[Cite as *State v. Helms*, 2010-Ohio-2327.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. JOHN A. HELMS Appellant	C. A. No. 25034 APPEAL FROM JUDGMENT ENTERED IN THE BARBERTON MUNICIPAL COURT COUNTY OF SUMMIT, OHIO CASE No. 09CRB979A

DECISION AND JOURNAL ENTRY

Dated: May 26, 2010

BAIRD, Judge.

{¶1} Defendant-Appellant, John Helms, appeals from his conviction in the Barberton Municipal Court. This Court affirms.

I

{¶2} On April 21, 2009, Helms was charged with two misdemeanor counts of domestic violence, in violation of R.C. 2919.25, stemming from an altercation at his brother's home the preceding day. Helms pleaded not guilty and the matter was tried to the bench, where Helms represented himself. The trial court found Helms guilty of one count of domestic violence related to his father, James Helms, but not guilty of the count related to his sister, Joyce Scott.

{¶3} The trial court sentenced Helms to jail for 180 days, which was suspended on the condition that he not commit another criminal offense and that he attend a 26 week anger management program. Helms now appeals from his conviction, asserting five assignments of error for our review. Some of his assignments of error have been combined for ease of analysis.

II

Assignment of Error Number One

"NO EVIDENCE OF INTENT PERSURANT TO ORC2919.25. A,B, OR C." (Sic.)

Assignment of Error Number Two

"COMMENTS OF JUDGEMENT, NOT EQUAL TO, MATERIAL, TESTIMONY, OR EVIDENCE PRESENTED." (Sic.)

{¶4} Initially, we note that, consistent with his decision to act pro se at his trial, Helms also filed his appellate brief pro se. Helms' brief is very difficult to comprehend and it is largely unclear what he is attempting to argue on appeal. We have previously noted that pro se litigants are given "reasonable leeway such that their motions and pleadings should be liberally construed so as to decide the issues on the merits, as opposed to technicalities." *Sherlock v. Myers*, 9th Dist. No. 22071, 2004-Ohio-5178, at ¶3. This approach is tempered, however, by the premise that "a pro se litigant is presumed to have knowledge of the law and correct legal procedures so that he remains subject to the same rules and procedures to which represented litigants are bound." Id. Consequently, this Court must hold a pro se appellant "to the same standard as any represented party." Id.

{¶5} In his first and second assignments of error, Helms appears to argue that his conviction is against the manifest weight of the evidence. He generally complains that: (1) the State failed to prove he acted knowingly; (2) the trial court erred in crediting the testimony of the State's witness, Joyce, because her testimony was inconsistent; and (3) the trial court failed to credit the testimony of his defense witness, Joel Helms. We disagree.

{¶6} In determining whether a conviction is against the manifest weight of the evidence an appellate court:

> "[M]ust 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. Otten* (1986), 33 Ohio App.3d 339, 340.

A weight of the evidence challenge indicates that a greater amount of credible evidence supports one side of the issue than supports the other. *State v. Thompkins*, 78 Ohio St.3d 380, 387. Further, when reversing a conviction on the basis that the conviction was against the manifest weight of the evidence, the appellate court sits as the "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony. Id. Therefore, this Court's "discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Martin* (1983), 20 Ohio App.3d 172, 175; see, also, *Otten*, 33 Ohio App.3d at 340.

{¶7} Helms was convicted of domestic violence under R.C. 2919.25(A), which prohibits a person from "knowingly caus[ing] or attempt[ing] to cause physical harm to a family or household member." Under R.C. 2901.22(B), "[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature."

{¶8} At trial, both Joyce and James testified on behalf of the State. Joyce testified that, the day before the altercation at issue, James had let Helms had take original copies of some of his documents. Though James, Helms' 86-year-old father, was aware that Helms had the paperwork, James became "very anxious" over the fact that he no longer had the original documents. James wanted to get the originals back from Helms, who at that point in time was at his twin brother, Joel's, house. James called Helms to let him know he was coming over to Joel's house to get the documents. According to Joyce, after she and James entered the house,

Helms came toward his father in an aggressive manner while waving the papers and screaming at him. Helms then pushed his father "with great force," causing him to hit his head on a nearby cabinet and fall to the floor. James sustained a bump on his head due to the fall. Joyce helped James to his feet, and then the two of them left Joel's house. Upon returning to Joyce's house, Joyce called police and emergency medical services to evaluate her father.

{¶9} James testified that he fell down at Joel's house, but was unable to recall exactly what caused his fall. James indicated he has an artificial femur which makes him unsteady on his feet and causes him to fall when he makes any quick movements. Though James acknowledged that his written statement to the police that day indicated Helms "rushed at [him] with papers and threw [him] down," he did not recall using those words or making that statement.

{¶10} Officer Michael Lowe, the deputy sheriff who responded to Joyce's call, testified that James "had a pretty good goose egg on the back of his head" when he arrived. Officer Lowe confirmed that Joyce provided him with a written statement which was consistent with her testimony at trial. James also provided a written statement to police which indicated that Helms had thrown him to the floor. Although Joyce physically wrote the statement on the paper for her father, Officer Lowe testified that James affirmed it to be a true statement at the time. Officer Lowe went to Joel's house for further investigation and though Joel was present then and at the time of the altercation, he declined to provide police with a written statement about the day's events.

{¶11} Joel testified on behalf of Helms and indicated that Helms never touched their father. Instead, Joel testified that James reached out to touch Helms as he walked by him while

entering the room and that "the momentum of him grabbing John [caused him to] start spinning around," which then led James to fall.

{¶12} When announcing its decision, the court acknowledged James' reluctance to testify in the matter. The court specifically indicated that it found Joyce's testimony credible, while it questioned the truthfulness of some of Joel's testimony. This Court has repeatedly indicated we will not reverse a conviction in a manifest weight challenge where the trier of fact chooses to believe certain testimony over that of another. *State v. Jones*, 9th Dist. No. 24469, 2010-Ohio-879, at ¶29, citing *State v. Crowe*, 9th Dist. No. 04CA0098-M, 2005-Ohio-4082, at ¶22. Matters of credibility are best determined by the trier of fact. *State v. Peterson*, 9th Dist. No. 23434, 2007-Ohio-2091, at ¶19. Because there was credible evidence adduced at trial that Helms pushed his father to the floor, the trial court did not lose its way in convicting Helms for domestic violence. Consequently, Helms' conviction is not against the manifest weight of the evidence. Accordingly, his first and second assignments of error lack merit and are overruled.

Assignment of Error Number Three

> "NO COURT ORDERED PRE-SENTENCE PARROL INVESTIGATION EVIDENCE SUBMITTED OR SHOWN." (Sic.)

{¶13} In his third assignment of error, it is unclear whether Helms argues that there was no presentence investigation performed, or whether the information contained in the presentence investigation does not support his sentence. Under either scenario, however, his argument is not well taken.

{¶14} Crim.R. 32.2 provides that "in misdemeanor cases the court may[] order a presentence investigation and report before imposing community control sanctions or granting probation." Thus, the court was not required to order a presentence investigation given Helms' misdemeanor conviction. Crim.R. 32.2. Though the trial court indicated at the close of trial that

it was requesting a presentence investigation, it is unclear from the record whether a presentence investigation was ever conducted in this case. Moreover, Helms has not filed a motion to supplement the record to include a copy of the presentence investigation in the record on appeal before us. See *State v. Burgess* (June 28, 2000), 9th Dist. No. 99CA007338, at *2. Therefore, we presume the validity of the trial court's rationale in support of Helms' sentence. *State v. Banks*, 9th Dist. No. 24259, 2008-Ohio-6432, at ¶14 (presuming the validity of appellant's sentence given the absence of a presentence investigation in the record). Accordingly, Helms' third assignment of error lacks merit and is overruled.

Assignment of Error Number Four

"NO DISCOVERY SUBMITTED BEFORE OR DURING TRIAL OF DEPUTY OR ORIGINAL COMPLAINT[.]" (Sic.)

{¶15} In his fourth assignment of error, Helms frames his argument as one related to the State's refusal to comply with discovery requests. His argument in support of this assignment of error, however, alleges that the investigating officers threatened Joel with arrest when he sought to provide a written statement and that Joyce provided police with written statement outside of the presence of the officers.

{¶16} The record reveals that Helms did not file any discovery requests in this matter pursuant to Crim.R. 16. Consequently, his assertion that the State failed to comply with such requests is not based in fact. To the extent Helms alleges that the officers on the scene erred in performing their investigative duties, this matter is not the proper subject of an appeal, nor was this issue ever raised by Helms during his trial. See App.R. 12(A)(2). Helms failed to question Officer Lowe, Joel, or Joyce on such matters throughout his trial, which precludes us from considering these matters on appeal. Id. Accordingly, Helms' fourth assignment of error is overruled.

Assignment of Error Number Five

"SENTENCE NOT DEFINED[.]"(Sic.)

{¶17} In his fifth assignment of error, Helms appears to challenge the mittimus issued for him to attend and complete an anger management program as part of his sentence. Helms, however, has failed to set forth any argument in support of his captioned assignment of error. Under the appellate rules, an appellant bears the burden of affirmatively demonstrating error on appeal and substantiating his argument in support of the alleged error. App.R. 16(A)(7); Loc.R. 7(B)(7). See *State v. Hairston*, 9th Dist. No. 05CA008768, 2006-Ohio-4925, at ¶21. Because Helms has failed to do so, we do not reach the merits of his argument. *Hairston* at ¶21. Accordingly, his fifth assignment of error is overruled.

III

{¶18} Helms' assignments of error are overruled. The judgment of the Barberton Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Barberton Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is

instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

WILLIAM R. BAIRD
FOR THE COURT

MOORE, J.
DICKINSON, P. J.
CONCUR

(Baird, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to §6(C), Article IV, Constitution.)

APPEARANCES:

JOHN A. HELMS, pro se, Appellant.

MICHELLE L. BANBURY, Assistant Prosecuting Attorney, for Appellee.