

[Cite as *Grove City v. Buck*, 2011-Ohio-2549.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

City of Grove City,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-1039
Roland G. Buck,	:	(M.C. No. 2009 CRB 7334)
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on May 26, 2011

Schottenstein, Zox & Dunn Co., L.P.A., Stephen J. Smith, Jr., Asim Z. Haque and Morgan M. Masters, for appellee.

Joseph D. Reed, for appellant.

APPEAL from the Franklin County Municipal Court

TYACK, J.

{¶1} Roland G. Buck ("appellant") is appealing from his conviction on a misdemeanor charge of domestic violence. He assigns a single error for our consideration:

I. THE TRIAL COURT ERRED WHEN IT REFUSED TO INSTRUCT THE JURY ON SELF DEFENSE, DEFENSE OF OTHERS AND DEFENSE OF PROPERTY.

{¶2} In order to address the merits of this assignment of error, we need to set forth some of the pertinent evidence before the trial court.

{¶3} On March 29, 2009, appellant was living with C.B. when the two started arguing. The argument escalated from mere words to physical confrontation. Appellant would later admit to slapping C.B. a single time, but called the contact accidental. After the slapping, appellant later physically restrained C.B. for an extended period of time and would not allow her to leave or to call police. Much later, he relented and called the police himself, handing the telephone to C.B. after he made the connection.

{¶4} Upon arriving at the residence, police found C.B. with a swollen eye and bruising visible on her face, arms and legs.

{¶5} Eventually, appellant apologized to C.B., both via email and via telephone message. Neither message mentioned self-defense, defense of others, or defense of property. At trial, appellant attempted to assert one or more of those defenses. The trial court did not feel the defenses applied under the circumstances and refused to give jury charges on the subject. That refusal is at the heart of the appeal.

{¶6} Appellant admits to doing physical harm to C.B. He claims that the first instance of physical harm came when he slapped her "accidentally." By claiming the slap was accidental, he gave up any claim that the physical harm he inflicted then was done in self-defense, in defense of others, or in defense of property. The judge was clearly correct in refusing to give a self-defense or related jury charge as to this slapping.

{¶7} Appellant claimed that the rest of the physical harm he inflicted on C.B., was inflicted in self-defense, defense of C.B. herself or of appellant's daughter, or in defense of property at the residence. On such a defense, appellant had the burden of proof by a preponderance of the evidence. The trial court judge was within his discretion to find that appellant and his counsel could not possibly persuade a rational jury of such

defense or defenses and therefore appellant was not entitled to a jury charge on such a defense or defenses.

{¶8} Appellant admitted that he blocked C.B. from calling police for a sustained period of time. That admission is inconsistent with a claim he thought he was legally justified in inflicting the physical harm clearly visible to police when they finally could respond to the report of domestic violence. His claim at trial that he blocked C.B. from calling police because he did not want his daughter, D.B. "exposed to the police" seems incredible. He could expose his daughter to an extended confrontation with C.B. which resulted in C.B. having a swollen eye and visible bruising to her face, arms and legs, but wanted to protect his daughter from exposure to the police. The more apparent explanation is that appellant wanted to protect himself from prosecution for domestic violence.

{¶9} As noted earlier, appellant admitted to doing physical harm to C.B. and apologized for it repeatedly. This activity is more consistent with a hope to avoid the consequences of the physical harm he inflicted than in a belief that he was justified in harming C.B.

{¶10} The trial judge was within his discretion to refuse the requested jury charge. The sole assignment of error is overruled. The judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

BROWN and FRENCH, JJ., concur.
