

[Cite as *State v. Banks*, 2009-Ohio-4782.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 08-CA-78
Plaintiff-Appellee	:	Trial Court Case No. 08-CRB-00419
v.	:	
	:	(Criminal Appeal from the
ABEL BANKS	:	Fairborn
	:	Municipal Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 11th day of September, 2009.

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BROGAN, J.

{¶ 1} Abel Banks appeals from his conviction and sentence on one count of misdemeanor assault in violation of R.C. 2903.13.

{¶ 2} In his sole assignment of error, Banks contends the trial court “abused its discretion in excluding evidence and disallowing opinion testimony at trial.”

{¶ 3} The present appeal stems from a dispute Banks had with his friend and house mate, Michelle Woolridge, on February 27, 2008. At trial, Woolridge testified that Banks pulled a telephone out of the wall and ripped a phone book during an argument. According to Woolridge, he then overturned a piece of furniture, striking her in the leg. Woolridge testified that he also tossed her to the ground, causing her to hit her head. She claimed to have suffered a bruise on her leg and a bump on her head. For his part, Banks admitted having an argument with Woolridge. He denied touching her, however, or hitting her with any furniture. A jury nevertheless found Banks guilty of assault, and the trial court sentenced him accordingly. This timely appeal followed.¹

{¶ 4} Banks’ assignment of error raises two separate issues. First, he contends the trial court erred in “excluding the use and introduction” of letters purportedly written by Woolridge to Banks after the incident in question. Banks claims the letters constituted cross-examination material to impeach Woolridge. Second, he contends the trial court erred in refusing to allow him to testify about the cause of Woolridge’s injuries. Specifically, he claims the trial court improperly prevented him from testifying that Woolridge’s seizures caused her to fall down and sustain bruises.

¹On September 25, 2008, the trial court stayed execution of Banks’ sentence pending the outcome of this appeal.

{¶ 5} Upon review, we find no merit in either of Banks' arguments. With regard to the first argument, the record reflects that defense counsel questioned Woolridge about whether she had apologized to Banks for pursuing the criminal charge against him. Woolridge responded that she had apologized for the loss of their friendship. Defense counsel then asked whether Woolridge had told Banks she was being dishonest. Woolridge responded that she did not believe she was being dishonest. (Tr. at 54-55). At that point, defense counsel apparently attempted to read from one or more letters Woolridge had written to Banks after the incident in question.² Defense counsel asked whether Woolridge had stated, "I know our problem is me being dishonest." (Id. at 55). The prosecutor objected on the grounds that she had not received a copy of any letters before trial. The trial court ruled that defense counsel could not introduce the letters into evidence, read from them, or question Woolridge about their contents. (Id. at 55-58). The basis for the trial court's ruling was defense counsel's failure to disclose the letters in discovery, apparently pursuant to Crim.R. 16(C)(1)(a).³

{¶ 6} On appeal, Banks fails to address the trial court's ruling that he could not use the letters because he failed to turn them over during discovery. His only argument is that the letters constituted cross examination material under Evid.R.

²The letters are not part of the record on appeal.

³Crim.R. 16(C)(1)(a) provides: "If on request or motion the defendant obtains discovery under subsection (B)(1)(c), the court shall, upon motion of the prosecuting attorney order the defendant to permit the prosecuting attorney to inspect and copy or photograph books, papers, documents, photographs, tangible objects, or copies or portions thereof, available to or within the possession, custody or control of the defendant and which the defendant intends to introduce in evidence at the trial."

611(B) and that the trial court should have permitted him to use them because they were “relevant and related to the credibility of the victim[.]” Be that as it may, the trial court did not exclude the letters on the basis that they were unrelated to Woolridge’s credibility or that they were irrelevant. The sole basis for the trial court’s ruling was defense counsel’s failure to disclose the letters during discovery. Given Banks’ complete failure to address this issue, we find his first argument to be without merit.

{¶ 7} Banks’ second argument is equally unpersuasive. He contends the trial court improperly prevented him from testifying “about Woolridge’s seizures and the fact that she fell down often causing bruises to her body.” Banks claims the trial court disallowed this testimony because he was not a doctor. He argues that he should have been permitted to provide lay opinion testimony about the cause of Woolridge’s bruising.

{¶ 8} The record fails to support Banks’ argument. He first attempted to testify that Woolridge “has seizures, so she maintains bruises on her legs and arms.” (Tr. at 106). The trial court sustained an objection “at this time” because Banks’ personal knowledge had not been established. (Id. at 107). Banks then responded affirmatively when asked by his attorney whether he ever had seen Woolridge having a seizure. (Id.). Counsel then attempted to ask Banks whether Woolridge suffered from a “medical condition” that caused her seizures. (Id.). The prosecutor objected, and the following exchange occurred at a side bar:

{¶ 9} THE COURT: “How are you going to establish that he knows the condition?”

{¶ 10} DEFENSE COUNSEL: “Well–

{¶ 11} THE COURT: “He would have to be a doctor.”

{¶ 12} DEFENSE COUNSEL: “I don’t think he has to be a doctor.”

{¶ 13} THE PROSECUTOR: “He would either have to be a doctor or know it from her.”

{¶ 14} DEFENSE COUNSEL: “I can ask if he has ever taken her to a doctor. We can go the long route.”

{¶ 15} THE COURT: “He has to be in the doctor’s office and hear the doctor say it.”

{¶ 16} DEFENSE COUNSEL: “I’ll ask.”

{¶ 17} THE COURT: “You could have asked her those questions.”

{¶ 18} DEFENSE COUNSEL: “I was frustrated at the time.” (Id. at 107-108).

{¶ 19} Following the sidebar, the trial court sustained the prosecutor’s objection in open court. Defense counsel proceeded to question Banks about Woolridge taking medication, his observations of her making involuntary, sudden movements, and his observation of any bruises on her body. (Id. at 108).

{¶ 20} The foregoing review reveals that the trial court actually sustained two objections. First, it sustained an objection when Banks attempted to testify that Woolridge “has seizures, so she maintains bruises on her legs and arms.” (Tr. at 106). As noted above, the trial court sustained the objection “at this time” because Banks’ personal knowledge had not been established. The second objection concerned the trial court’s refusal to allow him to testify about whether Woolridge suffered from a “medical condition” that caused her seizures. As set forth above, the trial court reasoned that Banks could not testify about Woolridge suffering from a

particular medical condition unless he was a doctor or actually had heard a doctor diagnose her.

{¶ 21} Contrary to Banks' argument on appeal, the trial court did not preclude him from testifying about Woolridge having seizures, falling down, and sustaining bruises because he was not a doctor. The trial court initially precluded this line of testimony because Banks' personal knowledge had not been established. In any event, Woolridge later admitted that she suffered from severe epilepsy. (Tr. at 126). In addition, Banks was permitted to testify that he had witnessed Woolridge having seizures and moving involuntarily. (Id. at 107-108). He also later testified, without objection, that he had observed bruises on Woolridge many times. (Id. at 119). Reviewing the record as a whole, we believe Banks adequately presented his theory that the bruise on Woolridge's leg may have resulted from an epileptic seizure rather than from an assault.

{¶ 22} Finally, the trial court's refusal to permit Banks to identify a particular medical condition that caused Woolridge's seizures is of no significance. Woolridge admitted that she suffered from severe epilepsy, and Banks testified that he had seen her seizures. Regardless of whether Banks was qualified to opine about Woolridge's particular medical condition, the specific cause of her epileptic seizures was immaterial to any issue in the case. Banks' assignment of error is overruled, and the judgment of the Fairborn Municipal Court is affirmed.

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GRADY and DINKELACKER, JJ., concur.

(Hon. Patrick T. Dinkelacker, from the First District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

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