

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

STATE OF OHIO,	:	OPINION
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2003-L-189
DANIEL G. SIDLO,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Painesville Municipal Court, Case No. 03 CRB 00902.

Judgment: Affirmed.

Ron M. Graham, Mentor City Prosecutor, 8500 Civic Center Boulevard, Mentor, OH 44060 (For Plaintiff-Appellee).

Robert A. Boyd and Louis G. Henderson, Gibson, Brelo, Zicarelli & Martello, 55 Public Square, #2075, Cleveland, OH 44113, *Mark A. Zicarelli*, Gibson, Brelo, Zicarelli & Martello, 8353 Mentor Avenue, #2, Mentor, OH 44113 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.,

{¶1} Defendant-appellant, Daniel G. Sidlo (“Sidlo”), appeals from his conviction in Painesville Municipal Court on one count of domestic violence, a misdemeanor of the first degree in violation of R.C. 2919.25. The court sentenced Sidlo to sixty days in the Lake County Jail, and ordered Sidlo to pay a one hundred dollar fine. The trial court suspended the jail sentence provided Sidlo abide by the terms and conditions of

probation for twelve months. Sidlo's sentence has been suspended pending this appeal. For the following reasons, we uphold Sidlo's conviction.

{¶2} Sidlo is the father of Taylor Sidlo ("Taylor"), age nine at the time of her father's trial. Sidlo and Taylor's mother are divorced. Taylor's mother has custody of Taylor and Sidlo has visitation every other weekend and on Wednesdays from 5:00 to 7:30 pm. Sidlo lives with Ginny Sidlo ("Ginny"), his wife since September 2001.

{¶3} On May 14, 2003, Sidlo picked Taylor up at her grandmother, Elizabeth L. Hamilton's ("Hamilton") house, where Taylor lives with her mother. Sidlo took Taylor grocery shopping and then back to his house in Perry Township, Ohio.

{¶4} After returning home, Sidlo received a phone call regarding employment. Sidlo remained on the telephone for about forty-five minutes. While Sidlo was on the phone, Taylor testified Sidlo hit her with a large book on the back of her head as she walked past him. According to Taylor, she had done nothing to provoke Sidlo. Shortly thereafter, Ginny returned home and prepared dinner. Sidlo, Taylor, and Ginny ate dinner together. Taylor testified that after dinner, while Ginny was in the bathroom, Sidlo slapped her face. Again, Taylor testified she had done nothing to provoke Sidlo. Thereafter, Taylor and Ginny went outside to ride bikes while Sidlo watched. At about 7:30 p.m., Sidlo drove Taylor back to her grandmother's house.

{¶5} Sidlo denied striking Taylor with a book, his hand, or otherwise at any time on May 14, 2003. Ginny testified she was with Taylor from the moment she arrived home that day until Taylor left for her grandmother's house. Ginny denied Sidlo struck Taylor or that Taylor showed any indication that Sidlo had struck her.

{¶6} Taylor's grandmother testified she noticed a red mark on Taylor's cheek that evening after Sidlo had dropped Taylor off. Taylor's grandmother also testified that, late that evening, Taylor confided that Sidlo had hit her with a book.

{¶7} The next morning, May 15, Taylor confided that Sidlo had also slapped her. Taylor's mother and grandmother took Taylor to the Lake County Sheriff's office. At that time, both Taylor and her grandmother made statements. According to Taylor's written statement, Sidlo "struck me in the face with an open hand, struck me in the head with a book, and struck me on the legs with a big heavy chair. Yesterday [May 14] these things happened." At trial, however, Taylor testified Sidlo had struck her on the legs with a chair on May 4, 2003.¹ Taylor's grandmother's statement indicated Taylor did not report the abuse until the morning of the fifteenth, although, at trial, Taylor's grandmother testified Taylor told her Sidlo had struck her with a book on the evening of the fourteenth.

{¶8} At trial, Sidlo's attorney elicited testimony from Taylor and her grandmother that, on four prior occasions, allegations of abuse had been raised against Sidlo, but that, on each of these occasions, charges either were not brought or the claims were not substantiated.

{¶9} Sidlo was found guilty of domestic violence following a bench trial and timely appealed. Sidlo raises a single assignment of error: "The trial court abused its discretion when it found Daniel Sidlo guilty of domestic violence."

{¶10} Sidlo's argument on appeal is that his conviction is against the manifest weight of the evidence. The issue for the reviewing court when considering a manifest weight of the evidence challenge is whether "there is *substantial* evidence upon which a

jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt.” *State v. Nields*, 93 Ohio St.3d 6, 25, 2001-Ohio-1291, quoting *State v. Getsy*, 84 Ohio St.3d 180, 193-194, 1998-Ohio-533. (Emphasis sic).

{¶11} “The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the 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.” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶12} Although “the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of facts,” *State v. DeHass* (1967), 10 Ohio St.2d 230, at paragraph one of the syllabus, when considering the weight of the evidence the reviewing court sits as a “thirteenth juror” and may “disagree[] with the factfinder’s resolution of the conflicting testimony.” *Thompkins*, 78 Ohio St.3d at 387, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42. The discretionary power to reverse a conviction “should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *Id.*, citing *Martin*, 20 Ohio App.3d at 175. A reviewing court will not reverse a conviction “where there is substantial evidence upon which a jury could reasonably conclude that all the elements of an offense have been proven beyond a reasonable doubt.” *State v. Eley* (1978), 56 Ohio St.2d 169, syllabus.

{¶13} In order to convict Sidlo for domestic violence, the prosecution had to prove Sidlo “knowingly cause[d] *** physical harm to a family or household member.”

1 . A separate charge for the alleged chair incident was dismissed at the time of trial.

R.C. 2919.25(A). “Physical harm” is defined as “any injury, illness, or other physiological impairment, regardless of severity or duration.” R.C. 2901.01(A)(3).

{¶14} Sidlo’s conviction rests on the testimony of his daughter, Taylor. Sidlo maintains Taylor’s testimony is not credible. Sidlo argues the allegations against him were instigated by Taylor’s mother in order to deprive him of visitation with Taylor. In support of this argument, Sidlo points out that Taylor has previously made allegations of abuse against him and that in each case the allegations were unsubstantiated.²

{¶15} Sidlo also notes certain inconsistencies in Taylor’s testimony. For example, in the police report written on May 15, Taylor indicated that three incidents of abuse happened “yesterday,” i.e., May 14. At trial, Taylor admitted one of those incidents actually happened on or about May 4.

{¶16} There were also discrepancies about when Taylor informed her grandmother of the abuse. Taylor testified she told her grandmother on May 14, the day the abuse occurred. Taylor’s grandmother alternately testified Taylor told her of the abuse on the evening of May 14 and on the morning of May 15. Taylor also testified Sidlo hit her with the book as she entered the kitchen while Taylor’s grandmother testified that it happened in the kitchen. Finally, Sidlo points out that Taylor offered no explanation as to why her father allegedly did these things and that the Lake County deputy who took Taylor’s statement observed no physical evidence of abuse.

{¶17} Although Sidlo has raised a compelling theory for the fabrication of abuse charges against him, i.e., the bitter relationship with Taylor’s mother, we are not convinced that the evidence weighs so heavily against his conviction as to render the

2. In one case, charges were brought but later dismissed. In two other cases, charges were never brought.

result a miscarriage of justice. The fact prior allegations of abuse have been unsubstantiated bears on Taylor's credibility, but does not undermine it. These prior allegations are no more determinative of Sidlo's innocence than prior convictions for domestic violence would be determinative of Sidlo's guilt.

{¶18} We find the discrepancies in Taylor's testimony immaterial. Generally, the discrepancies only relate to collateral matters such as the date of one of the incidents and when Taylor told her mother and grandmother of the abuse. Taylor's testimony regarding the substance of the allegations, when, where, and how Sidlo struck her, was consistent both in the report made to the deputy on May 15 and at trial. That testimony clearly describes two instances in which Sidlo struck Taylor. Taylor was cross-examined by defense counsel on the prior allegations and independently examined by the judge. It is clear from the record that Taylor understood the gravity of the charges she made against Sidlo as well as their implications. If Taylor was manipulated into bringing these charges in order to please her mother, she gave no indication of it at trial. Sidlo's assignment of error is overruled.

{¶19} For the foregoing reasons, the decision of the Painesville Municipal Court is affirmed.

WILLIAM M. O'NEILL, J., concurs,

DIANE V. GRENDALL, J., dissents with Dissenting Opinion.

DIANE V. GRENDALL, J., dissents with a Dissenting Opinion.

{¶20} In order to convict Sidlo for domestic violence, the prosecution bore the burden of proving, beyond a reasonable doubt, that Sidlo “knowingly cause[d] *** physical harm to a family or household member.” The only evidence that Sidlo knowingly caused physical harm to a family member is the contradicted and uncertain testimony of his nine-year-old daughter, who has been the subject of an ongoing custody dispute between Sidlo and the child’s mother. Since this testimony does not establish Sidlo’s guilt beyond a reasonable doubt, I respectfully dissent.

{¶21} When considering a manifest weight of the evidence challenge, the reviewing court must consider whether “there is *substantial* evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt.” *State v. Nields*, 93 Ohio St.3d 6, 25, 2001-Ohio-1291, quoting *State v. Getsy*, 84 Ohio St.3d 180, 193-194, 1998-Ohio-533. (Emphasis sic). Although “the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of facts,” *State v. DeHass* (1967), 10 Ohio St.2d 230, syllabus, the reviewing court sits as a “thirteenth juror” and may “disagree[] with the factfinder’s resolution of the conflicting testimony.” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42.

{¶22} The Ohio Supreme Court has identified the following factors that a reviewing court may consider in determining whether a decision is against the manifest weight of the evidence: “whether the evidence was uncontradicted, whether a witness was impeached, what was not proved, that the reviewing court is not required to accept the incredible as true, the certainty of the evidence, the reliability of the evidence, whether a witness’ testimony is self-serving, and whether the evidence is vague,

uncertain, conflicting, or fragmentary.” *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 23-24, citing *State v. Mattison* (1985), 23 Ohio App.3d 10, syllabus.

{¶23} Sidlo’s daughter, Taylor, testified that Sidlo struck her on two occasions during a scheduled visitation with Sidlo on May 14, 2003, once with a book while he was talking on the phone and with his hand after they had finished eating.

{¶24} Taylor’s account of the two incidents lacks logical coherence. There is no discernible cause for Sidlo to strike Taylor, nor is there any discernible effect or consequence of the alleged assaults. The two incidents simply happen in a causal vacuum with the arbitrariness of lightning in a cloudless sky. This peculiarity of Taylor’s testimony is evident from the trial court’s questioning of Taylor.

{¶25} The Judge: And your dad was on the phone?

{¶26} Taylor: Uh-huh.

{¶27} The Judge: Well, did you say something to him that he -- for him to hit you like that?

{¶28} Taylor: No.

{¶29} The Judge: What did he do, just come up and hit you in the back of the head with a book?

{¶30} Taylor: (Indicates yes.)

{¶31} The Judge: For no reason?

{¶32} Taylor: (Indicates yes.)

{¶33} The Judge: Did he tell you like, “I’m -- I have --I’m on the phone. Can’t you see I’m on the phone or I’m trying to talk to somebody”?

{¶34} Taylor: No.

{¶35} The Judge: “Don’t bother me,” anything like that?

{¶36} Taylor: He didn't say anything.

{¶37} * *

{¶38} The Judge: *** And then he didn't do it for a reason? He hit you for no reason? He just did it?

{¶39} Taylor: (Indicates yes.)

{¶40} The Judge: Did you do something to maybe to make him mad?

{¶41} Taylor: (Indicates no.)

{¶42} The Judge: Nothing at all?

{¶43} Taylor: (Indicates no.)

{¶44} The same lack of causal connection with the surrounding circumstances is also evident in Taylor's account of the second alleged incident.

{¶45} Taylor: *** I went to go put my plate in the sink.

{¶46} The Judge: And then what did he do, just came up and slapped you then?

{¶47} Taylor: Yeah.

{¶48} The Judge: Why; what did you do then?

{¶49} Taylor: I don't think I did anything.

{¶50} The Judge: Do you think maybe you said something?

{¶51} Taylor: (Indicates no.)

{¶52} The Judge: You're sure?

{¶53} Taylor: (Indicates yes.)

{¶54} The Judge: Nothing?

{¶55} Taylor: (Indicates no.)

{¶56} The Judge: He just came up and slapped you for no reason?

{¶57} Taylor: Yes.

{¶58} The Judge: Just out of the blue?

{¶59} Taylor: Yes.

{¶60} The Judge: And did you tell his -- his wife, your stepmother, anything about it?

{¶61} Taylor: No.

{¶62} The Judge: Did you guys go back -- did you go outside then and ride your bike afterward?

{¶63} Taylor: Yeah.

{¶64} * *

{¶65} The Judge: Were -- were you mad at him after that?

{¶66} Taylor: No.

{¶67} The Judge: You were not mad at him for hitting you with a book and slapping you?

{¶68} Taylor: No, but I was upset.

{¶69} At trial Sidlo denied that he had ever struck Taylor, on this or any other occasion. Taylor's testimony was also contradicted by Ginny. Ginny testified that she was with Sidlo and Taylor continuously from the time she arrived home. She testified that Sidlo never struck Taylor during that time. Taylor testified, in contrast, that Ginny had gone to the bathroom after dinner and that it was at that point that Sidlo slapped her.

{¶70} Taylor also contradicted herself in the course of her testimony. On cross-examination, defense counsel questioned Taylor about prior allegations of abuse that

Taylor had made against Sidlo. Taylor testified that, in each case, the allegations were true. Taylor was not consistent, however, in maintaining the truth of these allegations.

{¶71} Defense counsel: There was an incident where your father -- you went -
- you filed a complaint where he was zipping up your jacket and the zipper stuck in your
neck; do you remember that?

{¶72} Taylor: (Indicates yes.)

{¶73} Defense counsel: And that was back in -- that was back in 1999; do you
recall that?

{¶74} Taylor: Yes.

{¶75} Defense counsel: And do you recall that -- that was accidental; wasn't
it?

{¶76} Taylor: Yes.

{¶77} Defense counsel: Okay. And as a result of that, your mother and you
filed charges against him, so that your father didn't get to visit with you for about four
months; do you remember that?

{¶78} Taylor: Yes.

{¶79} * *

{¶80} Defense counsel: There was another incident that after you went home
from visiting with your father in November of 2001, that you fell on a bicycle; do you
remember that? Your -- your dad was trying to teach you to ride a bicycle?

{¶81} Taylor: Yes.

{¶82} Defense counsel: And again, there was a report to the Lake County
Sheriff's Department; do you remember that?

{¶83} Taylor: (Indicates yes.)

{¶84} * *

{¶85} Defense counsel: And do you remember as a result of that incident that you didn't get to visit with your father for several months?

{¶86} Taylor: Yes.

{¶87} Defense counsel: And do you remember telling the deputy at that time that "My Father" -- you told the deputy that your father pushed you and you fell down; correct?

{¶88} Taylor: Yes.

{¶89} Defense counsel: And do you remember telling the deputy at that time that, "I don't believe that my father would ever intentionally cause me any harm"; do you remember that?

{¶90} Taylor: No, I do not remember.

{¶91} Defense counsel: Now, he was just trying to teach [you] to ride a bicycle; was he not?

{¶92} Taylor: Yes, he was.

{¶93} Defense counsel: And you had a bruise on your leg and the first thing that your mom did was take you to Human Services --

{¶94} Taylor: Yes.

{¶95} Defense counsel: -- and also to the Sheriff's Department?

{¶96} Taylor: Yes.

{¶97} Defense counsel: And you're aware that those allegations, that there were no charges filed as a result of that?

{¶98} Taylor: Yes.

{¶99} Defense counsel: And, in fact, he was teaching you to ride a bicycle and you fell down?

{¶100} Taylor: Yeah.

{¶101} Defense counsel: And he didn't intentionally hurt you on that day?

{¶102} Taylor: I don't think so.³

{¶103} The “corroborating” testimony of Taylor’s grandmother carries very little weight. The grandmother testified that she noticed a red mark on Taylor’s face when Taylor was dropped off. The grandmother did not attach any significance to this mark, however, until Taylor confided that her father had struck her. The grandmother’s testimony as to when Taylor confided this information is confusing and contradictory. According to the grandmother’s statement to the police, Taylor did not talk about the incidents until the following day. At trial, the grandmother initially testified that Taylor told her about the book on Wednesday evening and about the slap on Thursday morning. The grandmother then changed her testimony and said that Taylor told her about the slap on Wednesday evening, but that it was very late when she did so. The grandmother’s testimony regarding the dates of the alleged abuse was also confused and contradicted the statement she provided to the police. The officer who took Taylor’s written statement did not notice any marks on Taylor.

{¶104} In light of the preceding, this case is the “exceptional case in which the evidence weighs [so] heavily against the conviction” that the exercise of our discretionary power to reverse the conviction is justified. *Thompkins*, 78 Ohio St.3d at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175. Taylor’s testimony regarding the

3. In a third incident, Taylor alleged that Sidlo had slapped or hit her in the face. No charges, however, were ever filed as a result of this allegation.

circumstances surrounding the incidents does not make the allegations against Sidlo credible. Moreover, Taylor contradicted herself as to whether prior allegations of abuse were legitimate. Taylor's and her grandmother's testimony is further undermined by numerous other, although minor, inconsistencies. Finally, there was evidence that Taylor has been the subject of a custody struggle between her mother and Sidlo since 1999 and that this struggle has produced prior, unsubstantiated allegations of abuse. Weighing the evidence in light of these considerations, as is our prerogative, we should hold that the elements of domestic violence have not been established beyond a reasonable doubt.

{¶105} For the foregoing reasons, I would reverse the conviction.