

STATE OF OHIO                    )  
  )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.       27243

Appellee

v.

LUIS D. MARTINEZ

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CR 13 08 2156

Appellant

DECISION AND JOURNAL ENTRY

Dated: March 25, 2015

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MOORE, Judge.

{¶1} Defendant, Luis Martinez, appeals from the judgment of the Summit County Court of Common Pleas. We affirm.

I.

{¶2} On July 31, 2013, Michell Sharier fell from an upstairs window of a home where she resided with four men, including her boyfriend, Mr. Martinez, and a man named Ray. Ms. Sharier maintained that Mr. Martinez had accosted her after accusing her of stealing his tools from the home. During an ensuing altercation, Ms. Sharier alleged that Mr. Martinez held her by her legs out of their upstairs’ bathroom window and then dropped her. As a result of these allegations, the Summit County Grand Jury indicted Mr. Martinez for felonious assault in violation of R.C. 2903.11(A)(1).

{¶3} Mr. Martinez pleaded not guilty, and, prior to trial, the State filed a motion in limine. In its motion, the State asked the court to prohibit the defense from eliciting any

testimony, arguing or presenting any evidence regarding purported heroin use by Ms. Sharier. During the discussion of the State's motion, it stated that it had obtained Ms. Sharier's medical records from her treatment following the fall, in which medical staff had noted that Ms. Sharier reported heroin use one week prior to the date at issue. The State explained that it intended to seek redaction of the records as to the reports of heroin use. The defense responded by arguing that Ms. Sharier's report of heroin use was relevant to the defense theory that she was acting erratically at the time of the incident, and that she jumped out of the window. The defense further maintained that her reports of heroin use in the medical records were admissible as statements made for medical treatment. The trial court provisionally granted the State's motion to prohibit evidence of heroin use by Ms. Sharier.

{¶4} The case proceeded to a jury trial. As part of the State's case-in-chief, Ms. Sharier testified that, about one week prior to the date at issue, Mr. Martinez had locked her out of their house after discovering that certain items had been stolen from the home, and he blamed Ms. Sharier for the theft. The night before the incident at issue, Ms. Sharier returned to the home and spent the night there with her boyfriend. After her boyfriend left for work the next morning, Ms. Sharier attempted to leave the house, but Mr. Martinez blocked her path. Ms. Sharier maintained that Mr. Martinez poked her in the chest, and she responded by punching him. A physical altercation ensued between the two, during which Mr. Martinez told Ms. Sharier that he was going to kill her, and he grabbed her by her hair and pulled her upstairs. Mr. Martinez and Ray then held Ms. Sharier by her legs out of a second story window for about ten minutes, and then dropped her to the ground. As a result of her fall, she sustained injuries to her leg and a broken ankle. During Ms. Sharier's testimony, she identified her medical records.

{¶5} At the conclusion of the State's case-in-chief, it submitted Ms. Sharier's medical records in their entirety for the record, but requested the court to address at a later time which portions of the exhibit would go to the jury. The defense objected, renewing its argument made during the discussion of the State's motion in limine. The defense maintained that, if the court admitted the medical records, then the reports of heroin use should also be included in the exhibit submitted to the jury. The trial court admitted the medical records in their entirety for purposes of the record and deferred decision of whether the records would be redacted.

{¶6} As part of the defense's case, Monica Benavides testified that she was on the telephone with Mr. Martinez during the incident with Ms. Sharier. Ms. Benavides maintained that during their telephone conversation, Mr. Martinez told her that Ms. Sharier was attacking him and indicated that she was about to jump out the window. A nearby resident also testified that, when he saw Ms. Sharier hanging from the window, it appeared that two men were trying to lift her back into the window, but she was kicking at them with one free leg. The defense also called detectives who testified that heroin users may act illogically. In addition, the defense called a neighbor of Ms. Sharier, who testified that she saw another neighbor remove heroin from Ms. Sharier's purse after she fell.

{¶7} After the defense rested, the trial court determined that Ms. Sharier's medical records would be submitted to the jury in their entirety and that defense counsel was permitted to address Ms. Sharier's medical records, which included her reported heroin use, during closing argument. The defense did address Ms. Sharier's reported heroin use during closing argument, maintaining that use of such a drug could have caused her to act erratically and attempt to jump out of the window.

{¶8} After deliberations, the jury found Mr. Martinez guilty of felonious assault, and the trial court sentenced him to two years of incarceration. Mr. Martinez timely appealed from the sentencing entry, and he now presents two assignments of error for our review. We have consolidated the assignments of error, and we will address them out of order, to facilitate our discussion.

## II.

### **ASSIGNMENT OF ERROR II**

THE TRIAL COURT ERRED IN HOLDING THE SELF-ADMISSION OF THE COMPLAINING WITNESS THAT SHE WAS A HEROIN USER WAS EXTRINSIC EVIDENCE WHOSE (SIC.) P[R]EJUDIC[I]AL EFFECT OUTWEIGHED ITS PROBATIVE VALUE.

### **ASSIGNMENT OF ERROR I**

THE TRIAL COURT ERRED IN EDITING THE HOSPITAL RECORD OF THE COMPLAINING WITNESS THAT SHE WAS A HEROIN USER AS SUCH STATEMENTS WERE MADE TO OBTAIN MEDICAL T[R]EATMENT FOR HER INJURIES.

{¶9} In his second assignment of error, Mr. Martinez argues that the trial court erred in prohibiting the defense from inquiring of Ms. Sharier as to her heroin use. In his first assignment of error, Mr. Martinez argues that the trial court erred in redacting Ms. Sharier's hospital records.

{¶10} Questions regarding the admission or exclusion of evidence are within the trial court's discretion. *State v. Sage*, 31 Ohio St.3d 173, 180 (1987). Therefore, we will not reverse a trial court's evidentiary ruling absent an abuse of discretion. *State v. Auerswald*, 9th Dist. Medina No. 11CA0053-M, 2013-Ohio-742, ¶ 9. The term "abuse of discretion" connotes that the court was unreasonable, arbitrary, or unconscionable in its judgment. *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

{¶11} Here, the State filed a motion in limine, in which it sought to preclude the defense from eliciting testimony, submitting evidence, or presenting an argument pertaining to Ms. Sharier’s heroin use. The trial court provisionally granted the motion, holding that evidence of Ms. Sharier’s heroin use was “more prejudicial than probative unless there can be shown some link between her drug use and erratic behavior.” However, the court further explained that this was an “in limine ruling[] and [it] can be addressed as the evidence is developed.”

{¶12} This Court has held that “[a] court’s ruling on a motion in limine does not preserve issues related to evidentiary rulings for appeal.” *State v. Garfield*, 9th Dist. Lorain No. 09CA009741, 2011-Ohio-2606, ¶ 55. “The law is well settled that failure to contemporaneously object during the identification of [evidence] and testimony regarding it forfeits appellate review.” *State v. Rice*, 9th Dist. Summit No. 26116, 2012-Ohio-2174, ¶ 20 quoting *State v. Cross*, 9th Dist. Summit No. 25487, 2011-Ohio-3250, ¶ 49.

{¶13} The record does not reflect that at any time during Ms. Sharier’s testimony or her cross-examination did the defense seek to revisit the trial court’s ruling on the admissibility of evidence pertaining to her drug use. Accordingly, Mr. Martinez has forfeited his argument pertaining to the trial court’s ruling insofar as it relates to the cross-examination of Ms. Sharier, and we decline to address it. *See id.* Therefore, Mr. Martinez’ second assignment of error is overruled.

{¶14} Next, to the extent that Mr. Martinez argues that the trial court erred in redacting the references to Ms. Sharier’s heroin use from the medical records, his argument lacks merit, as there is no indication that the medical records were redacted. To the contrary, the trial court determined:

I’m going to order that all of the medical records will go back to the jury and that whatever the State believes they say, whatever the Defense believes they say can

be argued in closing arguments, whatever interpretation either side wants to put on them, and I think there has been now, given all of the evidence, enough of a link between the heroin and potential behavior that that can be argued to the jury.

Moreover, the medical records included on appeal contain numerous unredacted references to Ms. Sharier's report of past heroin use.

{¶15} Therefore, Mr. Martinez' first assignment of error is overruled.

### III.

{¶16} Mr. Martinez' assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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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(C). 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.

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CARLA MOORE  
FOR THE COURT

HENSAL, P. J.  
WHITMORE, J.  
CONCUR.

APPEARANCES:

JONATHAN A. BARTELL, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.