

[Cite as *State v. Vickers*, 2018-Ohio-782.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : Case No. 16CA17
 :
 vs. :
 :
 GARY VICKERS, : DECISION AND JUDGMENT ENTRY
 :
 Defendant-Appellant. :

APPEARANCES:

Darren L. Meade, Columbus, Ohio, for appellant¹

Adam R. Salisbury, Gallipolis City Solicitor, Gallipolis, Ohio, for appellee

CRIMINAL APPEAL FROM MUNICIPAL COURT
DATE JOURNALIZED: 2-14-18
ABELE, J.

{¶ 1} This is an appeal from a Gallipolis Municipal Court judgment of conviction and sentence. The trial court found Gary Vickers, defendant below and appellant herein, guilty of aggravated menancing, a first degree misdemeanor.

{¶ 2} Appellant assigns the following error for review:

"THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE IN SUPPORT OF A CONVICTION FOR AGGRAVATED MENANCING, BECAUSE THE EVIDENCE IS INSUFFICIENT TO PROVE THAT MR. VICKERS USED A GUN, AND EVEN IF HE HAD A GUN, THE EVIDENCE IS INSUFFICIENT TO PROVE THE VICTIM SUBJECTIVELY BELIEVE HE WOULD

¹Different counsel represented appellant during the trial court proceedings.

CAUSE HER SUBSTANTIAL PHYSICAL HARM TO HER PERSON OR PROPERTY."

{¶ 3} On September 14, 2016, Rio Grande Police Department Patrolman Chad Still filed a complaint that charged appellant with aggravated menacing, in violation of Rio Grande Village Ordinance 537.05(a), a first degree misdemeanor. At his arraignment, appellant pled no contest to the charge. Appellant, however, wished to have counsel appointed to represent him at sentencing. Prior to sentencing, appellant requested to withdraw his no contest plea. The trial court granted appellant's request to withdraw his plea and scheduled the matter for trial.

{¶ 4} At trial, the evidence revealed that on September 7, 2016, appellant engaged in an argument with his neighbor, Alisha Johnson. The argument first began in the street, then the participants retreated to their respective residences. Shortly thereafter, appellant decided to visit Johnson's residence. Apparently, Johnson exited her residence and, according to Johnson, appellant produced and pointed a black handgun at Johnson and told her that he would shoot her. Johnson testified that she believed that appellant intended to cause her serious physical harm.

{¶ 5} In addition to the victim, several other witnesses testified during the bench trial, including the appellant's girlfriend, Ms. McCoy, appellant's father, Mr. Vickers, the investigating officer and the appellant. The record reveals that several conflicts arose in the evidence from various witnesses, especially concerning the presence and the use of the weapon. Appellant indicated that he did not own any handguns, but did own BB guns. Appellant also maintained that he did not have a BB gun in his possession during the altercation.

{¶ 6} After hearing the evidence and counsels' lengthy closing arguments, the trial court found appellant guilty as charged. The court indicated from the bench that the facts adduced at

the trial established that appellant had threatened Johnson with what appeared to be a handgun, but was probably a BB gun that had the appearance of a handgun. Consequently, appellant caused Johnson to believe that appellant intended to cause her serious physical harm. The court sentenced appellant to serve twenty-two days in jail with credit for time served, three years of community control supervision, pay a fifty dollar fine, pay court costs and pay a supervision fee. Appellant filed a timely notice of appeal.

{¶ 7} In his sole assignment of error, appellant asserts that insufficient evidence supports his conviction for aggravated menancing. Generally, a claim of insufficient evidence invokes a due process concern and raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. State v. Thompkins, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). When reviewing the sufficiency of the evidence, our inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt. Id. at syllabus. The standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. E.g., Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979); State v. Jenks, 61 Ohio St.3d 259, 273, 574 N.E.2d 492 (1991). Furthermore, a reviewing court should not assess “whether the state’s evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction.” Thompkins, 78 Ohio St.3d at 390 (Cook, J., concurring).

{¶ 8} Thus, when reviewing a sufficiency-of-the-evidence claim, an appellate court must construe the evidence in a light most favorable to the prosecution. E.g., State v. Hill, 75

Ohio St.3d 195, 205, 661 N.E.2d 1068 (1996); State v. Grant, 67 Ohio St.3d 465, 477, 620 N.E.2d 50 (1993). A reviewing court will not overturn a conviction on a sufficiency-of-the-evidence claim unless reasonable minds could not reach the same conclusion than that of the trier of fact. State v. Tibbetts, 92 Ohio St.3d 146, 162, 749 N.E.2d 226 (2001); State v. Treesh, 90 Ohio St.3d 460, 484, 739 N.E.2d 749 (2001).

{¶ 9} In the case sub judice, the aggravated menacing ordinance provides, inter alia, that a defendant may not knowingly cause another to believe that the defendant would cause serious physical harm to the victim's person or property. We believe, after our review of the evidence adduced at trial and viewed in a light most favorable to the prosecution, that substantial competent and credible evidence, if believed, supports a finding that any rational trier of fact could have found all of the essential elements of the crime of aggravated menacing beyond a reasonable doubt. The trial court, sitting as the trier of fact, could opt to believe all, part or none of the testimony of any witness who testified at trial. Obviously, the court found the victim's testimony to be credible and the evidence in the record supports that determination. The trier of fact believed that appellant threatened the victim with a weapon, in all likelihood a BB gun that had the appearance of an actual handgun.

{¶ 10} We also recognize that the witnesses offered conflicting evidence at the trial, especially concerning the use of the weapon. However, a trial is not simply a numerical comparison of the number of witnesses that both parties may call to testify. Rather, the trier of fact is charged with the duty to observe the witnesses and their demeanor and determine credibility. Here, the trier of fact determined that the victim's testimony was the most credible and we find no error in that determination.

{¶ 11} Accordingly, based upon the foregoing reasons we overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the 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 Gallipolis Municipal Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

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

Hoover, P.J. & Harsha, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.