[Cite as *State v. Jeffers*, 2009-Ohio-1672.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 08CA7
vs.	:	
JOHN CLAYTON JEFFERS,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

COUNSEL FOR APPELLANT: James R. Henry, Law Offices of James R. Henry, P.O. Box 754, 456 Second Avenue, Gallipolis, Ohio 45631

COUNSEL FOR APPELLEE: C. Jeffrey Adkins, Gallia County Prosecuting Attorney, Gallia County Courthouse, 18 Locust Street, Gallipolis, Ohio 45631

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 3-31-09

ABELE, J.

{¶ 1} This is an appeal from a Gallia County Common Pleas Court judgment of conviction and sentence. A jury found John Clayton Jeffers, defendant below and appellant herein, guilty of (1) murder in violation of R.C. 2903.02(A), and (2) theft of a motor vehicle in violation of R.C. 2913.02(A)(1).

{¶ 2} Appellant assigns the following errors for review:[1]

[1] Appellant's brief contains "propositions of law," rather than "assignments of error" as required by App.R. 16. We will nevertheless treat them as "assignments of

FIRST ASSIGNMENT OF ERROR:

"THE LOWER COURT ERRED WHEN IT PERMITTED THE STATE TO CALL INTO QUESTION APPELLANT-DEFENDANT'S CHARACTER TRAIT AND PROPENSITY FOR VIOLENCE BY ALLOWING A KEY STATE WITNESS TO TESTIFY THAT HE HAD A HISTORY OF VIOLENCE IN A MURDER TRIAL."

SECOND ASSIGNMENT OF ERROR:

"THE LOWER COURT COMMITTED REVERSIBLE ERROR BY ADMITTING A FIVE-PAGE STATEMENT OF WITNESS INTO EVIDENCE WHEN IT WAS CLEARLY INADMISSIBLE HEARSAY."

{¶ 3} Andrea Hughes first met appellant when she was sixteen years old and he thirty-two. The couple had a sporadic two year relationship and eventually reunited on July 13, 2007 when Hughes decided to "stay" with appellant. The couple took up residence on the bank of the Ohio River near the Island View Motel.[2]

{¶ 4} On the evening of July 19, 2007, appellant and Hughes walked to the motel. They soon met Larry Cox, who was residing at the motel during the summer while working at a nearby power plant. The three visited Cox's room and began to drink beer and watch Country Music Television.[3]

{¶ 5} At some point during the evening, appellant removed his boot and began

---

error." Also, the brief does not contain a "statement of the assignments of error" as required by App.R. 16(A)(3).

[2] It is unclear whether the two were "camping" or were homeless and living by the river. Hughes's testimony suggests the latter, but the term "campsite" was also used several times during the testimony.

[3] Appellant and Hughes both admitted to drinking whiskey and being somewhat inebriated before they met Cox.

to complain about his feet. Cox looked at appellant, dismissed his complaint and stated that his feet were in far worse shape and hurt more than appellant's feet. Not to be outdone, appellant proclaimed that he was "from an abusive family," spent "10 years in prison" and had lived a "rough life." Recognizing this rhetorical gauntlet, Cox responded that he, in fact, lived a much harder life than appellant. This exchange soon escalated into a heated argument over who had lived the more difficult life. Eventually, appellant attacked Cox, knocked him to the floor and stomped his head and neck.

{¶ 6} After the attack, appellant ordered Hughes to grab Cox's wallet and keys. The couple ran outside, found the victim's vehicle and drove to appellant's sister's house in West Virginia. Cox managed to exit the motel room and walk approximately one hundred feet before he collapsed and died. Appellant was arrested the following day.

{¶ 7} The Gallia County Grand Jury returned an indictment charging appellant with murder and motor vehicle theft. At trial, appellant admitted to the motor vehicle theft and, despite his earlier denials during police interviews, admitted that he was in the motel room and with the victim on the day in question. Appellant testified, however, that Cox attacked him, that he and Cox then had a normal fight and that he did not "stomp" Cox. Further, appellant claimed that he observed Cox sitting on a bed, seemingly fine, when he and Hughes left the motel.

{¶ 8} After hearing the evidence, the jury found appellant guilty as charged on both counts. For the murder conviction, the trial court sentenced appellant to serve life imprisonment without possibility of parole for fifteen years. For motor vehicle theft, the court ordered an additional eighteen month sentence with the prison sentences to be

served consecutively. This appeal followed.

I

{¶ 9} Appellant's first assignment of error involves the testimony of his girlfriend, Andrea Hughes.[4] Hughes testified that appellant was the aggressor in the confrontation, that he repeatedly "stomped" the victim and that she obeyed his command to take Cox's car keys and wallet because she was afraid of appellant. When asked to elaborate on this last point, Hughes explained that Jeffers had beaten her in the past, and that if she disobeyed him, she was afraid that she may be "next" (i.e. receive abusive physical contact). Appellant argues that this evidence was prejudicial and deprived him of a fair trial. We disagree with appellant.

{¶ 10} Our review of the record reveals that during cross-examination, defense counsel thoroughly and expertly challenged Hughes's credibility. Among other things, she was asked if she did "anything to stop" the assault. At another point, counsel pointed out to the jury that the victim was "lying [there] bleeding" and all Hughes did was "grab the wallet . . . and his keys" but "offer[ed] no help." This was effective defense advocacy. By the same token, however, the prosecution rehabilitated Hughes to explain why she was afraid of appellant, not only to stop the assault but also why she followed appellant's command to take Cox's wallet and keys. Hughes was thus asked on re-direct examination how many times appellant had struck her. She responded that she "couldn't even begin to tell."

[4] It is unclear whether Hughes and appellant are still involved in a relationship. Although Hughes was the chief prosecution witness against appellant, she also testified that she has continued to write letters to him.

{¶ 11} We believe that this testimony was not introduced, as appellant contends, to prove a character trait of violence and to show that appellant acted in conformity with that character trait, but rather to explain why Hughes was afraid of appellant and (1) did nothing to stop the assault and (2) grabbed Cox's keys and wallet when appellant instructed her to do so. We readily acknowledge that relevant evidence should be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. See Evid.R. 403(A). Courts, however, have considerable discretion to make that determination and those decisions should not be reversed absent an abuse of that discretion. State v. Beal, Clark App. No. 07-CA-86, 2008-Ohio-4007, at ¶51.

{¶ 12} It is also important to recognize that an abuse of discretion is more than either an error of law or judgment; rather, it implies that a trial court's attitude is unreasonable, arbitrary or unconscionable. State v. Clark (1994), 71 Ohio St.3d 466, 470, 644 N.E.2d 331, 335; State v. Moreland (1990), 50 Ohio St.3d 58, 61, 552 N.E.2d 894, 898. In reviewing for an abuse of discretion, appellate courts must not substitute their judgment for that of the trial court. State ex rel. Duncan v. Chippewa Twp. Trustees (1995), 73 Ohio St.3d 728, 732, 654 N.E.2d 1254; In re Jane Doe 1 (1991), 57 Ohio St.3d 135, 137-138, 566 N.E.2d 1181. Generally, to establish an abuse of discretion the result must be so palpably and grossly violative of fact or logic that it evidences not the exercise of will, but perversity of will; not the exercise of judgment, but defiance of judgment; and not the exercise of reason, but, instead, passion or bias. Vaught v. Cleveland Clinic Found., 98 Ohio St.3d 485, 787 N.E.2d 631, 2003-Ohio-2181, ¶13; Nakoff v. Fairview Gen. Hosp. (1996), 75 Ohio St.3d 254, 256, 662 N.E.2d 1.

{¶ 13} In the case sub judice, in view of the questions asked of Hughes on cross-examination and the prosecution's need to explain and convince the jury that Hughes was indeed afraid of appellant and why she followed his commands, we find nothing arbitrary, unreasonable or unconscionable in the trial court's decision to allow Hughes to testify that appellant had previously beaten her.

{¶ 14} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's first assignment of error.

II

{¶ 15} Appellant's second assignment of error involves the trial court's decision to admit into evidence, over appellant's objection, a handwritten statement that Hughes made to police. The prosecution introduced this evidence apparently in response to the fact that appellant's counsel pointed out during his cross-examination that Hughes expected to receive favorable sentencing treatment for her complicity to auto theft conviction and that her trial testimony conflicted with the earlier statement that she had given to the police. Appellant claims that Hughes's statement constitutes inadmissible hearsay and the "damaging contents of the statement" were prejudicial to him, thus meriting a reversal.

{¶ 16} Hearsay is defined as a statement, other than one made by the declarant at trial, offered to prove the truth of the matter asserted. Evid.R. 801(C). Hearsay evidence is generally inadmissible. Evid.R. 802. Police reports are usually considered to be inadmissible hearsay and should not be submitted to the jury. State v. Leonard 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229. However, certain rules of

evidence and exceptions may apply and result in a statement's admissibility.

{¶ 17} Evid.R. 801(D)(1)(b) provides that a statement is not hearsay if the declarant testifies at trial or hearing and is subject to cross-examination concerning the statement, and the statement is consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive. Thus, the rule permits the rehabilitation of a witness whose credibility has been attacked by means of a charge of fabrication or false testimony in return for improper motivation or influence. State v. Lopez (1993), 90 Ohio App.3d 566, 630 N.E.2d 32; State v. Totarella Lake App. No. 2002-L-147, 2004-Ohio-1175. To fall under Evid.R. 801(D)(1)(b), the consistent statements that the offering party seeks to introduce to rehabilitate their witness must have been made prior to the emergence of the improper influence or motive. State v. Edwards (1999), Lorain App. No. 97CA006775. Once again, we point out that the admission or exclusion of evidence generally rests in the trial court's sound discretion. State v. Sage (1987), 31 Ohio St.3d 173, 51 N.E.2d 343. This standard also applies to decisions concerning hearsay statements. However, questions concerning evidentiary issues that also involve constitutional protections, including confrontation clause issues, should be reviewed de novo. State v. Hardison Summit App. No. 23050, 2007-Ohio-366. Technical rules of evidence and hearsay questions cannot defeat fundamental due process rights. State v. Landrum (1990), 53 Ohio St.3d 107, 115, 559 N.E.2d. 710, citing Green v. Georgia (1979), 442 U.S. 95.

{¶ 18} In the case sub judice, appellant's trial strategy challenged Hughes's testimony, both concerning her accuracy and her motivation. Appellant noted that

Hughes had entered a plea to a criminal charge and had agreed to cooperate with authorities to testify at appellant's trial. Hughes's sentencing was scheduled to occur after appellant's trial. In light of the events that transpired at trial, we find no error with the trial court's decision to admit Hughes's statement into evidence.

{¶ 19} Moreover, even if we assume for purposes of argument that the statements's admission constitutes error, we do not believe that such error constitutes reversible error. Harmless trial errors are to be disregarded and the erroneous admission of evidence is not reversible unless it affects a substantial right that prejudices the defendant. See Crim.R. 52(A); Evid.R. 103(A); State v. Mathers, Lorain App. No. 07CA9242, 2008-Ohio-2902, at ¶26; State v. Drew, Franklin App. No. 07AP-467, 2008-Ohio-2797, at ¶22. We find nothing of that sort here.

{¶ 20} Our review of the record reveals nothing in Hughes's statement to police that is more prejudicial than her actual trial testimony. Indeed, the statement appears largely consistent, cumulative and repetitive. See State v. Granderson 177 Ohio App.3d 424, 2008-Ohio-3757, 894 N.E.2d 1290. We also point out the overwhelming nature of the evidence against appellant. Not only did appellant's girlfriend testify against him, but several witnesses who saw him shortly after the attack observed that he was very nervous and that he asked them to refrain from mentioning that they had seen him. The Ohio Bureau of Criminal Investigation (BCI) found the victim's blood on appellant's boot, which is consistent with the "stomping" that Hughes described. The Gallia County Corner further corroborated Hughes's version of events, as well as an assistant coroner from Montgomery County who oversaw Cox's autopsy. Perhaps the

most damaging evidence, however, was appellant's admission that immediately after his arrest, he lied to police about not being present at the motel. Appellant later admitted to virtually everything in this case, except about who instigated the conflict and the severity with which appellant attacked Cox. In short, we simply cannot conclude that the admission of Hughes's statement prejudiced appellant.

{¶ 21} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's second assignment of error. Having considered all the errors assigned and argued in the brief, and finding merit in none of them, the judgment of the trial court is hereby affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the 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 Gallia County Common Pleas Court to carry this judgment into execution.

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

Kline, P.J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.