

[Cite as *State v. Eisenman*, 2011-Ohio-2810.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-809
 : (C.P.C. No. 09CR08-5025)
 Travis J. Eisenman, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on June 9, 2011

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Yeura R. Venters, Public Defender, and *Allen V. Adair*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Defendant-appellant, Travis J. Eisenman, appeals from the judgment of the Franklin County Court of Common Pleas convicting him of felonious assault, in violation of R.C. 2903.11, a felony of the second degree, and abduction, in violation of R.C. 2905.02, a felony of the third degree. Appellant waived his right to trial by jury and was found guilty by the court of both offenses.

{¶2} The following relevant facts were adduced from the record. Samantha Ritchey and appellant are parents of a five-year-old daughter named Trinity. On

August 11, 2009, both appellant and Trinity were visiting with Ritchey at her home. Appellant's mother, Charlene Combs, had legal custody of Trinity and arrived at Ritchey's home at approximately 8:00 p.m.

{¶3} Ritchey testified that on August 11, 2009, both appellant and Trinity were visiting at her home and that both were to be picked up by Combs. She testified that rather than leaving, appellant returned to her home and an argument ensued. According to Ritchey, although she and appellant had broken off their relationship over a year earlier, appellant was upset that she was in a relationship with Christopher Beck. Appellant had been drinking that evening and assaulted Ritchey by pushing her, pulling her hair, and repeatedly striking her with his hands. Ritchey testified that appellant assaulted her throughout the night until approximately 3:30 a.m and alleged that during this timeframe, appellant threatened her with a box cutter and a knife, ultimately cutting her on the arm with the box cutter. She testified that appellant restrained her in bed by wrapping her in a blanket and lying next to her. Finally, Ritchey testified that her head struck her pet rat's cage, which was shown in Exhibit 5 to be a glass tank. On cross-examination, Ritchey denied her head went through the tank, but admitted her head had caused the tank to break. Ritchey denied any laceration to her head as a result of the tank breaking.

{¶4} At some point, appellant took Ritchey's cell phone away, but later returned it to her at approximately 12:30 a.m. and told her to call her boyfriend to tell him that their relationship was over. Ritchey made the call as ordered. After several requests by Ritchey to be treated at the hospital for injuries suffered by her due to the assault, appellant agreed to take Ritchey to Riverside Hospital. He escorted Ritchey on a bus to

the hospital, where he was searched and a box cutter was removed from him at the security check point.

{¶5} Ritchey testified that at some point she was able to text both her sister and Beck and inform them that she was going to the hospital. She testified that in order to persuade appellant to take her to the hospital, she told appellant that she would tell the hospital staff that her injuries were a result of being assaulted at a bar. At the hospital, while in the presence of appellant, Ritchey told the nurse that such had occurred. Later, after appellant was no longer in her presence, she told hospital personnel that it was appellant who had assaulted her. At the hospital, she met with police, made statements, and photos were taken. Ritchey described the pain from the injuries and testified that, in addition to being cut on the arm by the box cutter, she suffered a bruised face, black eye, and broken nose for which she had surgery.

{¶6} Beck was called as a witness and testified to receiving a phone call from Ritchey in which she was crying and broke off their relationship. He claimed that he was in shock at the break up and immediately jumped in his truck and drove to Ritchey's apartment. He found the apartment locked with no sign of forced entry and returned home, despite initially believing appellant was with Ritchey and fearing for her safety. He called Ritchey's sister, who, according to Beck, was equally shocked at Ritchey breaking up with him. After learning Ritchey was going to the hospital, Beck drove to Riverside Hospital to find her.

{¶7} Jennifer Dickerson, a sexual assault nurse examiner at Riverside Hospital, testified she observed Ritchey in triage at the hospital. She testified that Ritchey gave different versions of what happened to her. First, Ritchey, while accompanied by one

male, explained she was attacked by two girls as she was leaving a bar, and stated that she did not want the police called. Later, while accompanied by a different individual, Ritchey stated that it was the "initial male visitor" who had accompanied her who had assaulted her and that she had been assaulted by him for approximately five hours. Dickerson testified that the nurse's notes indicated that Ritchey had swelling to her nose and purple discoloration under her right eye, but no laceration of the head, face or neck. The medical records were admitted into evidence and contained a third version of the assault as having occurred at a bar between 10:00 p.m. and 3:00 a.m. at the hands of appellant's boyfriend.

{¶8} Officer Ron Lanning testified that when he first saw Ritchey at Riverside Hospital that Ritchey, Beck, and appellant were in a hospital room together. He testified that shortly after briefly speaking with Ritchey, Ritchey identified appellant as the person who had assaulted her. Lanning then escorted appellant out of the room so Ritchey and appellant could be interviewed separately. Lanning testified that Beck was the individual that called the police and that he had been advised that a box cutter had been taken from appellant at the hospital. Lanning testified that he took a written statement from Ritchey and that she appeared upset and scared of appellant.

{¶9} Detective Lawrence Gauthney, a domestic violence detective, testified he arrived at the hospital and spoke with Ritchey while Beck was present. He identified Exhibit 5 and called the item depicted therein as an aquarium. He testified that Ritchey stated that she hit her head on the aquarium during the assault and that appellant beat her while she was being restrained in bed and was unable to move. He testified that the box cutter used during the assault was taken from appellant at the hospital, tested for

blood, and that no blood was found to be present. He also testified that Ritchey appeared nervous, scared, and in pain and testified that Ritchey's injuries included a black eye, a bruise on her neck area, and a minor cut on her right shoulder.

{¶10} Steven Ireland, a physician's assistant assigned to Riverside Hospital's emergency department, testified from his notes as to the history he received from Ritchey when he examined her in the emergency room. He testified that Ritchey stated she had been assaulted by a male from 10:00 p.m. to 3:00 a.m. He testified that the initial apparent injury was bruising and swelling below her right eye and that there were also scratches on her right shoulder and abrasions to the back of her elbows. He testified that a CAT scan revealed Ritchey had a broken nose. Ireland was asked to view Exhibit 5, and was asked whether the jagged glass edges depicted in the photo would have caused lacerations to a person if their head struck the tank causing it to shatter. Ireland indicated that lacerations could be likely, but opined that if a person's head would hit the glass causing it to shatter, but did not go through the glass, that the individual would not necessarily suffer lacerations.

{¶11} The defense presented three witnesses. The first was Dawn Rider, the mother of appellant's other children. She testified that she either talked to or texted Ritchey three times about her injuries. The first communication involved a text and occurred in September 2009 in which Ritchey informed Rider that appellant had assaulted her. In a telephone conversation three to four weeks later, Ritchey changed her story and told Rider she "got jumped by two girls at a bar." In a third conversation, Ritchey informed Rider that her boyfriend hit her when he found out appellant had been at her home.

{¶12} The second witness was appellant's mother, Charlene Combs. She testified that earlier in the day she dropped both appellant and Trinity off at Ritchey's house. She testified that on the day in question she and her husband went to Ritchey's home to pick up Trinity. She explained that she and her husband had custody of the child and that neither appellant nor Ritchey had visitation rights. She testified that Trinity, Ritchey, and appellant were upset because Combs would not let Trinity spend the night. She stated that both appellant and Ritchey walked Trinity to the car and that appellant gave Trinity a pair of his sunglasses and told her to bring them back to him the next morning. She testified that both Ritchey and appellant walked back to the apartment together and went in the front door. She testified when she last saw Ritchey she seemed fine and had no black eyes or any injuries. The next time she saw appellant, he was incarcerated.

{¶13} Jeff Combs, appellant's stepfather, was called as the third witness. He testified essentially the same as Charlene Combs, his wife, in regard to what occurred at Ritchey's home when he and his wife picked up Trinity.

{¶14} Appellant asserts the following assignment of error for our review:

Appellant's convictions were against the manifest weight of the evidence.

{¶15} "The 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." *State v. Brindley*, 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶35. In order for a court of appeals to reverse the judgment of a trial court on the basis that the verdict is against the manifest weight of the evidence, the appellate court must disagree with the

fact finder's resolution of the conflicting testimony. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. 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. *Id.*, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶16} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. The determination of weight and credibility of the evidence is for the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230. The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor and determine whether the witnesses' testimony is credible. *State v. Williams*, 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No. 01AP-194. The trier of fact is free to believe or disbelieve all or any of the testimony. *State v. Jackson*, 10th Dist. No. 01AP-973, 2002-Ohio-1257; *State v. Sheppard* (Oct. 12, 2001), 1st Dist. No. C-000553.

{¶17} Consequently, although an appellate court must act as a "thirteenth juror" when considering whether the manifest weight of the evidence requires reversal, it must give great deference to the fact finder's determination of the witnesses' credibility. *State v. Covington*, 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶22; *State v. Hairston*, 10th Dist. No. 01AP-1393, 2002-Ohio-4491, ¶17. " '[W]hen conflicting evidence is presented at trial,

a conviction is not against the manifest weight of the evidence simply because the [finder of fact] believed the prosecution testimony.' " *State v. Hammerschmidt* (Mar. 8, 2000), 9th Dist. No. 2987-M, *4 (citation omitted). See also *State v. Morris*, 159 Ohio App.3d 775, 2005-Ohio-962, ¶20, 22 (jury not required to accept the defendant's explanation).

{¶18} Appellant's manifest weight challenge is made generally and does not challenge the evidence presented on any particular element of the offenses.¹ Rather, appellant challenges the credibility of the victim and argues that because she gave different versions of what occurred and because her injuries, in his view, are not consistent with the assault as described by Ritchey, that her testimony is neither credible nor worthy of belief and renders the judgment against the manifest weight of the evidence.

{¶19} It is not enough to create extraordinary circumstances warranting reversal as against the weight of the evidence simply because the record contains conflicting versions of what caused Ritchey's injuries. "A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. The trier of fact is free to believe or disbelieve all or any of the testimony." *State v. Williams*, 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶16 (citation omitted). See also *State v. Banks*, 10th Dist. No. 09AP-13, 2009-Ohio-4383, ¶15 (fact finder is free to resolve or discount alleged inconsistencies). "The trier of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible." *Williams* at ¶16 (citations

¹ The assignment of error does not preserve a sufficiency of the evidence challenge to the verdict nor is sufficiency of the evidence argued in appellant's brief.

omitted). It is the province of the fact finder to determine the truth from conflicting evidence, whether the conflicting evidence comes from different witnesses or is contained within the same witness's testimony. *State v. Salinas*, 10th Dist. No. 09AP-1201, 2010-Ohio-4738, ¶37.

{¶20} The trial court was in the best position to weigh the evidence presented, along with the demeanor of the witnesses, and the conflicting evidence to determine credibility. Given the great deference that must be given to the fact finder's determination regarding credibility, we cannot say that the verdict in this case was against the manifest weight of the evidence, nor is this a case where the trier of fact clearly lost its way. Accordingly, appellant's sole assignment of error is overruled.

{¶21} Having overruled appellant's assignment of error, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

BROWN and DORRIAN, JJ., concur.
