[Cite as *State v. Hardges*, 2011-Ohio-61.]

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

STATE OF OHIO	C.A. No. 25316
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
IVORY J. HARDGES	COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO
Appellant	CASE No. CR 09 11 3321

DECISION AND JOURNAL ENTRY

Dated: January 12, 2011

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Tenisha Easley sought medical treatment. Based on statements she made to the hospital staff, they contacted police, who came and interviewed her. From this interview and her injuries, the police concluded that she was likely a victim of domestic violence and issued an arrest warrant for Ivory Hardges. A jury found Mr. Hardges guilty of domestic violence, and the trial court sentenced him to one year in prison. This Court affirms Mr. Hardges' conviction as it is supported by sufficient evidence and is not against the manifest weight of the evidence.

BACKGROUND

{¶2} Officers Michael Orrand and Warren Soulsby, ten and eight-year veterans of the Akron Police Department, responded to a call from a hospital staff member concerning a victim of assault. The hospital records admitted at trial indicated that Ms. Easley told the staff that her boyfriend had hit her. The officers spoke to Ms. Easley, and, according to their testimony, she

told them that Mr. Hardges had punched her in the mouth. Both officers testified that her injuries were consistent with being punched and falling to the ground. The officers concluded that this was likely a case of domestic violence.

{¶3} Officer Orrand explained during his testimony that there is a "preferred-arrest policy" for instances of domestic violence. This policy requires police officers to issue a warrant for the arrest of a suspect if there is evidence of violence towards a victim "who has a relationship, live-in relationship, a child in common [with the suspect], or they're married." Having determined there was evidence of violence towards Ms. Easley and that she had such a relationship with Mr. Hardges, Officer Soulsby signed a warrant for Mr. Hardges' arrest.

{¶4} Ms. Easley testified that she had learned that Mr. Hardges had taken the couple's children to another woman's house. She had heard this news from Alicia Hardges, Mr. Hardges' wife. Mrs. Hardges had discovered that her children were also at that house. According to Ms. Easley's testimony, the two women decided to drive to the house and confront Mr. Hardges and the other, other woman.

{¶5} Ms. Easley testified that, when they got to the house, she began arguing with Mr. Hardges, who was sitting on the railing on the side of the front porch. According to her testimony, at some point during the argument, he lost his balance and started to fall. Ms. Easley testified that, as he fell, Mr. Hardges grabbed her shirt and she grabbed his shirt in an attempt to keep him from falling. According to her, they both fell over the railing to a driveway five to six feet below.

{¶6} Ms. Easley testified that her face struck a small wall running underneath the railing and along the driveway, causing her injuries. She testified that Mr. Hardges did not suffer any injury from the fall. Following the fall, she called 9-1-1 and requested an ambulance. Ms.

Easley testified that she chose to walk approximately a mile to the hospital instead of waiting for the ambulance.

{¶7} At trial, Ms. Easley denied ever telling hospital staff that Mr. Hardges had punched her and denied telling police that he had hit her. She said that any statement she made to that effect was only because she was upset with him for taking her children to another woman's house.

RELEVANCY

{¶8} Mr. Hardges has argued that the trial court erred in allowing testimony, over his counsel's objections, as to whether he visited Ms. Easley while she was in the hospital and as to his relationships with multiple women. He has argued that his attorney correctly objected to the testimony as being irrelevant and prejudicial. "This argument[, however,] is outside the scope of [Mr. Hardges'] assigned error and, therefore, need not be addressed." *Rusov v. Ansley*, 9th Dist. No. 23748, 2007-Ohio-7022, at ¶7 (quoting *State v. Harris*, 9th Dist. No. 00CA007691, 2001 WL 866258 at *3 n.1 (Aug. 1, 2001)); App. R. 16(A)(3), (7); Loc. R. 7(B)(7).

SUFFICIENCY OF THE EVIDENCE

{¶9} Mr. Hardges' sole assignment of error is that his conviction for domestic violence is against the manifest weight of the evidence. As part of his argument, however, he has also suggested that it is not supported by sufficient evidence. Sufficiency of the evidence claims are reviewed de novo. *State v. Rucker*, 9th Dist. No. 25081, 2010-Ohio-3005, at ¶9 (citing *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997)). Viewing the evidence in the light most favorable to the prosecution, this Court must determine whether the evidence could have convinced the average finder of fact beyond a reasonable doubt of Mr. Hardges' guilt. *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991).

{¶10} A jury found Mr. Hardges guilty of violating Section 2919.25(A) of the Ohio Revised Code. Under Section 2919.25(A), "[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member." "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). Further, "[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). Mr. Hardges does not dispute that Ms. Easley sustained injuries or that they have children together. The only disputed issue is whether he knowingly caused or attempted to cause harm to Ms. Easley.

{¶11} Officer Soulsby testified that Ms. Easley made statements to him that Mr. Hardges had punched her. He testified further that her injuries were consistent with being punched. Additionally, the hospital records admitted into evidence indicate that Ms. Easley made statements to the hospital staff saying that Mr. Hardges had struck her. The physician record lists assault "from boyfriend" as the cause of injury. The report of her treatment indicates that she "was struck in the face by her boyfriend . . . then she fell" and that she "want[s] to press charges and will talk to the police." Viewing the evidence in the light most favorable to the State, there was sufficient evidence to demonstrate beyond a reasonable doubt that Mr. Hardges knowingly caused harm to Ms. Easley.

MANIFEST WEIGHT OF THE EVIDENCE

{¶12} As mentioned previously, Mr. Hardges' assignment of error is that his conviction for domestic violence is against the manifest weight of the evidence. When a defendant argues that his conviction is against the manifest weight of the evidence, 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 must be reversed and a new trial ordered." *State v. Otten*, 33 Ohio App. 3d 339, 340 (1986).

{¶13} Mr. Hardges has argued that Ms. Easley's testimony closely follows her written statement to the police and that any claim she made to being assaulted was because she was upset with him. Ms. Easley read her written statement to the police during her testimony: "[Mr. Hardges] grabbed my shirt and leaned over to the left and then he fell. Then [he] grabbed my shirt so I fell with him. . . . Then my bottom lip busted." There was testimony, however, that Ms. Easley's written statement did not include all of her statements to the police. Officer Soulsby testified that she made oral statements to him claiming Mr. Hardges had punched her. He also testified that she had stopped writing because she was in pain and nauseous, not because she had finished her statement. As mentioned above, the hospital records admitted into evidence indicate that Ms. Easley made statements to the hospital staff that Mr. Hardges had struck her. Further, Officer Soulsby testified that, in his experience investigating thousands of alleged domestic violence incidents, the victim often becomes uncooperative once she realizes that her boyfriend may be arrested or go to jail. Officer Orrand echoed this in his testimony.

{¶14} "[T]he jury is free to believe, all, part, or none of the testimony of each witness." *State v. Luks*, 9th Dist. No. 05CA0046-M, 2006-Ohio-920, at ¶35 (quoting *Prince v. Jordan*, 9th Dist. No. 04CA008423, 2004-Ohio-7184, at ¶35). As the finder of fact, the jury "was entitled to reject any evidence it found incredible." *State v. Whitehouse*, 9th Dist. No. 09CA009581, 2010-Ohio-587, at ¶23. Ms. Easley testified at trial that her injuries came from a fall and denied ever saying that Mr. Hardges struck her. She admitted writing letters to Mr. Hardges, however, in

which she said she had said he assaulted her because she "ke[pt] trying to get back at him . . . ." Her testimony was internally inconsistent and in conflict with evidence in the State's exhibits and the testimony of the State's witnesses. The jury was not required to believe her testimony over the evidence presented indicating that she had initially claimed Mr. Hardges had punched her. This Court cannot say the jury lost its way in finding that Mr. Hardges knowingly caused Ms. Easley's injuries. His conviction for domestic violence is not against the manifest weight of the evidence.

CONCLUSION

{¶15} Mr. Hardges' conviction for domestic violence is supported by sufficient evidence and is not against the manifest weight of the evidence. The judgment of the Summit 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 Summit, 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

MOORE, J.
CONCURS

CARR, J.
CONCURS, SAYING:

{¶16} Just as the majority addresses the sufficiency argument that it notes Hardges "suggested" in his sole assignment of error, I would also address Hardges' challenge regarding the admissibility of certain evidence. I would conclude, however, that the trial court did not err in admitting the challenged evidence. I, therefore, concur in the majority's affirmance of Hardges' conviction

APPEARANCES:

KAREN H. BROUSE, attorney at law, for appellant.

SHERRI BEVAN WALSH, prosecuting attorney, and HEAVEN R. DIMARTINO, assistant prosecuting attorney, for appellee.