

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO,	:	JUDGES:
	:	Hon. Robert G. Montgomery, P.J.
Plaintiff - Appellee	:	Hon. Kevin W. Popham, J.
	:	Hon. David W. Gormley, J.
-vs-	:	
	:	
ERIC ELMER LEE HENDRIX,	:	Case No. 2024CA00111
	:	
Defendant - Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING:	Appeal from the Stark County Common Pleas Court, Case No. 2024 CR 0620
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JUDGMENT:	Affirmed
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DATE OF JUDGMENT:	April 18, 2025
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APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellee

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STATEMENT OF THE FACTS AND THE CASE

{¶1} The Appellant and M.H. have been married since 1992 but do not reside together. M.H. testified that on February 26, 2024, Appellant was in her apartment and became upset because she would not ask the neighbor for a cigarette. M.H. reported that Appellant shoved her onto her bed, poked her chest and had his right hand on her throat. M.H. reported that she fought back by kicking her legs and screaming. It was further reported that Appellant drew his fist and shoved a comforter into M.H.'s mouth. M.H. stated she could not breathe and "thought he was going to keep his hand there until I passed out ..." *Trial Transcript*, p. 107. M.H. further attested that Appellant let her go so she could use the bathroom and she fled to a neighbor's apartment and called 9-1-1. *Id.*, p. 109. Officer Pilla and Lieutenant Stillwagon arrived and spoke to M.H. Lieutenant Stillwagon called Officer Carosello, a domestic violence officer, to the scene. Officer Carosello described M.H.'s demeanor as shaking, visibly upset and crying. *Id.*, p. 154. M.H. told Officer Carosello she had been strangled. Officer Carosello observed red spots on M.H.'s nose, neck and cheek and then took photographs. *Id.*, p. 158. Officer Carosello testified that the red spots are likely petechia and not freckles. Officer Carosello further stated M.H.'s entire chest area was really red under her neck. *Id.*, p. 160.

{¶2} Officer Carosello has been a domestic violence officer for 20 years. Officer Carosello testified she annually attends a two-day conference on domestic violence, protection orders and strangulation.

{¶3} Officer Pilla testified that he searched the apartment complex for Appellant but could not locate him. *Id.*, p. 141. Officer Pilla did not speak with any potential

witnesses at the apartment complex nor did he review any potential security camera footage.

{¶4} M.H. reported to the police officers that the day prior to the above stated incident, she and Appellant had another altercation. M.H. testified that on February 25, 2024, Appellant was in her home and became upset with her. She testified that he picked her up off the ground by her neck, dragged her to her bedroom and pushed her onto the bed with his hand around her throat. *Trial Transcript*, p. 104. She continued by stating that Appellant straddled her body with his hands still on her throat as she kept putting her legs up to get him off of her but he would smack her legs down. *Id.*, p. 104.

{¶5} On April 19, 2024, a grand jury was convened and returned an indictment against Appellant with one count of strangulation in violation of R.C. 2903.18(B)(3), one count of strangulation in violation of R.C. 2903.18(B)(2) and one count of domestic violence in violation of R.C. 2919.25(A)(D)(4). Appellant was arraigned on April 26, 2024 and entered a plea of not guilty on all counts. A jury trial was held on June 11, 2024 and Appellant was found guilty on one count of strangulation under R.C. 2903.18(B)(3) and one count of domestic violence under R.C. 2919.25(A)(D)(4). Appellant was found not guilty of strangulation under R.C. 2903.18(B)(2).

{¶6} Appellant filed an Appeal with this Court on October 31, 2024, and asserts the following assignments of error:

{¶7} “I. THE APPELLANT’S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF EVIDENCE WITH RESPECT TO THE STANGULATION CHARGE, THEREBY VIOLATING HIS GUARANTEES OF DUE PROCESS PURSUANT TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES AND ARTICLE ONE, SECTION TEN OF THE OHIO CONSTITUTION.

{¶8} II. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT DISALLOWED THE APPELLANT TO IMPEACH THE COMPLAINING WITNESS UNDER RULE 606 OF THE OHIO RULES OF EVIDENCE.

{¶9} III. THE TRIAL COURT ABUSED ITS DISCRETION WHEN ALLOWING A POLICE OFFICER TO TESTIFY AS A MEDICAL EXPERT WITHOUT THE REQUISITE QUALIFICATIONS.”

STANDARD OF REVIEW

{¶10} In reviewing whether a judgment is against the manifest weight of the evidence, an appellate court looks at the entire record and weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury 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. K.A.C.*, 2024-Ohio-1139 (10th Dist.).

Rule 609. Impeachment by Evidence of a Criminal Conviction

(a) In General. The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

(2) for any crime regardless of the punishment, the evidence must be admitted if the court can readily determine that establishing the elements of the crime required proving--or the witness's admitting--a dishonest act or false statement.

{¶11} Admissibility of evidence is reviewed under an abuse of discretion standard.

ANALYSIS

{¶12} Appellant argues in his first assignment of error that the decision of the jury to acquit Appellant on the charge of R.C. 2903.18(B)(2) but find him guilty on the charge

of R.C. 2903.18(B)(3) are inconsistent verdicts and therefore against the manifest weight of the evidence. This Court disagrees.

{¶13} R.C. 2903.18 states that:

No person shall knowingly do any of the following:

(2) Create a substantial risk of serious physical harm to another by means of strangulation or suffocation;

(3) Cause or create a substantial risk of physical harm to another by means of strangulation or suffocation.

{¶14} R.C. 2903.18(B)(2) is a more serious charge and the court must find a risk of “serious” physical harm. R.C. 2903.18(B)(3) requires a finding of physical harm. The Appellant argues that all strangulations create a risk of serious physical harm and since the jury acquitted Appellant finding that there was no risk of serious physical harm, the jury could not convict him on the lesser offense.

{¶15} This case involves two separate instances where the victim made claims that she had been strangled. One occurred on February 25, 2024, and the other on February 26, 2024. Therefore, the grand jury indicted Appellant on two separate counts. There was evidence presented that M.H. had red spots on her neck, bruising on her chest under her throat, and that she was visibly shaken and crying after the alleged incident. The jury heard the 9-1-1 call, saw photographs and listened to the testimony of the witnesses. This Court finds that the jury did not lose its way and based its decision on the evidence presented.

{¶16} Appellant argues in his second assignment of error that the court erred as a matter of law by not allowing his counsel to question the victim regarding a theft offense.

{¶17} It is well established that a trial court's decision to admit evidence is an evidentiary determination within the broad discretion of the trial court and subject to review on an abuse-of-discretion standard. See, *State v. Diar*, 120 Ohio St.3d 460, 2008-Ohio-6266, 900 N.E.2d 565, at ¶ 66; *State v. Sage*, 31 Ohio St.3d 173, 510 N.E.2d 343, at ¶ two of the syllabus.

{¶18} Appellant's counsel questioned M.H. and asked, "First, you've recently been convicted of a theft offense; is that correct?" *Trial Transcript*, p. 123. The prosecutor objected and a side bar was held. The following exchange took place during the sidebar:

Defense Counsel: It's a crime of dishonesty. It's impeachable.

Trial Court: I don't know what you've got. So, what is it that you have? I don't know, Steve.

Defense Counsel: She has a theft conviction.

Prosecutor: But it happened after this incident.

Defense Counsel: This has nothing to do with that falsification issue that I brought up.

Trial Court: Can we see the date of the incident?

Defense Counsel: I guess I need to be able to lead up to the thought that the State helped her get rid of a bench warrant so that she could appear here today without coming in here in cuffs.

Trial Court: No, no, no. This happened after the incident, Steve. You can't do that, okay?

Trial Transcript, p. 123.

{¶19} Defense counsel did not object to the court's ruling regarding the timing of the theft conviction. Defense counsel did not make an argument to the court that his line of questioning was within the rules of evidence. If Appellant's counsel felt that the court's ruling on the prosecutor's objection was erroneous, he needed to object to the court's ruling during the trial. This Court has held that when defendant "failed to object ... at trial and has therefore forfeited all but plain error." *State v. Terry*, 2024-Ohio-2876 (5th Dist.).

{¶20} Appellant argues that the court sustained the prosecutor's objection to his line of questioning and therefore, "Appellant was not required to make an objection on top of the objection already being discussed to preserve this issue." *Reply Brief of Appellant*, p. 4. In reviewing the court's transcript, this Court finds that the trial court made a ruling on the prosecutor's objection. Defense counsel did not argue. The only argument that Appellant could make on appeal is that the trial court committed plain error. Appellant has failed to make this argument. We overrule Appellant's second assignment of error.

{¶21} Finally, Appellant argues that the trial court abused its discretion by allowing a police officer to provide medical expert testimony. Appellant argues that Officer Carosello "testified as a medical expert and made a medical diagnosis on the stand". *Appellant Brief*, p. 15.

{¶22} Officer Carosello has been a Domestic Violence Officer with the City of Louisville for 13 years. She attends yearly training and worked on approximately 75 cases last year. During the trial Officer Carosello testified, "she advised me that she had been strangled and we always recommend any victim with injury, especially strangulation, go to the hospital because both our local hospitals have programs specifically to check for

injuries that the medics can't check for on the scene, and with strangulation, a lot of times there's some internal injuries."

{¶23} Appellant's attorney objected on the basis that, "Getting into areas that she's not qualified to talk about with regards to the effects of strangulation on a human being." The court responded, "Well, I think she's just talking about the protocol. Is that my understanding." Officer Carosello answered in the affirmative. The trial court went on to state that, "Yea, I think she's, with her training, permitted to talk about the protocol." Appellant's counsel answered, "Okay." *Trial Transcript*, pp.155-156. Appellant also argues that Officer Carosello gave medical testimony when identifying red blotchy spots on photos that were taken of the victim. She testified, "... with victims that are strangled, they get these like red blotchy spots. It's called petechia." *Id.*, p. 160. Appellant's attorney did not object to this testimony nor did he ask Officer Carosello any questions on this subject during cross examination. There is nothing in the trial transcript that refers to Officer Carosello as a medical expert or that she gave medical testimony. She testified to her observations. *State v. Wears*, 2023-Ohio-4363 (3d Dist.) held that an officer could testify that he observed red marks around the victim's neck that were roughly the size of thumbprints and were consistent with having been choked or grabbed around the throat.

{¶24} The trial court has broad discretion in determining the admissibility of expert testimony, and that determination is subject to review for an abuse of discretion. *Terry v. Caputo*, 2007-Ohio-5023. An abuse of discretion means more than a mere error of law or judgment; it implies an arbitrary, capricious, or unconscionable attitude on the part of the trial court. *Blakemore v Blakemore*, 5 Ohio St.3d 217, 219 (1983). This court finds that the trial court's decision is reasonable.

CONCLUSION

{¶25} This court affirms the trial court's decision and overrules Appellant's assignments of error.

By: Montgomery, P.J.

Popham, J. and

Gormley, J. concur.²