[Cite as *State v. Freeman*, 2018-Ohio-3587.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 106374

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

BUDDY FREEMAN

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-17-615931-A

BEFORE: Keough, J., E.A. Gallagher, A.J., and Jones, J.

RELEASED AND JOURNALIZED: August 30, 2018

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KATHLEEN ANN KEOUGH, J.:

{¶1} Defendant-appellant Buddy Freeman appeals from the trial court's judgment, rendered after a bench trial, finding him guilty of abduction, criminal damaging, theft, grand theft, robbery, aggravated menacing, domestic violence, felonious assault, tampering with evidence, and menacing by stalking. Finding no merit to the appeal, we affirm.

I. Factual and Procedural Background

{¶2} In 2017, a Cuyahoga County Grand Jury indicted Freeman in a 36-count indictment that included varying degrees of charges for kidnapping, robbery, aggravated robbery, attempted burglary, aggravated burglary, theft, grand theft, criminal damaging or endangering, aggravated menacing, menacing by stalking, domestic violence, felonious assault, and tampering with evidence. The charges arose from incidents involving Freeman and his ex-girlfriend, Shania Tiggs-Williams. Freeman pleaded not guilty, and the case proceeded to a bench trial.

{¶3} Tiggs-Williams testified at trial that she met Freeman in 2011, and their daughter was born in 2012. She said her relationship with Freeman lasted for over six years even though it was "rocky."

{¶4} Tiggs-Williams described various incidents involving Freeman. She said that on August 26, 2016, after she told Freeman that she did not want to sit on the porch with him, Freeman threw bleach on her clothes and then put his hands around her neck and choked her. Tiggs-Williams got away, ran to her neighbor's apartment, and called

the police. She said that Freeman kicked at her neighbor's door while she was inside. Tiggs-Williams said she subsequently told the prosecutor she did not want to prosecute Freeman for this offense because she was still in love with him.

{¶5} Tiggs-Williams said that on December 3, 2016, Freeman, who had stolen the key to Tiggs-Williams's apartment, came into her apartment without permission and told her that he would throw bleach on her if she left the apartment. Tiggs-Williams said that after Freeman left, she called the police and asked them to escort her out of her apartment but they never came. She said that later that day, she and her daughter went across the street to Freeman's father's house. She testified that when Freeman saw her, he told her that he was going to "beat [her] a**." He then "tussled" with her and took the keys to her apartment out of her pocket. Tiggs-Williams said that a CMHA officer had to let her into her apartment that night.

{¶6} Tiggs-Williams testified that as she was walking to work on December 7, 2016, Freeman met up with her and walked with her. She said that when she told him she had to go to work, he became angry and told her he "was not done talking" to her. As she tried to walk away, Freeman spit at her and grabbed her arm, ripping her jacket.

{¶7} The next incident occurred the evening of February 5, 2017. Tiggs-Williams testified that Freeman came to her apartment that evening, but they began arguing, "things escalated," and Freeman stole her cell phone. Text records submitted by the state at trial showed that Freeman used the phone later that night to send

text messages purportedly from Tiggs-Williams to Freeman stating that she was lying about the previously described incidents in order to send him to jail.

{¶8} Tiggs-Williams said she bought a car in February 2017. She said that Freeman did not own a car but would sometimes borrow a car from family or friends. She testified that on March 20, 2017, she, Freeman, and their daughter went to Chipotle in her car. Tiggs-Williams said that she let Freeman drive to avoid any confrontation. When they arrived at Chipotle, Freeman ordered Tiggs-Williams to stay in the car, which she did. Later, they stopped at Freeman's father's house so their daughter could use the bathroom. When Tiggs-Williams began to get out of the car, Freeman became angry, grabbed her, threw her to the ground, and then walked off with her car keys.

{¶9} The next day, Tiggs-Williams could not find her car. As she and her brother's girlfriend walked around looking for the car, Freeman called the brother's girlfriend and said he was going to "shoot up" her car and "have his people do things" to Tiggs-Williams. Tiggs-Williams testified that she was finally "fed up" with Freeman's "shenanigans," so she and her brother's girlfriend went to CMHA headquarters. As they were speaking to CMHA officer Thomas Hinkle, Freeman called the brother's girlfriend again. She put the call on speaker phone, and Officer Hinkle heard Freeman threaten to "beat [Tiggs-Williams's] a**" and state that he was going to "have it out" with the CMHA police. Officer Hinkle testified that he issued an alert for his officers to be on the lookout for Freeman.

{¶10} Tiggs-Williams testified that on March 29, 2017, as she was driving on Superior Avenue near East 65th Street, she saw Freeman driving behind her. She said he was driving "extremely close" to the back of her car, so she pulled into a laundromat. She got out of her car, and as Freeman approached, he told her, "I don't want no s***; I just want to see my daughter." However, as Freeman approached her car, Tiggs-Williams became afraid that his statement was just a ruse to snatch her keys again, so she got back in her car and drove away.

{¶11} Tiggs-Williams testified that Freeman then chased her with his car. She said that he was driving so close during the chase that she thought he was going to hit the back of her car, and that she was forced to drive 50 miles per hour in a 25 mile per hour zone as she "tried to get away." She eventually pulled into a parking lot at East 71st Street and Wade Park Avenue where she flagged down a CMHA officer.

{¶12} CMHA patrolman Jack Justis testified he and other CMHA officers were in the parking lot that day investigating a report of drug activity in the area. He said that Tiggs-Williams drove into the parking lot "at a high rate of speed" and "started screaming for help." Officer Justis said she told him and the other CMHA officers that "her ex-boyfriend, Buddy Freeman, was chasing her in a car and was trying to hit her."

{¶13} Officer Justis testified that he was aware of Freeman because of the prior alert, and that Freeman was known to possess firearms and to have made threats to fight with and kill police officers. Two CMHA officers advised Justis that they had seen the car that Tiggs-Williams said Freeman had been driving. A short time later, Justis found

the abandoned car near East 71st Street and Melrose Avenue. Justis called a K-9 officer to assist with the search for Freeman; they eventually found him hiding behind an abandoned washer and dryer in the backyard of a nearby home.

{¶14} The trial court found Freeman guilty as set forth above and sentenced him to an aggregate term of five years in prison. This appeal followed. **II. Law and Analysis**

{¶15} On appeal, Freeman challenges only his convictions on Count 32, felonious assault in violation of R.C. 2903.11(A)(2), and Count 33, domestic violence in violation of R.C. 2919.25(A). Both of these counts related to the incident that occurred on March 29, 2017.

A. Sufficiency and Manifest Weight of the Evidence

{¶16} In his first assignment of error, Freeman contends that his conviction for felonious assault was not supported by sufficient evidence and was against the manifest weight of the evidence. In his second assignment of error, Freeman contends that his conviction for domestic violence was not supported by sufficient evidence and was against the manifest weight of the evidence.

{¶17} The test for sufficiency requires a determination of whether the prosecution met its burden of production at trial. *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 12. 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. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

{¶18} A manifest weight challenge, on the other hand, questions whether the state met its burden of persuasion. *State v. Hill*, 8th Dist. Cuyahoga No. 98366, 2013-Ohio-578, ¶ 32. To determine whether a conviction is against the manifest weight of the evidence, the reviewing court must look at the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Thompkins* at 388.

{¶19} Although we review credibility when considering the manifest weight of the evidence, we are cognizant that determinations regarding the credibility of witnesses and the weight given to the evidence are primarily matters for the trier of fact to decide. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967). The trier of fact is best able "to view the witnesses and observe their demeanor, gestures, and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 24. Thus, an appellate court will overturn a conviction due to the manifest weight of the evidence only in extraordinary circumstances where the evidence presented at trial weighs heavily against the conviction. *Thompkins* at 388.

{¶20} Although the concepts of the sufficiency of the evidence and weight of the evidence are different, a determination that a conviction is supported by the manifest weight of the evidence will also be dispositive of the issue of sufficiency. *State v. Buford*, 8th Dist. Cuyahoga Nos. 97218 and 97529, 2012-Ohio-1948, ¶ 20.

{¶21} Freeman was convicted in Count 32 of felonious assault in violation of R.C. 2903.11(A)(2), which states that "[n]o person shall knowingly * * * cause or attempt to cause physical harm to another * * * by means of a deadly weapon," in this case a motor vehicle. A person acts knowingly "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).

{¶22} Freeman asserts that his conviction was not supported by sufficient evidence and was against the manifest weight of the evidence because there was insufficient evidence that he tried to cause physical harm to Tiggs-Williams on March 29, 2017. He argues that there was no evidence that he tried to hit her with his car or that she had to do anything when she was driving to avoid being hit. In short, he contends there is no evidence that he used his car as a deadly weapon. We disagree.

{¶23} Upon our review of the evidence, we find there was sufficient evidence to prove that Freeman knowingly attempted to cause physical harm to Tiggs-Williams with the vehicle he was driving. Tiggs-Williams testified that Freeman chased her car so fast and so close that she thought he was going to hit the back of her car as they were driving. She testified further that she was forced to drive 50 miles per hour in a 25 mile per hour zone in order to avoid being hit as she tried to get away. Office Justis corroborated

Tiggs-Williams's testimony; he said that when Tiggs-Williams pulled into the parking lot at a high rate of speed, she screamed that she needed help because Freeman was trying to hit her.

{¶24} Viewing this evidence in a light most favorable to the prosecution, we find that any rational trier of fact could have found the essential elements of felonious assault proven beyond a reasonable doubt. Accordingly, Freeman's conviction was supported by sufficient evidence.

{¶25} Nor was it against the manifest weight of the evidence. Tiggs-Williams testified that she had to drive double the speed limit in order to avoid being hit and to get away from Freeman. Likewise, Officer Justis testified that when she pulled into the parking lot, Tiggs-Williams screamed for help from the officers because, as she told them, Freeman "was trying to hit her" with his car. Despite Freeman's argument, the fact that Freeman never hit Tiggs-Williams is not dispositive. There was ample circumstantial evidence from which the factfinder could have concluded that Freeman knowingly attempted to hit Tiggs-Williams's car with his car. Such a conclusion was more than reasonable in light of the other earlier incidents described by Tiggs-Williams in which Freeman became angry and either tried to harm her or threatened her. Accordingly, we do not find this case to be the exceptional case where the evidence weighs heavily against the conviction.

{¶26} Freeman next contends that his conviction for domestic violence relating to the events of March 29, 2017, is not supported by sufficient evidence and is against the manifest weight of the evidence.

{¶27} Freeman was convicted in Count 33 of domestic violence in violation of R.C. 2919.25(A), which provides that "[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member."

{¶28} Freeman asserts that his conviction for domestic violence was not supported by sufficient evidence and was against the manifest weight of the evidence because other than the incident on March 29, 2017, involving the car chase, which resulted in the felonious assault conviction, "there was no other evidence relating to a domestic violence incident" that day. Freeman's argument is without merit because the evidence relating to the domestic violence charge is the same as that relating to the felonious assault charge.

{¶29} The evidence established that Freeman tried to hit Tiggs-Williams's car on March 29, 2017, when he chased her so close and so fast that she was forced to drive 50 miles per hour in a 25-mile-per-hour zone to avoid being hit.

{¶30} For purposes of the domestic violence statute, a person can be considered a "family or household member" if she is "the natural parent of any child of whom the offender is the other natural parent * * *." R.C. 2919.25(F)(1)(b). It is undisputed that Freeman and Tiggs-Williams had a child together. Thus, under R.C. 2919.25(F)(1)(b), Tiggs-Williams qualified as a "family or household member."

{¶31} Accordingly, viewing the evidence in a light most favorable to the prosecution, the trial court could have concluded beyond a reasonable doubt that Freeman knowingly attempted to cause physical harm to a family or household member in violation of R.C. 2919.25(A). Thus, the conviction is supported by sufficient evidence.

{¶32} It is also not against the manifest weight of the evidence. The judge heard Tiggs-Williams's and Officer Justis's testimony regarding Freeman's attempt to hit Tiggs-Williams's car and could judge their credibility. After reviewing the entire record and considering the credibility of the witnesses, we do not find that the trier of fact clearly lost its way and created a manifest miscarriage of justice in finding Freeman guilty of both felonious assault with a motor vehicle and domestic violence related to the events of March 29, 2017. The first and second assignments of error are overruled.

B. Ineffective Assistance of Counsel

{¶33} In his third assignment of error, Freeman asserts that his counsel was ineffective for not arguing at the close of the state's case that the trial court should dismiss Counts 32 and 33 pursuant to Crim.R. 29.

{¶34} To establish ineffective assistance of counsel, a defendant must show (1) that counsel's representation was deficient in that it "fell below an objective standard of reasonableness," and (2) "there is a reasonable probability that but for counsel unprofessional errors, the result of the proceeding would have been different." *State v. Sanders*, 94 Ohio St.3d 150, 151, 761 N.E.2d 18, (2002), citing *Strickland v. Washington*, 466 U.S. 668, 687-688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "'A reasonable

probability is a probability sufficient to undermine confidence in the outcome.'" *State v. Bradley*, 42 Ohio St.3d 136, 142, 538 N.E.2d 373 (1989), quoting *Strickland* at 694.

{¶35} A Crim.R. 29 motion challenges the sufficiency of the evidence. Under Crim.R. 29(A), after the evidence on either side is closed, and upon motion by the defendant or on its own, the court shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment if the evidence is insufficient to sustain a conviction of the offense or offenses.

{¶36} Freeman contends that because there was insufficient evidence to support convictions on Counts 32 and 33, there is a "strong likelihood" the trial court would have dismissed both counts if trial counsel had moved for their dismissal under Crim.R. 29(A). Accordingly, he contends, counsel was ineffective for not doing so. We disagree.

{¶37} Counsel was not ineffective in not moving for dismissal of Counts 32 and 33 under Crim.R. 29 because, as discussed above, the state presented sufficient evidence to support convictions on both counts. The third assignment of error is therefore overruled.

{¶38} Judgment 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 common pleas court to carry this judgment into execution. The defendant's conviction having

been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

KATHLEEN ANN KEOUGH, JUDGE

EILEEN A. GALLAGHER, A.J., and
LARRY A. JONES, SR., J., CONCUR