

COURT OF APPEALS
COSHOCTON COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff Appellee

-vs-

RACHEL MCGUIRE

Defendant-Appellant

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JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. Sheila G. Farmer, J.

Hon. Patricia A. Delaney, J.

Case No. 2014 CA 0022

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Municipal Court,
Case No. CRB 1400266

JUDGMENT:

Affirmed

DATE OF JUDGMENT:

June 10, 2015

APPEARANCES:

For Plaintiff-Appellee

ROBERT A. SKELTON
760 Chestnut Street
Coshocton, OH 43812

For Defendant-Appellant

MARK A. PERLAKY
111 West Main Street
Newcomertown, OH 43832

Farmer, J.

{¶1} On January 16, 2014, appellant, Rachel McGuire, reported to Coshocton County Sheriff's Deputy Nancy Wilt that her boyfriend, Dennis Hosfelt, assaulted her seven year old child over a homework dispute on January 9, 2014. Appellant signed a handwritten statement to that effect.

{¶2} On April 11, 2014, appellant signed another handwritten statement, recanting the January 16, 2014 statement. The April statement was presented during the trial of Mr. Hosfelt on May 7, 2014.

{¶3} On May 7, 2014, appellant was charged with falsification in violation of R.C. 2921.13 (Case No. CRB 1400260).

{¶4} On May 9, 2014, appellant was charged with child endangering in violation of R.C. 2919.22 for failing to intervene in the January 9, 2014 incident between her child and Mr. Hosfelt (Case No. CRB 1400266), the underlying case herein.

{¶5} A bench trial commenced on September 12, 2014. By judgment entry filed same date, the trial court found appellant guilty of the child endangering charge and sentenced her to ninety days in jail, suspended in lieu of two years of supervised probation. Appellant was also convicted of the falsification charge in Case No. CRB 1400260 for lying in the April 11, 2014 statement.

{¶6} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶7} "THE TRIAL COURT ERRED IN FINDING APPELLANT GUILTY, AS SAID FINDING WAS BASED ON INSUFFICIENT EVIDENCE."

II

{¶8} "THE TRIAL COURT ERRED IN FINDING APPELLANT GUILTY, AS SAID FINDING WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I, II

{¶9} Appellant claims her conviction for child endangering was against the sufficiency and manifest weight of the evidence as the trial court relied on past incidents of violence/abuse. We disagree.

{¶10} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks*, 61 Ohio St.3d 259 (1991). "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." *Jenks* at paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307 (1979). On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine "whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶11} We note the weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison*, 49 Ohio St.3d 182 (1990).

The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 1997-Ohio-260.

{¶12} Appellant was convicted of child endangering in violation of R.C. 2919.22(A) which states the following:

No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

{¶13} We note during oral argument, defense counsel emphasized, as he did during trial, that the state's position relative to the charges of falsification and child endangering was inconsistent. T. at 18, 41, 48. If appellant lied on January 16, 2014 when she reported the abuse, then there was no abuse. However, we note if appellant's recantation on April 11, 2014 (Plaintiff's Exhibit B), produced during Mr.

Hosfelt's trial on May 7, 2014, was found to be false, then the incident of abuse could have occurred. T. at 5-6.

{¶14} Deputy Wilt testified when appellant reported the incident at the Sheriff's Office on January 16, 2014, appellant admitted to not immediately intervening in the abuse of her child because of fear of being beaten herself by Mr. Hosfelt. T. at 25-26, 37, 39. Appellant submitted a handwritten statement outlining the January 9, 2014 abuse of her child (Plaintiff's Exhibit A). On January 16, 2014, an employee from the Coshocton County Job & Family Services interviewed the child. The child's statements were incorporated in a joint stipulation (Joint Exhibit 1-A). The child told of repeated abuse by Mr. Hosfelt, including an incident that had occurred the previous week. Also presented in Plaintiff's Exhibit C were photographs of the bruises on the child, taken by both appellant and Deputy Wilt. T. at 30-32.

{¶15} Appellant testified her January 16, 2014 statement to Deputy Wilt was false and motivated by rage and revenge for Mr. Hosfelt drinking and talking to other women. T. at 51. Appellant stated whenever Mr. Hosfelt had hit the child in the past, she would intervene and chase Mr. Hosfelt away with a baseball bat. T. at 52, 69-70. On cross-examination, appellant admitted to chasing Mr. Hosfelt away with a baseball bat several times in six years for abusing both her and her child. T. at 53. In fact, appellant chased Mr. Hosfelt away twelve times from January of 2013 to January of 2014. T. at 61. Appellant stated the January 9, 2014 incident was "horse-play." T. at 53, 56-57. Appellant admitted her child's stipulated statements were not lies, but could not explain why the child said such things, stating "I can't read his mind." T. at 57. Appellant obtained a protection order against Mr. Hosfelt about a week after the

January 16, 2014 report. T. at 63-65. Appellant stated in obtaining the protection order, she repeated the lie she had reported on January 16, 2014. T. at 64. Despite the protection order, appellant was attempting to "get back together" with Mr. Hosfelt. T. at 72.

{¶16} At the conclusion of the trial, the trial court made specific findings on the record. T. at 81-83. The trial court found appellant's version of how her child sustained bruises on January 9, 2014 (horse-play) not to be credible. T. at 82. The trial court found appellant's version "impossible for me to believe." *Id.* The trial court concluded the January 9, 2014 abuse of the child had occurred, and by appellant's own admission, she did not intervene (T. at 83):

THE COURT: It's just - - I don't think you understand. You know, I know that her argument is, "Well, gee, I'm a victim of domestic violence; that's why I do this?" But do you know what you're doing is propagating or continuing this course of conduct and allowing it to happen. And then to go to the extent of going to a different court seeking a civil protection order, that just emphasizes to me that, yeah, something really did happen that day and maybe that was the straw that broke the camel's back and maybe she was gonna see the light. But then again, because of six years of her investment in this guy who obviously doesn't care about her or her child, she wants to come in and lie about that.

So the falsification occurred in May when that was filed, April the 11th when the second statement was made. That's a lie. And the child endangering did occur, so I'm finding her guilty of those two incidents.

{¶17} Given Joint Exhibit 1-A and Plaintiff's Exhibit A, the trial court had sufficient evidence to reject appellant's version of "horse-play" regarding the January 9, 2014 incident; therefore, the trial court was correct to accept appellant's admission of failing to intervene and stop the abuse of her child.

{¶18} Upon review, we find sufficient evidence to support the conviction for child endangering, and find no manifest miscarriage of justice.

{¶19} Assignments of Error I and II are denied.

{¶20} The judgment of the Municipal Court of Coshocton County, Ohio is hereby affirmed.

By Farmer, J.

Gwin, P.J. and

Delaney, J. concur.

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