

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 25137

Appellee

v.

KENDRICK L. EDWARDS

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CR 09 09 2676

Appellant

DECISION AND JOURNAL ENTRY

Dated: December 30, 2010

CARR, Presiding Judge.

{¶1} Kendrick Edwards appeals the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} This case stems from an incident that occurred on August 28, 2009, at 1340 Doty Drive in Akron, Ohio. The substantive facts are discussed in detail below.

{¶3} On September 24, 2009, the Summit County Grand Jury indicted Kendrick Edwards (hereinafter referred to as “Edwards”) on one count of domestic violence in violation of R.C. 2919.25(A), a felony of the third degree; one count of domestic violence in violation R.C. 2919.25(C), a misdemeanor of the first degree; and one count of criminal damaging or endangering in violation of R.C. 2909.06(A)(1), a misdemeanor of the second degree.

{¶4} Edwards waived his right to a jury trial. On November 30, 2009, after a bench trial, the trial court found Edwards guilty of both of the domestic violence charges in the indictment. The trial court found Edwards not guilty of the criminal damaging or endangering charge. Edwards was sentenced to a two-year prison term.

{¶5} Edwards subsequently filed a notice of appeal on December 11, 2009. On appeal, Edwards raises two assignments of error.

II.

ASSIGNMENT OF ERROR I

“THE FINDING THAT MR. EDWARDS AND JASMINE CLAY COHABITATED (sic) WITH EACH OTHER UNDER [R.C.] 2919.25 IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

ASSIGNMENT OF ERROR II

“THERE IS INSUFFICIENT EVIDENCE TO SUPPORT A FINDING THAT KENDRICK EDWARDS COHABITATED (sic) WITH JASMINE CLAY AS REQUIRED BY [R.C.] 2919.25.”

{¶6} In his first assignment of error, Edwards argues that his conviction was against the manifest weight of the evidence. In his second assignment of error, Edwards argues that his conviction was not supported by sufficient evidence. This court disagrees with both assertions.

{¶7} Edwards was convicted of domestic violence in violation of R.C. 2919.25(A), which states, “No person shall knowingly cause or attempt to cause physical harm to a family or household member.” Edwards was also convicted of domestic violence menacing pursuant to R.C. 2919.25(C), which states, “No person, by threat or 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.” With respect to both assignments of error, Edwards’ argument focuses

on the evidence presented at trial on the issue of whether he and the alleged victim, Jasmine Clay, had cohabited as required by R.C. 2919.25.

{¶8} R.C. 2919.25(F)(1)(a)(i) defines “Family or household member” as “[a]ny *** spouse, a person living as a spouse, or a former spouse of the offender.” A “[p]erson living as a spouse” means a person who is living or has lived with the offender in a common law marital relationship, who otherwise is cohabiting with the offender, or who otherwise has cohabited with the offender within five years prior to the date of the alleged commission of the act in question.” R.C. 2919.25(F)(2). The Supreme Court of Ohio has held that “the essential elements of ‘cohabitation’ are (1) sharing of familial or financial responsibilities and (2) consortium.” *State v. Williams* (1997), 79 Ohio St.3d 459, 465. The Supreme Court explained that “[p]ossible factors establishing shared familial or financial responsibilities might include provisions for shelter, food, clothing, utilities, and/or commingled assets.” *Id.* With respect to establishing consortium, factors to consider are “mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal relations.” *Id.* The Supreme Court emphasized that “[t]hese factors are unique to each case and how much weight, if any, to give to each of these factors must be decided on a case-by-case basis by the trier of fact.” *Id.*

Sufficiency of the Evidence

{¶9} The law pertaining to a challenge to the sufficiency of the evidence is well settled:

“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.” *State v. Galloway* (Jan. 31, 2001), 9th Dist. No. 19752.

The test for sufficiency requires a determination of whether the State has met its burden of production at trial. *State v. Walker* (Dec. 12, 2001), 9th Dist. No. 20559; see, also, *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390.

{¶10} The State called two witnesses at trial. The State's first witness was Officer Jonathan Strainer of the Akron Police Department. Officer Strainer testified that around 7:00 AM on the morning of August 28, 2009, he was dispatched to a gas station on Massillon Road near Faye Drive in Akron. Upon arriving at the gas station, Officer Strainer encountered a woman who was sobbing. The woman, who was later identified as Jasmine Clay, was in her pajamas and not wearing any shoes. Clay identified herself as the individual who had called the police. Officer Strainer testified that, "She was crying, she had tears going down her face, she had a hard time catching her breath[.] *** I had to tell her to calm down so she could tell me what happened."

{¶11} After Ms. Clay calmed down, she told Officer Strainer that her boyfriend had come home and she thought he had been with another woman. Officer Strainer testified that Ms. Clay was also upset because she found that "the windshield [of her vehicle] was broken out or damaged." Ms. Clay said that her boyfriend had told her that "the other girl threw a brick through the window." Officer Strainer testified as follows:

"She stated he became enraged because she was upset about her car, grabbed her by her arms, was flinging her about the apartment. At that point her dog came up and bit him on the leg or on the pants. He became upset at that, and at that point he kicked the dog placing a pretty big hole in the wall."

Officer Strainer testified that, upon pulling up to the gas station, he noticed that Ms. Clay had "a big bruise under one of her eyes." As he got closer, Officer Strainer was able to observe "quite a few marks on both sides of her arms, some scratching and some pretty decent size bruises." Ms.

Clay told Officer Strainer that she called from the gas station because she felt the need to get out of the house because she was afraid of the defendant.

{¶12} After calling for another Officer to back him up, Officer Strainer made his way to Ms. Clay's apartment. When they arrived, Officer Strainer found a man in the apartment. The man identified himself to the officers as Kendrick Edwards. Ms. Clay's cousin, a female, was also in the apartment. Officer Strainer asked Edwards what had happened during the incident. Edwards indicated that he "didn't do anything." Officer Strainer observed a large hole in the bottom of one of the walls in the living room. Officer Strainer testified that when he first had contact with Jasmine Clay at the gas station, Ms. Clay stated that she and Edwards were "boyfriend and girlfriend that lived together."

{¶13} The State's second witness at trial was Jasmine Clay. Ms. Clay testified that Kendrick Edwards was "[a]n ex-boyfriend." Ms. Clay testified that she is twenty-seven years old and that she has known Edwards since she was thirteen years old. Ms. Clay testified that, at one time, she and Edwards had been "boyfriend and girlfriend." When asked if her relationship with Edwards had been "on and off", Ms. Clay testified:

"No. It's been on and off from the age of – well, in all honesty, when I was a kid, he wasn't really mine, he belonged to somebody else, but he was my boyfriend. He had his girlfriend, but he was my boyfriend. And when I turned 26, 25, one of them two, we got back together, and we were together for four months, and after that we weren't together at all. I just never left his side."

Ms. Clay testified that Edwards would stay the night with her. Ms. Clay testified that there had been times when Edwards stayed with her "two or three days" in a row. Ms. Clay testified that, "[i]t was up to him[]" how frequently Edwards stayed with her and it would depend on "what he wanted to do" in a given week. Ms. Clay explained, "if he was with his actual girlfriend and he needed me to come get him, I would come. It just depended what situation he got into in life,

and if need[ed] me, I always came.” Ms. Clay testified, “[A]t one point in time, it was a year and a half ago, he had me believing, just my family, not his, just my family, we were going to get married.” Ms. Clay testified that Edwards later told her that he never had any intention of marrying her. Ms. Clay testified that Edwards had a hospital bill mailed to her house because he did not want the mother of his children to know he had been to the hospital.

{¶14} Ms. Clay testified that she and Edwards have had sexual relations over the course of time they have known each other. Ms. Clay testified that at one point in 2009, she had been pregnant by Edwards. Ms. Clay testified that during the course of their relationship, she had provided money to Edwards. With respect to how often she provides Edwards with money, Ms. Clay testified as follows:

“Well, just handing him money, you would be silly to do that. You don’t do that. I’ve bonded him out of jail because he got into trouble. Just period, if he needs me, I come. It doesn’t make a difference what it’s for. It could be because of him, his babies.”

Ms. Clay further testified that Edwards has had children with a different woman. Ms. Clay testified that she bought things for Edwards’ children and that the children were her “homies.” Ms. Clay testified that when Edwards stays the night, she cooks for him. Ms. Clay further testified that Edwards keeps personal items in her storage unit. After Edwards had been in a fight with another girlfriend, Edwards had his mother and Ms. Clay “go down and get all his stuff and stick it in [Ms. Clay’s] storage unit.” Ms. Clay testified that Edwards’ personal items included four bags of clothes, a coat, some shoes, a fish tank, as well as additional items in other bags with which Ms. Clay was not familiar. Ms. Clay testified that Edwards freely comes and goes from her house. Ms. Clay testified that Edwards does not keep personal items such as a toothbrush and clothes at her house. Ms. Clay testified that Edwards is prohibited from keeping such items in her home because she lives in AMHA housing.

{¶15} Ms. Clay further testified that she considered Edwards to be a friend during the course of their relationship. Ms. Clay testified that she confided in Edwards and that she relied on him to the extent that he used to be her “knight in shining armor.” Ms. Clay also testified that Edwards confided in her as well. When asked if Edwards has a place where he was either on the lease or responsible for paying rent, Ms Clay stated, “He did. I don’t think he has it anymore because he’s been here a year, but he did.” Ms Clay testified that Edwards had previously lived with the mother of his children, Maxine Rogers. Edwards sometimes sleeps at the homes of other people, including his mother and a different girlfriend named Unique. Ms. Clay testified that Unique was the woman responsible for the broken window in her car. In describing Edwards’ relationship with Unique, Ms. Clay stated, “Like they’re boyfriend and girlfriend one week, the next week they’re not, then they are again. They’re real different. Like, they don’t really know what they want to do with their lives at all[.]” Ms. Clay testified that she was responsible for the bills at her house and she does not receive any support from Edwards. Ms. Clay testified that Edwards would drive her car when “he need[ed] to do something.”

{¶16} In describing the physical altercation between herself and Edwards, Ms. Clay testified as follows:

“And I told him I was tired of losses due to him every time he needs me, and in the end of it he always dog me, and he didn’t appreciate that. And when I said that, he told me to quit yelling at him.

“And I told him -- told him no. And at first he shoved me, and after he shoved me I shoved him back and he tossed me all over the hallway.

“And when I fell on the ground, he was – he like was trying to choke me on the ground. And I screamed for one of my brothers who was in the room, and when I screamed for him, my dog bit him on the back of his leg and he kicked my dog through the wall into the boiler room.”

Ms. Clay testified that the altercation continued into the parking lot as she attempted to leave.

{¶17} Ms. Clay testified that she had been put in jail the Friday prior to trial to ensure that she would be available to testify. Ms. Clay testified that she had not planned on testifying against Edwards. Ms. Clay testified, “I’m not the person that should have ever put him in jail. That man has been my knight in shining armor since I was 13 years old and I’ve always saved him.”

{¶18} In his merit brief, Edwards urges this Court to follow the First District’s decision in *State v. Cobb*, 153 Ohio App.3d 541, 2003-Ohio-3821. We note that there are several significant factual distinctions between this case and the circumstances at issue in *Cobb*, where the female victim was married to someone other than the defendant and there was clear testimony that the defendant maintained his own apartment. *Id.* at ¶5. Furthermore, we emphasize that the Supreme Court has stated that the factors set forth in *Williams* are “unique to each case and how much weight, if any, to give to each of these factors must be decided on a case-by-case basis by the trier of fact.” *Williams*, 79 Ohio St.3d at 465.

{¶19} Upon consideration of the aforementioned testimony, we conclude that the State presented sufficient evidence to demonstrate that Edwards has cohabited with Jasmine Clay. Ms. Clay testified that she provided financial support to Edwards. Ms. Clay also testified that she had a relationship with Edwards’s children and that she provided financial support to them as well. Ms. Clay further testified that Edwards is free to come and go from her house and that he drives her car. Ms. Clay also testified that when Edwards stays the night, she cooks meals for him. This testimony tended to show that Edwards and Ms. Clay shared familial and financial responsibilities. With respect to consortium, Ms. Clay testified that her relationship with Edwards dated back until the time she was thirteen years old. Ms. Clay testified that Edwards was a friend, that she and Edwards confided in each other, and that she had considered him her

“knight in shining armor.” Ms. Clay further testified that she and Edwards engaged in sexual relations and, at one point, had discussed the prospect of getting married. Furthermore, Officer Strainer testified that Ms. Clay stated that she and Edwards were “boyfriend and girlfriend that lived together.” This evidence, when viewed in the light most favorable to the State, tended to show that Edwards cohabited with Ms. Clay as is required by required by R.C. 2919.25.

{¶20} Edwards’ second assignment of error is overruled.

Manifest Weight of the Evidence

{¶21} An appellate court’s review of the sufficiency of the evidence and the manifest weight of the evidence adduced at trial are separate and legally distinct determinations. *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. 19600. “While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion.” *Id.*, citing *Thompkins*, 78 Ohio St.3d at 390 (Cook J., concurring).

{¶22} A determination of whether a conviction is against the manifest weight of the evidence, however, does not permit this Court to view the evidence in the light most favorable to the State to determine whether the State has met its burden of persuasion. *State v. Love*, 9th Dist. No. 21654, 2004-Ohio-1422, at ¶11. Rather,

“an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of 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 conviction must be reversed and a new trial ordered.” *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

“Weight of the evidence concerns the tendency of a greater amount of credible evidence to support one side of the issue more than the other. *Thompkins*, 78 Ohio St.3d at 387. Further, when reversing a conviction on the basis that it was against the manifest weight of the evidence, an appellate court sits as a ‘thirteenth

juror,' and disagrees with the factfinder's resolution of the conflicting testimony. Id." *State v. Tucker*, 9th Dist. No. 06CA0035-M, 2006-Ohio-6914, at ¶5.

{¶23} This discretionary power should be exercised only in exceptional cases where the evidence presented weighs heavily in favor of the defendant and against conviction. *Thompkins*, 78 Ohio St.3d at 387.

{¶24} In support of his position that the weight of the evidence tended to show that there was not shared familial or financial responsibilities between himself and Ms. Clay, Edwards points to Ms. Clay's testimony on cross-examination. Ms. Clay testified that Edwards did not live at her house and he did not help to pay the bills. Ms. Clay also noted that Edwards did not did not pay any bills when he lived with the mother of his children, Maxine Rogers. Ms. Clay further testified on cross-examination that she also had some items in her storage unit that belong to Edwards' sister, Alia. When asked to describe how her relationship worked with respect to his overnight stays, Ms. Clay testified:

"He'd come over, visit, watch TV. Him and my kids wrestle. I probably -- most of the time I have all the kids and he would come over because all the kids were there. And I take the kids home, he'd leave, he'd stay for a couple hours, he'd leave, he'd come back. He stayed the night if his kids stayed the night and then he would leave."

Ms. Clay testified that "[Edwards'] kids are with me every day. They were in the home. His kids are with me even if I'm not talking with him, even if we don't talk at all. His child's mother's my friend. His child's mother's my friend." With respect to Edwards' hospital bill that was mailed to her house, Ms. Clay testified that she furnished her address to the hospital. Ms. Clay testified that she "always" takes Edwards to the hospital and that she furnished her address because "[Edwards] didn't want it to go to his house." Ms. Clay also testified, "Was Kendrick a user, is that what you're asking me in a nice way? Yeah, he would see who he want[ed] to see. It wasn't like we was together. We weren't. I had who I had, he had who he had. When we'd

hook up, he was my homey. It wasn't -- nobody was a secret on either part." Edwards also argues that there was no evidence that he and Ms. Clay commingled assets.

{¶25} With respect to consortium, Edward concedes that there was evidence of conjugal relations between Ms. Clay and him. Edwards notes that those relations had stopped prior to the incident. Edwards also argues that while there was a level of cooperation, solace and comfort between Ms. Clay and him, their relationship should be characterized as one of friendship rather than one that is romantic in nature.

{¶26} While it is clear that the relationship between Edwards and Ms. Clay was not marked by fidelity, the record does not support Edwards' contention that the trial court clearly lost its way in concluding that he and Ms. Clay had cohabited pursuant to R.C. 2919.25. Edwards correctly notes that Ms. Clay testified on cross-examination that Edwards did not live with her or assist her in paying bills. Ms. Clay also testified that Edwards was involved with several different women and that she and Edwards were not "together" at the time of the incident. While Ms. Clay testified that Edwards did not live with her, she also testified that Edwards was free to come and go from her house and that he sometimes stayed as many as "two or three days" in a row. While Ms. Clay testified that Edwards did not contribute to household expenses, she also testified that Edwards did not pay the bills when he lived with Maxine Rogers. Ms. Clay testified that, after Edwards informed her that her car had been damaged, she told Edwards that she was "tired of losses due to him" every time he needed her. Ms. Clay further testified that she purchased items for Edwards' children and that she cared for them even when she was not speaking with Edwards. This testimony suggests that the relationship between Edwards and Ms. Clay involved a level of financial dependency. Edwards' contention that his relationship with Ms. Clay could be best characterized as a friendship is undermined by the fact

that he and Ms. Clay had engaged in sexual relations just months prior to the incident, as well as the fact that Edwards and Ms. Clay had discussed getting married a year and a half prior to the incident. Furthermore, we recognize that Ms. Clay acknowledged at trial that she did not want to testify against Edwards because of her belief that “she [is] not the person that should have ever put him in jail.” According to the testimony of Officer Strainer, Ms. Clay stated on the day of the incident that she and Edwards were “boyfriend and girlfriend that lived together.” It follows that Edwards has not demonstrated that this is the exceptional case where the trier of fact clearly lost its way. Edwards’ first assignment of error is overruled.

III.

{¶27} Edwards’ first and second assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

DONNA J. CARR
FOR THE COURT

WHITMORE, J.
MOORE, J.
CONCUR

APPEARANCES:

SCOT A. STEVENSON, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and HEAVEN DIMARTINO, Assistant Prosecuting Attorney, for Appellee.