

[Cite as *State v. Batie*, 2015-Ohio-762.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101234

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

MYAH EVANS BATIE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-577133-A

BEFORE: Stewart, J., Kilbane, P.J., and Boyle, J.

RELEASED AND JOURNALIZED: March 5, 2015

ATTORNEY FOR APPELLANT

Rick L. Ferrara
2077 East 4th Street, Second Floor
Cleveland, OH 44114

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor

Anthony Miranda
Assistant County Prosecutor
Justice Center, 9th Floor
1200 Ontario Street
Cleveland, OH 44113

MELODY J. STEWART, J.:

{¶1} On March 11, 2014, a jury convicted Myah Evans Batie of domestic violence in violation of R.C. 2919.25(A) with a prior conviction specification. The charge arose out of a physical altercation between Batie and her husband, where the husband called 911 for assistance.

{¶2} Batie appeals her conviction on grounds that the court allowed improper opinion testimony to be introduced at trial, and that the jury's verdict is against the manifest weight of the evidence. For the following reasons, we affirm the decision of the trial court.

{¶3} In her first assignment of error, Batie claims that the trial court abused its discretion by allowing police officer, Todd Simpson, to give his opinion on who he considered to be the initial aggressor in the altercation. Batie argues that the officer's testimony opined on the veracity of her claim that she was not the primary physical aggressor but was rather acting in self-defense. Batie claims that this determination is rightfully within the province of the jury.

{¶4} Evid.R. 701, governing the opinion testimony of lay witnesses, states:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

{¶5} While lay witnesses may provide the jury with helpful information based on their own personal observations, the jury, not the witness, has the sole privilege of assessing the credibility and veracity of the witnesses and evidence. Therefore, a police officer's opinion regarding the truthfulness of another witness is inadmissible. *See State v. Potter*, 8th Dist. Cuyahoga No. 81037, 2003-Ohio-1338, ¶ 39; *State v. Miller*, 2d Dist. Montgomery No. 18102, 2001 WL 62793, *5 (Jan. 26, 2001); *see also State v. Boston*, 46 Ohio St.3d 108, 129, 545 N.E.2d 1220 (1989) (an expert may not express opinion of a child declarant's veracity).

{¶6} A police officer may, however, testify regarding who is the primary physical aggressor, if that testimony is designed to establish the reasons why a police officer reacted in a particular way towards one party and not the other. As one court explained, "[t]he issue of who the primary aggressor is in an altercation is not an element of domestic violence. Rather, it relates to the proper procedure a police officer should follow when making an arrest in a domestic violence case." *State v. Boldin*, 11th Dist. Geauga No. 2007-G-2808, 2008-Ohio-6408, ¶ 78. *Boldin* further explained that R.C. 2935.03(B)(3)(b) requires police officers to seek an arrest warrant for the party they have reason to believe is the primary physical aggressor. *Id.* at ¶ 79. Therefore, the issue of who is the primary physical aggressor is relevant to the reasons why an officer proceeded on charging the defendant.

{¶7} In domestic violence cases, an officer's testimony regarding the primary physical aggressor does not invade the province of the jury because the officer is not opining on the ultimate issue in the case. However, the primary physical aggressor inquiry becomes increasingly more important to the outcome of a case when a defendant asserts a claim of self-defense. *Accord Id.* at ¶ 81.

{¶8} A claim of self-defense requires the defendant prove by a preponderance of the evidence that (1) she “was not at fault in creating the situation giving rise to the affray”; (2) that she “had a bona fide belief that [s]he was in imminent danger of death or great bodily harm and that [her] only means of escape from such danger was in the use of such force; and (3) that she did not violate any duty to retreat or avoid danger.” *State v. Williford*, 49 Ohio St.3d 247, 249, 551 N.E.2d 1279 (1990). The first prong of the test asks, in essence, whether the defendant was the initial aggressor. While the primary physical aggressor inquiry is not necessarily the same as whether a person was the initial aggressor, the primary aggressor question can nonetheless undermine a claim of self-defense. This is especially true when an officer’s testimony goes beyond the primary aggressor inquiry and treads into the realm of who initiated the altercation. That is exactly what happened in this case.

{¶9} Here, the officer testified on direct examination as follows:

Q. And when you respond to a domestic violence call, is it your duty to determine who is the primary physical aggressor?

A. Yes, it is.

Q. Based on your conversation in speaking with the victim * * * outside, in speaking with the defendant inside, your observations, what did you conclude?

A. The observations of the evidence proved that Miss Batie —

Defense Counsel: Objection.

The Court: Overruled.

A. Miss Evans started the disturbance, continued and assaulted and injured [her husband].

Q. An what was your basis for coming to that conclusion?

A. His bruising obviously on his face, the scratches, bite marks on his arm, and I think his leg.

{¶10} A careful review of the record in this case establishes that Officer Simpson did opine on an ultimate issue in the domestic violence defense. When asked what conclusions he drew based on his observations, Simpson responded by saying that the observations of the evidence *proved* that Batie “started the disturbance, continued, and assaulted and injured,” her husband. (Emphasis added.) Simpson did not simply testify as to the reason why he treated Batie as the primary physical aggressor and choose to proceed with charging her — testimony that would otherwise be admissible under Evid.R. 701. Rather, Simpson asserted that his observations proved Batie started the affray. This is exactly the type of improper testimony that must be omitted from trial, and we find that the trial court abused its discretion by allowing it.

{¶11} Notwithstanding our determination that the trial court abused its discretion, we must nevertheless overrule the assignment of error because the testimony amounted to harmless error. Crim.R. 52(A) instructs that any error, defect, irregularity or variance which does not affect the substantial rights of the defendant shall be disregarded. The term “substantial rights” has been interpreted to require that the error be prejudicial — that is that it must have affected the outcome of the trial court proceedings. *State v. Fisher*, 99 Ohio St.3d 127, 2003-Ohio-2761, 789 N.E.2d 222, ¶ 7.

{¶12} Here, it cannot be said that allowing the testimony resulted in prejudice to the defendant. At trial, the state introduced numerous photographic exhibits detailing the extent of the husband's injuries. Many of these exhibits detailed what appeared to be numerous, severe, scratch marks down the length of the husband's face. The photos also depicted a large burn mark on his forearm — which corroborated the husband's testimony that Batie attacked him with a hot iron. Other photos depicted what appeared to be bite marks on the husband's upper arm, and pictures showing a bloody, swollen lip. Further, Simpson testified that when he arrived at the Batie household, the appellant did not have any visible marks on her that would indicate that her husband had been physical with her. In fact, the only evidence supporting Batie's claim that she was acting in self-defense, was her own trial testimony. Therefore, even if the trial court had excluded Simpson's improper testimony, it cannot be said that the exclusion would have had any effect on the outcome of the case. Batie's first assignment of error is overruled.

{¶13} In her second assignment of error, Batie argues that the jury's verdict was against the manifest weight of the evidence. In a manifest weight analysis, an appellate court "reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and * * * resolves conflicts in the evidence." *State v. Smith*, 8th Dist. Cuyahoga No. 100204, 2014-Ohio-2057, ¶ 26, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). An appellate court may not merely substitute its view for that of the jury, but must find that "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." *Smith* at ¶ 26, quoting *Thompkins* at 387. When analyzing a manifest weight challenge, appellate courts must give special deference to the conclusion reached by the trier of fact. *Thompkins* at 390 (Cook, J., concurring). Accordingly,

reversal on manifest weight grounds is reserved for “the exceptional case in which the evidence weighs heavily against the conviction.” *Id.* at 387.

{¶14} We cannot say that this is the exceptional case that warrants reversal because the jury clearly lost its way. While contradictory testimony was presented by both the victim and the defendant at trial, the pictures of the victim’s injuries, together with the fact that Officer Simpson testified that there was not a mark on the appellant, is enough for a jury to conclude that Batie committed an act of domestic violence against her husband and was not acting in self-defense. Batie’s second assignment of error is also overruled.

{¶15} Judgment affirmed.

It is ordered that appellee recover of 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 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.

MELODY J. STEWART, JUDGE

MARY EILEEN KILBANE, P.J., and
MARY J. BOYLE, J., CONCUR