

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-200002
	:	TRIAL NO. 19CRB-25418
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
STEPHEN ROMANO,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a physical altercation between defendant-appellant Stephen Romano and his longtime girlfriend Christina Gourlay, with whom he had been living for eight years, Romano was arrested and charged with domestic violence. Romano proceeded to a bench trial, at the conclusion of which he was found guilty and sentenced to 180 days in jail. Romano unsuccessfully moved for a stay pending appeal.

In his sole assignment of error, Romano challenges the weight of the evidence supporting his domestic-violence conviction.

A manifest-weight-of-the-evidence argument challenges the believability of the evidence. In reviewing a challenge to the weight of the evidence, we sit as a “thirteenth juror.” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). We must review the entire record, weigh the evidence, consider the

credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice. *Id.*

Romano was convicted of domestic violence under R.C. 2919.25(A), which provides: “No person shall knowingly cause or attempt to cause physical harm to a family or household member.” Romano argues that the weight of the evidence does not establish that Gourlay suffered “physical harm.”

However, the state was not required to prove that Romano actually harmed Gourlay. *See State v. Baxter*, 1st Dist. Hamilton No. C-180575, 2019-Ohio-4855, ¶ 10. Instead, the state was required to prove that Romano caused or “attempt[ed] to cause” harm to Gourlay. R.C. 2919.25(A).

In this case, Gourlay unequivocally testified that Romano tackled her onto the bed. Gourlay stated, “He caused me physical pain, he held me down, and he wouldn’t let me up.” Gourlay continued, “I couldn’t breathe, I * * * actually did end up screaming. Because I couldn’t breathe and I couldn’t move.” Gourlay also testified that Romano “yanked” her hair, hurting her and causing her to scream. Thus, if believed, Gourlay’s testimony establishes that Romano harmed or attempted to harm her.

Romano’s manifest-weight-of-the-evidence argument turns in major part on the alleged inconsistencies in Gourlay’s testimony. Romano asserts that Gourlay was not credible because she did not allege in the civil-protection-order case that Romano pulled her hair or caused injuries, despite testifying to that in the criminal case.

In addition to the alleged inconsistencies, Romano also cites the testimony of Gourlay’s sister, Lucinda Mueller. Mueller testified for the defense and opined that Gourlay was not truthful. Mueller further testified that Gourlay had a “bad”

reputation in the community. According to Mueller, Gourlay was known for being “not truthful.”

“When conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the trier of fact believed the prosecution testimony.” (Internal quotations omitted.) *State v. McDaniel*, 1st Dist. Hamilton No. C-190476, 2021-Ohio-724, ¶ 25. The trier of fact is in the best position to “view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.” *Seasons Coal Co. v. City of Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). “Because the trier of fact sees and hears the witnesses and is particularly competent to decide ‘whether, and to what extent, to credit the testimony of particular witnesses,’ we must afford substantial deference to its determinations of credibility.” *State v. Glover*, 1st Dist. Hamilton No. C-180572, 2019-Ohio-5211, ¶ 30, quoting *Barberton v. Jenney*, 126 Ohio St.3d 5, 2010-Ohio-2420, 929 N.E.2d 1047, ¶ 20.

Despite the inconsistencies and the competing testimony of Mueller, the trial court chose to believe Gourlay’s testimony. The court was in the best position to determine the credibility of the witnesses and rationally could have believed Gourlay’s version of events. We cannot conclude that the court, in resolving the conflicting evidence, clearly lost its way and created such a manifest injustice that Romano’s conviction for domestic violence must be reversed. We accordingly overrule his sole assignment of error and affirm the judgment of the trial court.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MYERS, P.J., CROUSE and WINKLER, JJ.

OHIO FIRST DISTRICT COURT OF APPEALS

To the clerk:

Enter upon the journal of the court on April 16, 2021,
per order of the court _____.

Administrative Judge

