

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio, :  
 :  
 Plaintiff-Appellee, :  
 :  
 v. : No. 09AP-855  
 : (C.P.C. No. 08CR-11-8281)  
 Vincent D. Alexander, :  
 : (REGULAR CALENDAR)  
 Defendant-Appellant. :

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D E C I S I O N

Rendered on March 31, 2010

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*Ron O'Brien*, Prosecuting Attorney, and *Sheryl L. Prichard*,  
for appellee.

*Tracy A. Younkin*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas

TYACK, P.J.

{¶1} Vincent D. Alexander is appealing from his convictions for aggravated burglary and domestic violence. He assigns two errors for our consideration:

ASSIGNMENT OF ERROR ONE

THE TRIAL COURT COMMITTED REVERSIBLE ERROR AND DEPRIVED DEFENDANT-APPELLANT OF DUE PROCESS OF LAW BY ENTERING A JUDGMENT OF CONVICTION AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND CONTRARY TO LAW.

ASSIGNMENT OF ERROR TWO

THE TRIAL COURT ABUSED ITS DISCRETION AND COMMITTED PREJUDICIAL AND REVERSIBLE ERROR BY IMPROPERLY INSTRUCTING THE JURY AS TO THE DEFINITION OF TRESPASS AND/OR IN THE ALTERNATIVE, COUNSEL FOR DEFENDANT-APPELLANT WAS INEFFECTIVE FOR FAILING TO OBJECT TO THE INSTRUCTION, THUS DEPRIVING DEFENDANT OF A FAIR TRIAL AS GUARANTEED UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10, OF THE OHIO CONSTITUTION.

{¶2} Alexander was arrested in the early morning hours of November 13, 2008. Upper Arlington police, responding to a 9-1-1 call, found Alexander partially clothed in the residence of T.S. A window near the front door of the residence was broken and Alexander's hand had a cut on it. T.S. had visible injuries to her face, including a cut to her nose. At one point in time, T.S. and Alexander had lived together, but had had a serious disagreement a few days earlier which ended with T.S. asking for the keys to her apartment back. Alexander responded by throwing the keys onto the roof of the funeral home when they were attending the funeral for Alexander's brother.

{¶3} Aggravated burglary is defined by R.C. 2911.11 as follows:

(A) No person, by force, stealth, or deception, shall trespass in an occupied structure or in a separately secured or separately occupied portion of an occupied structure, when another person other than an accomplice of the offender is present, with purpose to commit in the structure or in the separately occupied portion of the structure any criminal offense, if any of the following apply:

(1) The offender inflicts, or attempts or threatens to inflict physical harm on another[.]

{¶4} The evidence presented at Alexander's trial showed that Alexander entered T.S.'s apartment when she was present. He used force, namely the breaking of a window, to get into the apartment. The fact that he had formerly lived at the apartment did not mean that he was free to break into the apartment. He clearly inflicted physical harm on T.S. All the elements of aggravated burglary were clearly demonstrated. The jury verdict was in accord with the manifest weight of the evidence and was completely lawful.

{¶5} Alexander was also convicted on a charge of domestic violence in violation of R.C. 2919.25(A) which reads:

(A) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

(B) No person shall recklessly cause serious physical harm to a family or household member.

(C) No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.

(D)(1) Whoever violates this section is guilty of domestic violence.

{¶6} Because Alexander had a prior conviction for domestic violence, the charge was a felony of the fourth degree.

{¶7} Since Alexander and T.S. had lived together, Alexander was a family or household member, as that phrase is defined by R.C. 2919.25(F)(1).

{¶8} The testimony at trial clearly showed that Alexander inflicted physical harm on T.S. All the elements of the crime of domestic violence were clearly demonstrated.

The jury verdict, once again, was both in accord with the weight of the evidence and in accord with law.

{¶9} The first assignment of error has no merit and is overruled.

{¶10} The second assignment of error alleges that an improper charge to the jury was given as to the definition of trespass. Criminal trespass is defined in R.C. 2911.21(A). R.C. 2911.21(A)(1) reads as follows:

No person, without privilege to do so, shall do any of the following:

(1) Knowingly enter or remain on the land or premises of another[.]

{¶11} Alexander, having been denied entrance to T.S.'s apartment, had no privilege to break a window and break in. He obviously had no privilege to break in and beat T.S.

{¶12} The trial court judge gave a standard instruction from Ohio Jury Instruction which read:

A "trespass" is knowingly entering or remaining on the land or premises of another without privilege to do so. A person living as a spouse may be criminally liable for trespass in the dwelling of the other person living as a spouse who is exercising custody or control over that dwelling.

{¶13} The instruction was an accurate statement of the applicable law. The trial judge was correct to give it. The defense counsel for Alexander was correct to withhold objecting to the instructions as given.

{¶14} The second assignment of error is overruled.

{¶15} Both assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

BROWN and McGRATH, JJ., concur.

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