

[Cite as *Cleveland v. Aguilera*, 2017-Ohio-5578.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 104852

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

SHEILA AGUILERA

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2016 CRB 002100

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

RELEASED AND JOURNALIZED: June 29, 2017

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MELODY J. STEWART, J.:

{¶1} The court found defendant-appellant Sheila Aguilera guilty of criminal damaging, a second-degree misdemeanor, for breaking glass and damaging the outside door of a duplex owned by the landlord-victim and rented by Aguilera's former boyfriend. Aguilera assigns three errors on appeal: that the court improperly allowed the city of Cleveland to introduce irrelevant other acts testimony, that defense counsel failed to ensure a separation of witnesses and make various objections, and that the court's verdict was against the manifest weight of the evidence.

I. Other Acts Testimony

{¶2} Aguilera first complains that the court erred by allowing the landlord to testify that five months before the events charged in this case, Aguilera previously damaged the inside door to the boyfriend's apartment. Aguilera argues that the city offered this testimony for the sole purpose of proving that she had a propensity to damage property.

{¶3} Standing alone, testimony that Aguilera had previously damaged the inside door to the former boyfriend's unit was irrelevant to proving that she damaged the outside door to the duplex and was inadmissible under Evid.R. 404(B), which states that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." However, the transcript shows that Aguilera first elicited testimony on the subject, so she invited the error.

{¶4} In her cross-examination of the landlord, defense counsel asked, “[w]as there ever an issue with the inside unit door having been broken in [the former boyfriend’s] unit?” The landlord replied that there had been an incident and that the former boyfriend paid to repair the damaged door. Defense counsel then asked the landlord to describe the extent of the damage sustained by the door, specifically “on the previous time where there was issues with the door[.]” The landlord replied that the door had been “busted in half.”

When asked how that happened, he replied that “it was broken from the outside in.” On redirect examination, the city asked the landlord if he knew who caused the damage to the door in the prior incident. The landlord said he had been told who caused the damage, but that he did not have personal knowledge of the fact. On direct examination, the city had the former boyfriend testify that Aguilera had been to the house after their relationship terminated and that “she went upstairs and kicked the door down.”

{¶5} “Invited error” is an error of commission (as opposed to plain error in which a party failed to act) where a party tries to take advantage of an error that the party induced the trial court to make. *State v. Smith*, 148 Ohio App.3d 274, 2002-Ohio-3114, 772 N.E.2d 1225, ¶ 30 (8th Dist.). Aguilera first brought up the subject of the door to the former boyfriend’s apartment having been broken. Having done so, she cannot complain that the city elicited testimony from the former boyfriend stating his belief that she caused the damage to the door.

II. Ineffective Assistance of Counsel

{¶6} The second assignment of error complains that defense counsel failed to seek a separation of the witnesses at trial and failed to object to a leading question in which the city assumed that Aguilera was banging on the glass part of the front door.

{¶7} The basis for Aguilera's claim that the court failed to separate the witnesses is a statement by defense counsel made to the landlord at the start of cross-examination in which he said, "[y]ou already heard me introduce myself to [the neighbor] * * *." From this statement, Aguilera deduces that all three witnesses were present in the courtroom.

{¶8} Assuming without deciding that defense counsel's statement indicates that all of the witnesses were present throughout trial, we find that defense counsel did not violate an essential duty by failing to seek a separation of witnesses nor has Aguilera shown any prejudice. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Only one witness, the neighbor, placed Aguilera at the front door when the offense occurred. The city's other two witnesses, the landlord and the former boyfriend, both testified that they were not present at the time Aguilera damaged the front door. Their testimony could not have been affected by listening to the neighbor's testimony.

{¶9} We likewise find no prejudice from defense counsel’s failure to object to the city’s question to the neighbor on direct examination about Aguilera “hitting this door and the windows.” In cross-examination of the neighbor, defense counsel asked her “did you actually see the physical act of glass breaking as the defendant was standing there?” The neighbor replied, “no.” The city’s question could not have changed the course of the trial.

III. Manifest Weight

{¶10} Aguilera’s third assignment of error is that the court’s verdict is against the manifest weight of the evidence because the greater weight of the evidence showed that she did not act knowingly to cause substantial harm to the landlord’s property.

{¶11} Aguilera conceded in opening statement to the court that she was present at the landlord’s house. And, at no point did she dispute the evidence that the front door had been damaged (the landlord testified that he would have to replace the entire door at a cost of \$850).

{¶12} Aguilera denied causing any damage to the property, and it is true that none of the city’s witnesses actually saw her damage the door. However, the neighbor testified that she saw Aguilera “banging on” the front door with what might have been a small cooking pot. The neighbor testified that she saw that some glass on the door had been broken and that there was fresh blood on the storm door, as though someone had just received a cut. In addition, the neighbor testified that she saw a broken, solar light on the ground. These events caused her to call the police.

{¶13} There was no question that Aguilera had been angry with the former boyfriend for terminating their relationship. And, Aguilera gave the court nothing to counter the evidence that she was banging on the front door with something. These facts show that Aguilera has not met the very high standard of showing that the trial court lost its way and created a miscarriage of justice by finding her guilty. *State v. Otten*, 33 Ohio App.3d 339, 340, 515 N.E.2d 1009 (9th Dist.1986).

{¶14} 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 Cleveland Municipal Court to carry this judgment into execution.

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

MELODY J. STEWART, JUDGE

KATHLEEN ANN KEOUGH, A.J., and
SEAN C. GALLAGHER, J., CONCUR