[Cite as *State v. Smiley*, 2016-Ohio-1370.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2015-T-0075**
- vs -	:	
CHARLES SMILEY,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Warren Municipal Court, Case No. 2015 CR 01245.

Judgment: Affirmed.

Gregory V. Hicks, Warren City Law Director, 391 Mahoning Avenue, N.W., Warren, OH 44483, and *H. Gilson Blair*, Assistant City Prosecutor, 141 South Street, S.E., Warren, Oh 44481 (For Plaintiff-Appellee).

Michael A. Partlow, 112 South Water Street, Suite C, Kent, OH 44240 (For Defendant-Appellant).

THOMAS R. WRIGHT, J.

{¶1} Appellant, Charles Smiley, appeals his domestic violence conviction arising from an altercation with his sister-in-law. He argues that the trial court's decision is against the manifest weight of the evidence. We affirm.

{¶2} Appellant was charged with one count of domestic violence, a first-degree misdemeanor, under Warren City Ordinance 537.14. The complaint alleged that he "knowingly cause[d] or attempt[ed] to cause physical harm to: Rhonda Smiley family or household member." He pleaded not guilty, and the matter proceeded to a bench trial.

Appellant was convicted and sentenced to 180 days jail with 150 days suspended and three years probation. He was assessed a $50 fine and court costs.

{¶3} He asserts one assigned error:

{¶4} "The appellant's conviction is against the manifest weight of the evidence."

{¶5} The court of appeals, upon testing the manifest weight of the evidence, reviews "'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.'" *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1983). "The power to reverse on 'manifest weight' grounds should only be used in exceptional circumstances, when 'the evidence weighs heavily against the conviction.'" *State v. Banks*, 10th Dist. Franklin No. 09AP-13, 2009-Ohio-4383, ¶14, quoting *Thompkins* at 387.

{¶6} Moreover, we must "give great deference" to the trier of fact's assessment of witness credibility. *State v. Covington*, 10th Dist. Franklin No. 02AP-245, 2002-Ohio-7037, ¶28; *State v. Ryan*, 10th Dist. Franklin Nos. 08AP-481, 08AP-482, 2009-Ohio-3235, ¶41. The finder of fact is charged with assessing a witness' credibility, and an appellate court cannot substitute its judgment. *State v. Awan,* 22 Ohio St.3d 120, 123, 22 Ohio B. Rep. 199, 489 N.E.2d 277 (1986). "[T]he factfinder is free to believe all, part, or none of the testimony of each witness appearing before it." *Warren v. Simpson,* 11th Dist. Trumbull No. 98-T-0183, 2000 Ohio App. LEXIS 1073, *8 (Mar. 17, 2000). A reviewing court must interpret the evidence consistent with the verdict if it is susceptible to more than one interpretation. *Id; State v. Haines*, 11th Dist. Lake No. 2003-L-035, 2005-Ohio-1692, ¶82.

{¶7} Appellant's manifest weight argument is founded on his claim that he struck his sister-in-law in self defense. However, conflicting testimony was presented on this issue. Appellant and his sister-in-law, Rhonda Smiley, were the only witnesses to testify at trial.

{¶8} Rhonda testified that she resided with her husband and his brother, appellant, in their deceased mother's home in Warren, Ohio. On a Sunday in May of 2015, she permitted a friend from church, who had a headache, to lie down in the spare bedroom of their shared residence. Rhonda stored her clothes and personal items in the bedroom, but no one regularly slept in it. Appellant was home and became inflamed that Rhonda permitted someone to use this bedroom. He was yelling and swearing at her, indicating that no one can lay there. Appellant left and Rhonda's friend left as well.

{¶9} A few hours later, appellant returned. Rhonda stated that he had been drinking. She described smelling alcohol on his breath and stated that he was also under the influence of drugs. Upon his return, appellant started trashing this spare bedroom and throwing Rhonda's things. He began to disassemble the bed in this room, and Rhonda challenged him. The two were arguing while appellant continued to take apart the bed. As appellant was attempting to carry the mattress out of the room to the basement, he yelled at Rhonda to get out of his way. She threatened to call the police and refused to move. He then hit her twice in the face, once in the eye and once in the mouth.

{¶10} She sustained a loose tooth, a fat lip, and a bloodshot eye. She said her eye and her mouth were bleeding as a result. Rhonda did not seek medical attention because she was more concerned with her husband, who was experiencing chest pains at the time. The state introduced several photographs as exhibits depicting her injuries. Rhonda stated that this was not the first time appellant had hit her.

{¶11} Appellant admitted hitting Rhonda, but stated that he was merely defending himself. He explained that while he was carrying the mattress, Rhonda kept hitting and beating on him and that she refused to get out of his way.

{¶12} When asked why he did not explain to the police that his actions were in self defense, he stated, "They didn't want to hear it. They never talked to me. * * * They wouldn't let me talk * * *." He denied being intoxicated at the time.

{¶13} Following closing arguments, the trial court announced its decision, stating in part: "after evaluating the testimony, and the evidence in this case, Mr. Smiley, the court can only come to one conclusion. And that is the * * *City, in this case has proven its case beyond a reason[able] doubt." The judge subsequently stated that "I don't believe this woman struck out against you. I don't believe that for one (1) minute."

{¶14} Upon giving great deference to the trier of fact's assessment of witness credibility, and in light of the trial court's unequivocal statement as to the veracity of Rhonda's testimony, we cannot conclude that appellant's conviction for domestic violence was against the weight of the evidence and that a new trial is warranted. Appellant's sole assignment of error lacks merit.

{¶15} Based on the foregoing reasons, it is the judgment and order of this court that the judgment of the trial court is affirmed.

CYNTHIA WESTCOTT RICE, P.J.,

COLLEEN MARY O'TOOLE, J.,

concur.