[Cite as *State v. Groomes*, 2010-Ohio-4311.]

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-100090 TRIAL NO. F09-1838Z
Plaintiff-Appellee,	:	*D E C I S I O N.*
vs.	:	
ERICA Y. GROOMES,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Juvenile Court

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: September 15, 2010

Joseph T. Deters, Hamilton County Prosecutor, and *Scott M. Heenan*, Assistant Prosecutor, for Plaintiff-Appellee,

Darlene M. Rogers, for Defendant-Appellant.

Please note: This case has been removed from the accelerated calendar.

DINKELACKER, Judge.

{¶1} In four assignments of error, defendant-appellant Erica Groomes claims that she was improperly convicted of child abuse.[1] For the reasons that follow, we disagree and affirm.

Spanking with Belt Leads to Misdemeanor Conviction

{¶2} Groomes's ten-year-old son had been misbehaving at school and at home. Her son weighed 130 pounds, and on the day before the incident involved in this case, his school had called Groomes about his behavior. Her son had received 16 incident reports within a period of six months. According to teachers, he was failing every subject, crawled around the classroom, lied, used profanity, and threw furniture. He had previously been suspended and had not been allowed to ride the bus with other children.

{¶3} On the evening of May 5, 2009, Groomes received a call at work from her 16-year-old daughter. She reported that Groomes's son had not come home and that she did not know where he was. Groomes's house rules required all her children to be inside the house when the streetlights came on. Her son eventually came home at around 10 p.m., lying about where he had been.

{¶4} Groomes decided that corporal punishment was appropriate when she arrived home at 11:20 p.m. She entered her son's room while he was sleeping and woke him up. She told him why she was punishing him, and she began to beat him with her belt. Her son refused to stay still while she was beating him, which resulted in blows landing on his buttocks, upper legs, and back.

[1] R.C. 2919.22(B)(1).

{¶5} The next day, her son went to school and visited the school nurse. The nurse saw the bruising, but she believed that what she saw did not constitute "abuse." But believing that she was required to report the bruising in any event, she contacted the Hamilton County Department of Job and Family Services. The police officers who responded were likewise sympathetic to Groomes's situation.

{¶6} Groomes's son was taken to Cincinnati Children's Hospital, where he was examined by Dr. Joseph Lauria. The doctor testified that, among the thousands of children he examined every year, he would see such bruising once every year or two. While the doctor noted no lacerations, the bruising was severe. He noted that his experiences with bruising in this degree of severity were "few and far between." The doctor testified that Groomes's son had been struck at least ten times, though it was difficult to determine the precise number. He testified that the blows had been delivered with "significant" force, and in his view, the bruises were the result of abuse.

{¶7} Groomes was charged with one count of misdemeanor child abuse and tried before a jury. The jury found her guilty, and she was convicted and sentenced accordingly.

Misdemeanor Child Abuse—No "Serious Physical Harm" Requirement

{¶8} In her first assignment of error, Groomes claims that the trial court erred when it instructed the jury on what constituted child abuse, and that it erred when it failed to instruct the jury properly on the affirmative defense of parental discipline. We discuss each issue in turn.

{¶9} First, Groomes claims that the trial court improperly instructed the jury on the crime of misdemeanor child abuse. R.C. 2919.23(B)(1) makes it a misdemeanor

of the first degree to "abuse [a] child." The term "abuse" is not defined as it relates to this offense.

{¶10} Groomes argues that the trial court should have followed this court's memorandum decision in *In re Barrett*.[2] Citing a case from the Eighth Appellate District, this court stated in *Barrett* that " 'child abuse' is not specifically defined in R.C. 2919.22. But common sense, the general language of the provision, and its accompanying Legislative Service Commission comments indicate that an act that inflicts serious physical harm or creates a substantial risk of serious harm to the physical health or safety of the child is child abuse."[3]

{¶11} But a problem arises when this definition is applied to the word "abuse." When no other aggravating factor is present, a violation of R.C. 2919.22(B)(1) is a misdemeanor of the first degree.[4] Child abuse is elevated to a felony of the second degree if the abuse "results in serious physical harm to the child involved."[5] By incorporating "serious physical harm" within the definition, the felony level of the offense would become redundant under the *Barrett* definition of "child abuse."

{¶12} The trial court told the jury that "abuse means an act which causes physical or mental injury that harms or threatens to harm the child's health or welfare. In making the determination of abuse, the jury is to look at the circumstances giving rise to the harm to the child, the disciplinary means employed by the parent, the child's past history, and any other potential relevant factors. Of importance when evaluating the physical harm to a child is whether the nature of the physical harm is warranted based on the underlying circumstances."

[2] (Mar. 13, 1998), 1st Dist. No. C-970196.
[3] Id., citing *State v. Ivey* (1994), 98 Ohio App.3d 249, 648 N.E.2d 519.
[4] R.C. 2919.22(E)(2)(a).
[5] R.C. 2919.22(E)(2)(d).

{¶13} We conclude that the court's instruction, premised on R.C. 2151.031(D), was an appropriate statement of the law as it relates to the misdemeanor offense described in R.C. 2919.22(B)(1). To the extent that *In re Barrett* can be read as heightening the standard by requiring a showing of serious physical harm for the misdemeanor offense, that decision is overruled.

Trial Court Did Not Abuse its Discretion When Instructing on Parental Discipline

{¶14} The second claim Groomes raises in her first assignment of error is that the trial court abused its discretion when it refused to give her proffered instruction on parental discipline. She asked that the trial court tell the jury that "[o]rdinarily, a person may not cause physical harm to another person. However, the law provides that a parent may administer corporal punishment or other physical disciplinary measures to a child. Corporal punishment means 'punishment of the body.' However, the privilege to administer corporal punishment is not without limitation. No person may administer corporal punishment in a cruel manner or for a prolonged period, which punishment or discipline is excessive under the circumstances and creates a risk of serious physical harm to the child."

{¶15} Immediately following the instruction given by the trial court, as quoted in the previous section, the court told the jury that "[c]learly, parents are entitled to utilize disciplinary measures for their children. However, such discipline must not be of such gravity that it becomes unreasonable in light of the underlying cause."

{¶16} The problem with Groomes's proposed instruction is that it incorporates the "serious physical harm" element, which we have previously concluded is not appropriate for a misdemeanor violation of R.C. 2919.22(B)(1). Further, the instructions given by the trial court, discussed in this section and the previous one, conveyed

essentially the same legal principles to the jury, with the exception of serious physical harm, as the ones outlined in Groomes's proposed instruction.[6] Therefore, the trial court properly instructed the jury on the issue of parental discipline.

{¶17} Based on the foregoing, we overrule Groomes's first assignment of error.

Conviction was Based on Sufficient Evidence and was not Against its Manifest Weight

{¶18} In his second and third assignments of error, Groomes argues that her conviction was based upon insufficient evidence and was contrary to the manifest weight of the evidence. We disagree.

{¶19} The standards for determining whether a conviction was based upon insufficient evidence or was against the manifest weight of the evidence are well established. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.[7] On the other hand, when reviewing whether a judgment was against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice in finding the defendant guilty.[8]

{¶20} In this case, the state had to establish that Groomes had recklessly abused her son. Groomes argues that "the state never proved beyond a reasonable doubt that by disciplining her son, Groomes perversely disregarded a known risk and abused her son." Based upon the testimony of Dr. Lauria, we must disagree. His testimony was sufficient to support her conviction and to make the conviction comport

[6] See *State v. Group*, 98 Ohio St.3d 248, 2002-Ohio-7247, 781 N.E.2d 980, at ¶108, citing *State v. Sneed* (1992), 63 Ohio St.3d 3, 9, 584 N.E.2d 1160.
[7] See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.
[8] See id. at 387.

with the manifest weight of the evidence. Therefore, we overrule Groomes's second and third assignments of error.

Prosecutor did not Improperly Raise Parallel Dependency Proceeding

{¶21} In her final assignment of error, Groomes claims that the trial court should have granted her motion for a mistrial after the state had made reference to the pending dependency action that had arisen from the facts in this case, in violation of the trial court's in limine ruling on the matter. But the few times that the issue came up, the trial court sustained Groomes's objections and instructed the jury to disregard any parallel proceedings. Since jurors are presumed to follow a trial court's admonitions regarding what they cannot consider,[9] we overrule her fourth assignment of error.

Conclusion

{¶22} Having considered each of Groomes's assignments of error and found them unpersuasive, we affirm the judgment of the trial court.

Judgment affirmed.

HILDEBRANDT, P.J., and **SUNDERMANN, J.,** concur.

Please Note:

The court has recorded its own entry this date.

[9] *State v. Loza* (1994), 71 Ohio St.3d 61, 75, 641 N.E.2d 1082.