[Cite as *State v. Harris*, 2010-Ohio-1081.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO Appellee v. ISAIAH HARRIS Appellant	C.A. Nos. 09CA009605 09CA009606 09CA009607 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO CASE Nos. 08CR076357 08CR075721 08CA077230

DECISION AND JOURNAL ENTRY

Dated: March 22, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Isaiah Harris allegedly beat up the mother of his children on two occasions and, on another occasion, forced her to perform fellatio on him. The Grand Jury indicted him for domestic violence, violating a protection order, felonious assault, kidnapping, rape, aggravated burglary, and intimidation. After Mr. Harris waived his right to a jury, the charges from each incident were consolidated for trial. The trial court found him guilty of domestic violence, violating a protection order, rape, aggravated burglary, and intimidation. It sentenced him to 23 1/2 years in prison. Mr. Harris has appealed, arguing that his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence. This Court affirms because there is sufficient evidence to support his convictions and they are not against the manifest weight of the evidence.

FACTS

{¶2} Mr. Harris started dating K.T. when they were 16 years old. They have three children together. According to K.T., they were living together on March 26, 2008, when they had an argument and she told him to leave. She said that he punched her and, after she was on the ground, kicked her in the head. She suffered a busted lip and bruising around her nose. According to Mr. Harris, he was dating another woman at the time. He said that he, K.T., and the new girlfriend met that day and that K.T. was injured when the two women began fighting. He said that K.T. blamed him for her injuries because she was angry that he was with someone else. The Grand Jury indicted him for domestic violence and felonious assault.

{¶3} Following that incident, a municipal court judge issued a temporary protection order, prohibiting Mr. Harris from committing acts of abuse against K.T. According to K.T., however, on June 30, 2008, Mr. Harris came to her house and began arguing with her about her having lied to him about a trip she had taken with a friend. During the argument, he punched, choked, and kicked her. He also swung a hammer around declaring that he was going to "bash [her] brains in with it." According to Mr. Harris, K.T. came over to his apartment that day and got into a fight with another woman he was dating. The Grand Jury indicted him for domestic violence and violating a protection order. After the incident, the municipal court issued another temporary protection order, prohibiting Mr. Harris from coming near K.T. or having any contact with her.

{¶4} K.T. said that, on November 12, 2008, Mr. Harris called her and told her that he wanted to see her. Because she was about to go to bed, she told him no and hung up. A few minutes later, he kicked open the door of her house. She met him on the staircase, and they went downstairs together to the living room. According to K.T., he pressed the blade of a pocket knife

against her face and made her perform fellatio on him. After it was over, he told her that, if they could not be together, then they might as well just kill each other. He refused to leave at first because he thought she would again report what had happened to the police. He also told her that, if he found out that she had been seeing anyone else, he would kill her. According to Mr. Harris, he did not go to K.T.'s house that day. He alleged that she had fabricated her entire story. The Grand Jury indicted him for kidnapping, rape, aggravated burglary, intimidation, domestic violence, and violating a protection order.

{¶5} Mr. Harris waived his right to a jury trial and moved to have the cases tried together. Regarding the March 2008 incident, the trial court found him guilty of domestic violence. Regarding the June 2008 incident, it found him guilty of domestic violence and violating a protection order. Regarding the November 2008 incident, it found him guilty of rape, aggravated burglary, intimidation, domestic violence, and violating a protection order.

SUFFICIENCY

{¶6} Mr. Harris's assignment of error is that his convictions are not based on sufficient evidence and are against the manifest weight of the evidence. Whether a conviction is supported by sufficient evidence is a question of law that this Court reviews de novo. *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997); *State v. West*, 9th Dist. No. 04CA008554, 2005-Ohio-990, at ¶33. This Court must determine whether, viewing the evidence in a light most favorable to the prosecution, it could have convinced the average finder of fact of his guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991). When a defendant argues that his convictions are against the manifest weight of the evidence, however, this Court "must review the entire record, 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[s] must be reversed and a new trial ordered." *State v. Otten*, 33 Ohio App. 3d 339, 340 (1986). "Inasmuch as a court cannot weigh the evidence unless there is evidence to weigh," this Court will consider Mr. Harris's sufficiency argument first. *Whitaker v. M.T. Automotive Inc.*, 9th Dist. No. 21836, 2007-Ohio-7057, at ¶13.

{¶7} Regarding Mr. Harris's convictions for domestic violence, under Section 2919.25(A) of the Ohio Revised Code, "[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member." In addition, "[n]o 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." R.C. 2919.25(C). The definition of "[f]amily or household member" includes "[t]he natural parent of any child of whom the offender is the other natural parent . . . ." R.C. 2919.25(F)(1)(b). "'Physical harm to persons' means any injury, illness, or other physiological impairment, regardless of its gravity or duration." R.C. 2901.01(A)(3). "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶8} Mr. Harris admitted that he has three children with K.T. Accordingly, they are members of the same family or household. R.C. 2919.25(F)(1)(b). K.T. testified that, on March 26, 2008, Mr. Harris punched and kicked her, busting her lip and bruising the skin around her nose. She said that, on June 30, 2008, he punched, kicked, and choked her, causing rug burns and her eyes to swell shut. He also swung a hammer around, threatening to strike her with it. She said that, on November 12, 2008, he threatened her with a 5- to 6-inch long pocketknife and

scraped the blade against the side of her head. There is evidence, therefore, that Mr. Harris caused or threatened to cause physical harm to K.T. during each incident. It was reasonable for the trial court to infer that Mr. Harris knew that his actions were threatening or would cause physical harm to K.T. His convictions for domestic violence are supported by sufficient evidence.

{¶9} Regarding violating a protection order, under Section 2919.27(A)(1), "[n]o person shall recklessly violate the terms of . . . [a] protection order issued . . . pursuant to section 2919.26 . . . of the Revised Code." "A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist." R.C. 2901.22(C). "When recklessness suffices to establish an element of an offense, then knowledge or purpose is also sufficient culpability for such element." R.C. 2901.22(E).

{¶10} After the March 2008 incident, the Lorain Municipal Court issued a temporary protection order under Section 2919.26, restraining Mr. Harris "from committing acts of abuse or threats of abuse against [K.T.]." Abuse generally means "[p]hysical or mental maltreatment, often resulting in mental, emotional, sexual, or physical injury." Black's Law Dictionary 10 (8th ed. 2004). There was evidence that Mr. Harris punched, kicked, and choked K.T. during the June 30, 2008, incident and that his actions resulted in physical injury to her. After that incident, the municipal court issued another temporary protection order, prohibiting Mr. Harris from abusing or communicating with K.T. There was evidence, however, that, on November 12, 2009, he contacted her and threatened her with a pocketknife. The court could infer that Mr.

Harris knew that his actions would violate the protection orders. Accordingly, his convictions for violation of a protection order are supported by sufficient evidence.

{¶11} Regarding rape, under Section 2907.02(A)(2), "[n]o person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force." "'Sexual conduct' means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex . . . ." R.C. 2907.01(A)(1). "'Force' means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." R.C. 2901.01(A)(1). "A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature." R.C. 2901.22(A). K.T. said that Mr. Harris pressed a knife against her head and forcibly made her perform fellatio on him. Accordingly, there was sufficient evidence that he purposely compelled her to engage in sexual conduct by force or threat of force.

{¶12} Regarding aggravated burglary, under Section 2911.11(A)(1) & (2), "[n]o person, by force . . . shall trespass in an occupied structure . . . , when another person other than an accomplice of the offender is present, with purpose to commit in the structure . . . any criminal offense, if . . . [t]he offender inflicts, or attempts or threatens to inflict physical harm on another [or] . . . [t]he offender has a deadly weapon . . . on or about the offender's person or under the offender's control." A person trespasses under Section 2911.11(A) if he knowingly enters or remains on the land or premises of another without privilege to do so. R.C. 2911.10; R.C. 2911.21(A)(1). "'Occupied structure' means any house . . . which . . . is maintained as a permanent or temporary dwelling, . . . is occupied as the permanent or temporary habitation of

any person, . . . [or,] [a]t the time, any person is present or likely to be present in it." R.C. 2909.01(C); R.C. 2911.11(C)(1). "'Deadly weapon' means any instrument, device, or thing capable of inflicting death, and designed or specially adapted for use as a weapon, or possessed, carried, or used as a weapon." R.C. 2911.11(C)(2); R.C. 2923.11(A).

{¶13} According to K.T., Mr. Harris asked if he could come over to see her, but she told him no. A few minutes later, he kicked open the door of her house and forced her to perform fellatio on him while holding a knife to her head. There was evidence, therefore, that Mr. Harris knowingly trespassed in K.T.'s dwelling by force with purpose to commit a criminal offense and threatened to physically harm her. There was also evidence that Mr. Harris knowingly trespassed in K.T.'s dwelling by force with purpose to commit a criminal offense and had possession of a deadly weapon. His convictions for aggravated burglary are supported by sufficient evidence.

{¶14} Regarding intimidation, under Section 2921.03(A), "[n]o person, knowingly and by force, [or] by unlawful threat of harm to any person or property, . . . shall attempt to influence, intimidate, or hinder a . . . witness in the discharge of the person's duty." "While the intimidation statute does not provide a definition of 'witness,' this Court has defined 'witness' for intimidation purposes as a person who has factual knowledge relevant to the proceedings." *State v. Rivera-Rodriguez*, 9th Dist. No. 07CA009154, 07CA009166, 2008-Ohio-1461, at ¶24. In addition, while the statute does not define "unlawful threat," this Court has defined it in this context as "[n]ot authorized by law; illegal" or "criminally punishable[.]" *Id*. at ¶25. (quoting Black's Law Dictionary 1574 (8th ed. 2004)).

{¶15} During the November 2008 incident, Mr. Harris threatened to kill K.T. twice. Although he appears to have made the threats because of his despair about not being able to get

back together with K.T. and his desire to be the only man in her life, he also refused to leave her house until she promised that she would not report his crimes to the police. The trial court, therefore, could have reasonably inferred that his threats were also meant to intimidate her from testifying against him. Accordingly, his intimidation conviction is supported by sufficient evidence. To the extent that his assignment of error is that his convictions are not supported by sufficient evidence, it is overruled.

MANIFEST WEIGHT

{¶16} Mr. Harris has also argued that his convictions are against the manifest weight of the evidence. He has noted that K.T. admitted that she continued a sexual relationship with him after the first two incidents and that she visited him in jail ten times after the third incident. According to him, her admissions undermine her credibility. He has also noted that he offered an alternative explanation for how she obtained the injuries she suffered in the first two incidents. This Court further notes that K.T. said she is willing to lie if it will benefit her.

{¶17} This Court has reviewed the entire record and concludes that the trial court did not lose its way. Although K.T. said that she continued to have a consensual sexual relationship with Mr. Harris after he beat her up, she said that he had never held a knife to her head during sex before the November 2008 incident. She explained that she visited Mr. Harris in jail because they have three children together and she wanted to let them see him. She also explained that the reason she lied to Mr. Harris about taking a trip with a friend was to avoid upsetting him and making things worse between them. The trial court was entitled to disregard the explanation that Mr. Harris gave for K.T.'s injuries, especially since he could not remember the full names or addresses of the girlfriends he said had caused the injuries. Regarding the November 2008 incident, it was appropriate for the court to disbelieve his testimony that he was not at K.T.'s

house that day because the State played a tape recording of him telling a police officer that he was at her house. To the extent that Mr. Harris's assignment of error is that his convictions are against the manifest weight of the evidence, it is overruled.

CONCLUSION

{¶18} Mr. Harris's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. The judgment of the Lorain County Common Pleas Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

PAUL A. GRIFFIN, attorney at law, for appellant.

DENNIS P. WILL, prosecuting attorney, and AMY IOANNIDIS BARNES, assistant prosecuting attorney, for appellee.