

[Cite as *State v. Sedan*, 2011-Ohio-2849.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2010-05-118
- vs -	:	<u>OPINION</u> 6/13/2011
SHADRICK SEDAN,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM HAMILTON MUNICIPAL COURT
Case No. 10CRB01660

Mary K. Dudley, Hamilton City Prosecutor, 345 High Street, 7th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Patrick E. McKnight, P.O. Box 621, Monroe, Ohio 45050, for defendant-appellant

HUTZEL, J.

{¶1} Appellant, Shadrick Sedan, appeals his conviction in the Hamilton Municipal Court for violating a domestic violence criminal temporary protection order (temporary protection order).

{¶2} Kimberly Keith, appellant's ex-wife, obtained a temporary protection order against appellant based on incidents that occurred on March 23, 2010. These

incidents included a heated telephone conversation between appellant and Keith and a dispute between appellant and their 14-year-old daughter. The temporary protection order contained a provision prohibiting appellant from encountering Keith on public streets. If he accidentally did so, the temporary protection order required appellant to depart immediately. At the time of trial, appellant and Keith were involved in a custody dispute and Keith was only able to see their children on supervised visits.

{¶13} At trial, Keith testified that on March 30, 2010 as she was leaving Butler County Children Services (Children Services) in her vehicle, she noticed appellant in his vehicle parked across the street. Keith turned right out of the parking lot at Children Services, opposite the direction appellant's vehicle was facing. According to Keith's testimony, despite the fact that appellant was parked facing the opposite direction, he followed Keith in his vehicle. As Keith was approaching State Route 4, Keith realized appellant was driving directly behind her. Keith pulled over on the side of the road and called the Hamilton Police Department. The Hamilton Police Department advised Keith to go to the police station to file a report on appellant as Keith had a temporary protection order against him. Keith testified that once she finished her phone call and resumed driving approximately five minutes later, she turned right onto High Street and testified she observed appellant pull out of a parking lot at a nearby Walgreens to continue to follow her. This time appellant followed a few cars behind Keith. Keith testified that when she turned left onto Front Street, towards the Hamilton Police Department, appellant continued straight on High Street.

{¶14} Appellant testified that he went to Children Services on March 30, 2010

to sign paperwork. According to appellant's testimony, as he was pulling into the parking lot at Children Services in his vehicle, he observed Keith pulling out of the parking lot at Children Services in her vehicle. Appellant parked in the handicapped parking space in the parking lot at Children Services, and went inside Children Services for approximately ten minutes. Appellant testified he then drove "straight home" from Children Services. Appellant testified he turned right onto Fair Avenue, turned left onto State Route 4, and turned right onto High Street. From High Street, appellant turned right onto Martin Luther King Street (State Route 127) and took Martin Luther King Street to New Miami. Except for initially seeing Keith as he was driving into the Children Services parking lot and Keith was driving out, appellant testified that he did not see Keith at any point on his drive home. Appellant also testified that he did not park across the street from Children Services.

{¶15} Appellant was charged with two counts of domestic violence in violation of R.C. 2919.25, and one count of violating a temporary protection order, in violation of R.C. 2919.27. Appellant was found not guilty of both counts of domestic violence and guilty of violating the temporary protection order. The conviction for violation of the temporary protection order was based on the March 30, 2010 incident.

{¶16} Appellant appeals his conviction for violation of the temporary protection order and raises one assignment of error:

{¶17} "THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY FINDING APPELLANT GUILTY OF VIOLATING A TEMPORARY PROTECTION ORDER"

{¶18} Appellant argues that his conviction for violating the temporary protection order is against the manifest weight of the evidence. While appellant does

not dispute that a valid temporary protection order was in place, he disputes Keith's version of the facts that supported his conviction. Appellant claims Keith's version of the facts is suspect because she was "disgruntled" and "infuriated" by the events leading to the domestic violence charges, including events between appellant and their 14-year-old daughter and a phone conversation between appellant and Keith. Appellant also claims Keith's version of the facts is suspect because she was angry regarding the custody dispute as she was only able to see their children on supervised visits.

{¶9} In order to determine whether a verdict is against the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine, when resolving conflicting evidence, if the trier of fact "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. A new trial should only be ordered in exceptional cases where "the evidence weighs heavily against the conviction." *Id.* While the appellate court weighs the evidence and considers the credibility of witnesses in its review, it must remember that it is primarily the task of the trier of fact to do so. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231.

{¶10} In this case, there is conflicting testimony between appellant and Keith. Both testified they were at Children Services on March 30, 2010. Keith testified she was followed for some time by appellant after she left the parking lot at Children Services. Appellant testified that other than seeing Keith as he was driving into the parking lot of Children Services and Keith was driving out, he did not see Keith at any

point on his drive home. Appellant testified he was inside of Children Services for approximately ten minutes and then drove "straight home." Appellant testified he turned right out of Children Services to Route 4, turned left onto Route 4, and turned right onto High Street, which is the same route Keith testified she took to the Hamilton Police Department. However, appellant testified he turned right onto Martin Luther King Street, which is three blocks before High Street crosses Front Street. Keith testified that she turned left onto Front Street from High Street and appellant continued to drive straight on High Street.

{¶11} Regarding credibility, Keith may have been disgruntled and infuriated because of appellant's actions leading up to the March 30, 2010 incident, which may have resulted in her filing domestic violence charges and obtaining a temporary protection order against appellant. She may also have been angry regarding custody issues as, at the time of the hearing, she had only supervised visits with their children. However, the trial court judge, as the trier of fact, was not required to discredit Keith's testimony because she may have been disgruntled, infuriated, or angry with appellant. Two conflicting versions of the incident at issue were presented, and the trier of fact found appellant's testimony "less than fully credible." As it is primarily the job of the trier of fact to determine the credibility of witnesses, we cannot say the trier of fact lost its way in finding Keith's testimony credible and appellant's testimony less than credible.

{¶12} Similarly, it is primarily the responsibility of the trier of fact to weigh the evidence. In reviewing the entire record, including appellant's admission to being at Children Services on March 30, 2010 and Keith's testimony, we cannot say the evidence weighs heavily against the conviction or that there was a manifest

miscarriage of justice.

{¶13} Therefore, we find appellant's conviction for violating the temporary protection order is not against the manifest weight of the evidence. The assignment of error is overruled.

{¶14} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.