

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

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| STATE OF OHIO, | : | APPEAL NO. C-160687 |
| Plaintiff-Appellee, | : | TRIAL NO. 16CRB-19403 |
| vs. | : | <i>JUDGMENT ENTRY.</i> |
| ROBERT MCCLURE, | : | |
| Defendant-Appellant. | : | |

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

Defendant-appellant Robert McClure was charged with domestic violence under R.C. 2919.25. His wife, Ayanna McClure, testified that during an argument McClure had threatened to pay someone to beat her up, pushed her into a wall, pushed his forearm against her shoulder and throat, and repeatedly spit on her. She also produced a photograph showing red marks and spit on her chest. McClure testified that he had argued with his wife, but denied pushing her, threatening her, or spitting on her. He stated that she spit in his face and when he tried to call the police, they did not answer. After a bench trial, McClure was found guilty and sentenced to 180 days. He now argues in his sole assignment of error that he is entitled to a new trial because his conviction was against the manifest weight of the evidence. We affirm the trial court's judgment.

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A review of the manifest weight of the evidence puts the appellate court in the role of a “thirteenth juror.” *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). Our duty is to review the entire record, weigh the evidence, consider the credibility of the witnesses, and resolve whether the trier of fact clearly lost its way and thereby created a manifest miscarriage of justice. *Id.*

McClure and his wife presented contradictory stories. McClure also testified that everything his wife said was a lie. The trial court, as the trier of fact, was in the best position to judge witness credibility. *State v. Railey*, 2012-Ohio-4233, 977 N.E.2d 703, ¶ 14 (1st Dist.). The trial court was free to believe or reject either story in whole or in part. As a result, based on our review of the record, we cannot conclude that the trial court lost its way and thereby created such a manifest miscarriage of justice that we must reverse McClure’s conviction and order a new trial. We overrule his sole assignment of error and affirm the trial court’s judgment.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27.

CUNNINGHAM, P.J, MYERS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on June 21, 2017

per order of the court _____
Presiding Judge