

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 12AP-57 (C.P.C. No. 11CR-01-510)
John A. Phillips, IV,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on December 20, 2012

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*Ron O'Brien*, Prosecuting Attorney, and *Steven L. Taylor*, for appellee.

*Richard Cline & Co., LLC*, and *Richard A. Cline*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶ 1} Defendant-appellant, John A. Phillips, IV, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. Because appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence, we affirm that judgment.

**I. Factual and Procedural Background**

{¶ 2} Appellant is the father of T.P., L.J.P., and E.P. In the winter of 2010, the children were living with his then ex-girlfriend, Ryann Parker. Apparently, appellant and Parker had a tumultuous relationship and it appears that Parker had a protective order against appellant. However, on the morning of December 30, 2010, appellant showed up at Parker's house and began pounding on the door. Parker told the children not to answer the door and appellant left.

{¶ 3} Later that same day, appellant showed up at Parker's house again. Parker was not home, but the children were there. This time, he knocked on the window of a downstairs bedroom and asked the children to open the door. L.J.P. opened the front door and let appellant inside the house. Appellant asked his sons why they did not open the door for him. He then asked where Parker and E.P. were and went upstairs to look for them. He apparently could not find anyone because he came back downstairs and asked L.J.P. to go upstairs to look for them. He then began to choke T.P. L.J.P. came back downstairs and could hear his brother say that he could not breathe. Appellant then struck both T.P. and L.J.P. in the face and then left the house.

{¶ 4} As a result of these events, a Franklin County Grand Jury indicted appellant with two counts of domestic violence in violation of R.C. 2919.25 and one count of violating a protection order or consent agreement in violation of R.C. 2919.27. Appellant entered not guilty pleas to the charges and proceeded to a jury trial. At some point before trial, the trial court dismissed the charge of violating a protection order.

{¶ 5} At trial, appellant's children testified to the version of events described above. Appellant's friend, Dustin Selby, testified that he observed the entire incident and said that appellant told him that he hit his sons as discipline because they did not open the door for him. (Tr. 259.)

{¶ 6} The trial court instructed the jury that it could consider whether appellant used proper and reasonable discipline as an affirmative defense to the domestic violence charges. Nevertheless, the jury found appellant guilty of both counts of domestic violence. The trial court sentenced him accordingly.

{¶ 7} Appellant appeals and assigns the following error:

The jury's verdicts were not supported by sufficient evidence;  
in the alternative, the verdicts were against the manifest  
weight of the evidence.

## **II. The Sufficiency and Weight of the Evidence**

{¶ 8} Appellant contends that his conviction for domestic violence only against L.J.P. is not supported by sufficient evidence. We disagree.

{¶ 9} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally adequate to support a verdict. *State v. Thompkins*,

78 Ohio St.3d 380, 386 (1997). Whether the evidence is legally sufficient to support a verdict is a question of law. *Id.*

{¶ 10} In determining whether the evidence is legally sufficient to support a conviction, " '[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.' " *State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, ¶ 34, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. A verdict will not be disturbed unless, after viewing the evidence in the light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶ 11} In this inquiry, appellate courts do not assess whether the State's evidence is to be believed, but whether, if believed, the evidence admitted at trial supports the conviction. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 79-80 (evaluation of witness credibility not proper on review for sufficiency of evidence); *State v. Bankston*, 10th Dist. No. 08AP-668, 2009-Ohio-754, ¶ 4 (noting that "in a sufficiency of the evidence review, an appellate court does not engage in a determination of witness credibility; rather, it essentially assumes the State's witnesses testified truthfully and determines if that testimony satisfies each element of the crime.").

{¶ 12} In order to find appellant guilty of domestic violence in this case, the state had to prove that he knowingly caused or attempted to cause physical harm to a family or household member. R.C. 2919.25(A).

{¶ 13} Appellant contends that his conduct is insufficient as a matter of law to constitute domestic violence against L.J.P because he used proper and reasonable parental discipline. Whether conduct is proper and reasonable parental discipline is an affirmative defense to a charge of domestic violence. *State v. Hicks*, 88 Ohio App.3d 515 (10th Dist.1993); *State v. Cordle*, 5th Dist. No. 10CAA010010, 2010-Ohio-5919, ¶ 18, citing *State v. Hart*, 110 Ohio App.3d 250, 254 (3d Dist.1996); *State v. Sellers*, 12th Dist. No. CA2011-05-083, 2012-Ohio-676, ¶ 15. A review for sufficiency of the evidence does not apply to affirmative defenses, because this review does not consider the strength of defense evidence. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶ 37; *State v.*

*Harrison*, 10th Dist. No. 06AP-827, 2007-Ohio-2872, ¶ 23. The claim of insufficient evidence challenges the sufficiency of the State's evidence. Thus, appellant cannot challenge the jury's rejection of his claim of reasonable parental discipline on the ground of sufficiency of the evidence. See *State v. Cooper*, 170 Ohio App.3d 418, 2007-Ohio-1186, ¶ 15 (4th Dist.); *Harrison*. Accordingly, we overrule this portion of appellant's assignment of error.

{¶ 14} Appellant contends that both of his convictions were against the manifest weight of the evidence. Again, we disagree.

{¶ 15} The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *Thompkins* at 387. Although there may be sufficient evidence to support a judgment, a court may nevertheless conclude that a judgment is against the manifest weight of the evidence. *Id.*

{¶ 16} When presented with a challenge to the manifest weight of the evidence, an appellate court may not merely substitute its view for that of the trier of fact, but must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Id.* at 387. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *State v. Strider-Williams*, 10th Dist. No. 10AP-334, 2010-Ohio-6179, ¶ 12.

{¶ 17} In addressing a manifest weight of the evidence argument, we are able to consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6. However, in conducting our review, we are guided by the presumption that the jury, or the trial court in a bench trial, " 'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " *Id.*, quoting *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Accordingly, we afford great deference to the jury's determination of witness credibility. *State v. Redman*, 10th Dist. No. 10AP-

654, 2011-Ohio-1894, ¶ 26, citing *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶ 55. See also *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus (credibility determinations are primarily for the trier of fact).

{¶ 18} In his manifest weight argument, appellant again argues that his conduct constituted proper and reasonable parental discipline. The domestic violence statute does not prohibit a parent from properly disciplining his or her child. *State v. Suchomski*, 58 Ohio St.3d 74, 75 (1991). A parent may use physical punishment as a method of discipline without violating the domestic violence statute as long as the discipline is proper and reasonable under the circumstances. *State v. Thompson*, 2nd Dist. No. 04CA30, 2006-Ohio-582, ¶ 29, citing *State v. Adaranijo*, 153 Ohio App.3d 266, 2003-Ohio-3822, ¶ 12 (1st Dist.). Whether any particular conduct constitutes proper and reasonable parental discipline is a question that must be determined from the totality of all of the relevant facts and circumstances. *Thompson* at ¶ 31. In analyzing the totality of the circumstances, a court should consider: (1) the child's age; (2) the child's behavior leading up to the discipline; (3) the child's response to prior non-corporal punishment; (4) the location and severity of the punishment; and (5) the parent's state of mind while administering the punishment. *Hart* at 256; *Sellers* at ¶ 15. The accused has the burden of establishing parental discipline as an affirmative defense. *State v. Zielinski*, 12th Dist. No. CA2010-12-121, 2011-Ohio- 6535, ¶ 27; *Cordle* at ¶ 18.

{¶ 19} Appellant told his friend Dustin Selby that he slapped the two boys as discipline because they would not open the door to let him in. (Tr. 256-59.) Despite this testimony, we cannot say that the jury clearly lost its way and created a manifest miscarriage of justice by concluding that appellant did not use proper and reasonable discipline in this situation in light of the boys' testimony describing the incident and the totality of the circumstances that must be considered to determine whether a parent used proper and reasonable discipline. *Zielinski* at ¶ 32. Accordingly, appellant's domestic violence convictions are not against the manifest weight of the evidence.

### **III. Conclusion**

{¶ 20} Appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. Accordingly, we overrule appellant's lone

assignment of error and affirm the judgment of the Franklin County Court of Common Pleas.

*Judgment affirmed.*

FRENCH and DORRIAN, JJ., concur.

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