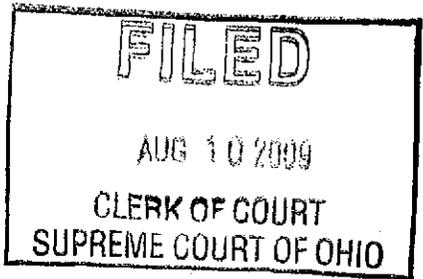


In the
Supreme Court of Ohio

STATE OF OHIO,	:	
	:	
Plaintiff-Appellant,	:	
	:	CASE NO. 2008-1942
vs.	:	CASE NO. 2008-2170
	:	On Appeal from the Union
	:	County Court of Appeals
RAYNELL ROBINSON,	:	Third Appellate District
	:	C.A. Case No. 14-07-20
Defendant-Appellee.	:	

**REPLY BRIEF OF THE APPELLANT
THE STATE OF OHIO**



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STATUTES AND OTHER AUTHORITIES

Section 2909.04(A) of the Ohio Revised Code. 2, 3, 6, 7

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Section 2903.10 of the Ohio Revised Code. 7

STATEMENT OF THE CASE AND THE FACTS

The Plaintiff-Appellant, State of Ohio, hereby incorporates its Statement of the Case and Facts set forth in its Merit Brief as if fully rewritten herein.

ARGUMENT

Proposition of Law No. 1:

The General Assembly intended that the prohibition against the disruption of public services R.C. 2909.04, apply only to only (sic) utility services provided to the public as a whole or any sizeable segment of the public, not the destruction of a single, private telephone.

The Defendant-Appellee appears to assert that the language of Ohio Revised Code Section 2909.04(A)(3), when read in context with the first two paragraphs of that section, is intended to prevent the disruption of public services, not individual services. In support of this argument the Defendant-Appellee points out that reference to “law enforcement officers, firefighters, rescue personnel, emergency medical services personnel or emergency facility personnel” are general. However, in contravention of the plain meaning of the language of the statute, the Defendant-Appellee then argues that the reference to “any person or property” does not mean an individual person or an individual’s property; instead it means the public generally. The language of the statute is not accidental; it refers purposefully to protecting and preserving any person or property from serious physical harm. The only reasonable interpretation is that the legislature intended for each individual citizen and his or her property to be preserved and protected by the first responders. Thus, the inability of first responders to respond to an individual’s emergency is sufficient to trigger the offense.

The second argument in this section advanced by the Defendant-Appellee concerns the placement of this paragraph (A)(3) in a statute about disruption of public services. The Defendant-Appellee argues that the (A)(3) section concerns only public services rather than the impact on a particular individual. Therefore, the Defendant-Appellee argues that because paragraphs (A)(1) and (2) deal specifically with the disruption of public services that is

apparently what the Legislature intended for paragraph (A)(3). According to the Defendant-Appellee this argument is bolstered by the fact that the (A)(3) section is not included in other statutes governing “interference with specific officers in specific cases.”

Once again this argument ignores the plain meaning of the language of the statute “to respond to an emergency or to protect and preserve *any person or property* from serious physical harm.” (emphasis added). In reviewing the other statutes cited by the Defendant-Appellee in support of his argument, each of these statutes involves specific instances where an individual acts in such a way to hinder law enforcement only, not any other first responders. Also, these statutes involve the actions of an individual defendant and not the impact of the defendant’s actions. R.C. Section 2909.04(A)(3) is the only statute that makes it a crime to hinder law enforcement and other first responders and has, as an element, the impact on an individual or his or her property. The Plaintiff-Appellant, State of Ohio, believes that the position of the Second, Fifth and Eighth Appellate Districts in upholding convictions for a violation of R.C. 2909.04 concerning acts of impairment of an individual’s utility service is correct and in keeping with the language of the statute.

The statute for Disrupting Public Services was originally enacted by the Legislature in 1974 (last revised in 2004). Much of the legislative history cited by the Third District Appellate Court can be traced back to the original passage of the statute. In 1974, the Legislature would never have been able to predict the modern proliferation of cellular telephones and communications. It would have been difficult to foresee the fact that many people in this day and age eschew land line telephones in favor of the more portable cell phones which provide a variety of services. So it is not unusual that the Legislature would not

have addressed or anticipated the destruction of a cell phone as one of the acts which the statute prohibits.

Proposition of Law No. II:

A person does not “substantially impair” emergency services when those services arrive only briefly later than they otherwise would have arrived and when the State fails to prove any substantial effect on anyone from the short delay.

The Defendant-Appellee argues that the State failed to show that there was a substantial impairment because there was none. Further, the Defendant-Appellee states that any delay argued by the State was brief and of no practical consequence. To accept these statements from the Defendant-Appellee is to ignore critical portions of the Plaintiff-Appellant’s case-in-chief. Heather Hoge testified that the Defendant-Appellee repeatedly struck Antonio Robinson in the back of the head and the face (Transcript at pps. 67-69). Ms. Hoge’s description of Antonio Robinson’s injuries is dramatically more than “broken teeth.” She stated as follows:

“Physically what happened to him? His lip was gashed open and hanging down. And his teeth were like broke loose from his gum.” (Transcript at pp. 69)

After this first assault when the Defendant-Appellee got off of the victim, Antonio Robinson got out his cell phone and dialed 9-1-1 (Transcript at pp. 69). When he realized what his nephew was doing, the Defendant-Appellee “grabbed the cell phone and smashed it on the ground” terminating Antonio Robinson’s call for emergency assistance (Transcript at pps. 70-71). Thereafter, Antonio Robinson was standing at the passenger side door of Heather Hoge’s truck repeatedly saying “my face, my face. There’s so much blood.” (Transcript at pp. 72). After Heather Hoge attempted to call 9-1-1 on her cell phone, the Defendant-Appellee assaulted Antonio Robinson *again, for the second time that morning*. While the Defendant-Appellee argues that the “brief” delay had no practical consequence, it had a very practical

and personal consequence for Antonio Robinson. The failure of law enforcement officers and emergency medical personnel to promptly arrive on the scene resulted in the Defendant-Appellee assaulting Antonio Robinson for the second time. Based upon the Defendant-Appellee's actions against Antonio Robinson, a Union County Grand Jury found probable cause that the Defendant-Appellee committed felonious assault on the victim, Antonio Robinson.

The State never attempted to prove that the "brief" delay in police response made a difference to anyone.

The delay in response to the 9-1-1 call by law enforcement was not "brief" as has been posited by the Defendant-Appellee. Antonio Robinson's cell phone 9-1-1 call came into the Union County Sheriff's Dispatcher at 3:33 A.M. on September 2, 2006 (Transcript at pp. 47). Dispatcher Katie Holdren answered Mr. Robinson's 9-1-1 call (Transcript at pp. 48). Based upon what she heard before the call was disconnected, Ms. Holdren learned that there was an assault and that an individual was injured and requesting medical assistance (State's Exhibit 1, 9-1-1 call). Ms. Holdren dispatched the fire department, an ambulance as well as the police department (Transcript at pp. 48). She had to dispatch these emergency responders to the Meadows Subdivision generally without any specific address because of the disruption of the phone call (Transcript at pps. 50-51). Law enforcement officers must first clear the scene before any medical personnel arrive so that they do not get injured (Transcript at pp. 95). Because law enforcement had no address to respond to in the subdivision, Officer Bartholomew of the Marysville Division of Police drove to the first entrance and completed a quick circle in the 400 to 500 area of the subdivision to make sure that no individual was trying to flag down a police officer (Transcript at pp. 95). Officer Bartholomew then joined Officer Collier in the high end of the subdivision, the 600 to 700 area of the subdivision.

In the meantime, Officer Collier, who had started at the high end of the subdivision, observed a woman walking toward him (Transcript at pp. 107). The Officer stopped and interviewed the individual who was determined to be Judy Newhart (sic Newhard), the girlfriend of the Defendant-Appellee. Ms. Newhart was upset and crying and when Officer Collier asked her for her address, she gave him a non-existent apartment number (Transcript at pp. 107). It was not until Officer Bartholomew joined Officer Collier in the high end area of the subdivision that law enforcement was able to determine the location of the assault victim (Transcript at pps. 96-100). Nothing in the Officers' respective testimony indicated that there was only a brief period of time before they discovered the scene of the assault and the victim. In fact, the Officers had to complete several tasks before they were able to discover the scene and the victim; namely, the Officers had to drive around the various sections of the subdivision looking for the scene; they had to interview witnesses to determine where the victim was located; and they had to communicate and update each other on the progress of their search through the subdivision. All of these actions are unnecessary when law enforcement is given accurate information. While the Officers searched for the scene of the crime and the victim, medical personnel were left "cooling their heels" waiting for the Officers to secure the scene before they could render aid to the victim.

The General Assembly raised the burden of proof as to impairment of emergency services, as opposed to other public services.

The Defendant-Appellee argues that the emergency services section of R.C. 2909.04, to which the Defendant-Appellee was charged with violating, requires proof that the defendant sought to "substantially impair" public services. The Plaintiff-Appellant agrees that the language of the statute in paragraph (A)(3) states "substantially impair" in contrast to the language in paragraphs (A)(1) or (2). Paragraphs (A)(1) and (2) deal with the disruption

of utility services to the general public. Paragraph (A)(3) concerns the first responder's ability to respond to an emergency situation and to protect and preserve an individual or his or her property; it has nothing to do with the disrupting utility services for the general public. The element that the Plaintiff-Appellant had to prove was not that the Defendant sought to substantially impair *public services* but that the Defendant substantially impaired the *ability* of law enforcement officers and other first responders to respond to an emergency, or to protect and preserve any person or property from serious physical harm. Based upon the testimony of the two Police Officers, their ability and that of the emergency medical personnel was impaired by the lack of information about the scene and the victim of the assault.

A substantial impairment is more than a "significant" impairment.

Initially, the Defendant-Appellee correctly states that the Legislature did not define the term "substantially impairs" within the criminal code. The Legislature has not defined the term within the general definitional section in R.C. 2901.01 of the criminal code nor did it choose to define the term within the Arson and other related matters chapter where the offense of Disrupting Public Services is actually located. The Defendant-Appellee then proceeds to fashion his own definition of this term by incorporating the definitions of "substantial risk" set forth in R.C. 2929.01(A)(8) and a "functionally impaired person" set forth in R.C. 2903.10(A). Neither of these two terms have any relationship to the term "substantially impairs." Eventually, the Defendant-Appellee reached the conclusion based upon an analysis of these two unrelated definitions that a police officer was not "substantially impaired" unless that impairment actually caused the officer to not do something of substance.

First, it is not appropriate for the Defendant-Appellee to create his own definition of a term when the Legislature has specifically chosen not to define it within the code. The

Legislature has intentionally left to the Courts the function of defining this term on a case by case basis. In any case, the Second, Fifth and Eighth Appellate Districts have found that the destruction of a single telephone line has substantially impaired the ability of law enforcement and emergency personnel to respond to an emergency situation. Second, contrary to the assertion of the Defendant-Appellee, something of substance did happen; the victim, Antonio Robinson, was assaulted a second time by the Defendant-Appellee after he made the 9-1-1 call.

A substantial impairment is more than a “substantial risk” or impairment.

The Defendant-Appellee argues that because law enforcement in the instant case was eventually able to respond to the scene of the assault and identify the victim that they were not substantially impaired in their ability to respond to the 9-1-1 call. Unless there was a total failure of law enforcement or emergency personnel to respond to the scene then their ability was not substantially impaired. The case law does not substantiate this point of view. In *State v. Scullion* (1999), 1999 Ohio App. LEXIS 3492, the Defendant took the telephone from his niece as she was attempting to call the police and ripped it out of the wall. Law enforcement officers were still able to respond to the scene of the domestic violence incident. The Eighth Appellate District stated that “the evidence indicated that although a 9-1-1 call was received by the Brecksville dispatcher, it came in as a hang-up and neither the Brecksville dispatcher nor the Broadview Heights dispatcher were able to call back to determine whether there was an emergency.” *Id* at pp. 10. The Eighth Appellate District found this evidence to be sufficient to uphold the conviction of the Defendant for disrupting public services.

The discussion of “substantially impaired” in *State v. Zeh* (1987), 31 Ohio St. 3d 99, is not helpful because the definition of “substantially” was not at issue in the case.

The Defendant-Appellee cites *State v. Zeh* (1987), 31 Ohio St. 3d 99 for its definition of “substantial impairment” with respect to a victim of sexual assault. However, the Defendant-Appellee states that the Court’s reasoning or definition is not helpful in this matter. The Plaintiff-Appellant respectfully disagrees; the Court’s analysis of “substantial impairment” is absolutely correct. Because the term “substantial impairment” is not defined in the Ohio Criminal Code, the Court must give the phrase the meaning generally understood *in common usage*. In the context of a sexual assault victim, the Court then stated that substantial impairment “must be established by demonstrating a present reduction, diminution or decrease in the victim’s ability, either to appraise the nature of his conduct or to control his conduct. . .” *Id.* at pps. 103-104. This same generally understood language may be incorporated into a definition of “substantial impairment” in the Disruption of Public Services statute. The term “substantially impair” in its common usage means a present reduction, diminution or decrease in the ability of the first responders to respond to an emergency or to protect and preserve any person or property from serious physical harm. It does not mean that the first responder’s ability is entirely thwarted as argued by the Defendant-Appellee.

Sometimes seconds matter. Sometimes they don’t.

The Defendant-Appellee argues that the Plaintiff-Appellant failed to provide any evidence that the delay occasioned by the Defendant-Appellee’s actions caused anyone to be injured, any medical treatment to be significantly delayed or any evidence lost. As previously set forth in the Plaintiff-Appellant’s response, the Defendant-Appellee assaulted the victim, Antonio Robinson a second time. This second assault occurred after the first 9-1-1 cell phone

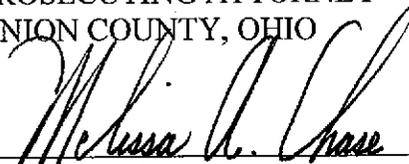
call was made and the transmission interrupted by the Defendant-Appellee's destruction of the cell phone. This destruction of the cell phone made it impossible for the victim to make another call for emergency assistance and for the victim to receive calls from the 9-1-1 Dispatchers or any other members of the public. But for the actions of Defendant-Appellee in destroying the cell phone, arguably law enforcement officers would have arrived at the scene directly and stopped and/or prevented the second assault from occurring. Emergency medical treatment was delayed while the law enforcement officers were driving around the subdivision to find the location of the assault and interviewing witnesses to discover the victim. To suggest that this delay of emergency medical treatment was "brief" or merely "incidental" is to minimize the serious nature of the victim's injuries.

CONCLUSION

For the foregoing reasons, the State of Ohio respectfully requests this court to reverse the judgment of the Third District Court of Appeals and remand the matter to that court for further proceedings.

Respectfully submitted,

DAVID W. PHILLIPS
PROSECUTING ATTORNEY
UNION COUNTY, OHIO

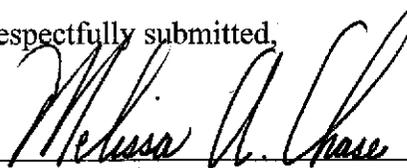


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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and accurate copy of the foregoing Merit Brief of the State of Ohio upon Alison Boggs, with a business address of 240 West Fifth Street, Suite A, Marysville, Ohio 43040 and upon Stephen P. Hardwick, Assistant Public Defender, with a business address of Office of the Ohio Public Defender, 8 East Long Street, 11th Floor, Columbus, Ohio 43215 by ordinary U.S. Mail this 10th day of August, 2009.

Respectfully submitted,



Melissa A. Chase (0042508)

Union County Assistant Prosecuting Attorney

APPENDIX

ORC Ann. 2909.04 (2009)

§ 2909.04. Disrupting public services

(A) No person, purposely by any means or knowingly by damaging or tampering with any property, shall do any of the following:

(1) Interrupt or impair television, radio, telephone, telegraph, or other mass communications service; police, fire, or other public service communications; radar, loran, radio, or other electronic aids to air or marine navigation or communications; or amateur or citizens band radio communications being used for public service or emergency communications;

(2) Interrupt or impair public transportation, including without limitation school bus transportation, or water supply, gas, power, or other utility service to the public;

(3) Substantially impair the ability of law enforcement officers, firefighters, rescue personnel, emergency medical services personnel, or emergency facility personnel to respond to an emergency or to protect and preserve any person or property from serious physical harm.

(B) No person shall knowingly use any computer, computer system, computer network, telecommunications device, or other electronic device or system or the internet so as to disrupt, interrupt, or impair the functions of any police, fire, educational, commercial, or governmental operations.

(C) Whoever violates this section is guilty of disrupting public services, a felony of the fourth degree.

(D) As used in this section:

(1) "Emergency medical services personnel" has the same meaning as in section 2133.21 of the Revised Code.

(2) "Emergency facility personnel" means any of the following:

(a) Any of the following individuals who perform services in the ordinary course of their professions in an emergency facility:

(i) Physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;

(ii) Registered nurses and licensed practical nurses licensed under Chapter 4723. of the Revised Code;

(iii) Physician assistants authorized to practice under Chapter 4730. of the Revised Code;

(iv) Health care workers;

(v) Clerical staffs.

(b) Any individual who is a security officer performing security services in an emergency facility;

(c) Any individual who is present in an emergency facility, who was summoned to the facility by an individual identified in division (D)(2)(a) or (b) of this section.

(3) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services.

(4) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(5) "Health care worker" means an individual, other than an individual specified in division (D)(2)(a), (b), or (c) of this section, who provides medical or other health-related care or treatment in an emergency facility, including medical technicians, medical assistants, orderlies, aides, or individuals acting in similar capacities.

History:

134 v H 511 (Eff 1-1-74); 146 v S 2 (Eff 7-1-96); 148 v H 137 (Eff 3-10-2000); 149 v S 40. Eff 1-25-2002; 150 v S 146, § 1, eff. 9-23-04.

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Citation: 1999 Ohio App. LEXIS 3492

1999 Ohio App. LEXIS 3492, *

STATE OF OHIO, Plaintiff-appellee vs. JOHN SCULLION, Defendant-appellant

NO. 74531

COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT, CUYAHOGA COUNTY

1999 Ohio App. LEXIS 3492

July 29, 1999, Date of Announcement of Decision

PRIOR HISTORY: [*1] CHARACTER OF PROCEEDING: Criminal appeal from Common Pleas Court, Case No. CR-361142.

DISPOSITION: JUDGMENT: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant appealed from judgment of Cuyahoga County (Ohio) Court of Common Pleas, which convicted him of disrupting public services in violation of Ohio Rev. Code Ann. § 2909.04, for pulling two telephones out of the walls of an apartment while his niece was attempting to report his domestic violence.

OVERVIEW: Defendant was convicted of one count of disrupting public services in violation of Ohio Rev. Code Ann. § 2909.04, for forcefully pulling extension cords for two telephones out of the walls of an apartment while his niece was attempting to dial 911 to report his alleged domestic violence. The court affirmed defendant's conviction. It rejected defendant's argument that he did not receive effective assistance of counsel. While defendant contended that his counsel had insufficient time to investigate and prepare for trial, his counsel never sought a continuance and defendant failed to identify how his counsel's performance was deficient or how the result would have been different had counsel been given additional time. The court found that the evidence was sufficient to establish that defendant violated Ohio Rev. Code Ann. § 2909.04 by preventing the apartment's occupants from making an emergency 911 call for assistance and by making it impossible for any member of the public to initiate telephone contact with the occupants. Finally, the verdict was not against the manifest weight of the evidence.

OUTCOME: The court affirmed defendant's conviction. Defendant failed to establish his ineffective assistance of counsel claim because he failed to identify how his counsel's performance was deficient, and the evidence was sufficient to establish that defendant disrupted public services by preventing the apartment's occupants from making an emergency call for assistance.

CORE TERMS: telephone, apartment, assignments of error, occupants, emergency, kitchen, dispatcher, prepare, telephone cord, assistance of counsel, reasonable doubt, bedroom, pulled, domestic violence, counsel's performance, announcement, convince, law enforcement officers, public services, evidence presented, trial counsel, defense attorney, average person, guilt beyond, trier of fact, physical harm, investigating, disrupting, convicted, deficient

LEXISNEXIS® HEADNOTES HideCriminal Law & Procedure > Counsel > Effective Assistance > Tests Criminal Law & Procedure > Counsel > Effective Assistance > Trials Criminal Law & Procedure > Appeals > Standards of Review > General Overview 

HN1 To establish that he was denied effective assistance of counsel, defendant must demonstrate that his counsel's performance fell below an objective standard of

reasonable representation and that he was prejudiced by his counsel's deficient performance such that there is a reasonable probability that were it not for counsel's errors, the result of the trial would have been different. A reviewing court must indulge a strong presumption that trial counsel's conduct was within the wide range of reasonable professional assistance. [More Like This Headnote](#)

[Criminal Law & Procedure](#) > [Appeals](#) > [Standards of Review](#) > [Substantial Evidence](#) > [Motions to Acquit & Dismiss](#)

[Evidence](#) > [Procedural Considerations](#) > [Exclusion & Preservation by Prosecutor](#)

[Evidence](#) > [Procedural Considerations](#) > [Weight & Sufficiency](#)

HN2 Pursuant to [Ohio Crim. R. 29\(A\)](#), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt. 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. [More Like This Headnote](#)

[Criminal Law & Procedure](#) > [Criminal Offenses](#) > [Miscellaneous Offenses](#) > [General Overview](#)
HN3 See [Ohio Rev. Code Ann. § 2909.04](#).

[Evidence](#) > [Procedural Considerations](#) > [Weight & Sufficiency](#)

HN4 The verdict is not against the weight of the evidence when there is evidence which, if believed, will convince the average person of the accused's guilt beyond a reasonable doubt. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. [More Like This Headnote](#)

COUNSEL: For plaintiff-appellee: WILLIAM D. MASON, Cuyahoga County Prosecutor. SALEH S. AWADALLAH, Assistant Prosecuting Attorney, Cleveland, Ohio.

For defendant-appellant: JAMES P. MCGOWAN, Cleveland, Ohio.

JUDGES: DIANE KARPINSKI, PRESIDING JUDGE, MICHAEL J. CORRIGAN, J., and ANNE L. KILBANE, J., CONCUR.

OPINION BY: DIANE KARPINSKI

OPINION

JOURNAL ENTRY AND OPINION

KARPINSKI, P.J.:

Defendant/appellant John K. Scullion was convicted of one count of disrupting public services, [R.C. 2909.04](#), for forcefully pulling extension cords for two telephones out of the walls of an apartment while his fourteen-year-old niece was attempting to dial 911 to report his alleged domestic violence. Scullion argues that he did not receive effective assistance of counsel, that the evidence to convict him was insufficient, and that the verdict was against the weight of the evidence. We find Scullion's assignments of error to be without merit, so we affirm the judgment.

The evidence at trial was that Scullion was staying at an apartment in the City of Broadview Heights with his [*2] mother and stepfather, his sister Judith Romano, and her three minor children on January 4, 1998. Scullion's fourteen-year-old niece, Kristin, testified that when she heard her eight-year-old brother Justin crying in the living room, she saw Scullion sitting next to him on the couch and holding him for a "time out." (Tr. 90-93.) Kristin asked Scullion to stop because Judith wanted Justin to go in the bedroom with her. Kristin testified that Scullion argued with her, got up from the couch and hit her on the head so that she fell over the garbage and into the corner of the stove in the kitchen. (Tr. 94.) As Scullion and his mother began arguing in the living room, Kristin went for the telephone in the kitchen in order to call the police, but Scullion took the telephone from her and ripped it out of the wall. (Tr. 95.) Kristin then went to her bedroom to dial 911 from the telephone located there, but Scullion pulled that telephone

from her as well. (Tr. 96, 100.) Kristin did not know whether that call ever went through. (Tr. 96.) Kristin then left the apartment to go to her friend's house because she was upset about the incident. (Tr. 96-97.)

In the meantime, Broadview Heights police [*3] received a radio dispatch concerning a 911 call that had been misrouted to the City of Brecksville. (Tr. 23-24.) The report indicated that it was a hang-up call originating from the apartment occupied by Scullion and his other family members. Both the Brecksville and Broadview Heights dispatchers attempted to call the residence back to determine whether there was an emergency, but the dispatchers were unable to get through to the residence.

Broadview Heights officers Brandenburg and Rummerly responded to the call and were met at the apartment door by Scullion. Scullion and the other occupants said that there was no problem and they did not know how or why a 911 would have been placed. (Tr. 26-29.) Kristin was not at the apartment at that time. (Tr. 29.) While Scullion appeared nervous, the officers did not notice anything else out of the ordinary and left within ten minutes. (Tr. 23-30.) Scullion left at the same time, and a license check of the car he was seen driving did not provide any basis for further inquiry. (Tr. 30-31.)

Approximately thirty minutes later, Officer Rummerly, who was involved in an unrelated traffic stop, was approached by a man who identified himself as Larry [*4] Willits, Scullion's step-father. (Tr. 31.) Willits reported that there had been a domestic violence situation at the apartment prior to the officers' initial inquiry. Officers Rummerly and Brandenburg then returned to the apartment. Scullion was not there, and this time the occupants reported Scullion's prior behavior. Shortly after the officers had returned to the apartment, Kristin also returned and reported the incident. The officers observed that the cord to one of the telephones had been torn from the wall and was damaged so much that it could not be plugged back in. (Tr. 33.) The occupants reported that they were not able to place telephone calls. (Tr. 38.) Judith Romano, Scullion's sister and the mother of the children, confirmed that the telephone cord in the kitchen had been yanked out of the wall. (Tr. 72.)

Scullion was subsequently charged and tried for disrupting public services, R.C. 2909.04. ¹ For his part, Scullion denied that Kristin had used the telephone or that he had pulled either the kitchen or bedroom telephone cords out. (Tr. 112-113, 115, 126-127.) Scullion was convicted and sentenced to fourteen months in prison.

Scullion's first [*5] assignment of error states

I. THE TRIAL COURT ERRED BY DENYING THE DEFENDANT-APPELLANT EFFECTIVE ASSISTANCE OF COUNSEL BY NOT GIVING TRIAL COUNSEL SUFFICIENT TIME TO CONDUCT A REASONABLE INVESTIGATION AND PREPARE FOR TRIAL.

This assignment of error is not well taken.

FOOTNOTES

¹ Prior to trial, the state dismissed, on grounds of untimeliness, two misdemeanor charges for domestic violence, R.C. 2919.25.

HN1

To establish that he was denied effective assistance of counsel, Scullion must demonstrate that his counsel's performance fell below an objective standard of reasonable representation and that he was prejudiced by his counsel's deficient performance such that there is a reasonable probability that were it not for counsel's errors, the result of the trial would have been different. *Strickland v. Washington* (1984), 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052; *State v. Bradley* (1989), 42 Ohio St. 3d 136, 538 N.E.2d 373. A reviewing court must [*6] indulge a strong presumption that trial counsel's conduct was within the wide range of reasonable professional assistance. See *Lakewood v. Town* (1995), 106 Ohio App. 3d 521, 666 N.E.2d 599. Scullion has not made the requisite showing in this case.

Scullion faults the trial court for failing to give counsel sufficient time to investigate and prepare for trial, but this contention is not borne out by the record. There is no indication that counsel sought a continuance or that the court denied a request for a continuance. While Scullion asserts that his counsel was afforded only 48 hours to investigate and prepare for trial, the record itself indicates that Scullion's counsel was assigned to the case on March 19, 1998, a pre-trial was held on April 1, 1998, and trial commenced on April 3, 1998. (Tr. 8.) Scullion's counsel indicated

that her office began investigating the case as soon as it was received. (Tr. 8.) And while Scullion asserts that his counsel had insufficient time to prepare a defense, Scullion does not identify with any particularity how his counsel's performance was deficient or how the result would have been different had counsel been given additional [*7] time. Our own review of the trial record does not give us any reason to second guess the reasonableness of his trial counsel's performance.

Scullion's reliance on *State v. Darrington*, 1993 Ohio App. LEXIS 2817 (June 3, 1993), Cuyahoga App. No. 62076, unreported, is misplaced. In that case, we found the defendant was denied effective assistance of counsel when one defense attorney lacked the experience necessary to try the case and the other more experienced defense attorney met the defendant just over two hours before the trial was scheduled to begin. Nothing in the record before us suggests that Scullion's trial counsel did not adequately prepare or present a defense on his behalf. The first assignment of error is overruled.

Scullion's second and third assignments of error state:

II. THE TRIAL COURT ERRED BY OVERRULING THE DEFENDANT-APPELLANT'S MOTION FOR ACQUITTAL PURSUANT TO RULE 29 OF THE OHIO RULES OF CRIMINAL PROCEDURE.

III. THE DEFENDANT-APPELLANT'S GUILTY VERDICT IS AGAINST THE WEIGHT OF THE EVIDENCE.

These assignments of error are not well taken.

^{HN2} Pursuant to Crim.R. 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds [*8] can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt." *State v. Bridgeman* (1978), 55 Ohio St. 2d 261, 381 N.E.2d 184, at syllabus. In *State v. Jenks* (1991), 61 Ohio St. 3d 259, 574 N.E.2d 492, paragraph 2 of the syllabus instructs as follows:

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.

In this case, Scullion was charged with violating ^{HN3} R.C. 2909.04, which provides, in relevant part:

(A) No person, purposely by any means, or knowingly by damaging or tampering with any property, shall do any of the following:

* * *

(3) Substantially impair the ability of law enforcement officers, [*9] firemen, or rescue personnel to respond to an emergency, or to protect and preserve any person or property from serious physical harm.

In *State v. Brown* (1994), 97 Ohio App. 3d 293, 646 N.E.2d 838, the defendant was found guilty of violating R.C. 2909.04 on evidence that he pulled the telephone out of the wall of an apartment, disconnected the telephone wires, and destroyed the telephone. The defendant thereby prevented the occupants from making an emergency 911 call for assistance and made it impossible for any member of the public to initiate telephone contact with the occupants.

In the case at bar, the evidence presented at trial likewise indicated that Scullion substantially impaired the ability of law enforcement officers to respond to an emergency or to protect and preserve persons or property from serious physical harm. Kristin's testimony indicated that Scullion pulled the kitchen and bedroom telephone cords from the wall so that she could not complete a 911 call. Judith Romano acknowledged that the kitchen telephone cord had been yanked from the wall, and this was corroborated by the investigating police officers. The

evidence [*10] further indicated that although a 911 call was received by the Brecksville dispatcher, it came in as a hang-up and neither the Brecksville dispatcher nor the Broadview Heights dispatcher were able to call back to determine whether there was an emergency. As in *State v. Brown, supra*, this evidence was sufficient to establish that Scullion violated R.C. 2909.04 by preventing the occupants from making an emergency 911 call for assistance and by making it impossible for any member of the public to initiate telephone contact with the occupants.

We also cannot say that the verdict was against the manifest weight of the evidence. ^{HNA} The verdict is not against the weight of the evidence when there is evidence which, if believed, will convince the average person of the accused's guilt beyond a reasonable doubt. *State v. Eley* (1978), 56 Ohio St. 2d 169, 383 N.E.2d 132. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. DeHass* (1967), 10 Ohio St. 2d 230, 227 N.E.2d 212. The evidence presented below, if believed, could convince the average person that Scullion violated [*11] R.C. 2909.04.

Scullion's second and third assignments of error are overruled. The judgment is affirmed.

It is ordered that appellee recover of appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MICHAEL J. CORRIGAN, J., and

ANNE L. KILBANE, J., CONCUR.

DIANE KARPINSKI

PRESIDING JUDGE

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court [*12] of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S. Ct. Prac. R. II, Section 2(A)(1).

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