

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

STATE OF OHIO,	:	O P I N I O N
Plaintiff-Appellee,	:	
- vs -	:	CASE NO. 2011-T-0013
WALEED N. MANSOUR,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Girard Municipal Court, Case No. 2010 CRB 0007.

Judgment: Affirmed.

Robert L. Johnson, Girard City Prosecutor, 100 North Market Street, Girard, OH 44420
(For Plaintiff-Appellee).

Robert J. Rohrbaugh, II, Robert J. Rohrbaugh, II, L.L.C., 4800 Market Street, Ste. A,
Boardman, OH 44512. (For Defendant-Appellant).

DIANE V. GRENDELL, J.

{¶1} Defendant-appellant, Waleed Mansour, appeals his conviction for Domestic Violence, following a trial in the Girard Municipal Court. The issue to be decided in this case is whether a Domestic Violence conviction is supported by the manifest weight of the evidence when the State presents the testimony of the victim alone, without other evidence. For the following reasons, we affirm the decision of the court below.

{¶2} On January 4, 2010, Waleed was charged with Domestic Violence, a misdemeanor of the first degree, pursuant to R.C. 2919.25(A).

{¶3} On January 15, 2010, Huwaida Mansour, Waleed's ex-wife, was granted a Temporary Protection Order against Waleed, due to the pending Domestic Violence case.

{¶4} The matter proceeded to a bench trial on December 23, 2010. The State presented the testimony of one witness, Huwaida.

{¶5} Huwaida testified that she and Waleed have two children together and she has custody of them. The children have visitation with Waleed every other weekend.

{¶6} Huwaida testified that on January 3, 2010, the children were staying at Waleed's home, to make up for a missed visitation that occurred while the children were on vacation with Huwaida. Huwaida stated that the children were supposed to stay with Waleed until 6:00 p.m. on January 3, but on the morning of January 3, the children called her and asked her to pick them up from Waleed's home.

{¶7} In response to the phone call, Huwaida went to Waleed's home. Huwaida explained that when picking the children up from Waleed's home, she would typically remain in her car, honk the horn, and the children would walk out to her car. On January 3, she did not honk her horn, but instead got out of her car, went to Waleed's front door, and knocked. She testified that she saw Waleed inside the house, approaching the front door, and heard him yelling at the children, saying "why did you call mommy?" and "don't you want to stay with daddy?" According to Huwaida, Waleed then opened the door and smacked her "across [her] head twice" with his open hand. Huwaida testified that Waleed opened the front door with his left hand and struck her in

the face with his right hand. She explained that when Waleed smacked her on the forehead, the hat she was wearing fell to the ground. She stated that the slap caused her to feel pain and left a red mark on her forehead, but she did not seek medical treatment.

{¶8} Huwaida explained that after hitting her, Waleed slammed the door shut. Waleed then opened the door and put their daughter outside in the snow, wearing no shoes. Huwaida testified that Waleed closed the door, opened it again, and then put their son outside, also without shoes. Huwaida heard Waleed saying “you want to disrespect daddy by going with mommy?” Huwaida explained that while she was getting into her car to leave, Waleed opened the door and stated “I’m going to destroy you” and also said he was going to “kill” her. Huwaida stated that she immediately left and went to the police station to file a report.

{¶9} Huwaida also testified that she had made domestic violence allegations against Waleed on previous occasions.

{¶10} Waleed testified that, on the morning of January 3, he was in his basement and heard noise upstairs. According to him, he went upstairs and his daughter “was already halfway out the door.” Waleed saw Huwaida taking their daughter to her car, and he then shut the door. According to Waleed, their son then tried to leave but was not wearing any shoes, so Waleed brought him into the house and got him shoes.

{¶11} Waleed stated that when he got to his front door, Huwaida was standing “on the step below the porch,” approximately four or five feet away from his front door.

Waleed testified that while he was standing at the front door, Huwaida never stepped on the porch, but remained on the step below the porch.

{¶12} Waleed explained that he has French doors on his home and that on the date of the incident, only the door located to the left was used. He testified that he used his left hand to open the door and that, when he pulled the door back to open it, he would have to “take a step back to allow the door to open,” and if he did not, “the door would hit him.”

{¶13} Waleed testified that he did not strike Huwaida at any time on January 3. Waleed also stated that the children were supposed to be staying with him on January 3 and that he was “upset” when the children were leaving with Huwaida. Waleed explained that he was not angry with Huwaida, but was “frustrated.” He stated that when Huwaida came to pick up the children, he could not “believe she [was] doing this.” He also stated that upon looking at his phone, he noticed that Huwaida, not the children, initiated the telephone call that occurred on January 3.

{¶14} Waleed stated that Huwaida has pursued domestic violence charges against him and he believes she accuses him of domestic violence during times when they are preparing to go to court on a custody matter. Waleed admitted that on one previous occasion, he pled guilty to a lesser charge of Domestic Violence.

{¶15} On December 23, 2010, the trial court judge found Waleed guilty of Domestic Violence, a misdemeanor of the first degree, pursuant to R.C. 2919.25(A). Waleed was ordered to pay a \$750 fine and court costs. He was sentenced to 180 days in jail, with 180 days suspended, and ordered to serve probation until December 1, 2011.

{¶16} Waleed timely appeals and asserts the following assignment of error:

{¶17} “The conviction of the Appellant, Waleed Mansour, was against the manifest weight of the evidence. When viewed under the totality of circumstances[,] the State of Ohio failed to prove beyond a reasonable doubt that the Appellant was guilty of the offenses charged.”

{¶18} A challenge to the manifest weight of the evidence involves factual issues. The “weight of the evidence addresses the evidence’s effect of inducing belief.” *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶25 (citation omitted); *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52 (“[w]eight of the evidence concerns ‘the inclination of the *greater amount of credible evidence*, offered in a trial’”) (emphasis sic) (citation omitted). “In other words, a reviewing court asks whose evidence is more persuasive -- the state’s or the defendant’s?” *Wilson*, 2007-Ohio-2202, at ¶25.

{¶19} Generally, the weight to be given to the evidence and the credibility of the witnesses is primarily for the trier of fact to determine. *State v. Thomas* (1982), 70 Ohio St.2d 79, at the syllabus. When reviewing a manifest weight challenge, however, the appellate court sits as the “thirteenth juror.” *Thompkins*, 78 Ohio St.3d at 387 (citation omitted). The reviewing court must consider all the evidence in the record, the reasonable inferences, and the credibility of the witnesses, to determine whether, “in resolving conflicts in the evidence, 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. 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.” *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶20} Waleed asserts that the State failed to offer proof beyond a reasonable doubt that he committed Domestic Violence and the trial court's finding that he was guilty was not supported by the manifest weight of the evidence. He argues that Huwaida's testimony was conflicting, impeached, and unreliable, because she testified that Waleed struck her with his right hand, but he is left-handed. Waleed argues that, given such inconsistency, along with the lack of physical evidence that Huwaida was injured, and given his denial of hitting Huwaida, the charge has not been proven beyond a reasonable doubt.

{¶21} In order to convict Waleed of Domestic Violence, the State had to prove, beyond a reasonable doubt, that Waleed "knowingly cause[d] or attempt[ed] to cause physical harm to a family or household member." R.C. 2919.25(A). A "family or household member" includes "[t]he natural parent of any child of whom the offender is the other natural parent." R.C. 2919.25(F)(1)(b). We note that Waleed does not assert that the State failed to prove the "knowingly" or "family or household member" elements of R.C. 2919.25(A), and, therefore, we need not address these elements.

{¶22} The evidence presented by the State in this case consisted of Huwaida's testimony, during which she stated that Waleed did cause her physical harm, by slapping her in the face, which caused her to have pain and a red mark on her forehead. The defense presented Waleed as its only witness and he testified that he did not hit Huwaida.

{¶23} Although the only evidence presented by the State was Huwaida's testimony, such evidence alone can support a conviction of Domestic Violence. *State v. Blonski* (1997), 125 Ohio App.3d 103, 114 (while no eyewitnesses testified except the

victim and the appellant denied the allegations against him, a domestic violence conviction was supported by the weight of the evidence because the finder of fact was free to weigh the victim's testimony against the appellant's testimony); *State v. Shelton*, 11th Dist. No. 2001-P-0050, 2002-Ohio-5157, at ¶41 (although the State's case consisted only of the testimony of one witness, the appellant's domestic violence conviction was supported by the weight of the evidence); *State v. Warfield*, 11th Dist. No. 2001-T-0079, 2003-Ohio-2366, at ¶11 (where the victim testified that the appellant had kicked her, there were no visible injuries, and no one else witnessed the assault, the conviction was supported by the manifest weight of the evidence). In this case, Huwaida testified as to all of the elements of the crime, as noted above. Although she was the State's only witness, her testimony provided evidence of the elements required to support a conviction for Domestic Violence.

{¶24} Waleed mainly takes issue with the trial court's decision to believe Huwaida's testimony instead of his own testimony. "It is well-settled that when assessing the credibility of witnesses, '[t]he choice between credible witnesses and their conflicting testimony rests solely with the finder of fact and an appellate court may not substitute its own judgment for that of the finder of fact.'" *State v. Griesmar*, 11th Dist. No. 2009-L-061, 2010-Ohio-824, at ¶55, citing *State v. McKinney*, 11th Dist. No. 2006-L-169, 2007-Ohio-3389, at ¶49 (citations omitted). "Indeed, the factfinder is free to believe all, part, or none of the testimony of each witness appearing before it." *Id.* (citation omitted). "If the evidence is susceptible to more than one interpretation, a reviewing court must interpret it in a manner consistent with the verdict." *State v. Grayson*, 11th Dist. No. 2006-L-153, 2007-Ohio-1772, at ¶31 (citation omitted).

{¶25} In this case, there was conflicting testimony about the events that occurred, such as where Huwaida was standing at the time of the incident, whether the children called their mother, and whether Waleed hit Huwaida. The issue of whether Huwaida or Waleed was telling the truth as to the events that occurred on January 3 is an issue for the factfinder to determine. See *State v. Hall*, 11th Dist. No. 2005-A-0007, 2006-Ohio-1446, at ¶31 (when a “trier of fact chose to believe appellee’s witnesses over appellant’s testimony,” the verdict is not against the manifest weight of the evidence).

{¶26} Moreover, a review of the record does not suggest that Huwaida’s testimony was conflicting or unreliable, as Waleed argues. Huwaida’s testimony was generally consistent during the course of the hearing and was also consistent with the narrative given in the police report. Huwaida always stated that upon arriving at Waleed’s front door, Waleed opened the door and hit her on the head twice, without provocation. Although Waleed asserts that Huwaida’s testimony is unreliable because she stated that Waleed hit her with his right hand, but that he is left-handed, there is no reason to believe that Huwaida’s statement was not truthful. Even during cross-examination, Huwaida did not change her testimony when stating that although Waleed was left-handed, he hit her with his right hand.

{¶27} Waleed also argues that the State failed to present physical evidence of Huwaida’s injury. However, it is not necessary that visible markings be observed on a victim for a defendant to be found guilty of Domestic Violence. *State v. Ward*, 11th Dist. No. 2008-G-2851, 2009-Ohio-3145, at ¶28; *State v. Boldin*, 11th Dist. No. 2007-G-2808, 2008-Ohio-6408, at ¶40 (“[d]omestic violence merely requires a showing of ‘physical’ harm as defined in R.C. 2901.01(A)(3), which does not require evidence of visible

injuries”). The testimony of a victim that she was injured is sufficient to support a domestic violence conviction, even when a victim “failed to seek medical treatment, nobody saw [her] injury, and no photographs were taken of her [injury].” *State v. Summers*, 11th Dist. No. 2002-A-0074, 2003-Ohio-5866, at ¶31.

{¶28} In this case, Huwaida testified that the slaps caused her to feel pain and left a red mark on her forehead. This evidence alone is enough to support a finding that physical harm occurred, although there was no evidence of a visible mark at the time Huwaida went to the police. See *Ward*, 2009-Ohio-3145, at ¶28; *Ankenbruck v. Ankenbruck*, 11th Dist. No. 99-T-0144, 2000 Ohio App. LEXIS 5757, at *7, citing *Blonski*, 125 Ohio App.3d at 114 (“[b]y itself, an open-handed slap to the face has been considered an attempt to cause bodily injury, and, thus, constituted domestic violence”). Therefore, the State’s failure to present such evidence does not render Waleed’s conviction invalid.

{¶29} The sole assignment of error is without merit.

{¶30} Based on the foregoing, the Judgment of the Girard Municipal Court, finding Mansour guilty of Domestic Violence, is affirmed. Costs to be taxed against appellant.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.