[Cite as *State v. Thomas*, 2023-Ohio-2291.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

LAJUAN JAMERO THOMAS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 22 MA 0100

Criminal Appeal from the
Mahoning County Court Number 2 of Mahoning County, Ohio
Case No. 2022 CRB 562

BEFORE:
Carol Ann Robb, Cheryl L. Waite, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.

Atty. Gina DeGenova, Mahoning County Prosecutor, Atty. Edward A. Czopur, Assistant Mahoning County Prosecutor, Mahoning County Prosecutor's Office, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503 for Plaintiff-Appellee and

Atty. Charles A.J. Strader, Attorney Charles Strader, LLC, 175 Franklin St., SE, Warren, Ohio 44481 for Defendant-Appellant.

Dated: June 28, 2023

Robb, J.

{¶1} Defendant-Appellant Lajuan Jamero Thomas appeals the judgment of the Mahoning County Court Number 2 convicting him of fourth-degree misdemeanor domestic violence (by threat) after a bench trial. Appellant contests both the sufficiency and the weight of the evidence. For the following reasons, Appellant's conviction is affirmed.

STATEMENT OF THE CASE

{¶2} On May 17, 2022, a complaint was filed against Appellant by a Boardman Township police officer based on a May 11, 2022 incident reported by the mother of some of Appellant's children. He was charged with fourth-degree misdemeanor domestic violence (by threat of force, knowingly causing a family or household member to believe the offender will cause imminent physical harm to the family or household member). *See* R.C. 2919.25(C),(D)(2).

{¶3} The next day, another complaint was filed due to the victim's report of a May 17, 2022 incident. This count of domestic violence (by threat) was charged as a third-degree misdemeanor. *See* R.C. 2919.25(C),(D)(5) (knowledge victim was pregnant). The cases were tried together to the court.

{¶4} The victim testified she had three children with Appellant and was approximately eight months pregnant with his child at the time of the incidents. (Tr. 6-8, 11). She lived in an apartment in Boardman. The police transported Appellant to her apartment after they called her while she was sleeping to let her know they were bringing him there because he told them he lived there. (Tr. 6-7). According to the victim's testimony, after Appellant entered the apartment, he grabbed a kitchen knife, stood over her with the knife, and asked her if she wanted to die. When questioned as to whether he made any motions with the knife, she answered, "Yes. He lowered the knife towards my head, telling me he was going to kill me." (Tr. 7).

{¶5} She said he took her cell phone, shut her in the bedroom, and instructed her not to come out. (Tr. 8-9). She nevertheless opened the door and watched him shut off a television, put chairs by windows, and collect bleach, duct tape, and a bag while saying he had "bodies on his hands" (which she interpreted as meaning he previously

killed someone). The victim said she was able to retrieve her phone by falsely telling Appellant she had to get to work. She called the police, and Appellant ran from the apartment before they arrived. (Tr. 8-9). She showed the responding officer the items Appellant collected and the place where two kitchen knives belonged but were missing. (Tr. 9).

{¶6} After reporting the incident, she expressed a reluctance to press charges; however, five days later, she changed her mind due to a second incident. (Tr. 17). The victim testified she saw Appellant near her neighbor's apartment when she arrived home on May 17, 2022. Appellant said he just wanted to talk and asked why she would not respond to him; she believed he was not permitted to contact her (Tr. 11-12, 20). The victim said Appellant started chasing her and she fell while running up the exterior staircase (which exacerbated a prior injury to her pelvis and hip). (Tr. 10-12). He ran from the scene before the police arrived (but left his bag behind). (Tr. 11).

{¶7} According to the victim's testimony, she "[a]bsolutely" felt threatened by Appellant from the incidents. She added, "I fear for my life until this day. I am terrified of him." When asked if she believed he would follow through with the threats, she answered, "Absolutely, 'cause he was living a lie and he was taking his frustration out on me." (Tr. 12).

{¶8} Appellant testified in his own defense, generally stating he did not come after her with a knife, chase her around the building, or threaten her on either date. (Tr. 24, 27). At one point, he denied being at the apartment on the dates in question but then acknowledged he would have been present on the date the police transported him there. (Tr. 27-28). He claimed their relationship was very toxic and the victim was jealous of his other relationships, noting he had just moved out of the residence of the mother of his other child. (Tr. 25).

{¶9} The trial court found Appellant guilty of the May 11, 2022 incident but not guilty of the May 17, 2022 incident (finding a lack of evidence of a threat on the latter date). The court imposed a sentence of 30 days in jail with 25 days suspended, 12 months of community control (with a state-certified assessment), a fine of $150 with costs, and no contact with the victim. (8/16/22 J.E.). Appellant filed a timely notice of appeal.

ASSIGNMENT OF ERROR ONE: SUFFICIENCY

{¶10} Appellant sets forth two assignments of error, the first of which contends:

"The Court committed reversible error when it denied the Defendant's Motion for Acquittal, pursuant to Crim.R. 29(A) at the conclusion of the case by the State of Ohio."

{¶11} The standard for reviewing the sufficiency of the evidence to support a criminal conviction on appeal is the same as the standard used to review the denial of a motion for acquittal. *See State v. Williams*, 74 Ohio St.3d 569, 576, 660 N.E.2d 724 (1996); Crim.R. 29(A) (motion for judgment of acquittal based on insufficient evidence). Whether the evidence is legally sufficient to sustain a conviction is a question of law dealing with adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). In reviewing the sufficiency of the evidence, the court views the evidence, including reasonable inferences, in the light most favorable to the prosecution to ascertain whether a rational juror could have found the elements of the offense proven beyond a reasonable doubt. *State v. Goff*, 82 Ohio St.3d 123, 138, 694 N.E.2d 916 (1998). *See also State v. Filiaggi*, 86 Ohio St.3d 230, 247, 714 N.E.2d 867 (1999) (reasonable inferences are viewed in favor of the state); *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979) (consider all evidence in the light most favorable to the prosecution, including reasonable inferences). Circumstantial evidence inherently possesses the same probative value as direct evidence. *State v. Treesh*, 90 Ohio St.3d 460, 485, 739 N.E.2d 749 (2001).

{¶12} An evaluation of witness credibility is not involved in a sufficiency review, as the question is whether the evidence is sufficient if it is believed. *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, 767 N.E.2d 216, ¶ 79, 82; *State v. Murphy*, 91 Ohio St.3d 516, 543, 747 N.E.2d 765 (2001). In other words, sufficiency involves the state's burden of production rather than its burden of persuasion. *Thompkins*, 78 Ohio St.3d at 390 (Cook, J., concurring).

{¶13} The elements of fourth-degree misdemeanor domestic violence are as follows: by threat of force, knowingly causing a family or household member to believe the offender will cause imminent physical harm to the family or household member. R.C. 2919.25(C),(D)(2). Appellant contends there was no evidence he caused the victim to believe he would cause her imminent physical harm. He suggests the question about

whether the victim wanted to die was akin to a conditional threat and claims the victim did not testify she was in fear he was about to take the action he desired.

{¶14} In general, the term threat encompasses "a range of statements or conduct intended to impart a feeling of apprehension in the victim." *State v. Cress*, 112 Ohio St.3d 72, 2006-Ohio-6501, 858 N.E.2d 341, ¶ 39. Force is generally defined as "violence, compulsion or constraint physically exerted by any means * * *." R.C. 2901.01(A)(1). Under the plain language of the statute, this threat of force must knowingly cause the victim to believe the defendant will cause imminent physical harm; the victim need not fear imminent death or even serious physical harm. R.C. 2919.25(C). Physical harm is defined as "any injury, illness, or other physiological impairment, regardless of its gravity or duration." R.C. 2901.01(A)(3).

{¶15} In the context of R.C. 2919.25(C), imminent includes impending, menacingly near, or at hand. *State v. Kergan*, 7th Dist. Mahoning No. 11 MA 72, 2012-Ohio-1407, ¶ 12, citing *State v. McKinney*, 9th Dist. Summit No. 24430, 2009-Ohio-2225, ¶ 11, citing *State v. Tackett*, 4th Dist. Jackson No. 04CA12, 2005-Ohio-1437, ¶ 14 (noting the reasonableness of the fear can show the threat was not conditional). Although courts sometimes say a conditional threat *alone* may not meet the imminent physical harm requirement, "a conditional threat that coincides with an overt physical act may satisfy the imminent physical harm requirement." *State v. Stiver*, 1st Dist. Hamilton No. C-210228, 2021-Ohio-3713, ¶ 13. The First District noted it previously distinguished its *Collie* case (cited by Appellant here) in its contemporaneous *Baarlaer* case. *Id.*, citing *State v. Collie*, 108 Ohio App.3d 580, 582-583, 671 N.E.2d 338 (1st Dist.1996) (insufficient evidence where there was no overt act when the defendant told the victim he would shoot her if he had a gun) and *City of Cincinnati v. Baarlaer*, 115 Ohio App.3d 521, 527, 685 N.E.2d 836 (1st Dist.1996) (sufficient evidence where the defendant shoved the victim against a door while saying he would kill her if she opened her mouth).

{¶16} As stated in a case cited by Appellant, the victim's state of mind is an element of the offense of domestic violence by threat. *City of Hamilton v. Cameron*, 121 Ohio App.3d 445, 449, 700 N.E.2d 336 (12th Dist.1997). As the state points out, this merely means "there must be some evidence that a victim either stated, or from other evidence it could be inferred, that the victim thought the accused would cause imminent

physical harm." *State v. Baker*, 12th Dist. Butler No. CA2020-08-086, 2021-Ohio-272, ¶ 13, quoting *Cameron*, 121 Ohio App.3d at 449. For instance, there was sufficient evidence where the victim testified she felt in fear for her life when her live-in boyfriend put a gun to her head and cocked the gun (which caused a shell to fall from the gun). *State v. States*, 7th Dist. Mahoning No. 97-CA-221 (May 10, 2001).

{¶17} Here, when asked if she felt threatened by Appellant from the incident, the victim testified: "Absolutely. I fear for my life until this day. I am terrified of him." When asked if she believed he would follow through with the threats he made to her, she said, "Absolutely, 'cause he was living a lie and he was taking his frustration out on me." (Tr. 12). In addition to this direct testimony on her state of mind, the victim testified Appellant stood over her with a knife, asked if she wanted to die, lowered the knife toward her head, and told her he was going to kill her. (Tr. 7). After taking her cell phone on his way out of the bedroom and shutting the bedroom door, he instructed her not to leave the bedroom, put chairs against the windows, and took out duct tape and bleach. He also made a statement suggesting to her that he already killed someone.

{¶18} As pointed out supra, reasonable inferences are evaluated in the light most favorable to the prosecution, and circumstantial evidence is no less important than direct evidence. *See Goff*, 82 Ohio St.3d at 138; *Filiaggi*, 86 Ohio St.3d at 247; *Treesh*, 90 Ohio St.3d at 485. The victim's fear of imminent physical harm was reasonable. Her credibility is not involved in a sufficiency review. *Yarbrough*, 95 Ohio St.3d 227 at ¶ 79, 82. We also note when the victim was able to retrieve her phone, she called the police and Appellant ran away (taking two of her kitchen knives). "[T]he fact that the victim went to the police may serve as evidence that demonstrates the victim's belief that physical harm was imminent." *State v. Tackett*, 4th Dist. Jackson No. 04CA12, 2005-Ohio-1437, ¶ 15. Although she was initially reluctant to press charges, she explained she also thought he was restrained from approaching her due to her initial report. The question is merely whether "any" rational trier of fact could have found the elements satisfied beyond a reasonable doubt. *State v. Getsy*, 84 Ohio St.3d 180, 193, 702 N.E.2d 866 (1998), quoting *Jackson*, 443 U.S. at 319.

{¶19} Contrary to Appellant's argument, the state presented sufficient evidence that by threat of force, he knowingly caused the victim to believe he would cause her

imminent physical harm. Accordingly, the trial court did not err in denying his motion for acquittal and finding sufficient evidence to support the offense. This assignment of error is overruled.

ASSIGNMENT OF ERROR TWO: WEIGHT

{¶20} Appellant's second assignment of error alleges:

"The conviction of the Defendant/Appellant, Lajuan Jamero Thomas, was against the manifest weight, and sufficiency, of the evidence."

{¶21} Although this assignment of error mentions sufficiency of the evidence in addition to weight of the evidence, we addressed sufficiency in the prior assignment of error. Weight of the evidence concerns "the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other." *Thompkins*, 78 Ohio St.3d at 387. We evaluate the effect of the evidence in inducing belief. *Id.* A weight of the evidence review considers whether the state met its burden of persuasion. *Id.* at 390 (Cook, J., concurring) (as opposed to the burden of production involved in a sufficiency review).

{¶22} When a defendant claims the conviction is contrary to the manifest weight of the evidence, the appellate court reviews the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, citing *Thompkins*, 78 Ohio St.3d at 387. Nevertheless, "the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 118, quoting *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. This is because the trier of fact occupies the best position from which to weigh the evidence and judge the witnesses' credibility by observing their gestures, voice inflections, and demeanor. *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984).

{¶23} Appellant does not believe the evidence shows the victim was truly fearful or felt threatened with imminent physical harm. He points out she did not initially want to

proceed to press charges after she made the police report on May 11, 2022. However, she explained she believed he was not permitted to contact her due to her report to the police, noting she changed her mind five days later due to a second incident. The victim indicated she was fearful during the incident and feared more than physical harm (which fear continued after the incident and remained through trial). She testified she believed he would follow through with his threats while observing, “he was living a lie and he was taking his frustration out on me.” (Tr. 12).

{¶24} The trial court was able to watch the victim for any indicators of untruthfulness as she testified, just as the court was able to watch Appellant’s demeanor as he testified. In addition, the evidence was such that a reasonable person would fear imminent physical harm in her situation, and a reasonable inference that she feared imminent physical harm would be valid.

{¶25} When more than one competing interpretation of the evidence is available and the one chosen by the fact-finder is not unbelievable, we do not choose which theory we believe is more credible and impose our view over that of the trier of fact. *State v. Baker*, 7th Dist. Mahoning No. 19 MA 0080, 2020-Ohio-7023, ¶ 148, citing *State v. Gor*e, 131 Ohio App.3d 197, 201, 722 N.E.2d 125 (7th Dist.1999). A thorough review of the record does not indicate this is the “exceptional” case in which the finder of fact “clearly lost its way” and created a manifest miscarriage of justice requiring a new trial; the evidence does not weigh “heavily” against the conviction. *See Lang*, 129 Ohio St.3d 512 at ¶ 220. Accordingly, the trial court’s finding of guilt was not contrary to the manifest weight of the evidence. This assignment of error is overruled.

{¶26} For the foregoing reasons, Appellant’s conviction is affirmed.

Waite, J., concurs.

Hanni, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Mahoning County Court Number 2 of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.