

[Cite as *State v. Cochran*, 2010-Ohio-4915.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 23624
Plaintiff-Appellee	:	
	:	Trial Court Case No. 09-CR-695
v.	:	
	:	
PERCY S. COCHRAN	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 8th day of October, 2010.

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FAIN, J.

{¶ 1} Defendant-appellant Percy Cochran appeals from his conviction and sentence for Felonious Assault. Cochran argues that the trial court committed plain error in allowing extensive evidence about the damage that Cochran caused to Melissa Nichols’s personal property to be admitted into evidence. He also maintains that his

conviction is not supported by sufficient evidence and is against the manifest weight of the evidence. We conclude that, although evidence of damage to Nichols's property was not relevant to the Felonious Assault charge against Cochran, any error in admitting that evidence was harmless beyond a reasonable doubt in light of the overwhelming evidence against Cochran, and was certainly not plain error. Furthermore, we conclude that Cochran's conviction is supported by sufficient evidence and that it is not against the manifest weight of the evidence. The judgment of the trial court is Affirmed.

I

{¶ 2} In February, 2009, Cochran was released from prison. He moved into the home of his cousin, Melissa Nichols. One evening, Nichols was showering after work when she heard Cochran in the bathroom. He made sexual advances toward her. When she refused him, Cochran became very angry and threatened, "I'm going to kill you[,] bitch." Cochran dragged Nichols from the shower to her bedroom and began to hit her. On and off during the next several hours, Cochran beat Nichols, causing temporary blindness, brain damage, and numerous bone fractures. Throughout the beating, Cochran continued to curse at Nichols, and he repeatedly threatened to kill her.

{¶ 3} During the early morning hours, Cochran called Nichols's mother, Pearl Johnson, and said, "Aunt Pearl, I've beaten Net up." Johnson explained that family members call her daughter Net. When Johnson asked why, Cochran said that he beat Nichols because she would not change the sheets on his bed. Johnson asked to talk to

Nichols, but Cochran told her that Nichols could not come to the phone because he had “beaten her eyes out.” He told her not to call the police, but he agreed that she should call the paramedics. After hanging up, Johnson called 911 and then drove the short distance to her daughter’s home. When Johnson arrived at her daughter’s home, she saw Cochran through the living room window. She asked him what happened, but he did not respond. Instead, he jumped out the window and started running away. Minutes later, Dayton police arrived. All of the doors were barred and locked, and the officers had to gain entrance to the home through the broken front window. Police put out a broadcast for Cochran’s arrest. That evening, Officer Saylor arrested Cochran in a local store. Cochran’s clothes were bloody, and he had a cut on his hand and his ankle.

{¶ 4} In the meantime, medics transported Nichols to the hospital, where she spent nearly two months undergoing surgeries to repair the extensive damage caused by Cochran and physical therapy to teach her to talk and walk again. Nichols and her mother explained at trial that Nichols is permanently disabled as a result of Cochran’s attack on her.

{¶ 5} Cochran was indicted on one count of Felonious Assault. A jury found him guilty as charged. The trial court sentenced Cochran to a cumulative sentence of nine years for this conviction and for his probation violation in another case. From his conviction and sentence, Cochran appeals.

II

{¶ 6} Cochran’s First Assignment of Error is as follows:

{¶ 7} “THE TRIAL COURT COMMITTED PLAIN ERROR WHEN IT ALLOWED

THE ADMISSION OF EVIDENCE AT TRIAL WHICH WAS IRRELEVANT TO THE CHARGE, AND WHICH IRREVERSIBLY PREJUDICED APPELLANT.”

{¶ 8} Cochran contends that the extensive testimony regarding the damage that he did to Nichols’s home was irrelevant to the charge against him and that it was prejudicial to his defense. Nichols testified that between the repeated beatings, Cochran destroyed much of the interior of her home and killed her two pet birds. Johnson also described the destruction that she found at her daughter’s home. Dayton Police Officer Dyke explained that the home had been “thoroughly trashed” and that “everything inside was damaged somehow.” Similarly, Dayton Police Officer Beal stated that “the entire house was destroyed” and that “there was nothing left unturned or not broken or shattered or slashed.” Numerous photographs were admitted in illustration of the extent of the damage to Cochran’s home.

{¶ 9} Because Cochran did not object to this testimony at trial, he has waived all but plain error. *State v. Fry*, 125 Ohio St.3d 163, 2010-Ohio-1017, ¶94, citing *State v. Childs* (1968), 14 Ohio St.2d 56, paragraph three of the syllabus. “A reviewing court should use the utmost caution in taking notice of plain error and should do so only if it is clear that, but for the error, the result in the trial court would have been different. *State v. Smith* (April 28, 2006), Greene App. No. 2005CA70, 2006-Ohio-2132, citing *State v. Long* (1978), 53 Ohio St.2d 91, * * * ¶2 of the syllabus. Notice of plain error should be taken only in exceptional circumstances and only to prevent a manifest miscarriage of justice. *Id.*, ¶3 * * * of the syllabus.” *State v. Russell*, Montgomery App. No. 21458, 2008-Ohio-774, ¶121.

{¶ 10} The State argues that “[t]he testimony concerning the type and extent of the

damage to the victim's home is relevant to prove the significant injuries sustained by the victim at the hands of Cochran. Namely, they were relevant to show that the victim had suffered serious physical harm." We fail to see how the damage to Nichols's home proved that she herself suffered serious physical harm.

{¶ 11} Nevertheless, we cannot say that the outcome of the trial would clearly have been different absent this evidence. As discussed under Cochran's Second Assignment of Error, the only issue disputed at trial was the identity of the perpetrator. Nichols positively identified Cochran as the one who had beaten her so severely. Johnson testified that Cochran called her after the beating and admitted to her what he had done, and Johnson saw Cochran leaving Nichols's locked house minutes after the call. We conclude that any error in admitting the evidence of the damage to Nichols's home was harmless beyond a reasonable doubt. It certainly was not plain error.

{¶ 12} Cochran's First Assignment of Error is overruled.

III

{¶ 13} Cochran's Second Assignment of Error is as follows:

{¶ 14} "APPELLANT'S CONVICTION OF ASSAULT AND UNLAWFUL RESTRAINT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 15} In his Second Assignment of Error, Cochran argues that his conviction is against the manifest weight of the evidence and that his conviction is not supported by sufficient evidence. In support, he insists that the State failed to prove that he was the perpetrator of the vicious attack against his cousin.

{¶ 16} A sufficiency of the evidence argument challenges whether the State has

presented adequate evidence on each element of the offense to allow the case to go to the jury or to sustain the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. The proper test to apply to such an inquiry is the one set forth in paragraph two of the syllabus of *State v. Jenks* (1991), 61 Ohio St.3d 259: "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." In contrast, when reviewing a judgment under a manifest weight standard of review "[t]he court reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the [factfinder] clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which evidence weighs heavily against the conviction." *Thompkins*, supra, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 17} Cochran was convicted of Felonious Assault, in violation of R.C. 2903.11(A)(1), which states: "No person shall knowingly * * * cause serious physical harm to another...." The only issue contested at trial was that Cochran was the perpetrator of the crime.

{¶ 18} To the extent that Cochran argues that Nichols's identification was not

credible, we point out that the credibility of witnesses and the weight to be given to their testimony are primarily matters for the trier of fact to resolve. *State v. DeHass* (1967), 10 Ohio St.2d 230, 231.

{¶ 19} Nichols testified that she recognized Cochran's voice when he pulled her from the shower and began beating her. Furthermore, Cochran continued to yell at her and threaten her during the hours of her ordeal. Nichols is Cochran's cousin, and she was sharing her home with him at the time of the attack. She was in a position to know his voice well.

{¶ 20} Additionally, Cochran called Johnson and told her, "Aunt Pearl, I've beaten Net up." Not only did he call Johnson "Aunt Pearl," but he also used a family nickname for Nichols. Johnson also recognized Cochran standing in Nichols's window and then running from the scene upon her arrival. Johnson had no doubts either that Cochran was the person who called her or that he was the person standing in her daughter's window and running from the scene.

{¶ 21} Viewing the State's evidence, as we must, in a light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime of Felonious Assault to have been proven beyond a reasonable doubt. Cochran's conviction is supported by sufficient evidence. Nor did the jury lose its way in convicting him. Cochran's conviction is not against the manifest weight of the evidence.

{¶ 22} Accordingly, Cochran's Second Assignment of Error is overruled.

IV

{¶ 23} Both of Cochran's assignments of error having been overruled, the

judgment of the trial court is Affirmed.

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DONOVAN, P.J., and GRADY, J., concur.

Copies mailed to:

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