

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-11-1043

Appellee

Trial Court No. CRB-11-00640

v.

Steven L. Sifleet

DECISION AND JUDGMENT

Appellant

Decided: February 10, 2012

* * * * *

David Toska, City of Toledo Chief Prosecuting Attorney, and
Michelle Turvey-Albert, Assistant Prosecuting Attorney, for appellee.

Joseph B. Clarke, for appellant.

* * * * *

YARBROUGH, J.

I. Introduction

{¶ 1} This is an appeal from the judgment of the Toledo Municipal Court, convicting appellant of domestic violence in violation of Toledo Municipal Code 537.19(a), a misdemeanor of the first degree. Appellant, Steven Sifleet, argues that the conviction is against the manifest weight of the evidence. For the reasons that follow, we affirm.

A. Facts

{¶ 2} On January 15, 2011, the victim, Susanna, filed charges of domestic violence and assault against appellant. Appellant pleaded not guilty, and the case proceeded to a bench trial on January 31, 2011.

{¶ 3} Testimony from the trial reveals the following. On December 3, 2010, Susanna filed for a divorce from appellant. At that time, the couple had been living in the same home, but Susanna had been sleeping in the master bedroom while appellant was sleeping downstairs on the couch. On January 10, 2011, an incident occurred, prompting appellant to file domestic violence charges against Susanna. Susanna was arrested and spent that night in jail. On January 11, 2011, a civil protection order was issued. The civil protection order did not prohibit contact with appellant, but it did prohibit Susanna from “harming, attempting to harm, threatening, molesting, following, stalking, bothering, harassing, annoying, or forcing sexual relations on [appellant].” The instant cause arises from events that transpired the next evening when Susanna returned to the home to see the couple’s six-year-old daughter.

{¶ 4} On that night, January 12, 2011, Susanna entered the home with her friend, Holly Heintschel. Susanna proceeded to take her purse and other items upstairs to the master bedroom, while Holly remained in the kitchen. At some point when Susanna returned downstairs, she got into a dispute with appellant over where the parties were sleeping. Appellant insisted that he would sleep in the master bedroom while Susanna slept downstairs, to which Susanna replied that she had slept on a plastic bed in jail, and

thus she was not sleeping on the couch. Appellant subsequently removed himself from the argument and locked himself in the master bedroom.

{¶ 5} Susanna testified she became concerned that appellant would look through her purse, so she retrieved the key to the bedroom and opened the door. Susanna stated that when she opened the door, appellant pushed on it, slamming her right arm in the door. Susanna got her arm out and appellant shut the door completely. Susanna then opened it again and had her right knee in the door. She testified that appellant continued to push on the door with her knee still in it, at which point Susanna said, “[Y]ou are hurting me. You are hurting me.” She stated that appellant did not let the door off her until their daughter put her hand through the door.

{¶ 6} Susanna testified that she went to the hospital the next day for her injuries. Photographs taken at the hospital and at Susanna’s place of employment showed that she suffered bruising on both her right arm and leg. X-rays were also taken of Susanna’s arm and leg, but came back negative.

{¶ 7} Holly’s testimony reveals that, on the night of the incident, Susanna went upstairs and told appellant that she needed to get her stuff out of the bedroom. Appellant replied, “[Y]ou are not coming in here. This is my space. You need to leave me alone.” Appellant also said that he would give the purse and personal items to Susanna, but Susanna responded, “[N]o, I want it now.” Holly testified that the parties were calm and were not yelling or raising their voices, so she walked back to the kitchen. When Holly returned, she saw that Susanna had the door partly open with her leg stuck in it. Holly

testified that Susanna said, “[Y]ou are hurting me, Steve. You are hurting my leg. Let go of the door.” Holly stated it was not until the daughter started crying that appellant opened the door.

{¶ 8} In addition to the testimony of Susanna and Holly, the prosecution also played a video that appellant recorded of the incident. The video shows a partially open door with what appears to be a person’s leg wedged in the opening. The video does not show Susanna’s arm being slammed in the door. The following is heard in the video:

Appellant: “See this, she is trying to break in. * * * [T]his is my room.”

Susanna: “You’re hurting my leg. You’re hurting my leg. Please let the door off.”

Appellant: “I’m not hurting your leg. Get your leg out of there please.”

Susanna: “No, I need to get some of my things.”

Appellant: “I will get it out for you.”

* * *

Appellant: “You need to leave, now.”

{¶ 9} The video then shows the daughter’s hand come onto the doorframe. Appellant asks the daughter to remove her hand. After she does, the parties then continue their argument, which ends when appellant apparently is given advice over the phone to call 911. Appellant then backs away from the door.

{¶ 10} After the prosecution rested, the defense called appellant and the responding police officer, Officer Farrell to testify. Officer Farrell testified that upon

arriving at the scene, she interviewed the parties and viewed the video taken by appellant. Based on the video and her interviews, Officer Farrell told the parties that she was going to file a report for a violation of the civil protection order. She testified that Susanna insisted that Officer Farrell arrest appellant, and when she refused, Susanna went to the Safety Building to try to have appellant arrested. The sergeant at the Safety Building also declined to arrest appellant after conversing with Officer Farrell. Officer Farrell testified that the next day Susanna went to a different police station and initiated charges against appellant. Officer Farrell stated that in her expert opinion as a police officer it was not appropriate to charge appellant with domestic violence.

{¶ 11} Appellant testified that he did not slam the door on Susanna. Appellant explained that he heard Susanna trying to get into the bedroom, so he grabbed the video camera and used his foot to block the door from being opened any further. Appellant stated he had one foot against the door while his other foot was wedged against the dresser. He also stated that, at the same time, he was on his cell phone with one hand, and was recording the incident with the camcorder in his other hand. Appellant testified that he relented and let Susanna in the room when she said all she wanted was to get her things, and when he saw his daughter start to cry.

{¶ 12} After the presentation of evidence and closing arguments, the trial court found appellant guilty of domestic violence. The court sentenced him to 30 days in the correction center, with those days suspended, and fined him \$250 plus court costs. The assault charge was dismissed.

B. Assignment of Error

{¶ 13} Appellant now appeals, raising as his sole assignment of error:

Defendant-Appellant's conviction of domestic violence was contrary to the manifest weight of the evidence.

II. Analysis

{¶ 14} Appellant presents three reasons why the conviction is against the manifest weight of the evidence. First, appellant contends that Susanna was in violation of the civil protection order at the time of the incident because she was “annoying, bothering, and harassing appellant.” Second, appellant points to the fact that the responding officer interviewed the parties and watched the video recording at the scene, yet, the officer did not elect to arrest appellant for domestic violence, but instead wrote a report based on a violation of the civil protection order. Finally, appellant contends that Susanna caused her own injuries by forcibly trying to wedge her arm and leg into the doorway. In support of this, appellant argues that he could not have “slammed” the door on Susanna because he had a camcorder in one hand and his cell phone in the other hand. Appellant concludes that these arguments are sufficient to demonstrate that the conviction was against the manifest weight of the evidence. We disagree.

{¶ 15} When reviewing a manifest weight of the evidence claim,

The court, reviewing 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 [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. The 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. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, quoting *State v. Thompson*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

{¶ 16} “Weight is not a question of mathematics, but depends on its effect in inducing belief.” (Emphasis deleted.) *Thompson*, 78 Ohio St.3d at 387. We must keep in mind, however, that “the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The trier of fact may believe all, some, or none of what a witness says. *State v. Antill*, 176 Ohio St. 61, 67, 197 N.E.2d 548 (1964).

{¶ 17} We hold that appellant’s conviction is not against the manifest weight of the evidence. To be guilty of domestic violence, appellant must have “knowingly cause[d] or attempt[ed] to cause physical harm to a family or household member.” Toledo Municipal Code 537.19(a). Here, the evidence at trial included Susanna’s testimony that appellant slammed the door on her arm, and that he separately continued to push on the door when her leg was in the doorway and while she was saying, “You are hurting me.” The evidence also included Holly’s testimony that Susanna’s leg was stuck in the doorway and that Susanna was saying, “[Y]ou are hurting me, Steve. You are

hurting my leg. Let go of the door.” Further, photos of the bruising on Susanna’s arm and leg evinced the physical harm caused by appellant’s pressing of the door against her limbs. Finally, the video shows appellant continuing to press the door against Susanna’s knee while Susanna is saying, “You’re hurting my leg. You’re hurting my leg. Please let the door off.” Based on this evidence, we cannot say that the trial court clearly lost its way in finding appellant guilty of domestic violence.

{¶ 18} Accordingly, appellant’s sole assignment of error is not well-taken.

III. Conclusion

{¶ 19} For the foregoing reasons, the judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
