

ANTHONY T. KAPLANIS
701 Courtyard Ctr.
116 Cleveland Ave. NW
Canton, OH 44702

Delaney, J.

{¶1} Appellant Roy Allen Greig appeals from the December 30, 2013 Judgment Entry of conviction and sentence entered in the Stark County Court of Common Pleas. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} Appellant and Nicola Greig are married and in August 2013 lived at an address on Middlebranch Road in Plain Township, Stark County. The address is an “up and down” duplex; the Greigs lived in the downstairs and Nicola’s sister and niece lived in the upstairs.

{¶3} Sometime in early summer 2013 Nicola began seeing a counselor at the Stark County Crisis Center for therapy for her diagnosed obsessive-compulsive disorder. Nicola has a specific phobia of germs and contamination in addition to depression. Her counselor is Dr. Emanuelson.

{¶4} On Monday, August 19, 2013, Nicola and appellant got into an argument because appellant put his bare feet on the couch. Appellant became angry, jumped off the couch, and screamed in Nicola’s face. Nicola tried to walk away but appellant followed her through the house screaming at her. Nicola testified appellant grabbed her, threw her across the bed and put his hands around her neck to choke her. Nicola also stated appellant placed Saran Wrap over her face and she scratched him when she couldn’t breathe.

{¶5} Appellant had been drinking that day and continued to drink during the incident. At least once he left to get more beer. Nicola said at one point she locked him out but he came in through a window. Appellant would not allow Nicola to leave.

{¶6} Nicola did not call 911 or seek help. Eventually, she testified, appellant got tired, lost interest, and went into his room. At that point, Nicola went upstairs to the residence of her sister, Tonya Cooper. When she later returned downstairs, she found appellant “passed out.”

{¶7} Tonya Cooper was home for at least a portion of this incident, along with her adult daughter. On August 19, Tonya heard “commotion” and banging from downstairs. She needed to get her own laundry from a common laundry room and waited until she saw appellant getting into his car. By the time Tonya was on her way to get the laundry, however, appellant had already returned with a 6-pack of beer. Tonya had to cross a deck to access the laundry and appellant was sitting outside. He told her Nicola locked him out and asked Tonya to tell her to let him in. Tonya said she didn’t want to get involved and proceeded upstairs. Appellant stated, “I guess you will get involved when I f—her up.” Tonya observed scratches on appellant’s face and testified he seemed angry and intoxicated.

{¶8} Tonya testified Nicola came upstairs around 10:00 p.m. and was very disheveled and crying. She had red marks on her face and neck. Nicola told Tonya what happened but no one called police. Tonya later reportedly told deputies she thought both parties were intoxicated, although at trial she testified she has never seen her sister intoxicated. Tonya and her daughter tried to get Nicola to stay upstairs with them but eventually she returned downstairs. The next morning, Tonya saw Nicola and the injuries were more apparent; the red marks were more obvious and Nicola’s tongue was bruised and swollen.

{¶9} That day, August 20, 2013, Nicola had a therapy appointment with Dr. Emanuelson, who observed scratch marks and bruising to her face. He testified Nicola appeared scared, hurt, and in pain. The doctor urged her to report the incident to authorities, discussed a safety plan with her, and encouraged her to go to the Domestic Violence Shelter.

{¶10} Deputy William Konic is a domestic violence investigator and deputy for the Stark County Sheriff's Office. On August 20, 2013, he spoke to Nicola at 2:50 p.m. when she came to the Sheriff's Office to make a report. Konic observed a bruise to Nicola's right temple and redness to her neck. She was upset, sad, fearful, and reluctant to discuss the incident. Nicola told Konic what happened and completed two written statements, including a domestic violence allegation form designed to help investigators determine which party was the primary physical aggressor.

{¶11} Konic testified over objection Nicola's statement was consistent with her physical appearance. He photographed her injuries and explained he would have to obtain additional statements, including from appellant and witnesses, and discuss the case with the prosecutor prior to taking further action. He recommended Nicola go to the Domestic Violence Shelter; she was hesitant but told him she would go.

{¶12} Konic and another deputy made contact with appellant at the residence, which was neat, clean, and did not show any signs of a struggle. Appellant told deputies he and Nicola got into an argument because he put his feet on the couch and got it dirty, consistent with Nicola's statement. Appellant, though, said Nicola started the physical confrontation by attacking him and any injuries she had were from him defending himself.

{¶13} The deputies observed and photographed appellant's injuries, including nail scratches to his face, arm, and back. Over objection, Konic testified he determined appellant was the primary physical aggressor because he felt the scratches on appellant's back were consistent with defensive wounds from appellant being on top of Nicola as she fought to get him off.

{¶14} Konic did speak briefly to Tonya Cooper by telephone. She did not witness the event but heard yelling and later saw Nicola. Konic testified Tonya told him both Nicola and appellant had been drinking.

{¶15} Konic sought a warrant for appellant's arrest after reviewing the case with the Canton Prosecutor's Office.

{¶16} Appellant was charged by indictment with one count of felonious assault pursuant to R.C. 2903.211(A)(2), a felony of the second degree; one count of abduction pursuant to R.C. 2905.02(A)(2), a felony of the third degree; and one count of domestic violence pursuant to R.C. 2919.25(A), a felony of the fourth degree due to his prior domestic violence conviction.

{¶17} Appellant entered pleas of not guilty and the case proceeded to jury trial. Appellant was found not guilty of felonious assault and abduction but guilty of domestic violence. The trial court sentenced appellant to a prison term of 18 months with the possibility of judicial release to SRCCC and a rehabilitation program for veterans after 30 days.

{¶18} Appellant now appeals from the judgment entry of conviction and sentence.

{¶19} Appellant raises one assignment of error:

ASSIGNMENT OF ERROR

{¶20} “I. THE TRIAL COURT ERRED IN PERMITTING DEPUTY KONIC TO TESTIFY AS TO HIS OPINION THAT DEFENDANT-APPELLANT WAS THE PRIMARY AGGRESSOR.”

ANALYSIS

{¶21} In his sole assignment of error, appellant argues the trial court erred and abused its discretion in permitting Deputy Konic to testify appellant was the primary physical aggressor. We disagree.

{¶22} Appellant argues Konic testified as an expert on domestic violence and therefore it was inappropriate for him to opine who was the primary aggressor. Konic was not offered as an “expert” per se; he described his position as domestic violence investigator meaning the deputy assigned to follow up on domestic violence reports with further investigation, including obtaining statements from witnesses and offenders, collecting evidence, and taking photographs. He has been trained on issues common to domestic violence investigations, including psychological effects of domestic violence and legal updates. In cases in which both parties have injuries and one argues self-defense, such as the instant case, the investigator must determine who was the primary physical aggressor to seek an arrest warrant. Such was Konic’s role in this case and he testified accordingly.

{¶23} The meaning of “primary aggressor” was explained in detail in *State v. Boldin*, 11th Dist. Geauga No. 2007-G-2808, 2008-Ohio-6408. As the 11th District points out, “[t]he issue of who the primary aggressor is in an altercation is not an element of domestic violence. Rather, it relates to the proper procedure a police officer should

follow when making an arrest in a domestic violence case.” Id. at ¶ 78. The Court notes R.C. 2935.03 requires police departments to seek an arrest warrant for the party they have reason to believe is the primary physical aggressor. Id. at ¶ 79. The issue of who is the primary aggressor may become relevant at trial when a defendant asserts self-defense, but “* * * a determination of the identity of the primary aggressor is not an element of the offense of domestic violence.” Id. at ¶ 81. An officer’s testimony regarding the primary aggressor does not invade the province of the factfinder because the officer is not opining on the ultimate issue in the case.

{¶24} In the instant case, the admission of Konic’s testimony that appellant was the primary aggressor was neither an error nor an abuse of discretion. Appellant told officers his wife attacked him, he reacted in self-defense, and her injuries resulted from his actions to protect himself. Konic testified the physical evidence corroborated Nicola’s story and not appellant’s, which is relevant and admissible in the context of why Konic sought a warrant for appellant’s arrest.

{¶25} Further, we note appellant objected to Konic’s testimony about the primary physical aggressor and the trial court offered to give a limiting instruction, instructing the jury the testimony was limited to Konic’s role in seeking a warrant for appellant’s arrest. In other words, the jury remained the ultimate factfinder in the case and the deputy’s opinion was not a finding of fact or ultimate conclusion in the case. Juries are presumed to follow the instructions of the trial court. *Pang v. Minch*, 53 Ohio St.3d 186, 187, 559 N.E.2d 1313 (1990), paragraph four of the syllabus. Appellant has not pointed to any evidence in the record that the jury failed to do so in this case.

{¶26} The trial court did not err or abuse its discretion in admitting Konic's testimony regarding the primary physical aggressor. Appellant's sole assignment of error is overruled.

CONCLUSION

{¶27} Having overruled appellant's sole assignment of error, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Delaney, J. and

Gwin, P.J.

Farmer, J., concur.