

[Cite as *Cleveland Hts. v. Kleinhenz*, 2015-Ohio-1540.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101618

CITY OF CLEVELAND HEIGHTS

PLAINTIFF-APPELLEE

vs.

JOSEPH H. KLEINHENZ

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cleveland Heights Municipal Court
Case No. CRB-1302231

BEFORE: Laster Mays, J., Boyle, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: April 23, 2015

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ANITA LASTER MAYS, J.:

{¶1} Defendant-appellant Joseph H. Kleinhenz (“Kleinhenz”), proceeding pro se, appeals from his three convictions in Cleveland Heights Municipal Court for domestic violence.

{¶2} Although Kleinhenz does not present specific assignments of error, he challenges his convictions apparently on the basis that they are not supported by the evidence adduced at trial. A review of the record demonstrates that he is incorrect. Consequently, his convictions are affirmed.

{¶3} The city’s witnesses provided the following description of the incident at Kleinhenz’s bench trial.

{¶4} K.K. testified that she is Kleinhenz’s younger sister, and that Kleinhenz, who was 30 years old, was living with their parents in the autumn of 2013. On November 24, 2013, K.K. was staying at their parents’ house, because of Kleinhenz’s angry outbursts, her parents did not feel comfortable being alone with Kleinhenz. After Kleinhenz entered the room in which she and her mother were conversing, K.K. received a phone call that prompted Kleinhenz to make a derogatory comment about the caller. When K.K. expressed displeasure at the comment, Kleinhenz “started to get agitated.” He got “very close to [her] face” and told her to “be quiet.” He then “shout[ed] vulgarities about all of the women in [our] family * * * .” Kleinhenz’s “screaming” fit, during which he was “foaming at the mouth,” led his mother to state that “she was going to call the

police,” and caused his father to enter the room to request that Kleinhenz “back away from” the women. Kleinhenz “lunged at” his father.

{¶5} K.K. stepped between the men as her mother “ran out the side door to call the police.” Despite her father’s urging to leave, K.K. remained because she believed that Kleinhenz “would attack [their] father” if she left. K.K. wrapped her arms around Kleinhenz to permit her father to get away instead.

{¶6} Kleinhenz’s father took the opportunity K.K. presented; he went out the front door. Kleinhenz “wrestl[ed]” away from K.K. until she fell, and although she attempted to grab his legs to stop him, Kleinhenz went in pursuit of their father. K.K. rose to follow, but as she tried to catch up to Kleinhenz, she stumbled on the front steps and fractured her ankle.

{¶7} Kleinhenz shoved his mother out of his way as he pursued his father. His father ran to the side door and reentered the house, he tried to close the door behind him, but Kleinhenz caught up and sought to “push into the house.” Kleinhenz’s father had “his shoulder into the door” to prevent his son’s entry.

{¶8} At that point, K.K. had returned to her father’s side and she urged him to seek “a safe place” while she “tried to hold the door.” K.K. was unable to do so. Kleinhenz came inside, wrestled with K.K. briefly, then “ran through the kitchen and out the front door” looking for his father.

{¶9} By that time, Kleinhenz’s mother’s cries for help had alerted some neighbors. One of them accosted Kleinhenz and held him until the police arrived. Kleinhenz

subsequently was charged with three counts of domestic violence and three counts of assault.

{¶10} His case proceeded to a bench trial. After considering the evidence, the trial court found him guilty of three counts of domestic violence and dismissed the assault charges. Kleinhenz was sentenced accordingly, and appeals from his convictions by asserting that they are not supported by the evidence presented at trial. Upon a review of both the sufficiency and the manifest weight of the evidence in this case, this court disagrees.

{¶11} A challenge to the sufficiency of the evidence supporting a conviction requires the court to determine whether the state has met its burden of production at trial. *State v. Givan*, 8th Dist. Cuyahoga No. 94609, 2011-Ohio-100, citing *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). On review for sufficiency, this court must assess not whether the city's evidence is to be believed, but whether, if believed, the evidence presented would support a conviction. *Id.* The relevant inquiry 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. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶12} In this case, the trial court found Kleinhenz guilty of domestic violence in violation of R.C. 2919.25(A), which prohibits a person from knowingly causing or attempting to cause physical harm to a family or household member. A person acts

knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. R.C. 2901.22(B). “Physical harm” means “any injury, illness, or other physiological impairment, *regardless of its gravity or duration.*” (Emphasis added.) R.C. 2901.01(A)(3).

{¶13} Generally, “[o]ne does not have to cause serious injury to be guilty of domestic violence.” *State v. Blonski*, 125 Ohio App.3d 103, 114, 707 N.E.2d 1168 (9th Dist.1997). “A defendant may be found guilty of domestic violence even if the victim sustains only minor injuries, or sustains no injury at all.” *Id.*, citing *State v. Nielsen*, 66 Ohio App.3d 609, 612, 585 N.E.2d 906 (6th Dist.1990).

{¶14} Although Kleinhenz’s sister and parents indicated that he did not actually lay hands on them, a violation of R.C. 2919.25(A) can also be demonstrated by a showing that the defendant attempted to commit physical harm.¹ *Hamilton v. Cameron*, 121 Ohio App.3d 445, 700 N.E.2d 336 (12th Dist.1997). A criminal “attempt” is defined as an act that is a substantial step in a course of conduct planned to culminate in the commission of a crime. R.C. 2923.02(A). The evidence showed that Kleinhenz engaged in an heated argument with his sister, placed himself so close to her that she became fearful of his intentions toward her and her parents, and resolutely and consciously advanced on his father, who fled out of the house. Kleinhenz chased his

¹In this context, this court notes that Kleinhenz’s mother testified that she was so frightened of him that she slept with her phone in the event that she needed to call 911, and that she kept the doors unlocked and ajar in the event she and her husband required a way to leave the house quickly.

father in such a manner that his sister became so apprehensive for her father's safety that, in her pursuit of Kleinhenz to stop him, she stumbled on the front steps and fractured her ankle. Kleinhenz, in the meantime, pushed his mother out of his way to get at his father, sought to force himself into the house despite his father's effort to prevent his entry, and then went after his quarry once again when he saw his father trying to escape. Only a neighbor's intervention prevented Kleinhenz from actually causing physical harm.

{¶15} When viewed in a light most favorable to the prosecution, the totality of the circumstances demonstrate that Kleinhenz knowingly at least attempted to cause physical harm to his three family members. *State v. Bolling*, 8th Dist. Cuyahoga No. 95568, 2011-Ohio-2790, ¶ 21. Accordingly, sufficient evidence supported his convictions. *State v. Kellum*, 12th Dist. Butler No. CA2009-03-081, 2009-Ohio-6743.

{¶16} As to the manifest weight of the evidence, this court cannot conclude that this is the exceptional case in which the evidence weighs heavily against the convictions. K.K., her mother and father gave versions of the incident that were entirely consistent with each other. The trial court acted within its prerogative to conclude that the city's witnesses provided credible testimony. Their accounts of Kleinhenz's actions reasonably led the trial court to find him guilty of having knowingly attempted to cause physical harm to his sister and his parents. *Id.* at ¶ 23; *State v. Simmers*, 5th Dist. Tuscarawas No. 2009 AP 04 0017, 2009-Ohio-6723.

{¶17} For the foregoing reasons, Kleinhenz's argument that the evidence did not support his convictions is rejected. His convictions are affirmed.

It is ordered that appellee recover from appellant costs herein taxed. The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cleveland Heights Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANITA LASTER MAYS, JUDGE

MARY J. BOYLE, P.J., and
SEAN C. GALLAGHER, J., CONCUR