged injuries that

resulted in bleeding, as claimed by his Ms. Edwards. He argues that contradictions in her testimony undermined her credibility. In support of his contention, appellant argues that Edwards testified that she and her daughter found the dog covered in blood after appellant left for work, yet the photographs “belie that description” and instead appear “to be the natural freckles and normal markings of the dog’s face and paws.” He also points to Edwards’ testimony at one time stating that the bleeding lasted for two and half hours and at another time stating that the bleeding continued for six hours. Appellant further argues that the fact Ms. Edwards later left the dog in his care while she went out of town casts doubt on the veracity of her claims.²

{¶18} Appellant also contends that the State’s evidence was “fragmented and inadequately corroborated.” In support of his contention, he argues that Ms. Edwards’ testimony was unsupported by physical evidence or neutral witnesses. Appellant points to Edwards’ testimony indicating that she used a towel to stop the bleeding, then called law enforcement as well as the dog warden, and then took the dog to the vet.³ He then contrasts this testimony with testimony from Deputy Waites indicating that when he arrived at the residence two and a half hours after

² We summarily reject this argument as overall reading of the transcript demonstrates the dog at issue had been rehomed at the time Edwards left the couple’s other two dogs alone in appellant’s care. Further, Edwards testified that appellant had never hurt those dogs.

³ We note that contrary to appellant’s arguments, the trial transcript makes clear that Edwards actually drove to the Sheriff’s Office, then drove to see the dog warden, and then took the dog to the vet. She did not simply make calls to those offices.

the report was called in, the dog was neither bleeding nor visibly injured. He argues that Waites' testimony conflicts with Edwards' claim that it took six hours for the bleeding to stop. Appellant also criticizes the fact that there was no testimony from the veterinarian, and no records submitted documenting the alleged injury.

{¶19} Finally, appellant contends that the weight of the State's evidence falls short of the statutory and case law standard for "cruelty." In support of his contention, he relies on the holding of *State v. George*, 2023-Ohio-2016 (12th Dist.). In *George*, the court found cruelty was proven where video evidence clearly depicted the defendant swinging a bat at his dog and screaming profanities at it. *Id.* at ¶ 21. Appellant also relies on *State v Mills*, 2011-Ohio-2323 (9th Dist.). *Mills* admitted to hitting the dog at issue four or five times with a metal fence post. *Id.* at ¶ 9. The dog was found dead in its pen thereafter. *Id.*

{¶20} Appellant contrasts the strength of the evidence in both *George* and *Mills* with the evidence in the present case. He argues that he only admitted to giving the dog a light tap that caused no immediate injury. He also argues that there were two other dogs in the house, as well as Ms. Edwards' 25-year-old son, suggesting there were "other plausible explanations" for the dog's alleged injury. He further criticizes the lack of video evidence or other eyewitness testimony.

{¶21} The State responds by arguing that the trial court found Edwards' testimony and exhibits, which included photos, to be credible and ultimately determined that appellant had a very bad temper, was already unhappy, and injured the dog. The State contends that the trial court properly assessed the testimony and exhibits and the reliability thereof. The State also points out that the trial court, as the trier of fact, observed the demeanor of the witnesses, assessed their credibility, and weighed the evidence.

{¶22} After reviewing the evidence, we cannot conclude that appellant's conviction for cruelty against a companion animal is against the manifest weight of the evidence. Nor can we conclude that the trier of fact lost its way in finding him guilty of this charge. Appellant admitted he was the only person awake in the house where the dog was located on the morning in question. He conceded that the dog caused a mess that he had to clean up and that he said "stupid dog" as reported by Edwards. Although he claims he only tapped the dog, the evidence introduced by the State showed otherwise.

{¶23} While appellant, by his own admission, was the only person or animal present where the dog at issue was located on the morning in question, he was overheard screaming at the dog. At the same time, Edwards heard the dog yelp and heard loud thuds. Photos submitted into evidence depicting the area of the house where appellant stated he left the dog showed what appeared to be blood

splattered on the floor and wall. Additionally, there is testimony in the record indicating the dog was found by Edwards immediately after appellant left the house. Edwards testified the dog was bleeding from its nose and continued to bleed for several hours. Appellant's arguments regarding inconsistencies in Edwards' testimony related to timeframes and the duration of the bleeding have no merit as the timeframes were sufficiently explained and clarified by direct questioning by the trial court.

{¶24} While appellant compares the facts of the present case to much more egregious facts in both *State v. George* and *State v. Mills, supra*, we do not find those cases to demand reversal of the present case. In fact, in *George*, although the dog at issue was struck several times with a bat, it sustained no apparent injury but instead only appeared to be afraid afterwards, as evidenced by its "flinching." *George, supra*, at ¶ 7. The *George* court further found that evidence of actual injury was not necessary because George was not charged with the subsection of the statute requiring serious physical injury. *Id.* at ¶ 22. The same is true here.

{¶25} As set forth above, the State was required to demonstrate that appellant knowingly committed an act of cruelty against a companion animal. As further set forth above, the term "cruelty" encompasses "every act * * * by which unnecessary or unjustifiable pain or suffering is caused * * *." R.C. 1717.01(B). There is evidence in the record demonstrating that the dog sustained an injury to its

nose that caused bleeding for several hours. There is also evidence that the dog was subsequently afraid of appellant to the extent that it had to be rehomed. Thus, our review of the record reveals that the State presented substantial, credible evidence from which the trier of fact could conclude, beyond a reasonable doubt, that appellant was guilty. Although the *Mills* case relied upon by appellant was much more egregious and resulted in a dog's death, such extreme behavior and results are not required to satisfy the language of the statute.

{¶26} Further, although there were competing versions of events, the trial court, as the trier of fact, clearly accepted the State's version of events. That fact does not render the verdict against the manifest weight of the evidence. The trial court was in the best position to view the witnesses' demeanor and assess their credibility. The trial court expressly stated that it found Edwards' testimony to be reliable and truthful, and that although it heard appellant's testimony, it did not accept it.

{¶27} Moreover, despite appellant's criticism regarding the lack of any eyewitness testimony, evidence may be direct or circumstantial. "[D]irect evidence is ' "[e]vidence, which if believed, proves [the] existence of [the] fact in issue without inference or presumption[.]" ' " *State v. Smith*, 2010-Ohio-4507, ¶ 43 (4th Dist.), quoting *Reeves v. Vitt*, 2009-Ohio-2436, ¶ 41 (11th Dist.), in turn quoting Black's Law Dictionary (6th Ed.1990). " "Circumstantial evidence is

defined as “[t]estimony not based on actual personal knowledge or observation of the facts in controversy, but of other facts from which deductions are drawn, showing indirectly the facts sought to be proved.” ’ ’ *State v. Meddock*, 2017-Ohio-4414, ¶ 54 (4th Dist.), quoting *State v. Nicely*, 39 Ohio St.3d 147, 150 (1988), in turn quoting Black's Law Dictionary (5th Ed.1979). As this Court observed in *State v. Jarrells*:

“Circumstantial evidence and direct evidence inherently possess the same probative value and therefore should be subjected to the same standard of proof. When the State relies on circumstantial evidence to prove an essential element of the offense charged, there is no need for such evidence to be irreconcilable with any reasonable theory of innocence in order to support a conviction.”

State v. Jarrells, 2024-Ohio-2816, ¶ 32 (4th Dist.), quoting *State v. Collins*, 2024-Ohio-794, ¶ 27 (4th Dist.).

{¶28} In light of the foregoing, we find no merit to appellant’s sole assignment of error. Therefore, it is overruled. Accordingly, the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Chillicothe Municipal Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal set forth in the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Hess, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 22, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.