

[Cite as *State v. Banks*, 2005-Ohio-186.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 84281

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	JOURNAL ENTRY
	:	
vs.	:	and
	:	
	:	OPINION
RONALD BANKS	:	
	:	
Defendant-Appellant	:	

DATE OF ANNOUNCEMENT  
OF DECISION:

January 20, 2005

CHARACTER OF PROCEEDING:

Criminal appeal from  
Common Pleas Court  
Case No. CR-446824

JUDGMENT:

AFFIRMED

DATE OF JOURNALIZATION:

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APPEARANCES:

For Plaintiff-Appellee:

WILLIAM D. MASON  
Cuyahoga County Prosecutor  
MATTHEW D. GOLISH, Assistant  
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For Defendant-Appellant:

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ANTHONY O. CALABRESE, JR., J.:

{¶ 1} Defendant-appellant Ronald Banks ("appellant") appeals from the trial court's decision finding him guilty of domestic violence. Having reviewed the arguments of the parties and the pertinent law, we hereby affirm the trial court.

I.

{¶ 2} According to the case, appellant was indicted by the Cuyahoga County Grand Jury for domestic violence in violation of R.C. 2919.25. The victim was alleged to be a family or household member. The single count of the indictment contained a furthermore clause that the appellant was previously convicted of domestic violence on June 26, 1995 in Cleveland Municipal Court, case number 95 CRB 13774. The furthermore specification enhanced the current charge to a fifth-degree felony. Appellant waived his right to a jury trial and tried this case to the bench.

{¶ 3} The trial commenced on February 11, 2004, and on February 12, 2004, the trial court returned a guilty verdict. Appellant was sentenced to a term of nine months on the single count of the indictment. Appellant then filed his notice of appeal and brief on the merits.

{¶ 4} According to the facts, the victim, Andrea Motley ("Andrea"), called the police on May 28, 2003 from 4102 East 138<sup>th</sup> Street in Cleveland. The victim told the dispatcher that she had been in a verbal argument with her live-in boyfriend. Shortly

thereafter, police officers Jim Merritt and Kim Marti arrived at the scene. Andrea told the officers that she and appellant had been involved in a verbal fight that escalated into physical violence. Officer Marti observed that the victim's face was swollen and a large chunk of hair was missing from her head. She further observed a large chunk of the victim's hair on the coffee table.<sup>1</sup>

{¶ 5} Andrea and appellant began fighting over finances, and the victim asked appellant to leave the residence. Appellant responded by taking his clothes and a Playstation game. The appellant and the victim argued about who owned the Playstation game; the victim stated that the game belonged to her daughters.<sup>2</sup> Appellant refused to give the game back and hit the victim, causing injuries to her head, hair, and face.

{¶ 6} An offense/incident report was prepared by Officer Merritt following an interview with the victim. The report stated that appellant "\*\*\* punched [Andrea] several times with a closed fist on [her] head \*\*\* pushed [her] down on the ground and in the process \*\*\* grabbed and ripped out a hand full of hair \*\*\*" and "\*\*\* kicked [her] on her forehead \*\*\*."<sup>3</sup> In the victim's written statement, she accused appellant of punching her, hitting her,

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<sup>1</sup>Tr. 15-16.

<sup>2</sup>Tr. 64.

<sup>3</sup>Trial Ex. A.

pulling out a chunk of her hair, and threatening her before leaving on his bicycle.<sup>4</sup>

II.

{¶ 7} Appellant's first assignment of error states the following: "Defendant/appellant was denied due process of law when the court refused to enter judgment of acquittal as there was no evidence to support the allegations that defendant/appellant committed the crime of domestic violence in violation of Ohio Revised Code Section 2919.25."

{¶ 8} R.C. 2919.25, domestic violence, states the following:

"(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

"(B) No person shall recklessly cause serious physical harm to a family or household member.

"(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

"(D)(1) Whoever violates this section is guilty of domestic violence. \*\*\*

"(F) As used in this section and sections 2919.251 [2919.25.1] and 2919.26 of the Revised Code:

"(1) 'Family or household member' means any of the following:

"(a) Any of the following who is residing or has resided with the offender:

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<sup>4</sup>Trial Ex. 3.

"(i) A spouse, a person living as a spouse, or a former spouse of the offender;

"(ii) A parent or a child of the offender, or another person related by consanguinity or affinity to the offender;

"(iii) A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

"(b) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent.

"(2) *'Person living as a spouse' means 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.'*"

(Emphasis added.)

{¶ 9} Crim.R. 29(A) states the following:

"(A) Motion for judgment of acquittal. The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state's case."

{¶ 10} Appellant argues that he was not guilty of domestic violence because the element of being a family or household member was not proven. We do not find merit in appellant's argument. In the case sub judice, Andrea testified that appellant was her live-in boyfriend for the past four years and that they had been romantically involved for a period of six years.<sup>5</sup> She further testified that the fight was based on "financial stuff."<sup>6</sup> In addition, Andrea had given the appellant keys to the apartment in the past and had replaced a key for appellant when he lost it.<sup>7</sup>

{¶ 11} The evidence also supports the commingling of assets. Andrea testified that appellant owned kitchen appliances and other small items in her home.<sup>8</sup> Furthermore, there was testimony that appellant removed clothing from the house before leaving.<sup>9</sup> Andrea testified that appellant slept at the residence most of the time and only left the residence if they had an argument, thereby establishing consortium.<sup>10</sup>

{¶ 12} Appellant admitted that he previously pled guilty to the identical crime of domestic violence with the identical victim,

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<sup>5</sup>Tr. 56.

<sup>6</sup>Tr. 51.

<sup>7</sup>Tr. 73-74.

<sup>8</sup>Tr. 67.

<sup>9</sup>Tr. 63.

<sup>10</sup>Tr. 80.

Andrea Motley.<sup>11</sup> It is highly unlikely that an individual would plead guilty to a crime, in effect agreeing that all elements of the crime applied, if one of the key elements of the crime did not exist. This admission that Andrea was a family or household member was made on February 23, 2000.<sup>12</sup>

{¶ 13} In summary, Andrea and the appellant were romantically involved for six years, fought over finances, both owned keys to the main door and had commingled assets. Moreover, appellant had his clothing at the residence, slept there most of the time and pled guilty to the identical crime before. We find the lower court's actions to be proper. In addition, we find that the evidence above demonstrates appellant committed the crime of domestic violence in violation of R.C. 2919.25.

{¶ 14} Appellant's first assignment of error is overruled.

### III.

{¶ 15} Appellant's second assignment of error states the following: "Defendant/appellant was acting in self-defense."

{¶ 16} When reviewing a claim by a defendant that evidence supports his claim of self-defense, the manifest weight standard is the proper standard of review because a defendant claiming self-defense does not seek to negate an element of the offense charged, but rather seeks to relieve himself from culpability.

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<sup>11</sup>Tr. 109-110, Case No. 384765.

<sup>12</sup>Tr. 109.

*State v. Martin* (1986), 21 Ohio St.3d 91. The standard of review for a manifest weight challenge is summarized in *State v. Martin* (1983), 20 Ohio App.3d 172, 175, as follows:

\*\*\*\* The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction."

(Citations omitted.)

{¶ 17} The power to reverse a judgment of conviction as against the manifest weight of the evidence must be exercised with caution and in only the rare case in which the evidence weighs heavily against the conviction. *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 18} As previously stated, R.C. 2919.25(A), the domestic violence statute, provides: "No person shall knowingly cause or attempt to cause physical harm to a family or household member." The elements of self-defense are set forth in *State v. Williford* (1990), 49 Ohio St.3d 247, 249. To establish self-defense as an affirmative defense, the defendant must establish the following by a preponderance of the evidence: (1) that he "was not at fault in creating the situation giving rise to the affray"; (2) that he "had a bona fide belief that he was in imminent danger of death or great



bodily harm and that his only means of escape from such danger was in the use of" such force; and (3) that he "must not have violated any duty to retreat or avoid" danger. Id. at 249. "The elements of self-defense are cumulative" and, "if the defendant failed to prove any one of these elements by a preponderance of the evidence, he failed to demonstrate that he acted in self-defense." Id.

{¶ 19} In the case at bar, appellant failed to demonstrate that he was not at fault in creating the situation giving rise to the affray. Here, appellant never indicated that the victim was at fault in creating the situation.<sup>13</sup> Moreover, appellant failed to prove that he had a bona fide belief that he was in imminent danger of death or great bodily harm and that his only means of escape from such danger was in the use of such force.

{¶ 20} In addition, appellant failed to demonstrate, as he was required, that he did not violate any duty to retreat or avoid danger. For example, the appellant in the case at bar only had to relinquish the Playstation game to the victim in order to avoid the violent confrontation that ensued. Instead, he continued the confrontation.

{¶ 21} In addition to failing to meet the elements of self-defense, the trial court made the credibility decision that it believed the victim's testimony and that her version of events was

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<sup>13</sup>Tr. 95-130.

supported by the evidence submitted at trial. The trial court found:

"The Court was impressed with the testimony of the victim in the case, Andrea Motley. It appeared to the court that she was a reluctant witness, but it also appeared that she was sincere, physically upset being here, very soft-spoken, very emotional in her testimony \*\*\*."<sup>14</sup>

{¶ 22} The lower court went on to state:

"By the way, it's just not her word which the Court did believe, but the pictures demonstrate a substantial bruise in and about the right eye. In the Court's opinion, the photograph showing the area of her top of her head where the hair was pulled out, her immediate statements to the police officers, both when she was interviewed and as demonstrated in Defendant's Exhibit A, the narrative report, computer-generated, and it's been testified that it was generated from the original version to the police, it states that: The victim stated on the above date and time she was involved in a verbal argument with her live-in boyfriend. The victim stated this verbal argument turned physical. The victim stated offender punched her several times with a closed fist on the victim's head. The victim stated offender pushed victim down on the ground and in the process the offender grabbed and ripped out a handful of the victim's hair. The victim stated while she was lying on the ground, the offender kicked her in the forehead, and that he left on his bicycle. \*\*\*

"So the victim's version, in this Court's opinion, was corroborated by the immediate statements to the police and the photographs, and there is more than sufficient evidence before the court of the two cohabitating, if you believe the victim's testimony and the Court does believe that, as well as the prior domestic violence conviction as indicated when they were cohabitating earlier and the address given to the police at the time of the drug arrest, which I believe was January 18, 01."<sup>15</sup>

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<sup>14</sup>Tr. 150.

<sup>15</sup>Tr. 151-152.

{¶ 23} This court, reviewing the entire record, weighing the evidence and all reasonable inferences, considered the credibility of the witnesses and determined that the lower court clearly did not lose its way. Therefore, this court finds that appellant did not satisfy the necessary elements to properly claim self-defense as a defense to the crime of domestic violence. Appellant did not act in self-defense.

{¶ 24} Appellant's second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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ANTHONY O. CALABRESE, JR.  
JUDGE

PATRICIA ANN BLACKMON, A.J., and

DIANE KARPINSKI, J.,            CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc. App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct.Prac.R. II, Section 2(A)(1).