

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-16-1144

Appellee

Trial Court No. CR201601080

v.

Shane Mink

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2017

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Claudia A. Ford, Assistant Prosecuting Attorney, for appellee.

Lawrence A. Gold, for appellant.

* * * * *

SINGER, J.

{¶ 1} Appellant, Shane Mink, appeals his conviction and sentence from the June 2, 2016 judgment of the Lucas County Court of Common Pleas, in which he was found guilty of abduction and assault, was sentenced to 24 months incarceration, and was ordered to pay prosecution, confinement, and attorney costs. For reasons that follow, we affirm.

Assignments of Error

{¶ 2} Appellant sets forth the following assignments of error:

1. Appellant received ineffective assistance of counsel in violation of [his] rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Section 10 of the Constitution of the State of Ohio.
2. The trial court committed error to the prejudice of Appellant by imposing the costs of prosecution without consideration of Appellant's present or future ability to pay.
3. The trial court erred to the prejudice of Appellant in denying his Rule 29 motion.
4. The jury's verdict was against the manifest weight of the evidence introduced by the state at trial.

Facts

{¶ 3} Shane Mink, appellant, was married and lived with his wife, Aimee Mink, in Grand Rapids, Lucas County, Ohio. On or around January 7, 2016, the two were in their home and appellant began drinking and became intoxicated. Appellant alleged he was provoked by his wife's emotional distance and her texting of other men. Appellant became angry and began to scream and strike his wife. Appellant tried to suffocate his wife with a pillow and would not allow her to leave the couch.

{¶ 4} This continued for several hours until roughly around 5:30 a.m. on January 8, 2016, when his wife called 911 and hid the phone in the couch. The call recorded the incident and appellant can be heard screaming and striking his wife, yelling at her “to sit,” and asking her if she “ever wanted to move her legs again.”

{¶ 5} Around 6:00 a.m., police arrived and arrested appellant. He was noted to be aggressive and intoxicated. Appellant’s wife had photos of her injuries taken before going to the hospital, where she was diagnosed with mild head injury, cervical strain, elevated blood pressure, and multiple contusions.

{¶ 6} Appellant was indicted on attempted felonious assault, in violation of R.C. 2923.02 and 2903.11(A)(1), and abduction in violation of R.C. 2905.02(A)(2)(C), both felonies of the third degree.

{¶ 7} The case went to jury trial. Appellant was found guilty of the lesser included offense of assault, a first degree misdemeanor, and abduction. Appellant was sentenced to 24 months incarceration for the abduction, and 180 days for the assault. The sentences were to run concurrently. Appellant was also ordered to reimburse the state of Ohio for the costs of supervision, confinement, assigned counsel and prosecution. Appellant timely appealed.

Legal Analysis

{¶ 8} In his first assignment of error, appellant argues that he received ineffective assistance of counsel. Appellee contends that appellant’s counsel was merely using trial strategy and was not ineffective.

Ineffective Assistance of Counsel

{¶ 9} We review ineffective assistance of counsel with a two-step process. There must first be a determination as to whether defense counsel violated any essential duties to the client. *State v. Bradley*, 42 Ohio St.3d 136, 141, 538 N.E.2d 373 (1989). Secondly, the ineffectiveness of counsel must have been prejudicial to the defense. *Id.* at 141-42.

{¶ 10} Appellant must prove that counsel fell beneath an objective standard of reasonableness, considering all the circumstances, including the prevailing norms of practice. Counsel has the “overarching duty to advocate the defendant’s cause,” and to “consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution.” *Strickland v. Washington*, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Due to the wide variety of legal strategies and approaches available “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Id.*

{¶ 11} Here, appellant claims ineffectiveness because his counsel failed to access phone records, which appellant asserts could have been used to help diminish his wife’s credibility. Appellant alleged that his wife was texting other men and then lied about it during her testimony saying she never sent any text messages at all that night. Appellant was hoping to impeach his wife’s testimony by using the phone records to show she had sent text messages.

{¶ 12} However, because the court must be deferential to counsel's strategy, we find counsel's decision to not procure the phone records does not fall objectively below a reasonable standard. We agree with appellee that this could be trial strategy to avoid revealing potentially harmful evidence. We also question the phone record's value for impeachment purposes.

{¶ 13} Although appellant cannot satisfy the first prong, we nevertheless review to see if counsel's alleged error prejudiced appellant. That is, is it reasonably probable that but for counsel's alleged error the outcome would have been different. *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989).

{¶ 14} Here, appellant argues that he was prejudiced by not having the phone records produced to give credibility to his own testimony while discrediting his wife's testimony. There is nothing in the record that would suggest that the phone records would have changed the outcome of the trial. Therefore, appellant's first assignment of error is not well-taken.

{¶ 15} In the second assignment of error, appellant argues that the trial court erred to his prejudice by imposing costs of prosecution, and requiring him to reimburse the state for costs of assigned counsel and confinement without considering his ability to pay. Appellee claims the court did in fact consider appellant's past and future earning abilities.

{¶ 16} "Our standard of review on the issue is whether the imposition of costs and financial sanctions was contrary to law." *State v. Farless*, 6th Dist. Lucas Nos. L-15-1060, L-15-1061, 2016-Ohio-1571, ¶ 4.

Cost of Prosecution

{¶ 17} R.C. 2947.23 states, in “all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the cost of prosecution * * * and render a judgment against the defendant for such cost.” The court has the discretion to impose or waive cost of prosecution, even when sentencing indigent defendants. *State v. Mamontov*, 6th Dist. Lucas No. L-06-1245, 2007-Ohio-1876, ¶ 7.

{¶ 18} Here, the trial court chose to impose the cost of prosecution upon appellant instead of waiving it. There is nothing in the record to suggest this was contrary to law.

Attorney Fees

{¶ 19} “R.C. 2941.51 provides that the cost of appointed counsel must be paid by the county as approved by the court. The court can order the defendant to pay all or a part of the cost of appointed counsel but only if the court determines that the offender ‘has, or reasonably may be expected to have, the means to meet some part of the costs of the services rendered.’” *Farless* at ¶ 10, quoting R.C. 2941.51.

{¶ 20} Here, the trial court found appellant had “or reasonably may be expected to have, the means to pay all or part of the applicable cost.” Appellant was employed as a welder for navy shipyards and had membership in the Sheet Metal Union Local 33 and Boilermakers Union Locals 37 and 85. Appellant is age 44, a trained craftsman and of sound body making him employable. The record supports the trial court’s finding that appellant was able to pay the costs of attorney fees. This finding is not contrary to law.

Costs of Confinement

{¶ 21} Under R.C. 2929.18(A)(5)(a)(ii), the trial court may impose on defendant the duty to reimburse the state for “all or part of the cost of confinement * * * provided that the amount of reimbursement ordered * * * does not exceed the total amount of reimbursement the offender is able to pay[.]” The court is not required to hold a hearing to determine if the defendant can reasonably be expected to pay, however there must be some evidence in the record to support this finding. *State v. Flowers*, 6th Dist. Lucas No. L-14-1141, 2015-Ohio-908, ¶ 11.

{¶ 22} In this case, the trial court found it was reasonable to expect appellant to be able to pay the costs of confinement. Although there was no hearing, there was evidence within the record to support the trial court’s finding. Namely, we refer to appellant’s job history and skill as a welder. It cannot be said that the trial court’s findings are clearly and convincingly contrary to law. Appellant’s second assignment of error is not well-taken.

Sufficiency of the Evidence

{¶ 23} In appellant’s third assignment of error, he contends that the trial court erred in denying his Crim.R. 29 motion because there was insufficient evidence showing he restrained his wife. Appellee contends that not only was there sufficient evidence to support the conviction, but also that appellant waived his right to challenge his Crim.R. 29 motion by not renewing it at the close of all evidence.

{¶ 24} We have repeatedly held that the failure of appellant to renew a Crim.R. 29 motion at the close of all of the evidence waives his or her right to appeal that error. However, we have not held that a sufficiency of the evidence argument is waived. *State v. Jeter*, 6th Dist. Erie No. E-02-047, 2004-Ohio-1332, ¶ 11-12.

{¶ 25} When reviewing a trial court for sufficiency of the evidence, the appellate court's standard of review is, "whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Gibson*, 6th Dist. Lucas Nos. L-13-1222, L-13-1223, 2015-Ohio-1679, ¶ 80, quoting *State v. Williams*, 74 Ohio St.3d 569, 576, 660 N.E.2d 724 (1996). When an individual is convicted of a charge without sufficient evidence it is a denial of proper due process, and thus qualifies as plain error. *State v. Herman*, 6th Dist. Erie No. E-01-039, 2002-Ohio-7307, ¶ 24.

{¶ 26} Here, there is evidence by testimony and a recorded 911 call which support the conviction. Appellant can be heard on the recording repeatedly demanding his wife to "sit." Appellant's wife testified that she was not allowed to leave the couch. Further, appellant's testimony supports the findings:

THE COURT: Do you agree hitting your wife was inappropriate?

APPELLANT: Absolutely. I could have restrained her otherwise.

* * *

THE COURT: Mr. Mink, you say that you were trying to restrain your wife?

APPELLANT: Yes.

{¶ 27} When viewed in the light most favorable to the state, we find reasonable minds could reach the conclusion that all elements of the crime were proven beyond a reasonable doubt. Accordingly, appellant's third assignment of error is not well-taken.

Manifest Weight

{¶ 28} In his fourth assignment of error, appellant argues that the jury's verdict was against the manifest weight of the evidence. Appellee contends that the burden of proof was met and that the jury reasonably considered the evidence prior to convicting appellant.

{¶ 29} When looking at a claim of manifest weight of the evidence, this court "must be guided by a presumption that the findings of the trier-of-fact were indeed correct." *Ohio Cas. Ins. Co. v. D & J Distrib. & Mfg.*, 6th Dist. Lucas No. L-08-1104, 2009-Ohio-3806, ¶ 40. This court must weigh all evidence and all reasonable inferences drawn from it, consider the credibility of witnesses and determine whether in resolving conflicts in the evidence, if the finder of fact clearly lost its way resulting in a miscarriage of justice. *State v. Prescott*, 190 Ohio App.3d 702, 2010-Ohio-6048, 943 N.E.2d 1092, ¶ 48 (6th Dist.).

{¶ 30} In this case, appellant contends there was no credible evidence his wife was ever restrained. However, based on our review of the record, including the wife's

testimony, appellant's testimony, the sheriff department's testimony, the recorded 911 call, the medical records of appellant's wife following the incident, and the pictures of her injuries, we find this is not the exceptional case where the jury clearly lost its way. This is especially true when considering appellant admitted that he was trying to restrain and contain his wife. Accordingly, appellant's fourth assignment of error is not well-taken.

Conclusion

{¶ 31} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

JUDGE

James D. Jensen, P.J.
CONCUR.

JUDGE

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