

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-080339
	:	TRIAL NO. C-08CRB-2453
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
VALERIE OVERSTREET,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In three assignments of error, defendant-appellant Valerie Overstreet challenges her conviction for domestic violence.² We affirm.

Overstreet is the mother of Sierra Overstreet.³ When Sierra came home on January 23, 2008, she got into an argument with Precious Overstreet. Precious is Overstreet’s sister. More than one witness testified that Precious hit Sierra first. A fight ensued on the porch. Overstreet heard the commotion and came to separate the two.

According to Sierra, Overstreet pulled her by the hair into the house, while Precious was still hitting her. She testified that “[t]hey were both on top of me hitting me. Nobody was trying to break both of us up, get Precious off of me or anything.” She testified that she was pushed into a bedroom and that “[w]hen I finally came out of there, me and my mom got into it. She was hitting me, smacking

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² R.C. 2919.25(A).

³ We use first names in this entry because many of the individuals involved here have the same last name.

and pulling my hair.” A caseworker from the Hamilton County Department of Job and Family Services testified that Overstreet had admitted to pulling Sierra’s hair and hitting her.

Other witnesses who lived in the home with Overstreet testified to versions of the events that were more favorable to Overstreet. Against the advice of counsel, Overstreet also testified. She testified that, when she had yelled for them to stop, Precious let go of Sierra, but Sierra continued to fight. Overstreet repeatedly denied hitting Sierra and also denied pulling her around by the hair. She testified that “nobody tried to physically harm [Sierra] in any kind of way,” and that she “did not strike [Sierra].” Overstreet said that she was only trying to break up the fight. She also claimed that the caseworker had lied during her testimony, and that the worker was “unprofessional.”

In closing, counsel for Overstreet argued for Overstreet’s version of events: that “all this defendant did was essentially break up a fight” and that “[w]e have other witnesses that would argue that this young lady here did not strike the alleged victim in this matter.” The trial court convicted Overstreet and sentenced her accordingly.

In her first two assignments of error, Overstreet argues that her conviction was based upon insufficient evidence and was against the manifest weight of the evidence. The legal standards applicable to these arguments are well established.⁴ Overstreet claims that the conviction was improper because the state did not show that Overstreet had “exceeded the bounds of parental discipline.” She maintains that “when Sierra cussed at her mother[,] she slapped her in the face.” Citing *State v.*

⁴ See *State v. Jones*, 1st Dist. No. C-070666, 2008-Ohio-5988, at ¶133, citing *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541.

Adaranijo,⁵ she concludes that the trial court failed to consider that “when a parent uses corporal punishment as a method of discipline, and there is no observable injury or risk of serious physical harm to the child, the parent has not, as a matter of law, committed domestic violence.”⁶

The state counters that what Overstreet did exceeded the bounds of parental discipline. But we need not reach that issue.

The key phrase in the *Adaranijo* decision is “as a method of discipline.” Overstreet repeatedly denied hitting Sierra and claimed that any hair-pulling was incidental to her attempt to separate Sierra and Precious. Since she testified that she did not hit Sierra, she obviously did not testify that she was employing “a method of discipline.” Absent any indication that parental discipline was involved in this case, the evidence presented was enough to support Overstreet’s conviction, and the conviction was not against the manifest weight of the evidence.

In her third assignment of error, Overstreet claims that trial counsel was ineffective. To prevail on a claim for ineffective assistance of counsel, an appellant must demonstrate that counsel's performance was deficient and that the appellant was prejudiced by the deficient performance.⁷ Overstreet argues that trial counsel should have raised the defenses of (1) parental discipline and (2) defense of another.

The fundamental flaw with this claim is that it ignores Overstreet’s own testimony. Trial counsel’s theory of the case was that Overstreet had never struck Sierra, and that she was only trying to break up the fight. This was Overstreet’s account. Arguing either parental discipline or defense of another would have

⁵ 153 Ohio App.3d 266, 267, 2003-Ohio-3822, 792 N.E.2d 1138.

⁶ *Id.*

⁷ *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052.

contradicted Overstreet's version of events. It would have been much more ineffective for trial counsel to take a position contrary to his client's.

We note that Overstreet argues the "defense of another" theory based on her claim that she was defending Sierra from the attack by Precious. There are two problems with this argument. First, Ohio law does not support the proposition that a person can defend someone by assaulting them. Second, according to Overstreet, Precious stopped fighting when Overstreet had yelled for them to stop. This was before Overstreet became physically involved in the altercation. Thus, any need to "defend" Sierra had ended.

Therefore, we overrule Overstreet's three assignments of error and affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

PAINTER, P.J., SUNDERMANN and DINKELACKER, J.J.

To the Clerk:

Enter upon the Journal of the Court on January 14, 2009

per order of the Court _____
Presiding Judge