

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

STATE OF OHIO,	:	APPEAL NO. C-170077
Plaintiff-Appellee,	:	TRIAL NO. 16CRB-25775
vs.	:	
ERIC JOHNSON,	:	<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. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Eric Johnson appeals his conviction for assault, raising four assignments of error. For the reasons that follow, we overrule each assignment of error and affirm the trial court’s judgment.

During a heated argument with his girlfriend Briasha Stroud, Johnson tried to leave, but she was blocking the door. He pushed her, and both of them fell to the floor. Stroud testified that Johnson fell on top of her and repeatedly hit her while they were on the ground. Stroud’s son entered the room and was injured when he fell on the floor. The state admitted photographs of the injuries to Stroud and her son, with no objection. The court found Johnson guilty because Stroud’s testimony was more credible than his.

In the first assignment of error, Johnson contends that the testimony and photographs regarding the injury to the child were inadmissible other-acts evidence under Evid.R. 404(B), and the trial court erred in admitting the evidence. Defense counsel failed to object to the alleged other-acts evidence, and waived all but plain error. *See State v. Long*, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph one of the syllabus. A reviewing court will not find plain error unless an error occurred and “but

for [such] error, the outcome of the trial clearly would have been otherwise.” *Id.* at paragraph two of the syllabus.

Having considered the evidence presented at trial, we do not find that the absence of the testimony and photograph would have changed the outcome of the trial. This case turned on the credibility of the witnesses, and the trial court found that the victim’s testimony was more credible than Johnson’s. Additionally, the trial court explicitly stated that it was not considering the child’s injuries in its determination. Because the outcome of the trial was not impacted by the alleged other-acts evidence, the trial court did not commit plain error. Accordingly, appellant's first assignment of error is overruled.

In his second assignment of error, Johnson argues that trial counsel was ineffective for failing to object to the admission of the evidence and failing to object to the lack of notice by the state that it intended to use the evidence. To prevail on an ineffective-assistance-of-counsel claim, Johnson must show that trial counsel's performance fell below an objective standard of reasonableness, and that he was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 687–688, 693, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Because the evidence did not affect the outcome of the trial, Johnson cannot establish prejudice. Therefore, we overrule his second assignment of error.

Next, Johnson contends the prosecutor committed misconduct by failing to provide notice of intent to use the alleged other-acts evidence. Johnson did not object to the prosecutor’s alleged misconduct, waiving all but plain error. Prosecutorial misconduct rises to the level of plain error if it is clear the defendant would not have been convicted in the absence of the improper conduct. *See State v. Israel*, 12th Dist. Butler No. CA2010-07-170, 2011-Ohio-1474, ¶ 43. Because we have already concluded that the evidence did not affect the outcome of the trial, we overrule his third assignment of error.

Finally, Johnson argues that the guilty finding was not supported by sufficient evidence and was contrary to the manifest weight of the evidence. Specifically, he contends that the state failed to prove he knowingly caused physical harm to Stroud. Stroud testified Johnson hit her several times after falling on top of her. The state introduced photographs of Stroud's injuries that were taken the following day showing bruises on her back, arm, and shoulder. Based on the evidence, the trier of fact could have found all the elements proven beyond a reasonable doubt. *See State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

Johnson further argues that Stroud's testimony was not credible. Matters as to the credibility of witnesses are for the trier of fact to resolve, and we give great deference to the court's findings as to the credibility of the witnesses. *See State v. Saunders*, 1st Dist. Hamilton No. C-160781, 2017-Ohio-8557, ¶ 9.

Here, the trial court weighed the credibility of the witnesses and determined that Stroud was more credible. After reviewing the entire record, we cannot say that the court clearly lost its way and created such a manifest miscarriage of justice that we must reverse Johnson's conviction and order a new trial. Therefore, the conviction is not against the manifest weight of the evidence and was supported by sufficient evidence. *See Thompkins* at 387. We overrule Johnson's fourth assignment of error.

Accordingly, we affirm the judgment of the trial court.

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.

MOCK, P.J., and ZAYAS, J.
MILLER, J., concurs in judgment only.

Enter upon the journal of the court on April 18, 2018
per order of the court _____.
Presiding Judge