

[Cite as *State v. Body*, 2010-Ohio-2589.]

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

JENNIFER BODY

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P. J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 09 CA 25

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the Municipal Court,
Case No. CRB 0900442

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

June 9, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, J.

{¶1} Appellant appeals her conviction on one count of domestic violence entered in the Municipal Court of Coshocton County.

{¶2} Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶3} On or about June 28, 2009, Appellant Jennifer Body and two friends, Clete Hunter and Devin Sickles, went to the residence of Appellant Body's mother, Linda McMorrow. While there, Appellant and her mother got into an argument. According to McMorrow, Appellant "flipped out" and hit her in the face. (T. at 6-7, 9). Appellant then left and McMorrow called the Sheriff's Department. The responding deputy, Sgt. Hettinger, testified that he observed some swelling of McMorrow's face.

{¶4} On June 29, 2009, Appellant was arraigned on and entered a plea of not guilty to one count of Domestic Violence, in violation of R.C. §2919.25(A) a first degree misdemeanor.

{¶5} Appellant waived her right to a trial by jury and this matter proceeded to a trial to the court on October 14, 2009.

{¶6} At trial, the court heard testimony from Linda McMorrow, Sgt. Dean Hettinger, Devin Sickles and Appellant.

{¶7} At the conclusion of the trial, the trial court found Appellant guilty and sentenced Appellant to thirty (30) days incarceration, all to be suspended for a term of good behavior while on probation.

{¶8} It is from this conviction that Appellant now appeals, assigning the following error:

ASSIGNMENT OF ERROR

{¶9} “I. THE CONVICTION OF THE DEFENDANT-APPELLANT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE PRESENTED BELOW.”

I.

{¶10} Appellant claims her conviction was against the manifest weight of the evidence. We disagree.

{¶11} On review for manifest weight, a reviewing court is to examine 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 jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. See also, *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541, 1997-Ohio-52. The granting of a new trial “should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *Martin* at 175, 485 N.E.2d 717.

{¶12} Appellant was convicted of domestic violence in violation of R.C. §2919.25(A) which states, “[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member.”

{¶13} It is Appellant's position that there was no credible evidence to prove that she caused any physical injuries to her mother, Linda McMorrow.

{¶14} As stated above, Appellant is the daughter of Linda McMorrow. At trial, Ms. McMorrow testified that her daughter hit her in the face. (T. at **). The investigating officer, Sgt. Hettinger testified that when he arrived on the scene, Ms. McMorrow told

him that her daughter, the Appellant herein, punched her in the left cheek with her right fist. (T. at 13). He further testified that he observed a “small bit of swelling to Linda’s left cheek.” Id.

{¶15} In contrast, Appellant and her witness Devin Sickles, both testified that Appellant never struck Ms. McMorrow. (T. at 18, 28). According to the defense’s version of events, McMorrow threw a beer can at Appellant and then pushed her, causing her to fall over either a coffee table or a couch. (T. at 17-18, 25-26).

{¶16} We conclude the trial court, in resolving the conflicts in the evidence, did not create a manifest injustice to require a new trial. The trial court heard the witnesses, evaluated the evidence, and was convinced of Appellant’s guilt.

{¶17} The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison* (1990), 49 Ohio St.3d 182, 552 N.E.2d 180, certiorari denied (1990), 498 U.S. 881, 111 S.Ct. 228, 112 L.Ed.2d 183. Reviewing courts should accord deference to the trial court’s decision because the trial court has had the opportunity to observe the witnesses’ demeanor, gestures, and voice inflections which cannot be conveyed to us through the written record, *Miller v. Miller* (1988), 37 Ohio St.3d 71, 523 N.E.2d 846.

{¶18} We find that there was sufficient evidence to substantiate a finding of guilty. Upon review, we find the trial court did not lose its way, and find no manifest miscarriage of justice.

{¶19} Appellant's sole assignment of error is overruled.

{¶20} For the foregoing reasons, the judgment of the Municipal Court of Coshocton County, Ohio, is hereby affirmed.

By: Wise, J.

Gwin, P. J., and

Hoffman, J., concur.

/S/ JOHN W. WISE_____

/S/ W. SCOTT GWIN_____

/S/ WILLIAM B. HOFFMAN_____

JUDGES

JWW/d 0603

