

[Cite as *State v. Jewell*, 2004-Ohio-4315.]

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2003-09-086
 :
 -vs- : O P I N I O N
 : 8/16/2004
 :
 JULLIAN J. JEWELL, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM MASON MUNICIPAL COURT
Case No. 03 CRB 00768

Robert W. Peeler, Mason City Prosecutor, Matthew J. Graber,
5950 Mason Montgomery Road, Mason, Ohio 45040, for plaintiff-
appellee

David E. Ernst, 11 S. Broadway, Suite 200, Lebanon, Ohio 45036,
for defendant-appellant

VALEN, J.

{¶1} Defendant-appellant, Jullian Jewell, appeals his
conviction in Mason Municipal Court for domestic violence.

{¶2} Appellant was charged with domestic violence in connec-
tion with a 2003 altercation with a woman who was the girlfriend
of appellant's brother. Appellant was not represented by an
attorney at the bench trial, and the victim did not appear to

testify. The prosecution requested a continuance to secure the appearance of the alleged victim, but the trial court refused a continuance. The trial court permitted a police officer to testify to the statements given by the alleged victim about the incident. Another officer testified to appellant's statements, and appellant presented three witnesses to the altercation. Appellant was found guilty and instituted the instant appeal.

{¶3} Assignment of Error:

{¶4} "THE TRIAL COURT ERRED IN FINDING DEFENDANT GUILTY OF THE CRIME OF DOMESTIC VIOLENCE WHEN THE RULING DID NOT REFLECT THAT THE PROSECUTION OF THE STATE [SIC] DID NOT MEET THEIR BURDEN AND DEGREE OF PROOF OF GUILT BEYOND A REASONABLE DOUBT."

{¶5} We will address, as determinative of this appeal, appellant's argument that the prosecution failed to show that the alleged victim in this case was a "family or household member," as required under Mason City Ordinance 537.14. See, also, R.C. 2919.25(A).

{¶6} The language of Mason City Ordinance 537.14 mirrored the language of the domestic violence statute, R.C. 2919.25, which was in effect at the time of the incident. The ordinance contained the following language:

{¶7} "(a) No person shall knowingly cause or attempt to cause physical harm to a family or household member.

{¶8} "***

{¶9} "(d) As used in this section:

{¶10} "(e) (1) 'Family or household member' means any of the following:

{¶11} "(A) Any of the following who is residing or has resided with the offender:

{¶12} "(1) A spouse, a person living as a spouse, or a former spouse of the offender;

{¶13} "(2) A parent or a child of the offender, or another person related by consanguinity or affinity to the offender;

{¶14} "(3) A parent or a child of a spouse, person living as a spouse, or former spouse of the offender, or another person related by consanguinity or affinity to a spouse, person living as a spouse, or former spouse of the offender.

{¶15} "(B) The natural parent of any child of whom the offender is the other natural parent.

{¶16} "(2) 'Person 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 one year prior to the date of the alleged commission of the act in question."

{¶17} It is uncontested that much of the definition of family or household member does not apply to the alleged victim. There was no evidence presented that the alleged victim was related by affinity or consanguinity to appellant. The only language applicable to the facts established in this case would be the term, "a person living as a spouse."

{¶18} Therefore, the prosecution was required to show that the alleged victim was a "person living as a spouse" with appellant. This requires a showing that appellant was residing or had resided with the victim and that the victim "otherwise is cohabiting with the offender" or "otherwise has cohabited with the offender ***." State v. Williams, 79 Ohio St.3d 459, 461, 1997-Ohio-79.

{¶19} Cohabitation is not defined in the Mason City Ordinance or the state statute. Based upon the lack of definition in the state statute, the Ohio Supreme Court has defined cohabitation to include two essential elements: (1) the sharing of familial or financial responsibilities and (2) consortium. Williams, at 465.

{¶20} The supreme court listed several factors that would tend to establish shared familial or financial responsibilities. They are: "provisions for shelter, food, clothing, utilities, and/or commingled assets." *Id.* Additionally, the supreme court listed several factors that might establish consortium, which are: "mutual respect, fidelity, affection, society, cooperation, solace, comfort, aid of each other, friendship, and conjugal relations." *Id.*

{¶21} The supreme court in Williams noted that this determination was made on a case-by-case basis, and that the offense of domestic violence arises out of the nature of the relationship between the parties, and not the "exact living circumstances." *Id.* at 464.

{¶22} As we previously noted, the victim in this case did not testify. However, the investigating police officer testified to the content of the victim's statement given to police. Even with the admission of this impermissible hearsay, the police officer did not establish any of the factors enumerated by the Ohio Supreme Court in Williams.

{¶23} A police officer did testify that appellant told him that the altercation was over a family or household matter. In addition, at least two of appellant's witnesses established that appellant and the alleged victim had separate rooms in the apartment. Specifically, witnesses testified that during the altercation, some individuals were standing in the entrance to appellant's room and the altercation was taking place in another room shared by the alleged victim and her boyfriend, appellant's brother.

{¶24} However, none of the witnesses for the prosecution or appellant testified to any of the factors enumerated by the Ohio Supreme Court for the trier of fact to find the sharing of familial or financial responsibilities and consortium.

{¶25} Construing this evidence most favorably for the prosecution, any rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt. While an inference may be drawn that appellant and the alleged victim had separate rooms in the same apartment, the prosecution failed to prove that the alleged victim was a family or household member of appellant as defined in the ordinance and applicable case law.

See Williams; State v. Jenks (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶26} Accordingly, we sustain appellant's assignment of error on this specific issue, and reverse the trial court's decision finding appellant guilty of domestic violence. Appellant is discharged.

YOUNG, P.J., and WALSH, J., concur.