

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	John W. Wise, P.J.
Plaintiff-Appellee	:	Julie A. Edwards, J.
	:	Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2008 CA 00147
STEVEN SNIDER	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal Appeal From Stark County Court  
Of Common Pleas Case No. 2008 CR 0583

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: June 29, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Edwards, J.*

{¶1} Defendant-appellant, Steven Snider, appeals his conviction and sentence from the Stark County Court of Common Pleas on one count each of felonious assault and domestic violence. Plaintiff-appellee is the State of Ohio.

#### STATEMENT OF THE FACTS AND CASE

{¶2} On April 29, 2008, the Stark County Grand Jury indicted appellant on one count of felonious assault in violation of R.C. 2903.11(A)(1), a felony of the second degree, and one count of domestic violence in violation of R.C. 2919. 25(A), a felony of the third degree. At his arraignment on May 2, 2008, appellant entered a plea of not guilty to the charges.

{¶3} Subsequently, a jury trial commenced on June 9, 2008. Prior to the start of trial, the parties stipulated that appellant had two prior domestic violence convictions, one in 2003 and the other in 2005. The following testimony was then adduced at trial.

{¶4} Pamela Ann McGrady is appellant's mother. Appellant and his mother lived together. McGrady testified that during the evening of March 24, 2008, she was reclining on the couch when appellant came home drunk. McGrady testified that she walked down a couple of stairs to get to the door where appellant was located. According to McGrady, appellant "came stumbling in the house and then the basement steps are right there. And he pushed me down the steps." Trial Transcript at 142. Because there was no railing on the steps, McGrady was unable to catch herself and ended up on the basement floor. Appellant then came down the stairs after McGrady and started "knocking" her head around, choking her and punching her in the ribs. Trial

Transcript at 143. McGrady, who suffered fractured ribs and a fractured neck, passed out. She was still receiving treatment for her injuries as of the time of trial.

{¶5} On cross-examination, McGrady denied that appellant told her that he had removed the basement railing to move a washer and dryer into the basement and that appellant told her not to use the stairs. McGrady further testified that she has suffered from epilepsy since she was eighteen months old and that she was in a serious car accident in 1991. She denied that, prior to March 24, 2008, she had a history of losing her balance or falling down. McGrady, when questioned, denied that, when she first arrived at the hospital after the incident, she told nurses and doctors that she had fallen down the stairs. She also denied that she had suffered a stroke a number of years ago. And she denied that she had suffered from any memory problems prior to March 24, 2008.

{¶6} Laurie Fitzgibbon, who is a registered nurse in the emergency room at Aultman Hospital, testified that she was on duty on March 25, 2008 when McGrady arrived at approximately 9:00 a.m. Appellant had taken McGrady to the emergency room. Fitzgibbon testified that McGrady had “extensive bruising throughout her face, her neck, and her chest” and was “in a lot of pain.” Trial Transcript at 157. McGrady told Fitzgibbons that she had fallen down the stairs. Fitzgibbons testified that based on her training, education, and experience, she concluded that McGrady’s injuries were not consistent with a fall down a flight of stairs.

{¶7} The following testimony was adduced when Fitzgibbons was asked what she proceeded to do at that time:

{¶8} “A. At that time she [McGrady] was in a room alone. Her son was said to be out in the hallway. We had closed the door to the trauma room and at that time we asked her what had happened again. She said I fell down the stairs. And the trauma nurse asked her did you fall or were you pushed? She hesitated and then she said I was pushed. When asked by who she stated my son, he had beaten her and he had pushed her down the steps.” Trial Transcript at 160.

{¶9} Fitzgibbon further testified that McGrady was “very scared” and stated that she did not feel safe in her home.

{¶10} Photographs of McGrady’s injuries were admitted into evidence. Fitzgibbons testified that the photos showed bruising around both eyes and both cheekbones and bruising on McGrady’s forehead, down her neck and on her left shoulder. McGrady also had bruising near her wrists, elbows, hips and knees and fractures on both sides of her ribs. In addition, her eye socket was fractured and one of the bones in the back of her neck was fractured. When asked about McGrady’s pain, Fitzgibbons testified that McGrady rated her pain at a ten on a scale of one to ten, with ten being the highest level.

{¶11} On cross-examination, Fitzgibbon testified that McGrady, who was “alert and oriented when she arrived at the emergency room, had a history of epileptic seizures and of falling and had an old head injury. Fitzgibbon testified that McGrady’s medical records indicated that she had a history of falling. She further testified that McGrady was given morphine for her pain. Trial transcript at 170. Fitzgibbon also testified that hospital records indicated that McGrady had previously suffered a stroke prior to March 25, 2008.

{¶12} The next witness to testify at trial was Victoria Sellers, a police officer with the City of Canton. Officer Sellers testified that, on March 25, 2008 between 9:45 and 10:00 a.m., she got a call to respond to Aultman Hospital in relation to a domestic violence incident. The officer testified that she spoke with McGrady, who was in a great deal of pain, and that McGrady “said that she had been in a fight with her son the previous evening and that he had punched her in the face and thrown her down some stairs.” Trial Transcript at 189.

{¶13} Officer Sellers testified that she spoke with appellant on March 25, 2008, and that he had scratches near the left side of his nose and on his forehead. Appellant also had abrasions on his hands.

{¶14} Appellant testified at trial in his own defense. Appellant testified that he woke up at the home he shares with McGrady on March 25, 2008 at a few minutes after 7:00 a.m. and hollered upstairs for his mother. Appellant testified that his mother said that her head hurt. According to appellant, after McGrady did not come downstairs, he went upstairs and opened her door. The following is an excerpt from appellant’s testimony:

{¶15} “A. And that’s when I saw her. And she looked up at me and I just looked at her and said my God, what happened to you. And she said oh, nothing. I said no, that looks serious. I said are you okay? And she really didn’t respond, just holding a rag up on her face.” Trial Transcript at 208.

{¶16} Appellant testified that McGrady told him that she had fallen down the basement stairs and he asked her why she did not stay away from the stairs like he told her to do because there was no railing. He further testified that he contacted an

acquaintance who took McGrady and appellant to the hospital. Appellant denied ever assaulting his mother.

{¶17} On cross-examination, appellant admitted that he had been convicted of domestic violence against his mother.

{¶18} At the conclusion of the evidence and the end of deliberations, the jury, on June 10, 2008, found appellant guilty of felonious assault and domestic violence. The jury further found that appellant had two prior convictions for domestic violence, one in 2003 and the other in 2005. As memorialized in a Journal Entry filed on June 27, 2008, appellant was sentenced to an aggregate prison sentence of thirteen (13) years.

{¶19} Appellant now raises the following assignment of error on appeal:

{¶20} “THE APPELLANT’S CONVICTIONS FOR DOMESTIC VIOLENCE IN VIOLATION OF R.C. 2919.25(A) AND ONE COUNT OF FELONIOUS ASSAULT IN VIOLATION OF R.C. 2903.11(A)(1) WERE AGAINST THE MANIFEST WEIGHT AND SUFFICIENCY OF THE EVIDENCE AND WERE NOT PROVEN BEYOND A REASONABLE DOUBT.”

I

{¶21} Appellant, in his sole assignment of error, argues that his convictions for domestic violence and felonious assault were against the manifest weight and sufficiency of the evidence. We disagree.

{¶22} In *State v. Jenks* (1981), 61 Ohio St.3d 259, 574 N.E.2d 492, the Ohio Supreme Court set forth the standard of review when a claim of insufficiency of the evidence is made. The Ohio Supreme Court held: “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." *Id.* at paragraph two of the syllabus.

{¶23} On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and determine whether in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed. The discretionary power to grant a new hearing should be exercised only in the exceptional case in which the evidence weighs heavily against the judgment." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717. Because the trier of fact is in a better position to observe the witnesses' demeanor and weigh their credibility, the weight of 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, syllabus 1.

{¶24} As is stated above, appellant was convicted of felonious assault in violation of R.C. 2903.11(A)(1) and domestic violence in violation of R.C. 2919. 25(A). R.C. 2903.11 states, in relevant part, as follows: "(A) No person shall knowingly do either of the following: (1) Cause serious physical harm to another or to another's unborn." Serious physical harm is defined as follows:

{¶25} “(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

{¶26} “(b) Any physical harm that carries a substantial risk of death;

{¶27} “(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

{¶28} “(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

{¶29} “(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.” R.C. 2901.01(A)(5).

{¶30} In turn, R.C. 2919.25 states, in relevant part, as follows: “(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.”

{¶31} Appellant specifically argues that there was insufficient evidence that he inflicted harm on his mother. Appellant also argues that his mother’s injuries did not constitute serious physical harm.

{¶32} However, we find that, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found that appellant knowingly caused serious physical harm to his mother, who was a family member. As is stated above, Pamela Ann McGrady, appellant’s mother, testified that appellant threw her down stairs and then struck her about the face, head and ribs, causing her to pass out. Both McGrady and Laurie Fitzgibbon, the emergency room nurse, testified as to McGrady’s extensive bruising and the fractures to her ribs, eye socket area and neck.



When asked about McGrady's pain, Fitzgibbon testified that McGrady rated her pain as a ten on a scale of one to ten, with ten being the highest level. Moreover, in addition to photographs of McGrady's injuries, her medical records were submitted into evidence. We find that, based on the foregoing, appellant's convictions were supported by sufficient evidence.

{¶33} Appellant also argues that his convictions for felonious assault and domestic violence are against the manifest weight of the evidence. Appellant notes that McGrady had suffered a stroke in the past, had epilepsy and was taking medications for seizures, and was in an automobile accident in 1991 wherein she suffered a closed head injury. Appellant also points out that he arranged for McGrady to get a ride to the hospital and, while at the hospital, he did not run or flee the scene. According to appellant, "[t]here was nothing presented that would cause a jury to believe that [a]ppellant caused these injuries with the exception of the incredible testimony of McGrady."

{¶34} However, the jury, as trier of fact, was in the best position to assess credibility. The jury clearly found McGrady's testimony to be credible and did not believe appellant. While appellant attempted to blame his mother's injuries on a fall due to epilepsy or other medical reasons, the jury did not find appellant to be credible. Based on the foregoing, we find that appellant's convictions for domestic violence and felonious assault were neither against the manifest weight nor the sufficiency of the evidence.

{¶35} Appellant's sole assignment of error is, therefore, overruled.

{¶36} Accordingly, the judgment of the Stark County Court of Common Pleas is affirmed.

By: Edwards, J.

Wise, P.J. and

Delaney, J. concur

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JUDGES

JAE/R0508

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

STEVEN SNIDER

Defendant-Appellant

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JUDGMENT ENTRY

CASE NO. 2008 CA 00147

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is affirmed. Costs assessed to appellant.

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JUDGES