

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STATE OF OHIO,	:	CASE NO. CA2026-03-011
Appellee,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
THELMA J. SMITH,	:	10/26/2026
Appellant.	:	
	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY MUNICIPAL COURT
Case No. 2025 CRB 2576

Mark J. Tekulve, Clermont County Prosecuting Attorney, and Zachary K. Garrison, Assistant Prosecuting Attorney, for appellee.

W. Stephen Haynes, Clermont County Public Defender, and Matthew V. Faris, Assistant Public Defender, for appellant.

OPINION

SIEBERT, J.

{¶ 1} Thelma J. Smith appeals her conviction in the Clermont County Municipal Court for domestic violence. Smith argues her conviction was against the manifest weight of the evidence, that the trial court erred in excluding evidence relating to the victim's

purported credibility issues, and that her trial counsel's performance was ineffective for failing to move for acquittal after the State's presentation of evidence. We overrule these assignments of error.

{¶ 2} Smith's conviction was not against the manifest weight of the evidence because the jury, as the trier of fact, was in the best position to conclude that when Smith repeatedly shoved her son, with one shove hitting him in the throat, she knowingly caused him physical harm as defined by Ohio law and was not engaging in a reasonable act of parental discipline. In addition, the trial court did not abuse its discretion in barring cross-examination of the victim regarding events that occurred weeks after the night in question because, among other reasons, such questioning would have had limited probative value in determining the victim's credibility about Smith's act of domestic violence when the basic facts of the case were not in dispute. Finally, Smith's counsel was not ineffective for not making a futile Crim.R. 29(A) motion to dismiss.

Background

{¶ 3} In September of 2025, Smith called her son, John,¹ sixteen years old at the time, to pick her up from a bar and then asked him to take her to Kroger for groceries. While at the store, Smith called John, who was waiting in the car, and asked him to come inside to help her. John, annoyed by this series of events, argued with Smith when they exited the store. While preparing to leave the Kroger parking lot, John realized he did not have his phone. Smith went back inside Kroger to look for it, and John pulled the car around to pick up Smith when she came back out. At the same time, Union Township Police officers responded to the store after receiving a report of the argument between

1. "John" is a pseudonym adopted for this opinion for the purposes of privacy and readability. See *State v. Cansler*, 2025-Ohio-2558, ¶ 1, fn. 1 (12th Dist.); Supreme Court of Ohio Writing Manual § 16, at 115 (3rd Ed. 2024).

Smith and John in the parking lot. When Smith came out of the store, she could not find John and, believing he had left without her, began walking home.

{¶ 4} After speaking with John, Union Township Police found Smith walking along the road. One officer testified Smith was "irate," "slurring her speech," "yelled at . . . pretty much anyone that she came into contact with," and "had an odor of an alcohol beverage emitting from her person." Smith testified that at this time she was "absolutely mad at everybody because I was pissed off walking down the highway . . ." but asserted she was not intoxicated. Police cited Smith for disorderly conduct and placed her in a police car. Concerned about Smith's behavior, one officer asked John if anyone else was at home, and when John shook his head no, the officer said, "we're here all night long. She may be mad at you now. I don't know if it's the booze. I don't know what it is. Call, and we'll come out, please."

{¶ 5} After police escorted Smith and John home and left, Smith began yelling at John, blaming him for her disorderly misconduct citation. As Smith continued to yell, John decided to leave the house and stay at his grandmother's. But as John attempted to leave the house, Smith confronted John at a stairwell within the home, and Smith shoved John three times as he attempted to get by her. John testified that with the third shove, Smith hit him in the throat. This caused John to experience some minor pain that, in his words, "wasn't like out loud howling pain." There was no visible injury, and John required no medical attention. Smith testified she shoved John to keep him from leaving and to prevent herself from falling. John testified that after the shoves, Smith told him to "get the f**k out of her house and to never come back." John left and headed to his grandmother's house.

{¶ 6} John knew his mother and his grandmother did not have a good relationship with one another. Because of this fractured relationship, after John arrived at his

grandmother's home, Smith arranged for a friend of the family, Rhonda Miller, to pick him up so that John could spend the night at Miller's house. The next day, Smith picked John up at Miller's house. Miller testified that Smith yelled at John, "said she wished she had knocked his head off." Miller continued, "[Smith] said the first two times [John] tried to leave that she shoved him. And the third time when she wanted to hit him, she told him to get out." Smith testified that during this argument, she stated she was "going to knock [his] teeth out" because John acted like the situation "was funny to him." As John and Smith's argument continued, Miller called police. After receiving a statement from John, police charged Smith with two counts of domestic violence.

{¶ 7} The matter proceeded to a jury trial. During opening statements and the defense's cross-examination of John, Smith's counsel sought to discuss events that purportedly took place after the underlying events of this case. From the record and the parties' briefs on appeal, it appears these events were (1) John alleged Smith texted him various threats after the events described above, but no evidence of these texts were found; and (2) according to Smith's appellate brief, John "concocted [a plan] with his older brother that involved lying to different authorities in the course of seeking additional false charges against Ms. Smith with the ultimate goal of removing [John] from Ms. Smith's house and from underneath her rules." The State objected to references about these events, and the trial court sustained the objections, concluding these matters were not relevant.

{¶ 8} The jury found Smith guilty of one count of domestic violence, and the trial court imposed 175 days in jail with 154 days suspended, two years of nonreporting probation, and a \$100 fine.

{¶ 9} Smith now appeals.

First and Third Assignments of Error – Sufficiency of the Evidence, Manifest Weight of the Evidence, and Ineffective Counsel

Applicable Law

{¶ 10} Ohio law prohibits an individual from "knowingly caus[ing] or attempt[ing] to cause physical harm to a family or household member." R.C. 2919.25(A). The relevant terms on appeal are "knowingly" and "physical harm." "A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist." R.C. 2901.22(B). In turn, "physical harm" is "any injury, illness, or other physiological impairment, regardless of its gravity or duration." R.C. 2901.01(A)(3).

{¶ 11} Despite the foregoing, Ohio law does not prohibit a parent from exercising "proper and reasonable" discipline of a child. *State v. Sellers*, 2012-Ohio-676, ¶ 15 (12th Dist.). To determine whether discipline was proper and reasonable, a trier of fact looks to the totality of the circumstances and considers "the child's age, the child's behavior leading up to the discipline, the child's response to prior noncorporal punishment, the location and severity of the punishment, and the parent's state of mind while administering the punishment." *Hamilton v. Purvis*, 2018-Ohio-2881, ¶ 21 (12th Dist.). Parents have the burden of establishing this affirmative defense at trial. *Id.*

Standards of Review

{¶ 12} "When reviewing the sufficiency of the evidence underlying a conviction, an appellate court examines the evidence to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Madden*, 2024-Ohio-2851, ¶ 31. Therefore, "[t]he 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." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, *superseded by state constitutional amendment on other grounds as stated in State v. Smith*, 1997-Ohio-355, ¶ 49, fn. 4.

{¶ 13} "A manifest weight of the evidence challenge examines the 'inclination of the greater amount of credible evidence, offered at a trial, to support one side of the issue rather than the other.'" *Madden* at ¶ 32, quoting *State v. Barnett*, 2012-Ohio-2372, ¶ 14 (12th Dist.). To determine whether a conviction is against the manifest weight of the evidence, the reviewing court must look at the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether in resolving the 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. Graham*, 2009-Ohio-2814, ¶ 66 (12th Dist.).

{¶ 14} In reviewing the evidence, an appellate court must be mindful that the original trier of fact was in the best position to judge the credibility of witnesses and determine the weight to be given to the evidence. *State v. Blankenburg*, 2012-Ohio-1289, ¶ 114 (12th Dist.). "[I]nconsistencies in the evidence alone do not mean that a decision is against the manifest weight of the evidence." *State v. Deck*, 2021-Ohio-3145, ¶ 21 (12th Dist.). "An appellate court will overturn a conviction due to the manifest weight of the evidence 'only in the exceptional case in which the evidence weighs heavily against the conviction.'" *State v. Zitney*, 2021-Ohio-466, ¶ 15 (12th Dist.), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997), *State v. Martin*, 20 Ohio App.3d 172 (1st Dist. 1983), paragraph three of syllabus.

{¶ 15} "[A]lthough the legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different, '[a] determination that a

conviction is supported by the manifest weight of the evidence will also be dispositive of the issue of sufficiency" as well as a Crim.R. 29 motion to dismiss (which will be discussed in further detail in Smith's third assignment of error). *State v. Billingsley*, 2020-Ohio-2673, ¶ 15 (12th Dist.), quoting *State v. Jones*, 2013-Ohio-150, ¶ 19 (12th Dist.).

Analysis

{¶ 16} In her first assignment of error, Smith argues her conviction was not supported by sufficient evidence and was against the manifest weight of the evidence. More specifically, Smith contends she "did not intend to harm" John and that the State failed to "present any evidence to show that Smith was subjectively aware that harming [John] was probable based on the way she physically tried to prevent him from leaving the house late on a school night." In short, Smith claims the State did not prove she acted knowingly.

{¶ 17} We disagree. "[T]he state was not required to prove specific intent to cause physical harm in order to support a conviction for domestic violence." *State v. Agnew*, 2024-Ohio-295, ¶ 43 (12th Dist.). Smith's intention or motivation in pushing John is irrelevant to prove whether she acted knowingly. See R.C. 2901.22(B). The State only needed to prove that Smith was aware her conduct would "probably cause a certain result." *Id.* Nonetheless, it is not disputed that Smith and John were in the midst of a continuing, heated argument when she confronted John on the steps and pushed him before yelling at him to "get the f**k" out of the house. Moreover, Miller testified that Smith stated the next day she "*wanted*" to hit John when pushing him the third time. These pieces of evidence and testimony support the jury's conclusion Smith acted knowingly and had either a specific intent to hit John, or at the very least, knew her conduct could cause John physical pain. *Compare with State v. Krieger*, 2018-Ohio-4483, ¶ 21-22 (12th Dist.) (holding no domestic violence occurred where wife intentionally stood in

defendant's way and "repeatedly refused to move," prompting defendant to push alleged victim out of the way as he attempted to walk away from argument).

{¶ 18} Next, Smith argues the State failed to demonstrate that John suffered physical harm. Smith points to the fact that John never received medical attention, did not sustain any bruising, and did not report any injury to his grandmother, Miller, Smith, or law enforcement. The only evidence in the record on John's injury was his testimony that Smith's third shove hit him in the neck and caused some minor pain. Smith ultimately contends, "[i]t is not believable that [John], with an 11-inch height advantage and weighing 65 to 75 pounds more than [Smith], would have sustained physical harm or pain from three pushes." Smith's arguments ignore the statutory definition of "physical harm" which expressly includes "*any injury . . . regardless of its gravity or duration.*" (Emphasis added.) R.C. 2901.01(A)(3). To that effect, we, like other Ohio courts, have held that "[w]hen accompanied by the requisite intent, a shove, push or grab may satisfy the 'physical harm' element of assault." (Cleaned up.) *State v. Kelley*, 2002-Ohio-5886, ¶ 24 (12th Dist.). See also *State v. Williams*, 2001 WL 1661862, *3 (10th Dist.); *In re Mark M.*, 2000 WL 125800, *2 (6th Dist. Feb. 4, 2000), quoting *State v. Weber*, 1998 WL 700676, *2 (6th Dist. Oct. 9, 1998). Ultimately, the fleeting nature of the pain John testified to, if believed, did not bar the jury from concluding physical harm occurred.

{¶ 19} Finally, Smith asserts her conviction was against the manifest weight of the evidence because the jury found Smith's actions were not "proper and reasonable parental discipline." Smith contends John's angry, "surly and disrespectful" attitude toward her that evening made her shoves, which she contended were meant to prevent John from leaving the house and to prevent herself from falling, "reasonable as an attempt by [her] to parent her son." Again, Smith's argument ignores that the jury was in the best position to weigh whether Smith's actions constituted domestic violence or reasonable

parenting discipline. As we have repeatedly recognized, a "conviction is not against the manifest weight of the evidence simply because the trier of fact believed the testimony and evidence presented by the [S]tate." *State v. Nelson*, 2024-Ohio-5750, ¶ 23 (12th Dist.), citing *State v. Lunsford*, 2011-Ohio-6529, ¶ 17 (12th Dist.). Given the evidence in the record, including John and Miller's testimony as well as the Union Police officer's express concern for John in light of Smith's aggressive behavior, we cannot conclude the jury "clearly lost its way" in concluding Smith's actions were the result of anger (and perhaps intoxication) after being cited for disorderly conduct and were not motivated by a desire to exercise parental discipline.

{¶ 20} We overrule Smith's first assignment of error.

Second Assignment of Error – John's Credibility

Applicable Law and Standard of Review

{¶ 21} Ohio's evidentiary rules permit cross-examination of a witness regarding specific instances of conduct that are "clearly probative of truthfulness or untruthfulness . . ." Evid.R. 608(B). In addition, "[b]ias, prejudice, interest, or any motive to misrepresent may be shown to impeach [a] witness either by examination of the witness or by extrinsic evidence." Evid.R. 16(A). "The admissibility of relevant evidence rests within the sound discretion of the trial court." *State v. Atkinson*, 2010-Ohio-2825, ¶ 7 (12th Dist.). "Relevant evidence" is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid.R. 401. Unless a trial court abuses its discretion, and the defendant suffers prejudice as a result, appellate courts will not disturb the decisions of the trial court as to the admissibility of evidence. *Atkinson* at ¶ 7. A trial court abuses its discretion when it acts "unreasonably, arbitrarily, or unconscionably." *Bowman v. Leisz*, 2014-Ohio-4763, ¶ 17 (12th Dist.).

Analysis

{¶ 22} In her second assignment of error, Smith argues the trial court abused its discretion by barring her counsel from discussing John's alleged lie about receiving threatening text messages from Smith and conspiring with his brother to get John out of Smith's legal custody. Smith asserts examination of these matters during opening statements and John's cross-examination would have exposed contradictory testimony by John and allowed the jury to assess John's character for truthfulness, including his assertion he suffered physical harm.

{¶ 23} We are unconvinced for multiple reasons. First, "opening statements are not evidence, and they exist simply to provide the trier of fact with a preview of the case." *In re K.S.*, 2013-Ohio-216, ¶ 33 (12th Dist.), citing *State v. Leonard*, 2004-Ohio-6235, ¶ 172. Second, the basic facts of this case are not in dispute: (1) John was annoyed after having to pick up Smith from the bar and taking her to Kroger, (2) they engaged in a heated argument at Kroger and later at home after Smith was cited for disorderly conduct, and (3) Smith shoved John repeatedly on the stairs as he attempted to leave the house. While Smith argues she did not cause John injury, John testified that she did, and Miller testified that Smith stated she "wanted to hit" John when she shoved him a third time. As a result, even if the trial court abused its discretion, we fail to see how Smith's defense suffered any prejudice.

{¶ 24} Third, cross-examining John regarding events that purportedly occurred weeks *after* the night in question events would have had limited probative value in determining whether John testified truthfully about Smith's act of domestic violence. See *State v. Bradley*, 2012-Ohio-4787, ¶ 27-33 (5th Dist.) (holding it was not an abuse of discretion for trial court to prevent defendant from calling his grandmother as a witness to challenge victim's testimony that she did not say she was going to send defendant to

prison *after* he assaulted her). The trial court did not abuse its discretion in barring discussion of these purported events.

{¶ 25} We overrule Smith's second assignment of error.

Third Assignment of Error – Ineffective Assistance of Counsel

{¶ 26} With her final assignment of error, Smith argues her trial counsel provided ineffective assistance of counsel by failing to make a Crim.R. 29(A) motion to acquit at the end of the State's presentation of evidence. We need not examine this argument in any great detail, but under Crim.R. 29(A), a defendant may be acquitted at trial by the court "if the evidence is insufficient to sustain a conviction of such offense or offenses." Appellate courts review the denial of a motion for acquittal under the same standard as that used to review a sufficiency-of-the-evidence claim. *State v. Maloney*, 2023-Ohio-2711, ¶ 40 (12th Dist.), citing *State v. Mota*, 2008-Ohio-4163, ¶ 5 (12th Dist.).

{¶ 27} Put simply, our determination that Smith's conviction was supported by the manifest weight of the evidence means a Crim.R. 29(A) motion would have been futile. "Trial counsel is not ineffective for failing to make a futile argument." *State v. Trafton*, 2023-Ohio-122, ¶ 29 (12th Dist.).

{¶ 28} We overrule Smith's third assignment of error.

{¶ 29} Judgment affirmed.

M. POWELL, P.J., and DONOVAN, V.J., concur

Donovan, J., retired, of the Second Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.

JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Clermont County Municipal Court for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Mike Powell, Presiding Judge

/s/ Melena S. Siebert, Judge

/s/ Mary E. Donovan, Judge