

[Cite as *State v. McIntyre*, 2002-Ohio-1393.]

**COURT OF APPEALS
THIRD APPELLATE DISTRICT
SENECA COUNTY**

STATE OF OHIO

PLAINTIFF-APPELLEE

CASE NUMBER 13-01-32

v.

RICHARD A. MCINTYRE, JR.

OPINION

DEFENDANT-APPELLANT

CHARACTER OF PROCEEDINGS: Criminal Appeal from Common Pleas Court.

JUDGMENT: Judgment Affirmed.

DATE OF JUDGMENT ENTRY: March 26, 2002.

ATTORNEYS:

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For Appellee.

HADLEY, J.

{¶1} The defendant/appellant, Richard A. McIntyre, Jr. ("the appellant"), appeals his conviction by the Seneca County Court of Common Pleas, finding him guilty of Domestic Violence, a fifth degree felony in violation of R.C. 2919.25(A). For the following reasons, we affirm the judgment of the trial court.

{¶2} The pertinent facts and procedural history are as follows. On February 2, 2001, the appellant hit the victim, Melissa A. Perin, with whom he lived and had a child. The appellant was indicted on one count of Domestic Violence in violation of R.C. 2919.25(A).

{¶3} The appellant was found guilty by a jury on July 18, 2001. He was sentenced to 3 years of community control and 45 days in the Seneca County Jail, along with other sanctions. He now brings this timely appeal, asserting one assignment of error for our review.

ASSIGNMENT OF ERROR

{¶4} The trial court erred in overruling the defendant's motion for judgment of acquittal at the close of the state's opening statement.

{¶5} For his sole assignment of error, the appellant alleges that the trial court improperly denied his motion for judgment of acquittal, made at the close of the state's opening argument.

{¶6} Regarding the appellant's motion, Ohio law states that

{¶7} [w]here, in a criminal proceeding, the state's [opening statement] indicates that the accused was charged with the offense for which he is being tried and there is no admission of fact showing that no offense was committed or that the accused was not guilty of the offense charged, a motion by the accused for judgment on such statement should be overruled.¹

{¶8} R.C. 2919.25(A), the offense with which the appellant was charged, forbids knowingly causing or attempting to cause harm to a family or household member. The appellant claims that his motion should have been granted because the state failed to assert in its opening statement that the victim was a member of his household or family.

{¶9} The state made the following claim in its opening:

{¶10} This case alleges that on February 2nd 2001, in Seneca County, that the defendant * * * Richard McIntyre * * * did cause or attempt to cause physical harm to a household or family member. The household or family member * * * being Melissa Perin.

{¶11} This statement clearly indicated that the appellant was charged with the offense for which he was being tried, as required by Ohio law. Moreover, contrary to the appellant's assertions, it plainly identifies the victim as a household or family member. Upon reviewing the state's opening statement in its entirety, we find no admissions of fact showing that no offense was committed or that the

¹ *State v. Karcher* (1951), 155 Ohio St. 253, paragraph one of the syllabus.

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appellant was not guilty as charged. Therefore, we find that the trial court did not err by overruling the appellant's motion for judgment of acquittal.

{¶12} Accordingly, the appellant's sole assignment of error is not well-taken and is hereby denied.

{¶13} Having found no error prejudicial to the appellant herein, in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment affirmed.

BRYANT and WALTERS, JJ., concur.