

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

CHARLES N. HUGHES

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P. J.

Hon. John W. Wise, J.

Hon. Patricia A. Delaney, J.

Case No. 2014 AP 07 0030

O P I N I O N

CHARACTER OF PROCEEDING:

Criminal Appeal from the New Philadelphia
Municipal Court, Case No. CRB 1400406

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

March 25, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Wise, J.

{¶1}. This is an appeal by Appellant Charles N. Hughes of his conviction of domestic violence in the New Philadelphia Municipal Court, Tuscarawas County. The relevant facts leading to this appeal are as follows.

{¶2}. On April 15, 2014, the Tuscarawas County Sheriff's Department received a call from Cynthia S., who reported that appellant had pushed her down and threatened her at the residence she and appellant shared in Midvale, Ohio. Tuscarawas County Deputies James Martin and Travis Stocker responded to the call.

{¶3}. Deputy Martin later recalled that after about five minutes of the deputies' knocking on the door, Cynthia S. opened up the garage and presented herself as follows: " *** [S]he was standing there crying, upset and she started to explain to us that [appellant] had knocked her down and threatened to kill her and that he was hiding inside the residence." Tr. at 23.¹ Deputy Martin also observed that Cynthia "had a mark on her knee, some scuffs." Tr. at 24. He also observed that although Cynthia appeared to have been drinking on the night in question, "she wasn't stumbling, falling down, she wasn't hanging onto things to keep her balance." Tr. at 31. He specifically recalled that she never told him that she had stumbled over anything on the floor. Tr. at 32.

{¶4}. Deputy Stocker spoke to appellant, who denied that he had pushed or assaulted Cynthia, instead reporting that she had fallen. Tr. at 36-37. The deputies documented the injuries to Cynthia in their report, as well as via photographs. Cynthia later testified that one of her knees was swollen and had abrasions, while the other knee was bruised. Tr. at 14.

¹ The trial court allowed the statement as an excited utterance exception to the hearsay rule.

{¶5}. Cynthia also made a written statement at the time of the incident. It included the following language: " *** Charles Hughes pushed me down and I fell on my knee. He said he would kill me if he thought I would say anything to the police. I got home, drank three beers, went to bed, then he started on me when he got home ***." See Tr. at 7.

{¶6}. Based on what they had gathered at the scene, the two deputies took appellant into custody. He was charged with first-degree misdemeanor domestic violence. Cynthia also filed for, and was granted, an ex parte Domestic Violence Temporary Protection Order ("DVTPO") against appellant on April 16, 2014.

{¶7}. The matter proceeded to a bench trial in the New Philadelphia Municipal Court on July 2, 2014. When called to the stand, Cynthia did not dispute that she had at least sustained an abrasion injury to her knee on the date in question. Tr. at 6, 9. However, she backed off of her original accusations, indicating that she was "not certain one way or the other" if she had been assaulted by appellant. Tr. at 18. She testified that she didn't recall the night's events, and that "[i]t's just all a big blur to me." Tr. at 9. She noted that she "get[s] brain fog sometimes." Tr. at 15. She also stated she was "very" intoxicated on April 15, 2014, and noted that she has balance issues and sometimes wore orthotic shoes. Tr. at 11. Cynthia also verified that she had written a letter to the trial court indicating that she wanted to "pursue reconciliation" with appellant. Tr. at 17.

{¶8}. After hearing the evidence, the trial court found appellant guilty of domestic violence, and proceeded to sentence him, inter alia, to 180 days in jail.

{¶9}. On July 28, 2014, appellant filed a notice of appeal. He herein raises the following three Assignments of Error:

{¶10}. "I. THE CONVICTION OF CHARLES N. HUGHES WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶11}. "II. THE STATE FAILED TO PROVE THAT MS. STOCKER AND THE DEFENDANT WERE FAMILY OR HOUSEHOLD MEMBERS AS DEFINED BY OHIO REVISED CODE §2925.19(F) [SIC].

{¶12}. "III. THE STATE FAILED TO PROVE THAT THE DEFENDANT CAUSED OR ATTEMPTED TO CAUSE PHYSICAL HARM TO MS. STOCKER IN VIOLATION OF OHIO REVISED CODE §2925.19(A) [SIC]."

I., II., III.

{¶13}. Although appellant's First Assignment of Error is captioned as a "manifest weight" claim, we find his brief thereafter transitions to a "sufficiency of the evidence" argument, and the remainder of his Assignments of Error stay on that path. We note that in Ohio, the legal concepts of sufficiency of the evidence and manifest weight of the evidence are both quantitatively and qualitatively different. See *State v. Williams*, Scioto App.No. 00CA2731, 2001-Ohio-2579, citing *State v. Ricker* (Sept. 30, 1997), Franklin App. No. 97APC01-96, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 678 N.E.2d 541. In essence, appellant herein contends the State failed to prove, as set forth in the domestic violence statute, that Cynthia was a family or household member and that appellant knowingly caused or attempted to cause physical harm to her.

{¶14}. In the interest of justice, we will herein treat appellant's challenges to his conviction as claims of insufficiency of the evidence, and we will consider them

together. See *State v. Gilbert*, 5th Dist. Ashland No. 09 COA 26, 2010-Ohio-2859, ¶12. In reviewing such claims, “[t]he 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* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

"Family or Household Member" Issue

{¶15}. R.C. 2919.25(A) states as follows: “No person shall knowingly cause or attempt to cause physical harm to a family or household member.”

{¶16}. Pursuant to R.C. 2919.25(F)(1)(a)(i), the definition of “family or household member” includes “[a]ny of the following who is residing or has resided with the offender: (i) A spouse, a person living as a spouse, or a former spouse of the offender.”

{¶17}. R.C. 2919.25(F)(2) in turn defines a person living as a spouse as “a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.”

{¶18}. In the case sub judice, it appears undisputed that appellant and Cynthia were never married, have had no children together, and are not blood relatives. Thus, under the circumstances, it was incumbent for the State to prove cohabitation under R.C. 2919.25(F)(2). In *State v. Williams*, 79 Ohio St.3d 459, 465, 683 N.E.2d 1126, 1997–Ohio–79, the Ohio Supreme Court addressed this issue as follows: “[W]e conclude that the essential elements of ‘cohabitation’ are (1) sharing of familial or financial responsibilities and (2) consortium. R.C. 2919.25(E)(2) and related statutes.

Possible factors establishing shared familial or financial responsibilities might include provisions for shelter, food, clothing, utilities, and/or commingled assets. Factors that might establish consortium include mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal relations. ***."

{¶19}. However, the Court clarified its *Williams* holding in *State v. McGlothan*, 138 Ohio St.3d 146, 4 N.E.3d 1021, 2014-Ohio-85, concluding in that case that where the State demonstrated the defendant was the victim's boyfriend and they had lived together for about a year, the State had no obligation to demonstrate the sharing of familial or financial responsibilities and consortium to prove cohabitation. *Id.* at ¶ 15.

{¶20}. In the case sub judice, notwithstanding appellant's own description of Cynthia at page one of his brief as "the Defendant's girlfriend," Cynthia indicated in her trial testimony that she had been living with appellant as of the date of the incident, but she was unsure about "get[ting] back together" with him. Tr. at 5, 17. She agreed that in her earlier letter to the court, she had stated that she wanted to "pursue reconciliation" with appellant. See Tr. at 17. The trial court judge was also aware of Cynthia's pursuit of a DVTPO against appellant. See Tr. at 13. In light of *McGlothan*, we find sufficient evidence was adduced at trial to demonstrate cohabitation for purposes of the domestic violence statute. *Cf. Uhrichsville v. Losey*, 5th Dist. Tuscarawas No. 2005 AP 03 0028, 2005-Ohio-6564, ¶27.

"Physical Harm" Element

{¶21}. In order to find appellant guilty of domestic violence under R.C. 2919.25(A), the trier of fact would have to find beyond a reasonable doubt that he knowingly caused or attempted to cause "physical harm" to a family or household

member. Physical harm to persons is statutorily defined as “any injury, illness, or other physiological impairment, regardless of its gravity or duration.” R.C. 2901.01(A)(3).

{¶22}. In addition to what we have summarized in our recitation of the facts, Cynthia testified, as part of her apparent recantation, that on the night in question there was a cord running across the floor, above the carpet. See Tr. at 18. Furthermore, she recalled that in the days following appellant's arrest, she tripped on the cord multiple times. Tr. at 19-20. Nonetheless, upon review of the record, we find that the undisputed abrasion and other injuries to Cynthia's knees, the presentation of photographs taken at the scene, and the existence of her statements made to the deputies, all viewed in a light most favorable to the prosecution, provided sufficient evidence for the trial court judge to find the element of physical harm caused by appellant beyond a reasonable doubt. *Cf. State v. Kelly*, 8th Dist. Cuyahoga No. 85662, 2006-Ohio-5902, ¶ 31 (holding, in an assault case, that a jury "could test the credibility of the victim's recantation" by referencing photographs of the victim's injuries).

{¶23}. Accordingly, appellant's First, Second, and Third Assignments of Error are overruled.

{¶24}. For the foregoing reasons, the judgment of the New Philadelphia Municipal Court, Tuscarawas County, Ohio, is hereby affirmed.

By: Wise, J.

Hoffman, P. J., and

Delaney, J., concur.

JWW/d 0304