

ORIGINAL

NOTICE OF APPEAL FROM A COURT OF APPEALS  
IN THE SUPREME COURT OF OHIO

STATE OF OHIO : On Appeal from the Miami County  
PLAINTIFF/APPELLEE : Court of Appeals, Second Appellate  
District  
VS. : 14-1164  
THOMAS RILEY : Appeal Case No. 2013 CA 37  
DEFENDANT/APPELLANT :

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MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT THOMAS L. RILEY

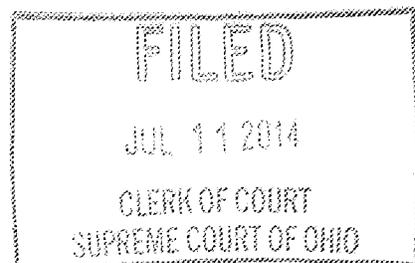
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EXPLANATION OF WHY THIS CASE IS A CASE OF  
PUBLIC OR GREAT INTEREST

This case presents matters of public or great interest to the citizens of Ohio. The tension between proper parental discipline and domestic violence touches every family and every parent-child relationship in Ohio.

Corporal punishment is theoretically available to parents in order to enforce proper parental discipline. In the instant case, that right is eroded by the finding that slapping which lead to a physical confrontation constituted the criminal act of Domestic Violence, R.C. 2919.25(A). The Court failed to consider the totality of the circumstances. 1) the child's age, 2) the behavior being disciplined, 3) the Child's response to correction, 4) the location and severity of the punishment, 5) the parent's state of mind when administering punishment.

Without a clear path to follow parents are let adrift when trying to enforce proper parental discipline. They are not only subject to criminal sanctions but are hampered in their ability to properly utilize corporal punishment at all. Such a situation may remove this parental sanction from use entirely.

Ohio permits parents to utilize corporal punishment when disciplining children but provides them with confusing standards when applying the punishment. The use of the criminal standard in the Domestic Violence statute differs from the standard used in Juvenile Court law (cite.) Parents and custodians are faced with a confusing Tower of BABEL confronting them with different standards and rules.

The result of this confusion is that many parents must conclude that no level of corporal punishment is safe under Ohio law.

These issues are potentially of great interest to every citizen of the State because at some point everyone is a parent, custodian or child.

Father was charged with Domestic Violence R.C.2919.25(A). The matter proceeded to a Bench Trial and father was convicted of violating R.C.2919.25(A) on July 2, 2013. He was sentenced to \$100.00 fine plus Court Costs on September 11, 2013.

Father filed a timely appeal to the Second District Court of Appeals and said Appeal was overruled on May 30, 2014. It is from this Final Entry that Defendant/Appellant seeks relief.

**PROPOSITION OF LAW NO. 1**

A father's use of parental discipline by using an open hand to slap son's face which results in wrestling is not a violation of .R.C. 2919.25(A), Domestic Violence unless the behavior is analyzed in conformity with:

1. The child's age
2. The child's behavior leading up to the discipline
3. The child's response to prior non-corporal punishment
4. The location and severity of the punishment
5. The parents state of mind while administering the punishment

**Argument in Support of Proposition of Law No. 1**

Defendant was convicted of violating R.C.2919.25(A). He testified that the extent of his discipline was slapping his son with an open hand. His son argued that father punched him in the face several times, but the injury sustained was more consistent with slapping. The two wrestled on the floor after son kicked father.

A strikingly similar fact pattern occurred in State v. Hart (1996), 110 Ohio App 3<sup>rd</sup> 250. In HART the father claimed to have slapped daughter twice as corporal punishment. Daughter stated that father had slapped her eight times and punched a hole in the bedroom wall.

The case was reversed due to the Trial Court's failure to consider the defense of corporal punishment.

Likewise in State v. Luke, 2011 WL 3813588 3d District, Union County, a father slapped a son in the face and was convicted of Domestic Violence R.C. 2919.25(A). The Court of Appeals reversed citing HART, and In Re J.L. 176 Ohio App 3d 186, 199 (2008). These Courts required a fine step analysis 1) the child's age, 2) the child's behavior leading up to the discipline, 3) the child's response leading up to the discipline, 4) the child's response to prior non-corporal punishment, 5) the location and severity of the punishment, 6) the parent's state of mind while administering the punishment. In Re J.L. 176 Ohio App 3d 186, 199 (2008).

This Court in State v. Suchomski, 58 Ohio St. 3d 74 (1991) found the domestic violence statute R.C. 2919.25(A) does not violate a parent's right to discipline a child. This case does not now ever provide an analysis of how to properly evaluate the right to corporal punishment. Some Courts have employed the five step analysis previously mentioned. Such was the case here. Appellant suggest that such five step approach is and should be required before finding of guilt son be entered when a parent has raised the issue of parental discipline through corporal punishment without such an approach the Court and the public are without guidance and the ability to conform their conduct to the requirements of the criminal law.

**CONCLUSION**

For the foregoing reasons, Appellant suggest that his conviction should be reversed and the suggested proposition of law should be adopted to clarify Ohio Law in relation to parental rights and duties with regard to corporal punishment.

Respectfully submitted,



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**CERTIFICATE OF SERVICE:**

I hereby certify that a copy of the foregoing was mailed this 11 day of July, 2014 to Andrew H. Johnston, Assistant Municipal Prosecutor, Miami County Municipal Court 201 W. Main Street, Troy, Ohio 45373.



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Paul R. F. Princi (0012149)

**APPENDIX**

FILED  
MIAMI COUNTY  
COURT OF APPEALS

14 JUN -3 PM 2:22

JAN A. NDTINGER  
CLERK OF COURTS

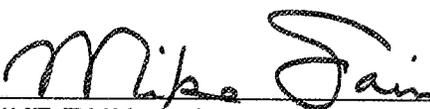
IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MIAMI COUNTY

STATE OF OHIO	:	Appellate Case No. 2013 CA 37
	:	
Plaintiff-Appellee	:	Trial Court Case No. 13-CRB-254
	:	
v.	:	
	:	(Criminal Appeal from
THOMAS L. RILEY	:	Municipal Court)
	:	
Defendant-Appellant	:	<b><u>FINAL ENTRY</u></b>

Pursuant to the opinion of this court rendered on the 30th day of  
May, 2014, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Miami  
County Court of Appeals shall immediately serve notice of this judgment upon all parties and  
make a note in the docket of the mailing.

  
MIKE FAIN, Judge



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MARY E. DONOVAN, Judge



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MICHAEL T. HALL, Judge

Copies mailed to:

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{¶ 3} The record reflects that Riley was found guilty following a bench trial. The State's primary witness was his seventeen-year-old son, the victim.<sup>1</sup> Riley's son testified that he was residing with his father and stepmother when an argument arose regarding chores and the internet. (Tr. at 7). The son became irritated and slammed his bedroom door. According to the son, Riley opened the door, cursed, got on top of him on the bed, and punched him in the face several times with a closed fist. Riley then put his son in a choke hold and dropped him to the floor before telling him to go to bed. (*Id.* at 7-8). The son went to sleep after his father left the room. When he awoke, he discovered that one eye had swelled shut and his face was bruised. (*Id.* at 9). The injuries were noticed by school employees the following day. (*Id.* at 10-11). He was taken to the hospital and prescribed medication for pain and swelling. (*Id.* at 11).

{¶ 4} On cross examination, Riley's son testified that he weighed 154 pounds and was about five feet and three or four inches tall. (*Id.* at 17). The son denied getting in his stepmother's face during the argument about chores and the internet. He denied cursing or slamming his bedroom door more than once. (*Id.* at 20). He also denied trying to hit his father in the bedroom. (*Id.* at 23). The only other prosecution witness was a police officer who spoke to the son at the hospital and took pictures of his injuries. (*Id.* at 32-40).

{¶ 5} After the State rested, Riley's wife Stacy testified as a defense witness. She recounted prior disciplinary problems with Riley's son such as back talking and not wanting to do his chores. (*Id.* at 42). She also testified that the son once pulled back and started pushing and kicking when she tried to grab his face. (*Id.*). Stacy claimed that Riley primarily

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<sup>1</sup>Riley's son was seventeen at the time of the incident and eighteen at the time of trial. (Tr. at 15).

disciplined his son by grounding him or taking away privileges and that he had not used corporal punishment for years. (*Id.* a 43). With regard to the incident in question, Stacy testified that the son was getting in her face and arguing about using the internet. (*Id.* at 46-47). The son eventually slammed his bedroom door. According to Stacy, Riley then went into his son's bedroom. She followed seconds later to make sure everything was okay. (*Id.* at 48). Upon entering, she saw Riley holding his son and telling him to calm down. Stacy testified that Riley had his arms around his son, who was pushing and kicking. (*Id.*). Riley let go when his son calmed down. Stacy saw no physical injury to the boy, who seemed "fine." (*Id.* at 49). Stacy testified that she did not see the son the following morning. (*Id.* at 50).

{¶ 6} The next witness was Riley himself. He testified that he was about five feet and five inches tall and weighed 150 pounds. (*Id.* at 57). According to Riley, his son became argumentative on the day in question after being denied internet access because his chores were not done. (*Id.* at 61). Riley testified that his son slammed a bedroom door several times and then got in his face and demanded internet access. (*Id.* at 63). Riley responded by ordering his son to the bedroom. When his son slammed the bedroom door again, Riley followed him. He entered his son's bedroom, put his hand in his son's face, and told him that the door would not be slammed again. (*Id.*). Riley testified that his son then "smacked" his hand. (*Id.*). Riley responded to that act by "smacking" his son on the cheek with an open hand. (*Id.* at 63-64). According to Riley, his son jumped up, kicked him against a bunk bed, and "kept fighting." (*Id.* at 64). Riley responded by restraining the boy until he calmed down. He denied hitting his son with a closed fist. (*Id.*). Riley stated that he did not see his son again that night or the following morning. (*Id.* at 65). On cross examination, he could not

explain how his son sustained the injuries depicted in photographs. He speculated that it may have been from the “wrestling around.” (*Id.* at 72). Riley acknowledged that punching his son with a closed fist for the infractions at issue would have been excessive. (*Id.* at 73-74). He simply denied that it had happened.

{¶ 7} The final witness at trial was the son’s cousin. He lived at Riley’s house and was home during the incident. The cousin confirmed an argument about internet access. (*Id.* at 78). The cousin testified that he saw Riley strike his son with an open hand. He did not see Riley hit the boy with a closed fist. (*Id.* at 79). The cousin stated that he left the room when Riley and his son “started rolling around.” (*Id.*). On cross examination, the cousin confirmed that he still resided with Riley (whereas Riley’s son no longer did). (*Id.* at 81). The cousin also acknowledged that he did not stay in the bedroom for the entire incident. (*Id.* at 83).

{¶ 8} Based on the evidence presented, the trial court found Riley guilty of domestic violence and sentenced him accordingly.

{¶ 9} On appeal, Riley argues that an open-handed slap to the face constituted reasonable and appropriate parental discipline under the facts and circumstances of this case. Therefore, he maintains that his domestic-violence conviction “is not supported by the evidence.”

{¶ 10} Riley’s appellate brief fails to make clear whether he is raising a legal-sufficiency or manifest-weight challenge. When a defendant challenges the sufficiency of the evidence, he is arguing that the State presented inadequate evidence on an element of the offense to sustain the verdict as a matter of law. *State v. Hawn*, 138 Ohio App.3d 449, 471, 741 N.E.2d 594 (2d Dist.2000). “An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence

admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 11} Our analysis is different when reviewing a manifest-weight argument. When a conviction is challenged on appeal as being against the weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, 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. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). A judgment should be reversed as being against the manifest weight of the evidence "only in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 12} With the foregoing standards in mind, we conclude that Riley's conviction is supported by legally sufficient evidence and is not against the manifest weight of the evidence. The trial court found him guilty of violating R.C. 2919.25(A), which provides that "[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member." The testimony of Riley's son, if believed, is certainly legally sufficient to support a finding that Riley violated the statute.

{¶ 13} Nor is Riley’s conviction against the manifest weight of the evidence. He argues that he slapped his son once with an open hand and that this act constituted proper parental discipline. We agree that reasonable parental discipline does not violate R.C. 2919.25(A). *State v. Suchomski*, 58 Ohio St.3d 74, 75, 567 N.E.2d 1304 (1991) (“Nothing in R.C. 2919.25(A) prevents a parent from properly disciplining his or her child.”). Here, however, Riley’s son testified that his father repeatedly punched him in the face with a closed fist. At trial, Riley acknowledged that such conduct, if it occurred, would not be proper discipline, and we agree.

{¶ 14} It is well settled that evaluating witness credibility is primarily for the trier of fact. *State v. Benton*, 2d Dist. Miami No.2010-CA-27, 2012-Ohio-4080, ¶ 7. A trier of fact does not lose its way and create a manifest miscarriage of justice if its resolution of conflicting testimony is reasonable. *Id.* Here the trial court quite reasonably could have credited the son’s testimony, which, in light of the boy’s injuries, seems to us more believable than Riley’s version of events. In any event, the trial court did not lose its way and create a manifest miscarriage of justice.

{¶ 15} The assignment of error is overruled, and the trial court’s judgment is affirmed.

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FAIN, J. and DONOVAN, J., concur.

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 Hon. Gary A. Nasal