[Cite as *State v. Stone*, 2010-Ohio-3918.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 23573
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CRB-1058
v.	:	
	:	
WILLIAM L. STONE	:	(Criminal Appeal from Montgomery
	:	County Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 20th day of August, 2010.

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BROGAN, J.

{¶ 1} William Stone appeals from his conviction of domestic violence after a bench trial. Stone argues in his sole assignment of error that his conviction is against the manifest weight of the evidence.

{¶ 2} The facts at trial established that the victim, Amber Srobe, and Stone lived together in a house in Riverside, Ohio. On June 30, 2009, Sergeant Harold

Jones of the Riverside Police was dispatched to Srobe's residence at one in the morning on the report of domestic violence. When he arrived, he was met by Srobe who told Jones that Stone had "forced himself on her." (Tr. 21.) Jones proceeded to the back bedroom of the residence where he located Stone who was zipping up his pants. Jones asked Stone what had just occurred and Stone replied he was trying "to love on his woman" or words to that effect. Jones observed a long abrasion or deep scratch on Srobe's side. Photographs were taken depicting the injury. (State's Exhibits 6 and 7.) Jones thought the injury appeared to be a fresh one. (Tr. 23.) Jones did not discover any hand guns on the scene nor a box cutter. (Tr. 29.)

{¶ 3} Srobe testified that she lived with Stone and he was the father of their two small children. She testified Stone came home that night and asked to have sex with her. Srobe testified she declined to do so because there was a twelve-year-old girl in the home at the time watching television. Srobe said Stone persisted and pushed her down on the bed in her child's room and jumped on top of her. Srobe said she fought him and during the fight Stone cut her with what she thought was a box cutter. (Tr. 6.) Srobe said she eventually landed on the floor of the bedroom and got away. She testified she called 9-1-1 for assistance. Srobe testified the police arrived shortly thereafter and she reported what happened to her. At trial, Srobe identified a series of photographs depicting bruises to her face and hand and the cut on her side and stomach. (Tr. 9, 10.)

{¶ 4} On cross-examination, Srobe testified she thought Stone cut her with a box cutter because he used one while employed at Big Lots in the furniture

department. (Tr. 11.) She admitted, however, that she never saw the box cutter that evening of the alleged assault. She admitted her clothes were not ripped nor were they covered in blood. She admitted she did not want to have sex with Stone because he was rumored to be having sexual relations with an eighteen-year-old girl. (Tr. 17, 18.)

{¶ 5} Stone testified in his own defense and admitted trying to have sex with Srobe but denied holding her down on the bed or stabbing her with anything. Stone testified that the side bruise suffered by Srobe did not come from any actions taken by him toward her. (Tr. 40, 41.)

{¶ 6} Defendant was found guilty of violating R.C. 2919.25(A), which provides:

{¶ 7} "(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member."

{¶ 8} " 'Knowingly' is defined in R.C. 2901.22(B):

{¶ 9} " '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. A person has knowledge of circumstances when he is aware that such circumstances probably exist.'

{¶ 10} " 'Physical harm to person' includes any injury or physiological impairment, regard-less of its gravity or duration. R.C. 2901.01(A)(3). 'Family or household member' includes a spouse. R.C. 2919.25(E)(1)(a)(I)." *State v. Younker*, Darke App. No. 2002-CA-1581, ¶ ¶ 17-19.

{¶ 11} "The criminal manifest-weight-of-the-evidence standard was explained

in *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. Id. at 386, 678 N.E. 2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence's effect of inducing belief. Id. at 386-387, 678 N.E.2d 541. In other words, a reviewing court asks whose evidence is more persuasive–the state's or the defendant's? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. Id. at 387, 678 N.E.2d 541. 'When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony.' Id. at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652." *State v. Wilson* (2007), 113 Ohio St.3d 382, ¶ 25.

{¶ 12} An appellate court may not merely substitute its view for that of the jury, but must find that "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*, supra, 78 Ohio St.3d at 387. (Quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717, 720-721). Accordingly, reversal on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." Id. We have examined the testimony

provided the trial court along with the photographs entered into evidence. The evidence supports the trial court's finding that Stone caused physical harm to a household member, Amber Srobe. The evidence presented by the State does not weigh heavily against Stone's conviction. The appellant's sole assignment of error is Overruled.

{¶ 13} The judgment of the trial court is Affirmed.

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FAIN and DINKELACKER, JJ., concur.

(Hon. Patrick T. Dinkelacker, First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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