

[Cite as *State v. Nordstrom*, 2015-Ohio-1453.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101656

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DANIEL E. NORDSTROM

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-580118-A

BEFORE: S. Gallagher, J., Celebrezze, A.J., and Stewart, J.

RELEASED AND JOURNALIZED: April 16, 2015

ATTORNEY FOR APPELLANT

Thomas A. Rein
Leader Building, Suite 940
526 Superior Avenue
Cleveland, Ohio 44114

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
By: John Patrick Colan
Assistant Prosecuting Attorney
Justice Center - 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, J.:

{¶1} Appellant Daniel Nordstrom appeals his convictions for felonious assault and domestic violence. Upon our review, we affirm the convictions and the sentence that was imposed in this case.

{¶2} On November 22, 2013, appellant was charged under a four-count indictment. Count 1 charged kidnapping in violation of R.C. 2905.01(A)(3); Count 2 charged felonious assault in violation of R.C. 2903.11(A)(1); Count 3 charged felonious assault in violation of R.C. 2903.11(A)(2); and Count 4 charged domestic violence in violation of R.C. 2919.25(A). Appellant entered a plea of not guilty. He waived his right to a jury trial only on Count 4. The case proceeded to trial.

{¶3} The charges arose from an incident that occurred on November 10, 2013. The victim testified that she was in a relationship with appellant, they had been together for three and one-half or four years, and they were residing together in appellant's home with appellant's two young children. The victim testified that although there were no problems when the relationship began, things changed because of appellant's drinking problem and accusations of cheating.

{¶4} According to the victim, on the date of the incident, appellant came home intoxicated, grabbed her by the arm, took her to the bathroom, started making accusations toward the victim, pulled her into the tub, hit her head against the wall of the tub, and started choking her. After appellant let the victim go, she went upstairs. Minutes later, appellant went upstairs, grabbed the victim by her shirt, and kept banging her head

against the closet door and choking her. He wrestled the victim to the ground and was punching her. The victim testified appellant repeatedly hit her with a piece of a metal bed frame. She indicated the attack lasted at least 20 minutes, and there was blood gushing everywhere from her nose. The children witnessed some of the attack.

{¶5} The victim testified that she slept much of the next day, appellant followed her around the house, she was not given the opportunity to call the police, and she missed her father's funeral. On cross-examination, the victim testified she was not being held captive by appellant. She testified that two days later she told appellant she was hurting and having difficulty breathing. She informed appellant she needed to get to the hospital, and appellant told her to tell the hospital she had been "in a bar fight or something." At the hospital, appellant was diagnosed with a nose fracture and a broken rib. She had swelling and bruising consistent with her account of the attack. She also had a bite mark on her back that she testified appellant caused during the attack.

{¶6} At the hospital, the victim provided a consistent statement of the incident, without referencing appellant by name. A domestic violence documentation form was completed. A nurse at the hospital called the police.

{¶7} The responding officer observed the victim's injuries. The victim informed him about appellant beating her. When officers knocked on the door to appellant's home, he did not respond. After gaining permission from the victim to enter, the police arrested appellant. Inside the home, blood was observed on the floor of the upstairs

bedroom, on the floor and walls of the bedroom, on a piece of a metal bed frame, and on sheets found in the washer.

{¶8} No visible injuries were observed on appellant when he was arrested. Appellant was interviewed at the police station. A photograph taken of appellant's head depicted a superficial scratch that did not appear to have broken the skin.

{¶9} The victim testified that she still loved the appellant and that they wrote to each other and spoke on the phone following the incident. In the letters written by appellant, he repeatedly asked the victim to change her story, and also told her not to speak with police or prosecutors and to ignore all subpoenas. In one letter, appellant instructed the victim what to say on each count of the indictment. The victim conceded writing a letter in which she provided an alternate account of the incident and apologized for embellishing. The victim testified this letter was a result of appellant's requests. The victim indicated she was testifying to the truth at trial and that she had cut off all communications with appellant two weeks before trial.

{¶10} The jury reached a verdict of not guilty of kidnapping under Count 1, and guilty of felonious assault as charged in Count 2. Count 3, felonious assault, was dismissed upon a hung jury. The trial court found appellant guilty of domestic violence as charged in Count 4.

{¶11} On June 16, 2014, appellant was sentenced in both this action and in a separate case. In this case, the trial court merged the convictions of felonious assault and domestic violence for sentencing. The state elected to have appellant sentenced for the

felonious assault. The trial court sentenced appellant to six years in prison. The court also imposed three years of postrelease control. Restitution was ordered to the victim in the agreed amount of \$1,000.

{¶12} The trial court proceeded to sentence appellant in Cuyahoga C.P. No. CR-13-581152-A, which involved a separate event and a separate victim. In that case, the trial court imposed a six-month sentence for a domestic violence conviction and ordered the sentence to be served consecutive to the six-year sentence imposed in this action.

{¶13} Appellant timely filed this appeal. He raises four assignments of error for our review. Under his first assignment of error, appellant claims the trial court erred in denying his motion for acquittal.

{¶14} Initially, the state correctly points out that the motion for acquittal was only raised with respect to Count 1, kidnapping. Appellant was found not guilty of that charge. However, insofar as appellant raises a sufficiency challenge to his convictions for felonious assault and domestic violence, we shall address his claim.

{¶15} A claim of insufficient evidence raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. In reviewing a sufficiency challenge, “[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*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶16} R.C. 2903.11(A)(1), felonious assault, provides that “[n]o person shall knowingly * * * [c]ause serious physical harm to another * * *.” Under R.C. 2901.01(A), “serious physical harm” is defined in relevant part as “(d) [a]ny physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement” or “(e) [a]ny physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.”

{¶17} R.C. 2919.25(A), domestic violence, states that “[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member.”

{¶18} The state presented evidence that appellant had been living with appellant for over three years, which was sufficient to establish she was a household member. The victim testified that appellant came home intoxicated, made false accusations against her, and proceeded to bash her head against the wall of the tub and the bedroom closet, punch her, choke her, bite her on the back, and hit her repeatedly with a piece of a metal bed frame. Her injuries included a broken nose, broken rib, bite mark, swelling, and severe bruising. Both witness testimony and exhibits corroborated her testimony. Although appellant argues the victim did not tell medical personnel that appellant caused her injuries, a domestic violence form was completed at the hospital. Further, the victim identified the appellant to police and during her testimony. Upon our review, we find the

state presented evidence that, if believed, was sufficient to allow a reasonable juror to conclude beyond a reasonable doubt that appellant caused serious physical harm to the victim. Appellant's first assignment of error is overruled.

{¶19} Under his second assignment of error, appellant challenges his convictions as being against the manifest weight of the evidence. When reviewing a claim challenging the manifest weight of the evidence, the court, reviewing the entire record, must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Thompkins*, 78 Ohio St.3d at 387, 1997-Ohio-52, 678 N.E.2d 541. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the exceptional case in which the evidence weighs heavily against the conviction. *Id.* A claim that a jury verdict is against the manifest weight of the evidence involves a separate and distinct test that is much broader than the test for sufficiency. *State v. Drummond*, 111 Ohio St.3d 14, 2006-Ohio-5084, 854 N.E.2d 1038, ¶ 193.

{¶20} Appellant again claims that no mention is made in the medical records that he was the cause of the victim's injuries. However, the medical records do indicate that her injuries were caused by domestic violence, the victim told the police that appellant caused her injuries and gave them permission to enter the home to arrest appellant, and the victim testified appellant caused her injuries. The victim testified in detail about

appellant's attack on her, and her testimony was consistent with what police observed in the home and the physical evidence presented at trial, including photographs of her injuries.

{¶21} Appellant further argues that the victim communicated with him despite the restraining order against appellant, and in one letter she changed her story and indicated she was embellishing. The record reflects that the state produced multiple letters appellant wrote to the victim asking the victim to change her story, including one that provided the details used in the letter written by the victim, and he also told the victim not to cooperate with police or the prosecutor and to ignore subpoenas. Further, there is no evidence in the record that appellant ever sought any medical treatment, he had no visible injuries upon his arrest, and the cut to his head was a superficial cut that did not appear to have broken the skin or to have caused bleeding.

{¶22} Upon a complete review of the record, we are unable to find appellant's convictions are against the manifest weight of the evidence. His second assignment of error is overruled.

{¶23} Under his third assignment of error, appellant claims he was deprived of due process and a fair trial through incomplete, inaccurate, and misleading jury instructions. Appellant refers to the claimed erroneous instructions in isolation. However, jury instructions must be viewed as a whole to determine whether they contain prejudicial error. *State v. Fields*, 13 Ohio App.3d 433, 436, 469 N.E.2d 939 (8th Dist.1984).

{¶24} First, appellant refers to an instruction that was given to the jury in the middle of trial to the effect that the defendant is presumed innocent “until all of the evidence is in[.]” Appellant argues the court misstated the presumption of innocence and burden of proof set forth in R.C. 2938.08.

{¶25} The instruction was given after the trial court was informed that one of the alternate jurors made a statement to the effect of “I would have a hard time looking at any defendant as innocent.” The court was reminding the jurors that any conclusions as to appellant’s guilt were not to be reached until all the evidence was heard. The court properly instructed the jury on the burden of proof and the presumption of innocence during its opening and closing instructions to the jury, and written instructions also were provided to the jury.

{¶26} Second, appellant claims the trial court omitted the word “serious” when instructing the jury on Count 2 with regard to the requisite amount of harm for felonious assault, which requires “serious physical harm.” A review of the record reflects that the omission occurred only once and that the trial court proceeded to repeatedly refer to “serious physical harm” when instructing the jury on the offense. Additionally, written instructions also were provided to the jury and there was ample evidence in the record demonstrating appellant caused the victim to suffer serious physical harm.

{¶27} Finding no prejudicial error occurred, appellant’s third assignment of error is overruled.

{¶28} Under his fourth assignment of error, appellant claims the trial court erred by ordering him to serve a consecutive sentence without making the appropriate findings required by R.C. 2929.14 and H.B. No. 86. This assignment of error is misplaced as the consecutive sentence was imposed in Cuyahoga C.P. No. CR-13-581152-A. The trial court held a joint sentencing hearing in the two cases. In this action, the court imposed a six-year prison sentence with credit for jail-time served. The trial court proceeded to impose a six-month prison sentence in the other action and ordered that sentence to be served consecutive to the sentence imposed in this case. Thus, the challenge properly lies in the appeal of the other action. Appellant's fourth assignment of error is overruled.

{¶29} Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas court to carry this judgment into execution. The defendant's convictions 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.

SEAN C. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., A.J., and
MELODY J. STEWART, J., CONCUR