

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

STATE OF OHIO,	:	APPEAL NO. C-080365
Plaintiff-Appellee,	:	TRIAL NO. 08CRB-10470
vs.	:	
TONY L. WINSTEAD,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

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

Defendant-appellant Tony L. Winstead was found guilty following a bench trial of domestic violence, a first-degree misdemeanor, in violation of R.C. 2919.25(A). On appeal, he raises three assignments of error. Because we find none of these assignments well taken, we affirm the trial court's judgment.

In three interrelated assignments of error, Winstead argues that his conviction for domestic violence was based on insufficient evidence and was against the manifest weight of the evidence, and that the trial court erred by denying his motion for a judgment of acquittal.

When reviewing a trial court's denial of a Crim.R. 29 motion, this court applies the same standard of review as it would in reviewing a challenge based upon

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

the sufficiency of the evidence.² When a defendant claims that his conviction is supported by insufficient evidence, this court must review the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found all the elements of the crime proved beyond a reasonable doubt.³ When reviewing a defendant's claim that his conviction is against the manifest weight of the evidence, this court must weigh the evidence and the credibility of the witnesses to determine if the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed.⁴

During the trial, Winstead's wife, Alicia, testified that an argument had arisen between herself and Winstead during a car ride with their daughter. At some point, Winstead pulled the car over and told her to get out. When Alicia refused, Winstead walked around to the passenger side, grabbed her, and tried to pull her out of the car.

When Alicia told Winstead to "get off of" her, he let go of her and went to the other side of the car. As he was trying to remove their daughter from her car seat, Alicia got out of the car and pushed Winstead in the chest. Winstead then removed their daughter from her car seat and began walking away with her in his arms.

Alicia ran after Winstead and tried to grab their daughter, but Winstead "straightened his arm out" and punched her in the mouth. She fell to the ground and then got up to look for a phone to call police. When the police arrived shortly thereafter, they photographed Alicia's cut lip and bloody chin. Alicia subsequently received six stitches.

² *State v. Johnson*, 1st Dist. Nos. C-020256 and C-020257, 2003-Ohio-3665, at ¶50.

³ *State v. Eley* (1978), 56 Ohio St.2d 169, 383 N.E.2d 132.

⁴ *Tibbs v. Florida* (1982), 457 U.S.31, 102 S.Ct. 2211.

Winstead claims the state failed to present sufficient evidence that he had knowingly caused physical harm to Alicia. He maintains instead that Alicia was accidentally injured by a blow from his forearm as he was trying to keep her from grabbing their daughter. His argument, however, ignores Alicia's testimony that he straightened out his arm and punched her in the mouth. Alicia's testimony was sufficient to establish the "knowingly" element of the offense.

Winstead next contends that Alicia's testimony was self-serving and unworthy of belief. But, in finding Winstead guilty, the trial court stated that it had looked at the photographs of Alicia's injuries and did not "buy [Winstead's] story about [his] elbow or forearm inadvertently hitting [Alicia] in the chin." Because the trial court, as the trier of fact, was in the best position to judge the credibility of the witnesses, it was free to reject Winstead's testimony. Moreover, based upon our review of the record, we cannot conclude that Alicia's testimony was so unreliable or unworthy of belief that the trial court lost its way and created a manifest miscarriage of justice. We, therefore, overrule Winstead's first, second, and third assignments of error and affirm the judgment of the trial court.

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.

PAINTER, P.J., SUNDERMANN and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on January 14, 2009
per order of the Court _____.
Presiding Judge