

[Cite as *State v. Medardi*, 2010-Ohio-3729.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93990

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

TINA M. MEDARDI

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-519577

BEFORE: Gallagher, A.J., Rocco, J., and Sweeney, J.

RELEASED AND JOURNALIZED: August 12, 2010

ATTORNEY FOR APPELLANT

Michael J. Cheselka, Jr.
Michael J. Cheselka, Jr., LLC
75 Public Square, Suite 920
Cleveland, Ohio 44113

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Kerry A. Sowul
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

SEAN C. GALLAGHER, A.J.:

{¶ 1} Appellant Tina Medardi challenges her conviction from the Cuyahoga County Court of Common Pleas. For the reasons stated herein, we affirm.

{¶ 2} On January 7, 2009, a Cuyahoga County grand jury indicted Medardi on one count of menacing by stalking and one count of telecommunications harassment. On Count 2, the indictment read that the alleged criminal activity occurred on or about February 13, 2008. The matter proceeded to a jury trial on July 30, 2009.

{¶ 3} The state called the victim, Thomas Saba, who had a relationship with Medardi for several months in 2007.¹ Saba testified he broke off the couple's relationship in October 2007. He testified that after their break up, Medardi began making so many phone calls to him that he stopped answering her calls. In January 2008, Saba filed a police report in which he complained Medardi was harassing him by continuously calling him at home and at work. On January 14, 2008, the city charged Medardi with telephone harassment, criminal mischief, and criminal trespass.

{¶ 4} At her arraignment in Cleveland Municipal Court on January 29, 2008, Medardi pleaded not guilty to all charges, and the court ordered her to have no contact with Saba. On February 13, 2008, the court found Medardi guilty of criminal mischief, and the city nolleed the two remaining counts. She was sentenced to 60 days in jail, with the sentence suspended; one year active probation; and a \$500 fine, of which half was suspended. The court also ordered Medardi to attend anger-management classes.

{¶ 5} Saba testified that he thought there was a protective order in place that required Medardi to refrain from calling him, but that on the evening of February 13, after the municipal court hearing, Medardi called him anyway. He testified she also called him on February 14 and told him

¹ The state also called Detective Thomas Lynch to testify about the details of his investigation.

that she had left some of his clothes on his front lawn. When Saba went out to his yard, he found a bag with his shredded clothing inside. According to Saba's testimony and the phone records introduced into evidence, Medardi made numerous calls to Saba between February 17 and June 19. Saba testified she called him more than a thousand times. He stated that on occasion he answered her calls, but most often he left her calls unanswered.

{¶ 6} Saba testified Medardi put a letter to him in his mailbox, expressing her feelings for him and begging him to talk to her. He filed a complaint with police several months later. The state introduced the letter into evidence, as well as a recording of several phone messages Medardi left on Saba's phone.

{¶ 7} The jury acquitted Medardi of menacing by stalking and convicted her of telecommunications harassment. The lower court sentenced her to six months in jail, with the sentence suspended; one year active probation; a fine of \$500; no contact with Saba; and a requirement that Medardi submit her phone records to the court each month for review.

{¶ 8} Medardi raises two issues on appeal. Because of their relatedness, we address them together.

{¶ 9} "I. Medardi's conviction for telecommunications harassment is improper since the state did not produce any evidence that Medardi called Saba on February 13, 2008, the offense date specified in the indictment."

{¶ 10} “II. The state did not prove all necessary elements of the crime of telecommunications harassment beyond a reasonable doubt.”

{¶ 11} Medardi argues the state presented insufficient evidence to convict her of telecommunications harassment. Her first assigned error argues there was no evidence of criminal conduct on the date set forth in the indictment; her second assigned error argues there was no notice to her to refrain from calling the victim. We disagree.

{¶ 12} When an appellate court reviews a claim of insufficient evidence, “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.” *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 77, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus. The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37.

{¶ 13} R.C. 2917.21(A)(5) states as follows: “No person shall knowingly make or cause to be made a telecommunication, or knowingly permit a telecommunication to be made from a telecommunications device under the person’s control, to another, if the caller does any of the following: * * * (5) Knowingly makes the telecommunication to the recipient of the

telecommunication, to another person at the premises to which the telecommunication is made, or to those premises, and the recipient or another person at those premises previously has told the caller not to make a telecommunication to those premises or to any persons at those premises.”

{¶ 14} First, Medardi claims the evidence introduced at trial does not show she made calls to Saba on or about February 13, 2008. She argues that the actual date of the offending telephone call is an essential element of the offense.

{¶ 15} It is well established that “[o]rdinarily, precise times and dates are not essential elements of offenses.” *State v. Sellards* (1985), 17 Ohio St.3d 169, 478 N.E.2d 781. In this case, the indictment indicated the date of the offense as “on or about February 13, 2008,” and specified that Medardi had previously been told not to make such a telecommunication. There was ample evidence in the record to show offending calls were made after notice not to call was given. With regard to the actual date specified in the indictment, in response to several questions, Saba testified he received calls from Medardi on the evening of February 13 and during the day on February 14.² Further, Exhibit 3 documented a record of phone calls to Saba’s cell

² It is not clear from the record why the state chose not to introduce Medardi’s cell phone records provided by defense counsel in response to the state’s request for reciprocal discovery. These records show a call was made from Medardi’s cell phone to Saba’s cell phone on February 14, 2008, at 11:55 a.m.

phone from February 17 through October 1, 2008. We find the testimony and evidence was sufficient to support the conviction for telecommunications harassment.

{¶ 16} Next, Medardi claims there was no evidence she was told not to call Saba prior to February 13. She argues that the municipal court case against her did not result in a conviction for telecommunications harassment and, therefore, is not conclusive on this issue of notice not to call Saba.

{¶ 17} R.C. 2917.21(A)(5) does not require official notification from a court not to call in order for a defendant to be convicted. It requires only that “the recipient or another person at those premises,” in this case Saba, told Medardi not to call him. See *State v. Boude*, Montgomery App. No. 19945 2004-Ohio-1176. Saba’s testimony was that he told Medardi to stop calling him numerous times after their relationship ended in October 2007.

{¶ 18} Even without Saba’s unwavering testimony that he told Medardi not to call him, the municipal court proceeding was sufficient to put Medardi on notice that she was not to contact Saba. The municipal court’s January 29, 2008 order, issued just two weeks prior to February 13, read: “The defendant is ordered to have no contact with the victim [Thomas Saba].” Despite the fact that the city nolleed the telephone harassment charge and Medardi was only found guilty of criminal mischief, the municipal court’s order put Medardi on notice that she was not to call Saba.

{¶ 19} We find the state presented sufficient evidence on all elements of telecommunications harassment to support a conviction. Medardi's first and second assignments of error are overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

SEAN C. GALLAGHER, ADMINISTRATIVE JUDGE

KENNETH A. ROCCO, J., and
JAMES J. SWEENEY, J., CONCUR