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

STATE OF OHIO,	:	APPEAL NO. C-160253 TRIAL NO. 15CRB-19242
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
KEVIN FARMER,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This is an appeal from a conviction for disorderly conduct following a jury trial. We affirm the trial court's judgment.

During a break in court proceedings in another matter, Kevin Farmer decided to go for a jog through the corridors of the courthouse. Three sheriff's deputies testified that they tried to stop Farmer from running but he initially refused to comply. Ultimately, Mr. Farmer halted when one of the deputies stepped in front of him and held up his hand. Mr. Farmer refused to identify himself to the deputies and insisted that he did not have to stop running. According to the deputies, Mr. Farmer became loud and belligerent and caused a disturbance in the lobby.

In two assignments of error, Mr. Farmer argues that his conviction is not supported by sufficient evidence and that the court improperly admitted evidence that he was the defendant in another trial on that day. We disagree.

In his sufficiency claim, Mr. Farmer argues that the courthouse did not have a formal rule prohibiting running in the courthouse and that he was only expressing to the

deputies his objection to being arrested. The statute under which Farmer was convicted, R.C. 2917.11(A)(1), provides that, "No person shall recklessly cause inconvenience, annoyance or alarm to another by * * * [e]ngaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior." Turbulent behavior is "tumultuous behavior or unruly conduct characterized by violent disturbance or commotion." *State v. Johnson*, 1st Dist. Hamilton No. C-070279, 2008-Ohio-705, ¶ 12, quoting *State v. Reeder*, 18 Ohio St.3d 25, 27, 479 N.E.2d 280 (1985).

Mr. Farmer argues that he did not hear the deputy's initial commands to stop and that he was not yelling, rather his voice was at a high pitch during the confrontation due to anxiety. The deputies, however, testified that after finally being stopped Farmer was belligerent, angry and shouting. In their telling, his conduct disrupted their duties associated with securing the courthouse lobby and caused them to call multiple other deputies to the lobby. While the deputies dealt with Farmer, the lobby was essentially closed. Few people were able to enter or exit, and crowds formed just outside the lobby and inside one of the offices attached to the lobby. This evidence was sufficient for the jury to have reasonably concluded that the state proved all elements of disorderly conduct beyond a reasonable doubt. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

Included within the assignment of error, is an oblique contention that Farmer's conviction infringed on his constitutional right to free speech. But Mr. Farmer does not separately argue this issue, and we decline to address it. *See* App.R. 12(A)(2). Mr. Farmer's first assignment of error is overruled.

In his second assignment of error, Mr. Farmer complains that he was denied a fair trial because the court allowed in inadmissible character evidence. Specifically, he complains about the evidence presented concerning his status as a defendant in another trial that day. On direct examination, Mr. Farmer testified that he started jogging after

leaving room 140. Then, during cross-examination, the following exchange occurred between Farmer and the prosecutor:

> Q: And you were a participant in a court proceeding?
>
> A: Explain participant.
>
> Q: You were a defendant?
>
> A: Oh, a defendant in the court proceedings. You can say that was an accurate statement, yeah.
>
> Q: And your trial was in progress?
>
> A: Was my trial in progress?
>
> Defense Counsel: Objection

Counsel explained that the basis of the objection was that "it was irrelevant what was going on in this room before he left." The court instructed the parties, "I think you established that Mr. Farmer was in a courtroom proceeding. Let's move on."

We find no error by the court. By the time counsel objected, Mr. Farmer had already told the jury that he was a defendant in a courtroom proceeding. If counsel believed the evidence that had already come in was improper, he should have asked for a curative instruction or moved for a mistrial. Counsel failed to do so. And the court's failure to sua sponte provide such a remedy does not rise to the level of plain error. Mr. Farmer has not demonstrated "that the outcome of the trial would clearly have been different but for the trial court's allegedly improper actions." *See State v. Waddell*, 75 Ohio St.3d 163, 166, 661 N.E.2d 1043 (1996).

Mr. Farmer also claims his counsel was ineffective for failing to request a mistrial after the evidence was admitted. To prevail on an ineffective assistance of counsel claim, Mr. Farmer must demonstrate both that counsel's performance fell below an objective standard of reasonableness, and that counsel's deficient performance prejudiced him.

See Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). Based on the isolated nature of the questioning and the overwhelming other evidence in the record, we cannot conclude that Farmer suffered prejudice or that the outcome of the trial would have been different. Farmer's second assignment of error is overruled.

We affirm the judgment of the trial court.

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.

CUNNINGHAM, P.J., DEWINE and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on November 18, 2016

per order of the court _____.

Presiding Judge