

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 09CA009544

Appellee

v.

MARCELLUS TYRONE PAGE

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 08CR075096

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 7, 2010

WHITMORE, Judge.

{¶1} Defendant-Appellant, Marcellus Page, appeals from his conviction in the Lorain County Court of Common Pleas. This Court affirms.

I

{¶2} On December 25, 2007, Page arrived at the home of Caitlin Natal, the nineteen-year old mother of his daughter. Natal became angry with Page because he did not bring Christmas presents for their daughter, and the two began to fight. Police officers from the Elyria Police Department were dispatched to Natal's home based on a call that a man was pounding on the door of the property. When police arrived, Natal was extremely upset, shaken, and crying. She told one of the officers that Page had punched and choked her. Officers noticed red marks and swelling on Natal's face and neck. When the officers investigated further, they also discovered Page had an active warrant. The officers took Page into custody.

{¶3} On February 13, 2008, a grand jury indicted Page on one count of domestic violence, in violation of R.C. 2919.25(A). The matter proceeded to a bench trial on October 27, 2008. The court found Page guilty and sentenced him to community control. Page now appeals from his conviction and raises three assignments of error for our review.

II

Assignment of Error Number One

“THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO SUPPORT A FINDING BEYOND A REASONABLE DOUBT THAT APPELLANT WAS GUILTY OF DOMESTIC VIOLENCE.”

{¶4} In his first assignment of error, Page argues that his conviction is based on insufficient evidence. Specifically, he argues that the State failed to prove Natal suffered any physical harm or that Page acted knowingly. We disagree.

{¶5} In order to determine whether the evidence before the trial court was sufficient to sustain a conviction, this Court must review the evidence in a light most favorable to the prosecution. *State v. Jenks* (1991), 61 Ohio St.3d 259, 274. Furthermore:

“An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt. The 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.” *Id.* at paragraph two of the syllabus; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386.

“In essence, sufficiency is a test of adequacy.” *Thompkins*, 78 Ohio St.3d at 386.

{¶6} R.C. 2919.25(A) provides that “[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member.” “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). “‘Physical harm’ *** means any injury, *** regardless of its gravity or duration.” R.C. 2901.01(A)(3). The phrase “family 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).¹

{¶7} Page only challenges the State’s production of evidence as to two of the foregoing elements. He argues that the State failed to present sufficient evidence that he caused Natal physical harm and that he acted knowingly. Officer Eric Grove of the Elyria Police Department testified that when he arrived at Natal’s home, she was “physically shaking, upset, [and] crying.” Officer Grove testified that Natal told him that Page had punched and choked her. He observed red marks and swelling on her cheek and neck and photographed the marks. The photographs that the State and defense counsel introduced depicted red marks on the right side of Natal’s face and the right side of her neck. The victim impact statement that Natal completed also indicated that she suffered a physical injury in the form of “red marks on [her] neck.”

{¶8} Based on the foregoing items, the State produced sufficient evidence on Page’s domestic violence charge at trial. Officer Grove observed a physical injury to Natal, which Natal explained was a result of Page punching and choking her. The photographs corroborated Officer Grove’s testimony. A rational trier of fact could have concluded that Page knowingly engaged in conduct that caused Natal physical harm. Page’s argument that his conviction is based on insufficient evidence lacks merit.

Assignment of Error Number Two

“APPELLANT’S DOMESTIC VIOLENCE CONVICTION IS AGAINST THE
MANIFEST WEIGHT OF THE EVIDENCE.”

¹ The former version of the statute contained the same definition for the phrase “family or household member.” Former R.C. 2919.25(F)(1)(b).

{¶9} In his second assignment of error, Page argues that his conviction is against the manifest weight of the evidence. Specifically, he argues that the State did not present persuasive evidence that he committed domestic violence. We disagree.

{¶10} In determining whether a conviction is against the manifest weight of the evidence an appellate court:

“[M]ust 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 must be reversed and a new trial ordered.” *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

A weight of the evidence challenge indicates that a greater amount of credible evidence supports one side of the issue than supports the other. *Thompkins*, 78 Ohio St.3d at 387. Further, when reversing a conviction on the basis that the conviction was against the manifest weight of the evidence, the appellate court sits as the “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony. *Id.* Therefore, this Court’s “discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.” *State v. Martin* (1983), 20 Ohio App.3d 172, 175; see, also, *Otten*, 33 Ohio App.3d at 340.

{¶11} Natal testified that she became angry with Page when he arrived at her home without Christmas presents for their daughter. The two shouted at one another and Page attempted to leave. Natal, at 5’3”, testified that she tried to stop Page from leaving by blocking his path out of the home. She testified that Page only touched her to hold her against the wall briefly and try to calm her down. She claimed that Page did not hurt her and the reason she was so upset when police arrived was that she did not want Page to leave. Natal further claimed that the red marks on her face that police noticed were the result of her crying and her severe acne.

On cross-examination, however, Natal admitted that she has never had acne on her neck and any red marks on her neck were the result of Page holding her against the wall. Natal denied ever telling the police that Page had punched her.

{¶12} As previously noted, Officer Grove testified that Natal was extremely upset when he arrived at her home and had red marks on her face and neck as well as minor swelling to the same areas. When Officer Grove first arrived, Natal specifically told him that Page had choked her and punched her on the right side of her face. Shortly thereafter, however, Natal indicated that she did not wish to speak with Officer Grove anymore. Officer Grove took pictures of Natal's injuries. The pictures depict red marks along the right side of Natal's neck as well as some redness to the right side of her face. Officer Grove testified that Page had an active warrant and was taken into custody at the scene.

{¶13} Page stipulated to a prior conviction for domestic violence and testified at trial. He testified that Natal became angry with him when he arrived at her house because he had not brought any Christmas presents for their daughter. According to Page, he remained relatively calm during the encounter and tried to leave when Natal became angry. She blocked his exit, and he moved her out of the way. Page believed that Natal was extremely upset and crying because she did not want him to leave. He denied choking her. As for the red marks on Natal's face and neck, Page testified that, if he did cause the marks, "[he] didn't mean to." Page admitted that he is approximately 5'9" and 175 pounds and much stronger than Natal.

{¶14} Page argues that his conviction is against the manifest weight of the evidence because Natal testified that Page did not harm her. Natal's initial statement to Officer Grove, Officer Grove's observation of Natal's face and neck, and the photographs of the same prove otherwise. The trier of fact was in the best position to view the witnesses and determine their

credibility. *State v. Jones*, 9th Dist. No. 24469, 2010-Ohio-879, at ¶29. This Court will not reverse Page’s conviction on a manifest weight challenge simply because the lower court chose to believe Natal’s initial statement to Officer Grove rather than her testimony at trial. *Id.* Further, Page’s argument that the State’s photographs were unpersuasive is inapposite. Even disregarding the photographs, Officer Grove testified that he observed Natal’s injuries in person and he described the injuries. Page’s second assignment of error lacks merit.

Assignment of Error Number Three

“APPELLANT WAS NOT AFFORDED THE EFFECTIVE ASSISTANCE (sic) OF TRIAL COUNSEL IN VIOLATION OF THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.”

{¶15} In his third assignment of error, Page argues that he was deprived of the effective assistance of counsel. Specifically, Page argues that his counsel was “frazzled, disorganized, and not prepared” and failed to introduce clear, quality photographs of Natal. We disagree.

{¶16} To prove an ineffective-assistance claim, Page must show two things: (1) that counsel’s performance was deficient to the extent that “counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment” and (2) that “the deficient performance prejudiced the defense.” *Strickland v. Washington* (1984), 466 U.S. 668, 687. To demonstrate prejudice, Page must prove that “there exists a reasonable probability that, were it not for counsel’s errors, the result of the trial would have been different.” *State v. Bradley* (1989), 42 Ohio St.3d 136, paragraph three of the syllabus. “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Strickland*, 466 U.S. at 691. Furthermore, this Court need not address both *Strickland* prongs if an appellant fails to prove either one. *State v. Ray*, 9th Dist. No. 22459, 2005-Ohio-4941, at ¶10.

{¶17} Page argues that he was prejudiced because his counsel was distracted and “trying to juggle as many clients as he could the morning of *** trial.” The record does not support Page’s contention. The trial court postponed the start of the trial because both Page’s counsel and the assistant prosecutor had to attend to other matters. Once the trial commenced, Page’s counsel saw the matter through to its completion without interruption. Page has not pointed this Court to any evidence in support of his unfounded assertion that his counsel was “frazzled” and distracted by other matters. App.R. 16(A)(7).

{¶18} Page also argues that his counsel was ineffective because he failed to produce “quality exhibits” in the form of photographs of Natal’s injuries. Page claims that higher quality photographs would have shown that any redness depicted in the photographs was the result of Natal’s acne and he was prejudiced by his counsel’s failure to procure that evidence. Even disregarding the photographs introduced at trial, however, Officer Grove testified that he observed redness and swelling on Natal’s face and neck. Further, Natal testified that she never had acne on her neck, one of the areas that Officer Grove described as being red and swollen. There is no evidence that Page suffered any prejudice as a result of his counsel not introducing additional photographs at trial. Page’s third assignment of error lacks merit.

III

{¶19} Page’s assignments of error are overruled. The judgment of the Lorain County Court of Common Pleas 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.

BETH WHITMORE
FOR THE COURT

DICKINSON, P. J.
CARR, J.
CONCUR

APPEARANCES:

JENIFER C. BERKI, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and BILLIE JO BELCHER, Assistant Prosecuting Attorney, for Appellee.