[Cite as *State v. Bennett*, 2023-Ohio-4739.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
BELMONT COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

CHRISTOPHER M. BENNETT,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 23 BE 0032

Criminal Appeal from the
Belmont County Court, Eastern Division, of Belmont County, Ohio
Case No. 23CRB00124 - 01, 02, 03

BEFORE:
Cheryl L. Waite, Carol Ann Robb, David A. D'Apolito, Judges.

JUDGMENT:
Affirmed.

Atty. J. Kevin Flanagan, Belmont County Prosecutor and *Atty. Jacob A. Manning*, Assistant Prosecutor, 52160 National Road, St. Clairsville, Ohio 43950, for Plaintiff-Appellee

Atty. Christopher P. Lacich, Roth, Blair, 100 East Federal Street, Suite 600, Youngstown, Ohio 44503, for Defendant-Appellant

Dated: December 20, 2023

WAITE, J.

{¶1} Appellant Christopher Bennett appeals his conviction for aggravated menacing on the grounds of insufficient evidence because he believes that threats he made against a police officer and the officer's son were mere puffery and could not be seen as credible. The record reflects that Appellant threatened to assault a police officer and threatened that he would hire someone to cut the throat of the officer's son. The officer testified that he believed the threats. The evidence is sufficient to convict Appellant of aggravated menacing, and the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} On May 10, 2023, the Village of Bellaire street crew reported an unresponsive male located in a white car in a parking lot. Bellaire police and EMT units were called to the scene. Appellant was found unconscious in the car. He was awakened and was asked to exit the vehicle to be examined, but he refused to be examined. Bellaire Police Chief John Watson determined that Appellant's driver's license had been suspended and the car's license plate expired in 2021. He explained to Appellant that the car would need to be towed. Appellant became belligerent and told Chief Watson that "I'm going to knock you the fuck out." (6/26/23 Tr., p. 76.) Watson then handcuffed Appellant and put him in the back of the police cruiser. Watson drove Appellant to the police station. During the ride, Appellant repeatedly threatened Watson and threatened to hire someone to cut Watson's son's throat.

{¶3} Appellant was charged with aggravated menacing, R.C. 2903.21, first degree misdemeanor; menacing, R.C. 2903.22, fourth degree misdemeanor; and persistent disorderly conduct, R.C. 2917.11(A), fourth degree misdemeanor. Appellant's

case was heard on June 26, 2023, before a jury. Paramedic Preston Eberhard and Chief John Watson testified for the state, and the video of Chief Watson's entire interaction with Appellant, including the drive to the police station, was entered into evidence. Appellant did not call any witnesses. The jury found Appellant guilty on all three counts. The court immediately sentenced Appellant to 180 days of incarceration on count one, 30 days on count two (to run consecutively), and 30 days on count three to run concurrently, for a total sentence of 210 days in jail. The court's final judgment entry was filed on June 26, 2023, and this appeal followed on July 13, 2023.

ASSIGNMENT OF ERROR

> THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION WHEN IT FAILED TO GRANT THE APPELLANT'S CRIM. R. 29 MOTION AS TO COUNT ONE (AGGRAVATED MENACING) BECAUSE HE WAS CONVICTED ON LEGALLY INSUFFICIENT EVIDENCE.

{¶4} Appellant is challenging the sufficiency of the evidence only as to count one in the complaint, the charge of aggravated menacing. An appellate court's task when reviewing whether sufficient evidence supports a defendant's conviction is well-settled and familiar. The reviewing court asks 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. Jones*, 166 Ohio St.3d 85, 2021-Ohio-3311, 182 N.E.3d 1161, ¶ 16, citing *State v. McFarland*, 162 Ohio St.3d 36, 2020-Ohio-3343, 164 N.E.3d 316. Sufficiency of the evidence involves a legal question that addresses adequacy. *State v. Pepin-McCaffrey*, 186 Ohio App.3d 548,

2010-Ohio-617, 929 N.E.2d 476 ¶ 49 (7th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). "Sufficiency is a term of art meaning that legal standard which is applied to determine whether a case may go to the jury or whether evidence is legally sufficient to support the jury verdict as a matter of law." *State v. Draper*, 7th Dist. Jefferson No. 07 JE 45, 2009-Ohio-1023, ¶ 14.

{¶5} Aggravated menacing, R.C. 2903.21(A), prohibits the following behavior: "(A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family."

{¶6} To prove the crime of aggravated menacing, the state must provide some evidence of the victim's subjective belief or fear of serious physical harm, either to himself, his family member, or his property. *State v. Klempa*, 7th Dist. Belmont No. 01BA63, 2003-Ohio-3482, ¶ 24. "[A] person can be convicted of aggravated menacing even though the person has not made any movement toward carrying out the threat." *Id.* "It is not an element of the offense of aggravated menacing that the offender either intends to carry out his threat or that he is even able to carry it out." *Cleveland v. McCoy*, 8th Dist. Cuyahoga No. 112287, 2023-Ohio-3792, ¶ 20.

{¶7} Appellant's entire argument is contained in just a few sentences in his brief. He contends that any statements he made about harming Chief Watson's son were mere puffery and fantasy. By categorizing his threats as puffery, Appellant is arguing that neither Chief Watson nor the jury could have believed he was making a credible threat because he was only "joking." Claiming that a statement is mere puffery or was a joke goes to the credibility of the statement. *State v. Lewis*, 2nd Dist. Greene No. 96 CA 12,

1997 WL 156596. Credibility, though, is not taken into account when reviewing a case for sufficiency of the evidence. "[O]n review for evidentiary sufficiency we do not second-guess the jury's credibility determinations[.]" *State v. Murphy*, 91 Ohio St.3d 516, 543, 747 N.E.2d 765, 797 (2001). Credibility goes to the weight of the evidence, not sufficiency. *State v. Herring*, 94 Ohio St.3d 246, 253, 762 N.E.2d 940, 950 (2002). The question we now review is whether there is evidence in the record that could, if believed, support each element of the charged crime.

{¶8} Chief Watson testified multiple times about the threats Appellant made to himself and to his son. Watson testified: "At one point in time [Appellant] made threats to my son. He stated he knew my son played baseball. He was going to get someone to cut his throat, cut his face." (6/26/23 Tr., p. 77.) Watson testified that he particularly believed and took seriously the threats against his son because he was not aware that Appellant even knew he had a son, or that his son played baseball. (6/26/23 Tr., p. 79.) Appellant made multiple threats of this nature. The video evidence corroborates Chief Watson's testimony.

{¶9} The video shows that Chief Watson and the paramedics found Appellant sitting in his car in a business parking lot. Appellant had no driver's license and the plates on the car had expired in 2021. Appellant exited the car and engaged in a long argument with Chief Watson about whether the car should be towed. Appellant became agitated when his car was towed, he threatened to "snap" and that he would "knock out" Chief Watson. Appellant was then handcuffed and put in the back of the police cruiser. Appellant can be heard on the video of the ride to the police station repeatedly threatening Chief Watson and his son.

{¶10} The specificity of the threat to Chief Watson's son is particularly noteworthy in this case. The threats were not vague and nebulous, but were gruesomely explicit and based on personal knowledge about Chief Watson and his family. The fact that Appellant knew that Chief Watson's son played baseball provided a chilling specificity to his threat. The seriousness of the threat, along with the special knowledge he had about Chief Watson's son, is sufficient to establish that Appellant knowingly caused Chief Watson to believe that the threat was real.

{¶11} As the record contains sufficient evidence to support the conviction, Appellant's assignment of error is overruled.

Conclusion

{¶12} Appellant contends that there was insufficient evidence in the record to support the jury conviction for aggravated menacing. He claims any threats he made directed to police Chief John Watson and his family were mere puffery and could not be taken seriously. Whether or not Appellant's threats could be taken seriously is a matter of credibility rather than sufficiency of the evidence. The record shows that Appellant made multiple threats of serious harm to Chief Watson and his son, that the threats contained personal details about Chief Watson's son, and that Chief Watson believed the threats. This is sufficient to support the conviction for aggravated menacing. The judgment of the trial court is affirmed.

Robb, J. concurs.

D'Apolito, P.J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Belmont County Court, Eastern Division, of Belmont 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.