

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

STATE OF OHIO,	:	APPEAL NO. C-090831
Plaintiff-Appellee,	:	TRIAL NO. C-09CRB-35370
vs.	:	<i>JUDGMENT ENTRY.</i>
KEVIN WALTON,	:	
Defendant-Appellant.	:	

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

Kevin Walton appeals his conviction for domestic violence. We conclude that his three assignments of error are not well taken, so we affirm the judgment of the trial court.

Walton was charged with domestic violence in violation of R.C. 2919.25(C). During a trial to the court, Walton's wife, Darci, testified that on October 16, 2009, Walton, who was not living with her at the time, had forced his way into her apartment and had threatened to kill her. According to Darci, she had run from the apartment with the couple's three-month-old son and had gotten into a car to leave. Walton tried to get into the car. Darci drove to her sister's apartment, which was in the same complex, and her sister called 911. Darci testified at trial that she believed that Walton was capable of carrying out his threat to kill her because he had been physically and mentally abusive to her in the past.

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

At the conclusion of the state's case, Walton made a Crim.R. 29 motion for an acquittal. The trial court denied the motion in part, granted the motion in part, and reduced the charged offense from a third-degree misdemeanor to a fourth-degree misdemeanor because Walton had not been previously convicted of a domestic-violence offense. In his defense, Walton testified that he had never touched his wife.

The trial court found Walton guilty of domestic violence. The court sentenced him to 30 days' incarceration with credit for 11 days served, fined him \$50, and ordered him to pay costs.

We consider Walton's assignments of error together. In the first, he asserts that his conviction was not supported by sufficient evidence. In the second, he asserts that his conviction was against the manifest weight of the evidence. And in the third, he asserts that the trial court erred when it denied in part his Crim.R. 29 motion for an acquittal.

The standard of review for a sufficiency claim and for the denial of a Crim.R. 29 motion for an acquittal is the same. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.² On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.³

The gist of Walton's assignments of error is that Darci's testimony was not credible. But the trial court was in the best position to determine the witnesses' credibility. We conclude that the state presented sufficient evidence of the lesser-degree offense, and that the trial court did not lose its way when it found Walton guilty of the offense. Walton's three assignments of error are without merit.

Therefore, we affirm the trial court's judgment.

² See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

³ See *id.* at 387.

OHIO FIRST DISTRICT COURT OF APPEALS

A certified copy of this judgment entry is 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., HENDON and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 14, 2010

per order of the Court _____.
Presiding Judge