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**STATE OF OHIO, Plaintiff-Appellee v. ROBERT D. MCCLURE,  
Defendant-Appellant**

**Case No. 92-CA-0078**

**COURT OF APPEALS OF OHIO, SECOND APPELLATE DISTRICT, GREENE  
COUNTY**

**1993 Ohio App. LEXIS 3060**

**June 17, 1993, Rendered**

**PRIOR HISTORY:** [\*1] T.C. Case No. 92 CRB  
01128

provided to the defense; and that surprise evidence was permitted to be introduced into evidence.

**DISPOSITION:** All of McClure's Assignments of Error having been overruled, the judgment of the trial court is Affirmed.

We conclude that the judgment is not against the manifest weight of the evidence; that the defense withdrew its motion for discovery of certain documents of which he now complains; and that there exists no basis to support McClure's contention that surprise evidence was introduced. Therefore, the judgment of the trial court [\*2] is affirmed.

**COUNSEL:** Joseph Stadnicar, S. Ct. Regis. No. 46851, 16 S. Pleasant Street, Fairborn, Ohio 45324, Attorney for Plaintiff-Appellee.

James R. Kirkland, S. Ct. Regis. No. 9731, 111 W. First Street, Suite 518, Dayton, Ohio 45402, Attorney for Defendant-Appellant.

**JUDGES:** FAIN, BROGAN, YOUNG

**OPINION BY:** FAIN

**OPINION**

OPINION

FAIN, J.

Defendant-appellant Robert D. McClure appeals from his conviction and sentence for domestic violence in violation of R.C. 2919.25(A) against his daughter, Angela McClure. McClure contends that the judgment of the trial court is against the manifest weight of the evidence; that certain critical documents were not

I

McClure is a Major in the Air Force and a graduate of the West Point United States Military Academy. He is married to Karen McClure. The couple has a daughter, Alexis Bethany McClure. McClure adopted Karen's two children from a previous marriage.

McClure was convicted of domestic violence against his adopted daughter, Angela. McClure claims that he was not attempting to beat his daughter, but only trying to prevent her from leaving to see her natural father, allegedly a convicted felon who had previously kidnapped her.

Following a bench trial, McClure was sentenced to thirty days in the Greene County Jail and fined \$ 750.00. The trial court modified the sentence to one year probation plus a \$ 750.00 fine. From the judgment of the trial court, McClure appeals.

## II

McClure's First Assignment of Error is as follows:

DEFENDANT'S CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AS PROSECUTION FAILED TO INTRODUCE SUFFICIENT EVIDENCE TO PROVE BEYOND A REASONABLE DOUBT THAT DEFENDANT COMMITTED AN ACT OF DOMESTIC VIOLENCE AGAINST HIS DAUGHTER. THE SAFETY AND PROTECTION OF ANGELA WAS IN NO WAY IMPAIRED.

In reviewing both weight and sufficiency of [\*3] the evidence, our inquiry is limited to viewing the evidence in a light most favorable to the prosecution and determining whether any reasonable trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 273, 574 N.E.2d 492. Our standard of review does not include a review of the credibility of testimony, but rather whether there is testimony in the record that, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Walker* (1978), 55 Ohio St.2d 208, 213, 378 N.E.2d 1049. The verdict will not be disturbed unless we conclude that reasonable minds could not reach the conclusion reached by the trier of facts. *State v. Jenks*, *supra*.

McClure was found guilty of Domestic Violence in violation of R.C. 2919.25(A), which provides that:

No person shall knowingly cause or attempt to cause physical harm to a family or household member.

McClure claims that the evidence is insufficient to support a conviction because the State relied upon two witnesses to establish its case. He questions the credibility of the two witnesses, McClure's [\*4] wife and his adoptive daughter, Angela. It is not within our authority to judge the credibility of the witnesses. That authority reposes exclusively in the trial court.

Angela McClure testified that she called the police because she was being attacked by her father. She testified that he was upset because she wanted to see her biological father. She attempted to leave the house, and McClure threw her over the couch. McClure then proceeded to hit and kick Angela as she was lying on the floor. She had difficulty breathing.

Angela ran outside through the screen door. McClure chased Angela and threw her to the ground. He then began pounding her head on the ground three or four times. McClure dragged her back into the house. At that point, Angela called the police.

We conclude that Angela's testimony is sufficient to establish the elements of R.C. 2919.25(A). Accordingly, there is testimony in the record that, if believed, would persuade the average mind of McClure's guilt beyond a reasonable doubt.

McClure's First Assignment of Error is overruled.

## III

McClure's Second Assignment of Error is as follows:

NO EVIDENCE WAS PRESENTED TO IDENTIFY THE SOURCE OF ALLEGED INJURIES [\*5] BY OTHER THAN TESTIMONY OF HIS DAUGHTER ANGELA M. MCCLURE. ALLEGED INJURIES WERE NOT SUBSTANTIATED BY EVIDENCE OF ANY MEDICAL RECORDS, EXPERT MEDICAL TESTIMONY, AND LACK OF MEDICAL ATTENTION REQUEST.

McClure argues that Angela's injuries were not substantiated by expert medical testimony or medical records. He claims that the cause of her injuries was not proved beyond reasonable doubt.

The testimony referred to in Part II of this opinion constitutes sufficient proof of the cause of Angela's injuries. Angela testified regarding her specific injuries, and in addition, the State introduced photographs depicting injuries to Angela's eye, forehead, leg, back and shoulder blade. The State was not required to introduce expert medical testimony or records regarding Angela's injuries.

McClure's Second Assignment of Error is overruled.

IV

McClure's Third Assignment of Error is as follows:

CRITICAL DOCUMENTS  
REQUESTED AND NECESSARY FOR  
A FAIR AND IMPARTIAL DEFENSE  
WERE NOT PERMITTED TO BE  
BROUGHT INTO EVIDENCE.

McClure's motion for "critical documents" was *sustained* by the trial court. McClure *withdrew* his motion to obtain evidence after the trial court had indicated [\*6] that he would accommodate McClure's request for documents and agreed to delay the trial in order for the defense to prepare. McClure's argument on appeal that the trial court refused to admit such documents thereby denying McClure the right to a fair trial is disingenuous.

McClure's Third Assignment of Error is overruled.

V

McClure's Fourth Assignment of Error is as follows:

SURPRISE OF EVIDENCE  
INTRODUCED DURING THE TRIAL  
PREVENTED A FAIR AND  
IMPARTIAL DEFENSE.

McClure claims that photographs of Angela's injuries and the 911 tape of Angela's call to the police were not

made available to the defense at the discovery hearing. The State asserts that defense counsel viewed the evidence at the pretrial hearing and was made aware of the State's intent to use this evidence at trial prior to the trial date. The record does not support McClure's claim of surprise. Furthermore, McClure has failed to show how he was prejudiced as a result of the alleged surprise.

McClure's Fourth Assignment of Error is overruled.

VI

In regard to McClure's pro se Assignment of Error and the amicus brief submitted by Colonel Robert D. McClure claiming that the record did not accurately [\*7] reflect a statement made by the trial court prior to sentencing, this court notes that the matter was remanded to the trial court pursuant to App. R. 9(E) to settle the record. The trial court responded by verifying that the record as filed in this court accurately reflects the statements made by the trial court prior to sentencing. The trial court specifically denied making the statement attributed to it by McClure. Therefore, we conclude that McClure's claim of alleged impropriety by the trial court lacks merit.

McClure's pro se Assignment of Error is overruled.

VII

All of McClure's Assignments of Error having been overruled, the judgment of the trial court is Affirmed.

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BROGAN and YOUNG, JJ. concur.