

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

STATE OF OHIO,	:	APPEAL NO. C-070362
	:	TRIAL NO. C-07CRB-14801
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
TIMOTHY ROSS,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Timothy Ross, appeals the judgment of the Hamilton County Municipal convicting him of assault, a misdemeanor of the first degree. He was convicted after a bench trial.

Ross was involved in a tumultuous romantic relationship with Amanda Becks. One evening, they met at a bar and got into an argument that ended when Becks slapped Ross.

Becks testified that Ross had gone to her condominium later that night and had struck her with his hand, hit her with a large storage bin, and shoved her into a wall numerous times. Becks produced medical records indicating that she had suffered a concussion and multiple contusions, and the state introduced photographs depicting the damage done to Becks's residence as a result of the altercation.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Ross testified that, after the argument at the bar, Becks had invited him to her condominium to talk. According to Ross, Becks had slapped and repeatedly shoved him when he arrived at the condominium, and he testified that he had shoved her only to defend himself. Ross denied that he had hit Becks or that he had repeatedly shoved her into a wall.

Several of Ross's friends who had been at the bar that night testified that Becks had been drunk and belligerent, but none had witnessed the events at Becks's condominium.

The trial court found Ross guilty and sentenced him to 14 days in jail and a period of community control.

In his first assignment of error, Ross now argues that the trial court erred in considering evidence about the duty to retreat and in considering the state's argument about the issue. He argues that the issue was irrelevant in a case involving nondeadly force and that he was prejudiced by the court's consideration of the issue.

We first note that Ross did not object to the evidence or to the prosecutor's argument and therefore waived all but plain error. Under the plain-error standard, we will not reverse a conviction unless, but for the error, the outcome clearly would have been different.²

In this case, there was no plain error. In closing argument, the prosecutor merely made a passing reference to the fact that Becks did not have a duty to retreat in her own residence and observed that Ross could have left Becks's condominium to avoid the confrontation. The state did not argue that Ross had a duty to retreat. And in any event, there has been no showing that the trial court was confused or that it

² See, e.g., *State v. Reid*, 1st Dist. No. C-050465, 2006-Ohio-6450, at ¶16, jurisdictional motion overruled, 113 Ohio St.3d 1468, 2007-Ohio-1722, 864 N.E.2d 654.

had even considered the issue in finding Ross guilty. We overrule the first assignment of error.

In the second assignment of error, Ross contends that the conviction was against the manifest weight of the evidence.

To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.³

The assault statute, R.C. 2903.13(A), provides that “[n]o person shall knowingly cause or attempt to cause physical harm to another * * * .”

In this case, the conviction was in accordance with the evidence. The state presented evidence that Ross had struck Becks and had repeatedly shoved her into the wall of her condominium, causing a concussion and multiple contusions. Becks’s testimony was bolstered by medical records as well as photographic evidence of the damage done to the residence. Although Ross presented evidence that he had been acting in self-defense, the trial court did not lose its way in rejecting that evidence and finding him guilty. We overrule the second assignment of error.

In the third and final assignment of error, Ross argues that the trial court erred in failing to consider the relevant statutory factors when it sentenced him to 14 days in jail and community control.

When imposing a misdemeanor sentence, the trial court must consider the factors set forth in R.C. 2929.22(B)(1)(a) through (e) and all other factors relevant to achieving the purposes and principles of sentencing enumerated in R.C. 2929.21.

³ *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

But a trial court need not make specific findings and is presumed to have considered all relevant factors if the sentence is within the statutory range, unless the defendant demonstrates otherwise.⁴

Here, Ross has failed to show that the trial court disregarded the statutory factors. The evidence indicated that Ross went to Becks's home and caused her fairly serious injuries. Although he had no criminal history, the trial court could have reasonably concluded that the sentence was necessary to serve punitive and deterrent purposes. We overrule the third 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.

SUNDERMANN, P.J., HILDEBRANDT and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on February 20, 2008
per order of the Court _____.
Presiding Judge

⁴ See *State v. Black*, 1st Dist. No. C-060861, 2007-Ohio-5871, at ¶¶19-20.