

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 09-CA-82
DONALD CAUDILL	:	
	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Richland County Court of
Common Pleas Case No. 2007-CR-37-D

JUDGMENT: AFFIRMED

DATE OF JUDGMENT ENTRY: May 28, 2010

APPEARANCES:

For Plaintiff-Appellee:

JAMES J. MAYER, JR.
Richland County Prosecutor
38 South Park Street
Mansfield, Ohio 44902

For Defendant-Appellant:

R. JOSHUA BROWN
32 Lutz Avenue
Lexington, Ohio 44904

KIRSTEN PSCHOLKA-GARTNER
Assistant Prosecuting Attorney
(Counsel of Record)

Delaney, J.

{¶1} Defendant-Appellant, Donald Caudill, appeals from the judgment of the Richland County Court of Common Pleas, finding him guilty of one count of burglary, a felony of the fourth degree, in violation of R.C. 2911.12(A)(4), and one count of negligent assault, a misdemeanor of the third degree, in violation of R.C. 2903.14(A).

{¶2} The facts giving rise to these convictions are as follows.

{¶3} In December, 2006, Appellant and his then wife, Jada Caudill, were in the process of obtaining a divorce. On December 28, 2006, at approximately 6:30 a.m., Jada left her two children, of whom Appellant was the father, with her parents, Dewane and Mona Roberts, for the day, while she went to work.

{¶4} At that time, Dewane's sister, Jan Kimes, and her husband, Bill, were at the house as well. At approximately 7:15 a.m., Appellant knocked on the door between the kitchen and the garage. Dewane answered the door, and Appellant claimed that he had custody of his children on that day and that he was there to take them home with him.

{¶5} According to Dewane, he understood that Appellant and Jada did not have a firm custody agreement during the pendency of the divorce proceedings and that Jada had custody of the kids that day. Dewane and Mona stated that they were celebrating Christmas with the kids that day because they did not get to see them on Christmas.

{¶6} Appellant refused to leave the premises when Dewane stated that he would not give the children to Appellant at that time. Appellant became angry and raised his voice. He pushed against the storm door against Dewane and entered the

residence without permission. Appellant yelled at his children to get their things and get in his car. Dewane repeatedly told Appellant to leave, but Appellant would not do so until the boys went with him.

{¶7} As Appellant was leaving with his children, Jan Kimes called 911. Appellant pulled his youngest son out of the door, and caused the boy to fall down the two steps into the garage and strike his head on the floor of the garage.

{¶8} Dewane followed Appellant and the boys outside, at which time Appellant clenched his fists and stated, “don’t make me go crazy on you fuckers.” Dewane walked to the back of Appellant’s car, where the boys were seated, and tried to reassure the boys that it was okay and that he would see them later.

{¶9} At that time, Bill Kimes walked into the garage, thinking that Appellant was going to hurt Dewane, and asked Appellant, “if he wanted to see crazy.” Appellant then ran and jumped into the car and began to rapidly accelerate out of the driveway. Because Dewane was leaning in the car talking to the boys, he became trapped in between the car door and the car. Dewane yelled for Appellant to stop the car, but Appellant did not stop the car and he dragged Dewane approximately one hundred feet down the driveway before Dewane was able to get free of the car. Dewane suffered multiple injuries as a result of being dragged down the driveway by Appellant, including sprains to his neck and shoulder, and multiple cuts and scrapes. His medical bills totaled approximately \$4,000.00.

{¶10} The Richland County Grand Jury subsequently indicted Appellant on one count of burglary, a felony of the second degree, in violation of R.C. 2911.12(A)(2), one count of felonious assault, a felony of the second degree, in violation of R.C.

2903.11(A)(2), and one count of aggravated menacing, a misdemeanor of the first degree, in violation of R.C. 2903.21(A).

{¶11} Appellant waived his right to a jury trial and chose to try his case to the trial court. During the trial, the State presented the testimony of Dewane and Mona Roberts, and Jan and Bill Kimes. Appellant presented testimony from probation officer Dan Meyers, Attorney Catherine Goldman, and Officer Sweat. Appellant also testified on his own behalf.

{¶12} After the evidence was presented, the trial court took the matter under consideration. On April 23, 2008, the trial court issued a ruling finding Appellant not guilty of burglary as charged in the indictment, but finding him guilty of the lesser included offense of burglary, a felony of the fourth degree, in violation of R.C. 2911.12(A)(4). The trial court also found Appellant not guilty of felonious assault under R.C. 2903.11(A)(2). Instead, the court found Appellant guilty of negligent assault, a misdemeanor of the third degree, in violation of R.C. 2903.14. The court found Appellant not guilty of aggravated menacing. The court sentenced Appellant to two years of community service and ordered him to pay restitution to Dewane Roberts in the amount of \$4,256.46 for his medical bills.

{¶13} Appellant now appeals the judgment of the trial court, assigning the following two Assignments of Error:

{¶14} “I. THE TRIAL COURT ERRED IN FINDING APPELLANT VIOLATED O.R.C. 2911.12(A)(4).

{¶15} “II. THE TRIAL COURT ERRED IN FINDING APPELLANT GUILTY OF NEGLIGENT ASSAULT.”

I.

{¶16} In Appellant's first and second assignments of error, he challenges the sufficiency of the evidence to convict him of both burglary, a felony of the fourth degree, and negligent assault, a misdemeanor of the third degree.

{¶17} When reviewing a claim of sufficiency of the evidence, an appellate court's role 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. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492. Contrary to a manifest weight argument, a sufficiency analysis raises a question of law and does not allow the court to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172, 175. 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. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

{¶18} In order to convict Appellant of burglary, the State was required to prove that Appellant, by force, stealth, or deception, trespassed in a permanent or temporary habitation of any person when any person other than the offender is present or likely to be present. R.C. 2911.12(A)(4). "Trespass" is defined for the purposes of R.C. 2911.12, as follows:

{¶19} "(A) No person, without privilege to do so, shall do any of the following:

{¶20} "(1) Knowingly enter or remain on the land or premises of another;

{¶21} "(2) Knowingly enter or remain on the land or premises of another, the use of which is lawfully restricted to certain persons, purposes, modes, or hours, when the

offender knows the offender is in violation of any such restriction or is reckless in that regard;

{¶22} “(3) Recklessly enter or remain on the land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access;

{¶23} “(4) Being on the land or premises of another, negligently fail or refuse to leave upon being notified by signage posted in a conspicuous place or otherwise being notified to do so by the owner or occupant, or the agent or servant of either.”

{¶24} “Privilege” is defined as: “an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.” R.C. 2901.01(A)(12).

{¶25} Moreover, to convict Appellant of negligent assault, the State was required to prove that Appellant negligently, by means of a deadly weapon or dangerous ordnance, caused physical harm to another.

{¶26} An automobile may be a “deadly weapon” when it is used in a manner likely to produce great harm or death. *State v. Tate*, 8th Dist. No. 87008, 2006-Ohio-3722, ¶ 23; see also *State v. Beatty*, 10th Dist. No. 08AP-52, 2008-Ohio-5063, ¶ 13.

{¶27} We find that, when viewing the evidence in the light most favorable to the prosecution, the state did prove Appellant’s guilt beyond a reasonable doubt.

{¶28} The evidence, as presented, showed that Appellant, without the permission of the home owner, entered Dewane and Mona Roberts home by pushing

his way into the house. Eyewitnesses stated that Appellant pushed Dewane out of the way in order to enter the house. Appellant argued with Dewane and stated that he would not leave without his children. When Appellant removed the boys from the Roberts' home, he stated to Dewane, who was following him out of the house, "don't make me go crazy on you fuckers."

{¶29} After the boys got into Appellant's car, Dewane was leaning into the car and was reassuring his grandsons that everything was okay and that he would see them soon, when Appellant jumped into the car, floored the accelerator and drug Dewane approximately 100 feet down his driveway before Dewane was able to get out of the way of the car. Dewane suffered numerous injuries and had medical bills totaling over \$4,000.00.

{¶30} Both Dewane and his brother-in-law, Bill, stated that Dewane did not have a chance to move out of the way of the car. Bill testified that he waved his hands and yelled at Appellant to stop. Dewane was also part of the way in the car, yelling at Appellant to stop. Bill testified that when Appellant backed up, the car door was open and Dewane was wedged against the car.

{¶31} With respect to the conviction for burglary, Appellant argues that he had a privilege to be inside Dewane Robert's home to pick up his children, and therefore he was not trespassing. Appellant fails to cite to any authority in support of this argument, however, and this court has not found any legal support for such a claim.

{¶32} While parents most certainly have a fundamental interest in the custody and care of their children, they must act within the bounds of the law in exerting those interests. Had Appellant wished to exert his custodial rights to see his children on that

day, the appropriate course of action was not to force his way into another person's home; rather, as the trial court pointed out in its judgment entry, the proper method to enforce such a right would be to involve the authorities or to contact a lawyer. By forcing his way into the Roberts' home, Appellant violated R.C. 2911.12(A)(4) by knowingly trespassing onto the premises of Dewane and Mona Roberts without a privilege to do so.

{¶33} With regard to Appellant's conviction for negligent assault, Appellant argues that the state failed to prove that Appellant exercised a substantial lapse from due care in failing to perceive that his actions caused a risk of harm to Dewane Roberts. We disagree. Dewane Roberts was leaning into Appellant's car, speaking to his grandsons through the open door, when Appellant gunned the accelerator and began to speed down the driveway, with Dewane yelling at Appellant to stop. Appellant dragged Dewane approximately 100 feet before slamming the car into drive and peeling out of the driveway. Such actions constitute a substantial lapse from due care sufficient to support Appellant's conviction.

{¶34} Appellant's assignments of error are overruled.

{¶35} For the foregoing reasons, the judgment of the Richland County Court of Common Pleas is affirmed.

By: Delaney, J.

Gwin, P.J. and

Wise, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JOHN W. WISE

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

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	:	
-vs-	:	JUDGMENT ENTRY
	:	
DONALD CAUDILL	:	
	:	
Defendant-Appellant	:	Case No. 09-CA-82
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Richland County Court of Common Pleas is affirmed. Costs assessed to Appellant.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JOHN W. WISE