

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DAVID M. PHILLIPS

Defendant-Appellant

: JUDGES:

:

: Hon. William B. Hoffman, P.J.

: Hon. Patricia A. Delaney, J.

: Hon. Craig R. Baldwin, J.

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: Case No. 15-CA-51

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O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Licking County
Municipal Court, Case No. 15CRB00674

JUDGMENT:

AFFIRMED

DATE OF JUDGMENT ENTRY:

March 18, 2016

APPEARANCES:

For Plaintiff-Appellee:

TRICIA M. MOORE
Assistant Law Director
40 W. Main St.
Newark, OH 43055

For Defendant-Appellant:

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Delaney, J.

{¶1} Defendant-Appellant David M. Phillips appeals his conviction and sentence for domestic violence, a first-degree misdemeanor in violation of R.C. 2919.25(A). Plaintiff-Appellee is the State of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} Defendant-Appellant David M. Phillips was charged with domestic violence, a first-degree misdemeanor in violation of R.C. 2919.25(A). It was alleged that Phillips assaulted H.J., his girlfriend and mother of his child.

{¶3} The matter came on for a bench trial at the Licking County Municipal Court. The following facts were adduced at trial.

{¶4} On April 18, 2015, Joyce Ann Dugan testified her daughter H.J. arrived at her mother's residence. Dugan stated when H.J. ran onto the porch of her home, Dugan saw that she was crying and covered in blood. H.J.'s eyes were swollen and starting to turn black and blue. H.J. was crying when she told Dugan that Phillips had hit her multiple times while they were driving in the car. H.J. tried to call 911 while in the car, but Phillips threw her cell phone out of the car when he realized what she was doing. Dugan testified H.J. then took a shower and while H.J. was in the shower, Dugan called 911.

{¶5} Officer Shane Satterfield of the Heath Police Department and Sergeant Jeff Hartford of the Licking County Sheriff's Department were dispatched to Dugan's home. Officer Satterfield testified he observed H.J. and saw fresh bruising on her temple, forehead, and eye area. H.J. was reluctant to speak to the officers at first, but then she spoke about what occurred. Officer Satterfield and Sergeant Hartford viewed the interior H.J.'s car. The officers observed blood splattered all over the car, with the most of the

blood concentrated in the front of the car. Sergeant Hartford took photographs of H.J.'s injuries and the blood on the interior of H.J.'s car. The photographs were entered as exhibits.

{¶6} Phillips testified on his own behalf. Phillips testified that he and H.J. were no longer in a relationship but H.J. dropped by to see him occasionally. On the day of the trial, Phillips drove H.J.'s car to court. Phillips denied he was with H.J. on April 18, 2015. He testified he was in Zanesville on April 18, 2015 and did not come home until April 20, 2015. Phillips said he did not strike H.J. on April 18, 2015.

{¶7} H.J. was subpoenaed to appear as a witness for trial, but she did not appear.

{¶8} The trial court found Phillips guilty of domestic violence. Phillips had a previous conviction for aggravated drug possession in 2014 for which he stated he was on probation. The trial court sentenced Phillips to 180 days in jail and a \$200.00 fine, with costs.

{¶9} It is from this decision Phillips now appeals.

ASSIGNMENTS OF ERROR

{¶10} Phillips raises two Assignments of Error:

{¶11} "I. THE TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING HEARSAY EVIDENCE UNDER THE EXCITED UTTERANCE EXCEPTION TO THE HEARSAY RULE.

{¶12} "II. THE TRIAL COURT ABUSED ITS DISCRETION IN IMPOSING A MAXIMUM JAIL TERM."

ANALYSIS

I. Excited Utterance

{¶13} Phillips argues in his first Assignment of Error that the trial court abused its discretion when it overruled his objection to allowing Dugan testify as to H.J.'s statements to her. We disagree.

{¶14} The State asked Dugan what H.J. said to her when she arrived at her home. Phillips objected on the basis that H.J.'s statements were hearsay and did not fall within the excited utterance exception. The trial court overruled the objection.

{¶15} The admission or exclusion of relevant evidence rests within the sound discretion of the trial court. *State v. Pryor*, 5th Dist. Stark No. 2013CA00016, 2013-Ohio-5693, ¶ 38 citing *State v. Sage*, 31 Ohio St.3d 173, 510 N.E.2d 343 (1987), paragraph two of the syllabus. We review the trial court's decision with an abuse-of-discretion standard. See *State v. Finnerty*, 45 Ohio St.3d 104, 107, 543 N.E.2d 1233 (1989); *State v. Hymore*, 9 Ohio St.2d 122, 128, 224 N.E.2d 126 (1967). A statement which is otherwise considered hearsay may be admissible as an excited utterance when the following four criteria are met: "(1) an event startling enough to produce a nervous excitement in the declarant, (2) the statement must have been made while still under the stress of excitement caused by the event, (3) the statement must relate to the startling event, and (4) the declarant must have personally observed the startling event." *In re C.C.*, 8th Dist. Cuyahoga Nos. 88320, 88321, 2007–Ohio–2226, ¶ 50, citing *State v. Brown*, 112 Ohio App.3d 583, 601, 679 N.E.2d 361 (12th Dist.1996).

{¶16} H.J. drove to her mother's home after the assault in the car. Dugan testified that when H.J. ran up the porch to her home, she was crying and covered in blood. Dugan

observed H.J.'s eyes swelling and starting to turn black and blue. Dugan testified H.J. was crying when she told her that Phillips hit her while they were driving in the car. The car was parked in front of Dugan's home and the interior of the car was splattered with blood. We find the record supports the trial court's decision that H.J.'s statements to Dugan were excited utterances.

{¶17} Phillips's first Assignment of Error is overruled.

II. Sentencing

{¶18} Phillips argues in his second Assignment of Error that the trial court abused its discretion when it imposed a maximum jail term of 180 days. We disagree.

{¶19} Generally, misdemeanor sentencing is within the sound discretion of the trial court and will not be disturbed upon review if the sentence is within the limits of the applicable statute. *State v. Smith*, 9th Dist. Wayne No. 05CA0006, 2006–Ohio–1558, ¶ 21, citing *State v. Pass*, 6th Dist. Lucas No. L–92–017, 1992 WL 386011. See, also, *State v. Chadwick*, 5th Dist. Knox No. 08CA15, 2009–Ohio–2472, ¶ 30. An abuse of discretion implies the court's attitude is unreasonable, arbitrary or unconscionable. *State v. Adams*, 62 Ohio St.2d 151, 404 N.E.2d 144 (1980). Furthermore, there is no requirement that a trial court, in sentencing on misdemeanor offenses, specifically state its reasons on the record. *State v. Harpster*, 5th Dist. Ashland No. 04COA061, 2005–Ohio–1046, ¶ 20.

{¶20} The charge of domestic violence under R.C. 2919.25(A) is a misdemeanor of the first degree, with a possible maximum term of incarceration being six months. See R.C. 2919.25(D)(2).

{¶21} R.C. 2929.21(A) first states that “[a] court that sentences an offender for a misdemeanor * * * shall be guided by the overriding purposes of misdemeanor

sentencing. * * *.” The overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender. R.C. 2929.21(A). In order to achieve those purposes, a sentencing court must consider “the impact of the offense upon the victim and the need for changing the offender's behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.” *State v. Coleman*, 4th Dist. Scioto No. 05CA3037, 2006–Ohio–3200, ¶ 21.

{¶22} In addition, R.C. 2929.21(B) states in pertinent part as follows: “A sentence imposed for a misdemeanor * * * shall be reasonably calculated to achieve the two overriding purposes of misdemeanor sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim, and consistent with sentences imposed for similar offenses committed by similar offenders.”

{¶23} Thus, under R.C. 2929.21(A) and (B), in order to achieve the purposes of protecting the public from future crime and punishing the offender, the sentencing court is to inter alia consider the offender's conduct, the impact of the offender's conduct on the victims, and the consistency of the sentence with sentences for similar offenses.

{¶24} In this case, there is graphic evidence of the physical harm to H.J. caused by Phillips. Both of H.J.'s eyes are bruised and bleeding. There is bruising and redness to her nose. There is blood splattered all over the interior of the car. Phillips told the trial court that he was currently on probation in Perry County.

{¶25} We find the trial court did not abuse its discretion in sentencing Phillips to 180 days in jail.

{¶26} Phillips's second Assignment of Error is overruled.

CONCLUSION

{¶27} The judgment of the Licking County Municipal Court is affirmed.

By: Delaney, J.,

Hoffman, P.J. and

Baldwin, J., concur.