

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-05-083
- vs -	:	<u>OPINION</u> 2/21/2012
ERIC SELLERS,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM HAMILTON MUNICIPAL COURT
Case No. 11CRB01129

Mary K. Dudley, Assistant Hamilton City Law Director, 345 High Street, 7th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Patrick E. McKnight, P.O. Box 621, Monroe, Ohio 45050-0621, for defendant-appellant.

RINGLAND, J.

{¶ 1} Defendant-appellant, Eric Sellers, appeals his conviction in the Hamilton Municipal Court for one count of domestic violence. For the reasons outlined below, we affirm.

{¶ 2} On March 30, 2011, Angela Oakley, the 17-year-old daughter of Carmen Hoop, appellant's then live-in girlfriend, sustained injuries to her arms, back, and ribs after she was involved in a physical altercation with appellant at their shared Hamilton residence. Appellant was subsequently charged with one count of domestic violence in violation of R.C.

2919.25(A), a first-degree misdemeanor. Following a bench trial, appellant was found guilty and sentenced to serve 180 days in jail, placed on two years of community control, and ordered to pay \$35 in fines and court costs. Appellant now appeals from his conviction, raising one assignment of error for review.

{¶ 3} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY FINDING APPELLANT GUILTY OF DOMESTIC VIOLENCE.

{¶ 4} In his single assignment of error, appellant argues that the state provided insufficient evidence to support his domestic violence conviction. Appellant also argues that his conviction must be reversed because he proved, by a preponderance of the evidence, that he was engaged in the "proper and reasonable physical discipline of an unruly teenager." Each of appellant's arguments will be addressed below.

Insufficient Evidence of Domestic Violence

{¶ 5} Initially, appellant argues that the state provided insufficient evidence to support his domestic violence conviction because it failed to present any evidence "regarding the severity of the injuries or the extent of any treatment that was received." Appellant also argues that the state provided insufficient evidence to support his conviction because "there is more than ample evidence" indicating the victim's injuries "could have been inflicted by [her mother] or when [she] fell to the ground of her own accord." These arguments lack merit.

{¶ 6} Whether the evidence presented is legally sufficient to sustain a verdict is a question of law. *State v. Lazier*, 12th Dist. No. CA2009-02-015, 2009-Ohio-5928, ¶ 9; *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. In reviewing the sufficiency of the evidence, "[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. Diar*, 120 Ohio St.3d 460, 2008-

Ohio-6266, ¶ 113, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. Proof beyond a reasonable doubt is "proof of such character that an ordinary person would be willing to rely and act upon it in the most important of his own affairs." R.C. 2901.05(D).

{¶ 7} As noted above, appellant was charged with one count of domestic violence in violation of R.C. 2919.25(A), a first-degree misdemeanor, which prohibits any person from "knowingly caus[ing] or attempt[ing] to cause physical harm to a family or household member." Appellant does not dispute that Oakley, the alleged victim, was "a family or household member." Instead, appellant only argues that the state provided insufficient evidence that he knowingly caused or attempted to cause her physical harm. "Physical harm," as defined by R.C. 2901.01(A)(3), "means any injury, illness, or other physiological impairment, regardless of its gravity or duration."

{¶ 8} At trial, Hoop, Oakley's mother, testified that appellant attempted to intervene in a verbal argument that she was having with her daughter in the kitchen. However, when his efforts to diffuse the situation proved futile, appellant "grabbed" her daughter "by the arms and shoved her to the wall." Hoop then testified that appellant held Oakley "on the ground for a while by the head of her hair." Continuing, Hoop testified that although she told appellant to stop, appellant grabbed her daughter "by the back of her hoody and dragged her while it was choking her across the floor to the back door and threw her out the door." According to Hoop's testimony, this caused Oakley to sustain bruises on her arms, a seven-inch long scratch on her back, and injuries to her ribs. At no time did Hoop testify that she caused her daughter's injuries.

{¶ 9} Oakley, the alleged victim, also testified that she had been arguing with her mother when appellant tried to intervene. However, feeling like appellant was "jumping down her throat," Oakley walked out of the kitchen and went into the dining room when appellant

followed her and began yelling. Oakley testified that although she told appellant to stop, he nevertheless grabbed her by the shirt and "slammed" her into the wall, pulled her hair, and shoved her head into the floor. According to Oakley's testimony, she tried get away but appellant grabbed her, pulled her towards the door, and threw her outside ripping her bra and shirt and causing her to sustain injuries to her head, back, and ribs.¹ Oakley then testified that she ran next door to call the police when appellant "jumped over the fence" and dragged her back into the house.

{¶ 10} In addition, Kaylee Glenn, Hoop's 17-year-old niece and Oakley's cousin, who also lived at the Hamilton residence, testified that while she was sitting in the living room she heard some "bickering" and then a "loud thump." Wanting to investigate the matter further, Glenn ran over to the dining room when she saw appellant pushing Oakley against the wall and "slamm[ing] her face into the carpet." Glenn then testified that although Hoop was telling appellant to "get off of her" and "leave her alone," appellant grabbed Oakley, slammed her up against the wall, and "drugged her out the back door." Glenn then testified that she saw appellant "jump the fence" into the neighbor's yard and start "dragging" Oakley back to the house.

{¶ 11} Also at trial, Marianne Kivlan, the next door neighbor, testified that as she was pulling into her driveway she saw Oakley coming down her front steps crying. Kivlan then testified that Oakley, who "looked real red and scratched up," came up to her car when appellant leaped over the fence and shoved Oakley into a brick wall. Kivlan also testified that appellant was "being real brutal" by "ripping her arms behind her head" and "ripping her shirt off of her" before "forcefully" taking her back into the house.

1. Oakley was later shown three photographs of her face and arms and testified that the photos accurately depicted the scratches and bruising appellant caused when he grabbed her and pulled her towards the door. Oakley also testified that her ribs still hurt as a result of the altercation with appellant.

{¶ 12} After a thorough review of the record, we find the state provided extensive evidence to support appellant's domestic violence conviction. As noted above, appellant was seen by several competent and credible witnesses repeatedly slamming Oakley into a wall, pulling her hair, pushing her head into the floor, shoving her to the ground, dragging her in and out of the house, and ripping off her bra and shirt. The overwhelming evidence presented in this case clearly indicates that appellant's actions caused Oakley, a family or household member, to suffer physical harm. Therefore, contrary to appellant's claims otherwise, this evidence was more than sufficient to support the trial court's finding of guilt. See *State v. Wells*, 12th Dist. No. CA2006-02-029, 2007-Ohio-1362, ¶ 5-15; *State v. Wengler*, 12th Dist. No. CA2006-01-014, 2006-Ohio-6352, ¶ 9-15. Appellant's first argument is overruled.

Parental Discipline as an Affirmative Defense

{¶ 13} Next, appellant argues that his conviction must be reversed because he proved, by a preponderance of the evidence, that he was "engaged in the proper and reasonable physical discipline of an unruly teenager." We disagree.

{¶ 14} At the outset, we note that although appellant uses the term "physical discipline" when describing the issue presented, he nonetheless cites to case law setting forth parental discipline as an affirmative defense. It is undisputed that appellant was not Oakley's father or stepfather, but instead, merely her mother's live-in boyfriend. We also note that when the state asked Hoop, Oakley's mother, if appellant had permission to discipline her daughter that day, Hoop testified that he did not. This places significant doubt on the applicability of parental discipline as an affirmative defense. However, although we may doubt its application under the facts and circumstances of this case, we will nevertheless review this matter to determine whether the trial court erred by finding appellant had not met

his burden establishing parental discipline as an affirmative defense.

{¶ 15} As recognized by the Ohio Supreme Court, the domestic violence statute does not prohibit a parent from properly disciplining his or her child. *State v. Suchomski*, 58 Ohio St.3d 74, 75 (1991). In turn, "a parent may use physical punishment as a method of discipline without violating the domestic violence statute as long as the discipline is proper and reasonable under the circumstances." *State v. Thompson*, 2nd Dist. No. 04CA30, 2006-Ohio-582, ¶ 29; *State v. Adaranijo*, 153 Ohio App.3d 266, 2003-Ohio-3822, ¶ 12 (1st Dist.); *State v. Holzwart*, 151 Ohio App.3d 417, 2003-Ohio-345, ¶ 14 (3rd Dist.). "Whether any particular conduct constitutes proper and reasonable parental discipline is a question that must be determined from the totality of all of the relevant facts and circumstances." *Thompson* at ¶ 31; *State v. Hart*, 110 Ohio App.3d 250, 256 (3rd Dist.1996). In analyzing the totality of the circumstances, a court should consider: "(1) the child's age; (2) the child's behavior leading up to the discipline; (3) the child's response to prior non-corporal punishment; (4) the location and severity of the punishment; and (5) the parent's state of mind while administering the punishment." *State v. Zielinski*, 12th Dist. No. CA2010-12-121, 2011-Ohio-6535, ¶ 25. The accused has the burden of establishing parental discipline as an affirmative defense. *Id.* at ¶ 27; *State v. Luke*, 3rd Dist. No. 14-10-26, 2011-Ohio-4330, ¶ 21.

{¶ 16} As noted above, appellant was seen by several competent and credible witnesses repeatedly slamming Oakley into a wall, pulling her hair, pushing her head into the floor, shoving her to the ground, dragging her in and out of the house, and ripping off her bra and shirt. While appellant claims his actions were necessary to control an "unruly teenager," we find his actions went well beyond that which could be considered proper and reasonable parental discipline. We agree with the trial court's finding that "[n]othing of what [appellant] did that day sounded like reasonable conduct in any way and certainly not reasonable discipline for an argument that the seventeen year old was having with her mother." See

Zielinski, 2011-Ohio-6535 at ¶ 32; *State v. Moore*, 163 Ohio App.3d 23, 2005-Ohio-4531, ¶ 101 (2nd Dist.); *State v. Craun*, 158 Ohio App.3d 389, 2004-Ohio-4403, ¶ 23 (3rd Dist.); *State v. McNichols*, 4th Dist. No. 02CA11, 2002-Ohio-6253, ¶ 10. Therefore, because we find no error in the trial court's finding that appellant had not met his burden establishing parental discipline as an affirmative defense, appellant's second argument is overruled.

{¶ 17} In light of the foregoing, having found no merit to either of appellant's arguments, we overrule appellant's single assignment of error.

{¶ 18} Judgment affirmed.

POWELL, P.J., and HENDRICKSON, J., concur.