

[Cite as *State v. Cordle*, 2010-Ohio-5919.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

KARI D. CORDLE

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. W.Scott Gwin, J.

Hon. William B. Hoffman, J.

Case No. 10CAA010010

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Delaware County Court of
Common Pleas, Case No. 08CRI110550

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 2, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, J.

{¶1} Defendant-appellant Kari D. Cordle appeals her conviction entered by the Delaware County Court of Common Pleas on two counts of domestic violence, in violation of R.C. 2919.25(A). Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On September 27, 2008, Appellant attended an Ohio State Football tailgating party. During a telephone conversation, Appellant's daughter testified she realized Appellant was intoxicated and asked her not to come to take pictures of her entering her high school homecoming dance. Appellant responded by telling her children not to come home after the dance.

{¶3} Later that evening, Appellant went to her ex-husband's home, where she thought her children would be after the homecoming dance for a party. Upon arrival, Appellant observed a number of children outside the home smoking marijuana and drinking beer.

{¶4} Appellant entered the home, observing alcohol, beer, loud music and trash on the floor. She approached her son and daughter, and an altercation ensued. Appellant claims her daughter struck her, and she then struck her daughter in the face near the left eye. Appellant's son restrained his mother from behind, and she bit him and kicked him in the leg where he had a sprained ankle. Appellant then kicked her daughter in the stomach, causing her to collapse. Appellant proceeded to smash several glass items within reaching distance.

{¶5} Count one of the indictment pertained to Appellant's son, and Count two pertained to her daughter. The jury found Appellant not guilty of domestic violence

relating to the son, but found her guilty of domestic violence against her daughter, a felony of the fourth degree due to a prior conviction.

{¶6} The trial court sentenced Appellant to a three year period of community control, a term of which included sixty days in the Delaware County Jail.

{¶7} Appellant now appeals, assigning as error:

{¶8} “I. APPELLANT’S CONVICTION FOR DOMESTIC VIOLENCE WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, BECAUSE SHE ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THE AFFIRMATIVE DEFENSE OF PROPER AND REASONABLE PARENTAL DISCIPLINE.

{¶9} “II. THE TRIAL COURT VIOLATED APPELLANT’S RIGHTS TO A FAIR TRIAL AND TO PRESENT A DEFENSE BY PROHIBITING HER FROM PRESENTING RELEVANT TESTIMONY ABOUT THE PRIOR DISCIPLINE HISTORY OF HER CHILDREN.”

I.

{¶10} In the first assignment of error, Appellant asserts her conviction for domestic violence is against the manifest weight of the evidence. Specifically, Appellant asserts she established the affirmative defense of proper and reasonable parental discipline.

{¶11} In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a thirteenth juror and “in reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in evidence the jury ‘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. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541, 1997-Ohio-52, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

{¶12} Appellant was convicted on one count of domestic violence, in violation of R.C. 2919.25(A), the statute reads:

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

{¶14} “***

{¶15} “(D)(1) Whoever violates this section is guilty of domestic violence, and the court shall sentence the offender as provided in divisions (D)(2) to (6) of this section.

{¶16} “(2) Except as otherwise provided in divisions (D)(3) to (5) of this section, a violation of division (C) of this section is a misdemeanor of the fourth degree, and a violation of division (A) or (B) of this section is a misdemeanor of the first degree.

{¶17} “(3) Except as otherwise provided in division (D)(4) of this section, if the offender previously has pleaded guilty to or been convicted of domestic violence, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to domestic violence, a violation of section 2903.14, 2909.06, 2909.07, 2911. 12, 2911.211, or 2919.22 of the Revised Code if the victim of the violation was a family or household member at the time of the violation, a violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially similar to any of those sections if the victim of the violation was a family or household member at the time of the commission of the violation, or any offense of violence if the victim of the offense was a family or

household member at the time of the commission of the offense, a violation of division (A) or (B) of this section is a felony of the fourth degree, and, if the offender knew that the victim of the violation was pregnant at the time of the violation, the court shall impose a mandatory prison term on the offender pursuant to division (D)(6) of this section, and a violation of division (C) of this section is a misdemeanor of the second degree.”

{¶18} Appellant argues she established she acted in accordance with proper and reasonable parental discipline which is an affirmative defense to the charge of domestic violence. Proper and reasonable parental discipline can be employed by a parent as an affirmative defense to the charge of domestic violence for physical harm to his or her child; however, the parent has the burden of proving such defense by a preponderance of evidence. *State v. Hart* (1996), 110 Ohio App.3d 250. Appellant maintains she used physical punishment as a method of discipline without violating the domestic violence statute, and such discipline was proper and reasonable under the circumstances. *State v. Adaranijo* (2003), 153 Ohio App.3d 266.

{¶19} A determination as to whether any particular conduct constitutes proper and reasonable parental discipline is a question that must be determined from the totality of the circumstances from all the relevant facts. *Adaranijo*, supra. A child’s age, behavior, and response to noncorporal punishment, as well as, the location and severity of the punishment are factors to be examined in determining whether a parent’s acts are proper and reasonable parental discipline. Id; *Hart*, supra.

{¶20} As set forth in the statement of the facts and case above, the record indicates a preexisting argument between Appellant and her daughter concerning

Appellant's intoxication. Appellant did not attempt any form of noncorporal punishment. Rather, in an intoxicated state, Appellant went to her ex-husband's home and commenced a physical altercation, including swinging at and punching her daughter in the face. Appellant's actions caused swelling around the daughter's eye and bruising.

{¶21} Considering all of the evidence and allowing for the trial court's weighing the evidence and judging the credibility of the witnesses, we find Appellant's conviction for domestic violence, in violation of R.C. 2919.25(A), is not against the manifest weight of the evidence. The record evidence does not demonstrate the jury lost its way or the jury's verdict resulted in a manifest miscarriage of justice.

{¶22} The first assignment of error is overruled.

II.

{¶23} In the second assignment of error, Appellant maintains the trial court erred in prohibiting her from introducing any relevant testimony regarding the prior discipline history of her children.

{¶24} Ohio Rules of Evidence 401 and 402 govern the admissibility of relevant evidence, defining "relevant evidence" as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

{¶25} Contrary to Appellant's assertion, we find the trial court allowed testimony and argument as to the prior disciplinary history of Appellant's daughter, although it did exclude the same as to Appellant's son as being irrelevant to Appellant's affirmative defense of self-defense. Assuming arguendo error in the exclusion of the evidence

relative to Appellant's son, we find Appellant has not demonstrated prejudice because she was acquitted of the charge as to her son.

{¶26} Appellant's second assignment of error is overruled.

{¶27} Appellant's conviction entered by the Delaware County Court of Common Pleas is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Gwin, J. concur

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards

HON. JULIE A. EDWARDS

s/ W. Scott Gwin

HON. W. SCOTT GWIN

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
KARI D. CORDLE	:	
	:	
Defendant-Appellant	:	Case No. 10CAA010010

For the reasons stated in our accompanying Opinion, Appellant’s conviction entered by the Delaware County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ W. Scott Gwin
HON. W. SCOTT GWIN