

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

STATE OF OHIO,	:	APPEAL NO. C-200330
Plaintiff-Appellee,	:	TRIAL NO. C-20CRB-14255
vs.	:	<i>JUDGMENT ENTRY.</i>
DANNY ROBERT WATERS,	:	
Defendant-Appellant.	:	

The court sua sponte removes this case from the regular calendar and places it on the court’s accelerated calendar, 1st Dist Loc.R. 11.1.1(A), and this judgment entry is not an opinion of this court. See Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Waters appeals his conviction for domestic violence in violation of R.C. 2919.25(A). We affirm.

Maryann Carter, Waters’s live-in girlfriend, testified that on July 27, 2020, the couple got into an argument. She testified that as she attempted to leave the house he hit her and restrained her. During her fight to get free, she was “slammed” onto the bed, injuring her face. Initially, she testified that she injured her face on the bed post, but on cross-examination she admitted that she had actually injured her face on her son’s head, who was sleeping in the bed. She testified that her face “hurt” and “immediately started swelling.” As she pushed past Waters to get out the front door, he grabbed her arm and left “little finger bruises” on her arm that “hurt.”

Carter testified that once she made it out into the front yard Waters grabbed her by her hair and put her in a chokehold.

Sergeant David Bingle of the Cleves Police Department testified that when he responded to the scene he observed an abrasion on the right side of Carter's face, and she was "very upset, crying, shaking."

In his sole assignment of error, Waters argues that his conviction was based upon insufficient evidence and against the manifest weight of the evidence. The test for determining the sufficiency of the evidence is whether "after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt." *State v. MacDonald*, 1st Dist. Hamilton No. C-180310, 2019-Ohio-3595, ¶ 12, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). It is a question of law for the court to determine, the court is not to weigh the evidence. *MacDonald* at ¶ 12. "When evidence is susceptible to more than one construction, a reviewing court must give it the interpretation that is consistent with the judgment." *In re J.C.*, 1st Dist. Hamilton No. C-180493, 2019-Ohio-4027, ¶ 20.

R.C. 2919.25(A) provides, "No person shall knowingly cause or attempt to cause physical harm to a family or household member." "Physical harm" is defined as "any injury, illness, or other physiological impairment, regardless of its gravity or duration." R.C. 2901.01(A)(3). Waters argues that the state failed to prove that he caused Carter's injuries.

"'Cause' is an act or failure to act which in a natural and continuous sequence directly produces the physical harm * * * and without which it would not have

occurred.” *Ohio Jury Instructions*, CR Section 417.23 (Rev. Nov. 7, 2020); *see State v. Price*, 162 Ohio St.3d 609, 2020-Ohio-4926, 166 N.E.3d 1155, ¶ 29.

Waters hit and restrained Carter as she attempted to leave the house, grabbed her arm, and pulled her hair and put her in a chokehold once they were in the front yard. His actions directly caused harm to Carter, including the abrasion on her face and the bruising on her arm. The conviction was based upon sufficient evidence.

In reviewing a claim that a conviction is against the manifest weight of the evidence, “we review the record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the trier of fact, in resolving conflicts in the evidence, ‘clearly lost its way and created such a manifest miscarriage of justice that the conviction must be overturned.’ ” *Martin*, 20 Ohio App.3d at 175, 485 N.E.2d 717. Reversal of a conviction and a grant of a new trial should only be done in “exceptional cases in which the evidence weighs heavily against the conviction.” *Id.*

“The trier of fact is in the best position to judge the credibility of the witnesses and the weight to be given to the evidence presented.” *State v. Carson*, 1st Dist. Hamilton No. C-180336, 2019-Ohio-4550, ¶ 16.

Waters argues that his conviction is against the manifest weight of the evidence because the only photograph documenting Carter’s injuries was taken by Carter two days after the incident, the police officers did not note in their reports any observations of injuries on Carter, and, because Carter lied regarding the details of her facial injury, her testimony regarding the rest of the incident should not be believed.

The trial court was in the best position to judge the credibility of Carter and Sergeant Bingle, and was free to believe all, part, or none of the testimony offered by

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either witness. *See State v. Hayes*, 2020-Ohio-5322, 162 N.E.3d 947, ¶ 40 (1st Dist.). Waters has not presented anything that leads us to believe that this is one of those rare cases where the trier of fact clearly lost its way and created a manifest miscarriage of justice.

The sole assignment of error is overruled and the judgment of the trial court is affirmed.

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.

MYERS, P.J., BOCK and CROUSE, JJ.

To the clerk:

Enter upon the journal of the court on September 15, 2021,
per order of the court _____.
Administrative Judge