

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

STATE OF OHIO,	:	APPEAL NO. C-170177
	:	TRIAL NO. 17CRB-5721
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
EVERTO ANIBAL RAMIREZ,	:	
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 Everto Ramirez was found guilty of domestic violence under R.C. 2919.25. The trial court sentenced him to 90 days in jail and imposed court costs. This appeal followed.

Ramirez and the victim, Brendy Gramajo, are Guatemalan citizens. At trial, Ramirez and Gramajo both testified through a court-provided Spanish-language interpreter.

In his first assignment of error, Ramirez asserts that his primary language is Mam, a Mayan language spoken primarily in Guatemala, and the trial court deprived him of his right to due process by providing a Spanish interpreter rather than a Mam interpreter. On the record before us, we disagree. Ramirez did not object to the use of a Spanish interpreter for his trial, and thus raises the issue for the first time on appeal. A party's failure to raise or address an issue in the lower court acts as a waiver of the issue on appeal. *See Portage Cty. Bd. of Commrs. v. Akron*, 109 Ohio St.3d 106, 2006-Ohio-954, 846 N.E.2d 478; *Fifth Third Bank v. Ducru Ltd. Partnership*, 157 Ohio

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App.3d 463, 2004-Ohio-1801, 811 N.E.2d 1165, ¶ 20. Here, Ramirez did not indicate any dissatisfaction with the interpreter until a vague statement in closing arguments, in which his defense counsel said: “a language barrier for both the alleged victim and [Ramirez] may be involved here * * *.” This statement was not sufficient to constitute an objection. First, it does not specifically address the issue with the interpreter or the translation. Ramirez never said he needed or even preferred a Mam-language interpreter, and he did not take issue with the translation of his testimony. Second, because there was no clear objection, Ramirez did not give the court the opportunity to correct the alleged error. Finally, there is nothing in the record that supports Ramirez’s contention that he is not fluent in Spanish or that Mam is his primary language. Ramirez attempted to correct this omission by filing an affidavit with this court. We are bound by the record below and do not consider the affidavit. *See* App.R. 9(A); *Middletown v. Allen*, 63 Ohio App.3d 443, 579 N.E.2d 254 (12th Dist.1989) (holding that affidavits attached to an appellate brief cannot be considered as part of the record on appeal). Therefore, we overrule Ramirez’s first assignment of error.

In his second assignment of error, Ramirez contends that his domestic-violence conviction was against the manifest weight of the evidence. In determining whether a verdict is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, and determine whether, in resolving conflicts in the evidence, the court 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. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

The domestic-violence statute provides, in relevant part, that “[n]o person shall knowingly cause or attempt to cause physical harm to a family or household

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member.” R.C. 2919.25(A). A family or household member includes “[t]he natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.” R.C. 2919.25(F)(1)(b). In this case, Ramirez and Gramajo lived in an apartment together with their six-year-old son. At trial, Gramajo testified that on March 2, 2017, she argued with Ramirez, who was drunk and furious. Gramajo said that when she tried to leave the apartment, Ramirez grabbed her hair from behind and dragged her back inside. Ramirez testified in his own defense. He admitted that he drank five beers and argued with Gramajo, but contended that he actually grabbed her jacket to help her up from a fall and only incidentally pulled her hair.

The trial court did not find Ramirez’s testimony credible, and chose to believe Gramajo’s version of events. Credibility determinations are primarily for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. While Ramirez presented a different version of events that, if believed, may have exculpated him, we find no indication that the trial court so “lost its way” in weighing the evidence presented so as to create a manifest miscarriage of justice warranting a new trial. *Thompkins* at 387. Therefore, we overrule Ramirez’s second assignment of error.

The judgment of the trial court is affirmed.

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.

MOCK, P.J., ZAYAS and MILLER, JJ.

To the clerk:

Enter upon the journal of the court on February 21, 2018
per order of the court _____.
Presiding Judge