

Court Original

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Court of Appeals Case No.  
 Plaintiff-Appellee, : CA2010-08-017

vs. : On Appeal from the Fayette County  
 : Court of Common Pleas, Case No.

JAMES M. LEWIS, : 01CR100061  
 Defendant-Appellant, pro se. : 11-0629

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APPELLANT'S PRO SE MEMORANDUM IN SUPPORT OF JURISDICTION

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Pro Se Appellant: James M. Lewis, #635-508  
 N.C.I.  
 15708 McConnelville Rd.  
 Caldwell, Ohio 43724

**RECEIVED**  
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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL  
INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

Defendant-Appellant presents this case and appeal to the Ohio Supreme Court seeking and requesting that it exercise its original jurisdiction and review this criminal case matter. Because the case involves a matter of public and/or great importance and involves a constitutional issue as follows:

The Defendant was denied a fair trial and the jury's verdict is flawed as it was based on false testimony by a state witness/victim and her son, allowed and perpetuated by the State and our Trial court, in what has become the normal practice in Ohio trial courts. Recently, our previous Ohio Attorney General himself has authored a book about false convictions in the same judicial system. And there are thousands of jury and bench trials over the past decade in Ohio that have been unfair and yet resulted in being affirmed on appeal. As these Constitutional Rights of Due Process and a Fair Trial and to effective counsel and our rights to face our accusers without Prosecutors and Judges promoting dishonesty over the truth and justice to be present an image of being tough on crime, cases such as this need to be reviewed and given serious consideration by this, Ohio's Highest Court.

STATEMENT OF THE CASE

This Appeal is the result of the January 31, 2011 affirming of the trial courts jury trial conviction of the Defendant, in appeal case number CA2010-08-

017, from the trial courts, Fayette County Court of Common Pleas case number, 01CR100061.

Defendant was indicted and tried for Domestic Violence, from an incident on April 15, 2010 involving his wife at their home. He was convicted of violating O.R.C. § 2919.25(A), a felony of the third degree and was sentenced to two years in prison. He timely filed and heard his direct appeal.

STATEMENT OF CASE

On April 15, 2010, appellant's wife (the victim) filed a police report, alleging that appellant choked her, "slammed" her against the wall, and subsequently threw her into the bed. The victim explained that prior to the physical incident, she and appellant argued because his brother took their son, (age 13), out of the house without her permission. He was charged, tried, and convicted based on her testimony, (recanted in part after trial), and that of their 13 year old son, who was obviously coached, confused and made little sense defying walls that would not allow him to see what she told the boy to say he saw. This obvious perjury and witness tampering was allowed and not stopped by the prosecution.

On direct appeal, the Defendant raised several issues as are presented herein.

**FIRST PROPOSITION OF LAW:** Appellant was denied his Due Process, (5th & 14th Amendment) and his Sixth Amendment Rights to a fair trial, to face his accusers with all relevant evidence, and to the truly effective assistance of defense counsel during his jury trial as a result of the now all-too-common practices

of the trial courts who operate with little to no checks or balances.

This, thus resulted in his being wrongfully convicted and punished. A matter the Court of Appeals unreasonably affirmed as their normal practice, thus Denying him his Due Process Right to a meaningful review and appeal.

On Appeal the Appellant presented four assignments of error related to his trial and his Constitutional and Due Process rights.

The Twelve District Court of Appeals "excused" each assignment and never considered the cumulative effect that ultimately denied him a fair trial. This is the denial of due process in and of itself, in that his appeal, like too many others, was meaningless.

It is the cumulative effect of the issues presented on direct appeal, which denied him a fair trial and thus violated his Constitutional rights.

These issues are so presented herein as raised for review, and as evidence that the lower courts practices must be examined by this Court under the full constitutional concepts and this case reversed.

Assignment of Error Number 1: THE TRIAL COURT ERRED IN EXCLUDING EVIDENCE OF THE PRIOR CONVICTION OF THE VICTIM FOR THE PURPOSE OF IMPEACHING THE WITNESS."

Ineffective assistance of appellate counsel for not raising this as one piece of the entire denial of a fair trial process, and for not including that such could be argued at trial and on appeal as Evidence to Show a Pattern by said victim.

In 1999, (not in trial court records), the Victim made a prior false

allegation and was convicted for falsification. this was for an very similar false testimony for another domestic violence matter, and this also showed her lack of veracity when dealing with law enforcement and the courts.

Evidence Rule 609 provides for impeachment, but one must, and the Court of Appeals did not, consider Rule 608 Evidence of Character of Witness, and especially, (B) for Specific instances of Conduct, as this would have been valuable and probative as to the jury's ability to weigh the truthfulness and untruthfulness. Rule 608, unlike 609 Does Not Have the Time Limit Rules.

Having Appellate reviews continuing to find that all such matters are left to the trial court's discretion, (appeal at Page 4), only promotes these types of unconstitutional rulings from our trial courts and to escalate the problem of constitutional rights violations.

The impact of the jury learning that the victim had such a history of falsification combined with the issues in the next assignment of error may well have resulted in a different verdict.

Assignment of Error Number 2: THE TRIAL COURT ERRED IN EXCLUDING THE TESTIMONY OF BRITTANY COX REGARDING STATEMENTS BY THE VICTIM, WHICH WERE MADE IN HER PRESENCE"

These statements by the victim that she threatened to file false charges of domestic violence against this Defendant, on the date of the incident, April 15, 2010, which contradicted the testimony of the victim who testified that she did not ever so threaten the defendant, was another critical piece of the defense's puzzle blocked by the trial court. (Also another poorly presented matter for trial counsel and failure to be raised as ineffective assistance of counsel

by appellate counsel).

Counsel on Appeal argued that Evidence Rule 613 (B) made the testimony of Brittany Cox admissible, as an impeachment statement, by self-contradiction. The Court of Appeals found that appellant counsel failed to establish a PROPER FOUNDATION, (page 7 top), and that the victim was never asked such questions by trial counsel, (INEFFECTIVENESS). The Court of Appeals does find that defense counsel asked the victim whether she "threatened to retaliate" which is too close to not allow Brittany Cox to expand upon. The denial of such testimony, which would have aided the jury in determining the truth of the case, was relevant and probative and should have been allowed. The denial of such testimony denied the Appellant his right to Effectively face his accusers and to defend himself against false accusations.

Rule 803 also allowed for the testimony of Brittany Cox as it allows out-of-court statements to be admitted to show the victim's state of mind, (see ¶ 33, 34). However, the Court of Appeals found this to be hearsay, which is ludicrous and denied him a fair trial and his right to face his accuser.

The Court of Appeals also finds this, and every defense harmful act, a harmless error, and found no harm when harm is serious.

Assignment of Error Number 3:

THE TRIAL COURT ERRED IN EXCLUDING THE TRANSCRIPTS FROM THE PRE-TRIAL HEARING HELD IN APRIL 2010.

The transcripts of the April 27, 2010 preliminary hearing would have impeached the victim with inconsistencies in her trial testimony. This denied the defense from again acting her memory and veracity and resulted in a denial

of a fair trial.

The Court of Appeals found that these inconsistencies were addressed during trial through witness examination and were thus harmless.

Yet, again we are faced with the cumulative effect of trial court protectionism of state cases and charges. A disease that threatens to destroy the American Jury System and to water down our Constitutional Rights until we are governed by oppressors at their whims. The transcripts had value in that they were readable proof of inconsistencies, that show the "victim" had no solid recollection of the events she alleged were this case and crime. Every such ounce of weight had valued to the jury that was instead misled. And this resulted in a wrongful conviction.

Assignment of Error Number 4:

THE TRIAL COURT ERRED BY FAILING TO GRANT THE MOTION TO DISMISS OR (ALTERNATIVELY) FOR ACQUITTAL WHEN THE EVIDENCE SUBMITTED COULD NOT PROVE BEYOND A REASONABLE DOUBT ALL THE ELEMENTS OF THE OFFENSE CHARGED.

Appellate counsel argued that the trial court erred in not granting the motion for acquittal, (Rule 29) specifically addressing that the evidence at trial was insufficient where the state presented the conflicting testimony of their two witness, the victim and her son, as their two versions differed "Significantly".

In this case, the alleged victim did not show any injuries to support her allegations of abuse or violence. During her interview with police, the police themselves stated that she "continually rubbed her neck during her interview"

and explained that she potentially created red marks on her neck that she alleged were the result of the defendant choking her. The State presented four photographs taken by police on April 15, 2010 showing the redness. (Is this another presentation of known perjury or false evidence presented by the State?).

Of Course the Court of Appeals found that this is another matter left to the trial court's sole discretion and one that will not be reversed.

Adding in the testimony of their 11 year old son, who stated he saw his dad choking his mom on the bed- but that this was from the top of the stairs which is physically impossible due to walls obstructing his view. (Trial Counsel failed to show this strongly enough to have the jury dismiss the boys testimony.)

Furthermore, the Court of Appeals finding, (§13) that this left the jury to adequately believe the victim, and to so support the conviction/verdict, Absolutely negates their findings that each of the previous individual issues were harmless, or could be harmless.

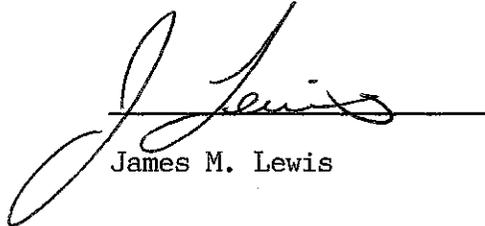
#### CLOSING/CONCLUSION

For the cumulative effect of these errors, which amount to a denial of the Appellant's due process and constitutional rights and so denied him a fair trial and thus resulted in the wrongful conviction of Mr. Lewis, this Court should accept jurisdiction as the matter has great public and constitutional importance. After all, to continue down the road the State's judicial system has been on for the past decade will surely end in tragic results and the death of justice will be closely followed with the death of democracy.

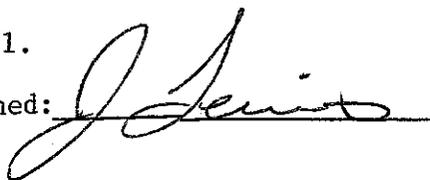
The Appellant so moves this Honorable Court to grant him this Motion and

to Accept Jurisdiction to allow him to further argue this matter. And he notes that he is seriously limited in the preparation due to his incarceration, limited legal knowledge, no counsel, and the fact that he has been and is in seg while he prepared this packet.

Respectfully Submitted,

 Appellant  
James M. Lewis

See Certificate of Service for entire packet,  
certifies that this Memorandum In Support of Jurisdiction has been mailed to the Fayette County Prosecutor along with all related documents, postage paid, from N.C.I. on the 9<sup>th</sup> day of March, 2011.

Signed: 

IN THE SUPREME COURT OF OHIO

AFFIDAVIT OF INDIGENCY

I, James M. Lewis, as pro se Defendant-Appellant, do hereby state that I am without the necessary funds to pay the costs of this action for the following reasons:

[Note: S. Ct. Prac.R.XV, Sec. 3, requirement for Reasons why I am unable to pay the docket fees and/or security deposit.]

- 1) I am the Appellant in the foregoing action;
- 2) I am seeking a waiver of the pre-payment of the filing fees and costs assessed by this Court in this action.
- 3) I have not previously within the last five (5) years, filed any civil or criminal actions that were deemed frivolous or malicious by any court, State or Federal (Only filed matters are my criminal cases and direct appeals)
- 4) I am a true pauper within the meaning and spirit of R.C. §§ 2323.30 and 2323.31, as I do not possess sufficient funds, property, (real or otherwise), or chattel to offer as security for fees or costs of this action;
- 5) My Only Income is the State pay of less than \$20 per month
- 6) I hereby represent that my impecunious status should not be used to deny me my day in Court concerning the foregoing action.

Furthermore, it is asserted that this affidavit complies with the holding of the Supreme Court of Ohio in State ex rel. Alford v. Winters (1997), 80 Ohio St.3d 285.

Further Affiant Sayeth Naught.

*James Lewis*  
\_\_\_\_\_  
Affiant, James M. Lewis

Sworn to and Subscribed to in my presence, in Noble County, Ohio, on this the 20<sup>th</sup> Day of June, 2011.

Signed: *Janet E. Speary*  
\_\_\_\_\_  
Notary Public, Ohio

My Commission Expires:



Janet E. Speary  
Notary Public - Ohio  
My Commission Expires 8-25-2013

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

STATE OF OHIO, :

Plaintiff-Appellee, :

- vs - :

JAMES M. LEWIS, :

Defendant-Appellant. :

CASE NO. CA2010-08-017

OPINION  
1/31/2011

CRIMINAL APPEAL FROM FAYETTE COUNTY COURT OF COMMON PLEAS  
Case No. 01CRI00061

David B. Bender, Fayette County Prosecuting Attorney, Kristina M. Rooker, 1<sup>st</sup> Fl.,  
Courthouse, 110 East Court Street, Washington Court House, Ohio 43160, for plaintiff-  
appellee

Susan R. Wollscheid, P.O. Box 176, Washington Court House, Ohio 43160, for  
defendant-appellant

**BRESSLER, J.**

{¶1} Defendant-appellant, James M. Lewis, appeals his conviction and  
sentence in the Fayette County Court of Common Pleas for domestic violence. For the  
reasons that follow, we affirm the decision of the trial court.

{¶2} On April 15, 2010, appellant's wife (the victim) filed a police report, alleging  
appellant choked her, "slammed" her against the wall, and subsequently threw her onto  
the bed. The victim explained that prior to the physical incident, she and appellant

argued because appellant's brother took the victim's 13-year-old son out of their home without the victim's permission. Following a police investigation, appellant was charged with domestic violence in violation of R.C. 2919.25(A), a third-degree felony, due to appellant's two prior domestic violence convictions. Following a jury trial, appellant was convicted and sentenced to serve two years in prison.

{13} Appellant now appeals from his conviction, raising four assignments of error. For ease of analysis, we will address appellant's assignments of error out of order.

{14} Assignment of Error No. 4:

{15} "THE TRIAL COURT ERRED BY FAILING TO GRANT THE MOTION TO DISMISS OR (ALTERNATIVELY) FOR ACQUITTAL WHEN THE EVIDENCE SUBMITTED COULD NOT PROVE BEYOND A REASONABLE DOUBT ALL THE ELEMENTS OF THE OFFENSE CHARGE." [sic]

{16} In his fourth assignment of error, appellant argues his conviction is not supported by sufficient evidence, thus the trial court erroneously denied his Crim.R. 29 motion for acquittal at the close of all evidence. Specifically, appellant argues the evidence was insufficient where the state presented the conflicting testimony of two witnesses: the victim and her 11-year-old son, whose accounts of the events on April 15, 2010 varied "significantly" from each other.

{17} When reviewing the trial court's denial of a motion for acquittal under Crim.R. 29, an appellate court applies the same test it would in reviewing a sufficiency of the evidence argument. *State v. Alkire*, Madison App. No. CA2008-09-023, 2009-Ohio-2813, ¶51. When reviewing the sufficiency of the evidence underlying a criminal conviction, "[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* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. A reviewing court must not substitute its evaluation of the witnesses' credibility for that of the jury. *State v. Benge*, 75 Ohio St.3d 136, 143, 1996-Ohio-227; *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶8} In the case at bar, appellant was convicted of domestic violence in violation of R.C. 2919.25(A), which states, "[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member."

{¶9} The state called three witnesses during trial. The state's first witness was the victim, who testified she and appellant argued after appellant's brother took the victim's 13-year-old son out of their home without her permission. When the victim discovered her son's disappearance, she told appellant she would "call the law" on his brother unless he returned her son within 30 minutes. The victim testified appellant became upset, at which time he grabbed the victim's throat and "slammed" her against the wall. Further, the victim testified once she escaped appellant's grasp, she attempted to walk to the kitchen to find her mobile phone, but appellant pushed her onto the bed before she could do so.

{¶10} The state's second witness was the victim's youngest son, who testified "I saw my dad on the bed \* \* \* choking my mom," after he walked upstairs to discover the cause of a "big thump" he heard from downstairs.

{¶11} Finally, the state presented testimony from Sergeant Bruce Stolsenberg of the Washington Court House Police Department. Stolsenberg testified he met the victim and her youngest son in the police department lobby on April 15, 2010. Stolsenberg testified the victim continually rubbed her neck during her interview and explained appellant created the red marks on her neck when he choked her. At that time, the

state presented four photographs taken by Stolsenberg on April 15, 2010, showing redness on the victim's neck.

{¶12} While appellant testified to a conflicting version of the events, the jury was free to accept or reject any and all of the evidence offered by the parties. See, e.g., *State v. Antill* (1964), 176 Ohio St. 61, 67; *State v. Smith*, Fayette App. No. CA2007-10-035, 2008-Ohio-5931, ¶16. Further, "[t]he existence of conflicting evidence does not render the evidence insufficient as a matter of law." *State v. Gray*, Franklin App. No. 06AP-15, 2007-Ohio-1504, ¶18, citing *State v. Murphy*, 91 Ohio St.3d 516, 543, 2001-Ohio-112.

{¶13} In the case at bar, the jury chose to believe the victim. Construing the evidence in a light most favorable to the state, we hold a rational fact-finder could have found the essential elements of the domestic violence charge proven beyond a reasonable doubt. Therefore, we decline to substitute our judgment for that of the jury in this matter.

{¶14} Based upon the foregoing, we find the trial court did not err in denying appellant's Crim.R. 29 motion, as sufficient evidence was presented at trial to support his conviction.

{¶15} Accordingly, appellant's fourth assignment of error is overruled.

{¶16} Assignment of Error No. 1:

{¶17} "THE TRIAL COURT ERRED IN EXCLUDING EVIDENCE OF THE PRIOR CONVICTION OF [THE VICTIM] FOR THE PURPOSE OF IMPEACHING THE WITNESS."

{¶18} In his first assignment of error, appellant argues the trial court erred in excluding evidence of the victim's prior falsification conviction from 1999. At trial, appellant attempted to admit the conviction for impeachment purposes. Appellant

argues this conviction was highly probative because it "demonstrated [the victim's] lack of veracity when dealing with law enforcement and the judicial system in particular."

**{¶19}** The admission or exclusion of relevant evidence rests within the sound discretion of the trial court. *State v. Ghee*, Madison App. No. CA2008-08-017, 2009-Ohio-2630, ¶32; *State v. Brown*, 100 Ohio St.3d 51, 58, 2003-Ohio-5059, ¶27. An appellate court will not disturb a trial court's ruling as to the exclusion of evidence absent an abuse of discretion. *Ghee* at ¶32. A trial court abuses its discretion when it acts in an unreasonable, arbitrary, or unconscionable manner. *Id.*

**{¶20}** Evid.R. 609 provides for impeachment by evidence of the conviction of a crime, and pursuant to Evid.R. 609(A)(3), evidence that any witness has been convicted of a crime "is admissible if the crime involved dishonesty or false statement, regardless of the punishment and whether based upon state or federal statute or local ordinance."

**{¶21}** However, Evid.R. 609(B) imposes time limits on the use of that information, and states:

**{¶22}** "Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement, or the termination of community control sanctions, post-release control, or probation, shock probation, parole, or shock parole imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect."

**{¶23}** After review of the record, we find no abuse by the trial court in excluding the evidence relating to the victim's prior falsification conviction. See *State v. Adams* (1980), 62 Ohio St.2d 151, 157. First, while not disputed by the parties, there is no evidence in the record to verify the date of the victim's prior falsification conviction.

Without an adequate record, we cannot determine whether this conviction is within the appropriate time frame set forth by Evid.R. 609(B). Cf. *State v. Greene*, Ashtabula App. No. 2002-A-0104, 2004-Ohio-6701, ¶22. Accordingly, we "must presume the regularity of the trial court proceedings and the presence of sufficient evidence to support the trial court's decision." *Id.*, citing *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199.

{¶24} Secondly, appellant's counsel was permitted to cross-examine the victim regarding her more recent convictions, including her 2002, 2003, and 2007 convictions for theft and a 2008 conviction for complicity to theft. Under these circumstances, there was little additional probative value to be derived from the admission of the victim's dated falsification conviction.

{¶25} In light of these considerations, we find the trial court did not abuse its discretion in excluding evidence of the victim's prior falsification conviction. See, e.g., *State v. Breckenridge*, Franklin App. No. 05AP-868, 2006-Ohio-5038, ¶10.

{¶26} Accordingly, appellant's first assignment of error is overruled.

{¶27} Assignment of Error No. 2:

{¶28} "THE TRIAL COURT ERRED IN EXCLUDING THE TESTIMONY OF BRITTANY COX REGARDING STATEMENTS BY [THE VICTIM], WHICH WERE MADE IN HER PRESENCE."

{¶29} In his second assignment of error, appellant argues the trial court abused its discretion in excluding extrinsic evidence of a prior inconsistent statement made by the victim. Specifically, appellant argues Brittany Cox witnessed the victim threaten to file false charges of domestic violence against appellant on April 15, 2010, which would contradict the victim's testimony that she never threatened to call the police on appellant.

{¶30} Appellant first argues such evidence was admissible under Evid.R. 613(B) as a prior inconsistent statement. Evid.R. 613 governs the procedures for impeachment of a witness by self-contradiction. "When extrinsic evidence of a prior inconsistent statement \*\*\* is offered into evidence pursuant to Evid.R. 613(B), a foundation must be established through direct or cross-examination in which: (1) the witness is presented with the former statement; (2) the witness is asked whether he [or she] made the statement; (3) the witness is given an opportunity to admit, deny or explain the statement; and (4) the opposing party is given an opportunity to interrogate the witness on the inconsistent statement." *State v. Mack*, 73 Ohio St.3d 502, 514-515, 1995-Ohio-273.

{¶31} After examining the record, we find appellant's counsel failed to establish a proper foundation for the admission of Cox's testimony under Evid.R. 613(B). Specifically, we find the victim was never asked if she threatened appellant with false domestic violence charges in the presence of Brittany Cox on April 15, 2010. While the victim was asked whether she "threatened to retaliate" against appellant, no mention was made of Brittany Cox or false domestic violence charges during cross-examination. Because a proper foundation was not laid for the admission of the extrinsic evidence, we reject appellant's argument and find the trial court did not abuse its discretion in excluding Cox's testimony on these grounds.

{¶32} Appellant also argues Cox's testimony regarding the victim's statement was admissible pursuant to Evid.R. 803(3).

{¶33} Evid.R. 803(3) permits the admission of out-of-court statements involving the declarant's then existing state of mind. Specifically, Evid.R. 803(3) exempts the following from the prohibition on hearsay:

{¶34} "A statement of the declarant's then existing state of mind, emotion,

sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will."

{¶35} The Ohio Supreme Court has held "[u]nder Evid.R. 803(3), statements of current intent to take future actions are admissible for the inference that the intended act was performed." *State v. Hand*, 107 Ohio St.3d 378, 2006-Ohio-18, ¶99. In the case at bar, Cox's testimony regarding the victim's threat to file false domestic violence charges against appellant constitutes admissible hearsay pursuant to Evid.R. 803(3) inasmuch as it reflects the victim's then existing state of mind. Cf. *State v. Davis* (1991), 62 Ohio St.3d 326, 343. In other words, Cox's testimony was probative of the victim's intent to retaliate against appellant with specific charges of domestic violence on April 15, 2010.

{¶36} Nevertheless, any error by the trial court in excluding Cox's testimony was harmless. Appellant's counsel had ample opportunity during cross-examination to challenge the victim's testimony that she did not threaten to "call the law" on appellant. Moreover, as previously discussed, sufficient evidence existed to support appellant's domestic violence conviction beyond a reasonable doubt. Upon reviewing the entire record and examining all the other evidence produced at trial, we find that if the hearsay testimony, i.e., that the victim threatened appellant with false domestic violence charges, had been introduced, the jury would have made the same decision.

{¶37} Accordingly, appellant's second assignment of error is overruled.

{¶38} Assignment of Error No. 3:

{¶39} "THE TRIAL COURT ERRED IN EXCLUDING THE TRANSCRIPTS FROM THE PRE TRIAL HEARING HELD IN APRIL 2010."

{¶40} In his third assignment of error, appellant argues the trial court erred in

refusing to admit into evidence transcripts of the preliminary hearing held April 27, 2010. Appellant attempted to admit the transcripts to impeach the victim as to inconsistencies in her testimony during the preliminary hearing and at trial.

{¶41} However, the inconsistencies appellant asserts were disclosed in the preliminary hearing transcripts were also fully discussed during cross-examination. Specifically, the victim was cross-examined regarding her testimony during the preliminary hearing that after appellant put his hands around her neck, she entered the kitchen for a drink of water, whereas during trial, the victim testified "I never once went into my kitchen."

{¶42} We find that as a result of counsel's inquiry on cross-examination, any discrepancies in the victim's statements were readily apparent to the jury, even without the preliminary hearing transcripts. See Evid.R. 103(A). Further, we find whether the victim entered the kitchen during the altercation and any other inconsistencies discussed during cross-examination were immaterial to appellant's culpability on the charged offense. Accordingly, we find no abuse in the trial court's ruling.

{¶43} Appellant's third assignment of error is overruled.

{¶44} Judgment affirmed.

POWELL, P.J., and RINGLAND, J., concur.