

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

|                      |   |                           |
|----------------------|---|---------------------------|
| State of Ohio,       | : |                           |
|                      | : | No. 17AP-55               |
| Plaintiff-Appellee,  | : | (M.C. No. 2016 CRB 19735) |
| v.                   | : |                           |
|                      | : | (REGULAR CALENDAR)        |
| Michael Thomas,      | : |                           |
|                      | : |                           |
| Defendant-Appellant. | : |                           |

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D E C I S I O N

Rendered on June 27, 2017

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**On brief:** *Richard C. Pfeiffer, Jr.*, City Attorney, *Melanie R. Tobias*, and *Orly Ahroni*, for appellee. **Argued:** *Orly Ahroni*.

**On brief:** *Todd W. Barstow*, for appellant. **Argued:** *Todd W. Barstow*.

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APPEAL from the Franklin County Municipal Court

LUPER SCHUSTER, J.

{¶ 1} Defendant-appellant, Michael Thomas, appeals from his assault conviction in the Franklin County Municipal Court. For the following reasons, we affirm.

**I. Facts and Procedural History**

{¶ 2} In August 2016, Thomas was charged with committing assault in violation of R.C. 2903.13(A), a misdemeanor of the first degree. Thomas waived his right to a jury, and the matter proceeded to a bench trial in December 2016. Only one witness testified at trial, Madison Township Police Officer Jacob Short.

{¶ 3} Officer Short testified as follows. On August 20, 2016, Officer Short was dispatched to investigate an alleged assault on Sedalia Drive, in Columbus. When Officer Short arrived at the scene, the assault victim, C.H., identified herself. C.H. was bleeding

from a cut on her face and she also had several scrapes on her arm. She told the officer that Thomas pushed her out of a moving vehicle, and the officer noted that her injuries were consistent with that allegation. As Officer Short was speaking with C.H., Thomas called her. C.H. answered the phone call and placed Thomas on speakerphone so the officer could also hear Thomas. C.H. told Thomas, "You hit me," and Thomas responded, "You were damaging my truck." (Dec. 6, 2016 Tr. at 8.) Thomas also indicated that he had pushed C.H. out of the vehicle. The conversation ended and Officer Short began to drive to his office to complete a report regarding the incident. A few minutes later, Thomas "flagged down" the officer and they both pulled their vehicles to the side of the road. (Tr. at 9.) Thomas explained to Officer Short that he pushed C.H. out of his vehicle to get her to stop damaging the vehicle. Officer Short noticed that the vehicle had a "busted up windshield." (Tr. at 10.)

{¶ 4} The trial court found Thomas guilty of committing assault, and Thomas timely appeals.

## **II. Assignment of Error**

{¶ 5} Thomas assigns the following error for our review:

The trial court erred and deprived appellant of due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution and Article One Section Ten of the Ohio Constitution by finding him guilty of assault as that verdict was not supported by sufficient evidence and was also against the manifest weight of the evidence.

## **III. Discussion**

{¶ 6} In his sole assignment of error, Thomas asserts his conviction for assault was not supported by sufficient evidence and was against the manifest weight of the evidence. This assignment of error lacks merit.

{¶ 7} Whether there is legally sufficient evidence to sustain a verdict is a question of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Sufficiency is a test of adequacy. *Id.* The relevant inquiry for an appellate court is whether the evidence presented, when viewed in a light most favorable to the prosecution, would allow any rational trier of fact to find the essential elements of the crime proven beyond a

reasonable doubt. *State v. Mahone*, 10th Dist. No. 12AP-545, 2014-Ohio-1251, ¶ 38, citing *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶ 37.

{¶ 8} When presented with a manifest weight argument, an appellate court engages in a limited weighing of the evidence to determine whether sufficient competent, credible evidence supports the jury's verdict. *State v. Salinas*, 10th Dist. No. 09AP-1201, 2010-Ohio-4738, ¶ 32, citing *Thompkins* at 387. "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the manifest weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony." *Thompkins* at 387, quoting *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). Determinations of credibility and weight of the testimony are primarily for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. Thus, the jury may take note of the inconsistencies and resolve them accordingly, "believ[ing] all, part, or none of a witness's testimony." *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶ 21, citing *State v. Antill*, 176 Ohio St. 61, 67 (1964).

{¶ 9} An appellate court considering a manifest weight challenge "may not merely substitute its view for that of the trier of fact, but must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of 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 conviction must be reversed and a new trial ordered." *State v. Harris*, 10th Dist. No. 13AP-770, 2014-Ohio-2501, ¶ 22, citing *Thompkins* at 387. Appellate courts should reverse a conviction as being against the manifest weight of the evidence only in the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983).

{¶ 10} Thomas was convicted of violating R.C. 2903.13(A), which states that "[n]o person shall knowingly cause or attempt to cause physical harm to another." " 'Physical harm to persons' means any injury, illness, or other physiological impairment, regardless of its gravity or duration." R.C. 2901.01(A)(3). "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." R.C. 2901.22(B). When determining whether a defendant acted knowingly, his state of mind must be determined from the

totality of the circumstances surrounding the alleged crime. *State v. Ingram*, 10th Dist. No. 11AP-1124, 2012-Ohio-4075, ¶ 22. Culpable mental states are frequently demonstrated through circumstantial evidence. *Id.*

{¶ 11} Although the victim in this case, C.H., was subpoenaed, she did not appear at trial to testify. However, Officer Short's testimony supported the trial court's finding that Thomas had assaulted C.H. Officer Short testified regarding statements made by C.H. and Thomas soon after the incident. When Officer Short arrived at the scene, C.H. told him that her boyfriend, Thomas, had pushed her out of his moving vehicle during an argument. Officer Short observed injuries to C.H.'s person, including a cut on her face and several scrapes on her arm. Those injuries were consistent with her statement that she had been pushed out of a moving vehicle. Additionally, C.H. was still bleeding when Officer Short arrived, which reasonably demonstrated that the altercation had just occurred. As Officer Short was speaking with C.H., she received a call from Thomas. During that conversation, C.H. told Thomas, "You hit me," and Thomas admitted to pushing her out of his vehicle. (Tr. at 8.) Shortly thereafter, Officer Short encountered Thomas in person, and Thomas again admitted that he pushed C.H. out of his vehicle. In view of Officer Short's testimony, the trial court reasonably concluded that Thomas knowingly caused physical harm to C.H. Moreover, because the weight of the evidence supported Thomas' conviction, there was no miscarriage of justice.

{¶ 12} Because Thomas' assault conviction was supported by sufficient evidence and was not against the manifest weight of the evidence, we overrule his sole assignment of error.

#### **IV. Disposition**

{¶ 13} Having overruled Thomas' sole assignment of error, we affirm the judgment of the Franklin County Municipal Court.

*Judgment affirmed.*

BROWN and DORRIAN, JJ., concur.

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