

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

City of Toledo

Court of Appeals No. L-07-1364

Appellee

Trial Court No. CRB-06-10315

v.

Zerlena T. Combs

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2009

* * * * *

David Toska, City of Toledo Chief Prosecutor, and Michael Niedzielski,
Assistant Prosecuting Attorney, for appellee.

Edward J. Fischer, for appellant.

* * * * *

HANDWORK, J.,

{¶ 1} Appellant, Zerlena T. Combs, appeals her conviction on one count of violating Toledo Municipal Code 537.16, Toledo's Safe School Ordinance. The facts relevant to our disposition of this cause are as follows.

{¶ 2} The testimony offered by school personnel and a student, Markus Hill, at appellant's jury trial revealed the following pertinent facts. On March 19, 2006, Rogers High School, which is located in Toledo, Lucas County, Ohio, held its annual senior talent show in the school gymnasium/auditorium ("gym"). One of appellant's daughters was taking part in the show. On that day, Gary Wolfe, the campus protection officer assigned to Rogers High School, was stationed on the first floor near the gym. For security reasons, school policy required anyone who was not a student at Rogers High School to enter through a designated door, to "sign in," and to receive a pass or, in this instance, a ticket to the show.

{¶ 3} By the time appellant arrived at the school with her mother, the talent show was almost over. She attempted to gain entrance through a secured door that was closer to the gym than the designated entry door. Wolfe saw Combs and started down the hall to the secured door. Because he had experienced problems with appellant previously, Wolfe "radioed" the school principal, Tony Brashear, who was supervising in the gym. Wolfe then proceeded to the secured door, opened it, and told Combs that she and her mother had to enter the building through the designated door and sign in.

{¶ 4} Appellant began arguing with Wolfe and asking for the principal. Because it appeared that Brashear could not hear his radio message, Wolfe asked a student, Markus Hill, to go into the gym, to find Brashear, and to inform him of the fact that Wolfe wanted him to "handle the situation." In the meantime, appellant continued arguing with Wolfe and trying to get in through the wrong door. When the principal

arrived at the scene, he attempted to alleviate the situation by agreeing to escort appellant's mother into the gym while Wolfe signed her in.

{¶ 5} As Wolfe attempted to lead appellant to the designated entry door saying, "Mrs. Combs, we are going to go right over here," she loudly replied, "Hey, asshole, it's Dr. Combs to you, you fucking child molester." Upon hearing this language, Brashear turned around and told appellant that she had to leave the school. He ordered Wolfe to walk Combs' mother to the gym. When Wolfe returned to the hallway, appellant, in a loud voice, continued calling him a child molester and yelling profanities. She refused to exit the building. At that point, Principal Brashear told Wolfe to call the police. Appellant shouted that she would not leave without her mother or her children and started down the hall to the gymnasium screaming profanities. Brashear ordered Wolfe to go into the gym and bring the grandmother out while he stood in front of the doors.

{¶ 6} At that point, a student in a wheelchair exited the gym. Appellant pushed Wolfe, and either hit Brashear on his left shoulder with her cell phone or pushed his arm, and tried to enter the gym. The principal, however, was able to help the student exit and closed the doors before appellant could gain entrance. Appellant was subsequently arrested and charged with two violations of Toledo's Safe School Ordinance.

{¶ 7} In her testimony, appellant denied the occurrence of some of the events described by school personnel. She claimed that because the handicap entrance was blocked off, she had to bring her 83 year old mother in through the closest door to the gym. She asserted that Wolfe conducted a vendetta against her because she "had gotten

him fired" from other positions with the school system. Combs contended that Principal Brashear allowed her and her mother to enter through the secured door and told her to go and sign in while he escorted her mother to the gym. She testified that it was Wolfe who caused the problem by apparently alleging that she called him a child molester and that, upon hearing the allegation, Brashear turned back toward her and told her to leave the building for "disrespecting" his staff. Appellant also asserted that Wolfe "knocked" her mother down when he pushed open the secured door.

{¶ 8} Appellant testified that she then ran down the hall to help her mother enter the gym. Combs claimed that the principal pushed her out of the way knocking her mother to the floor of the gym. She maintained that she never struck Brashear with her cell phone and that there was never a handicapped child trying to exit the gym during the incident. According to both of appellant's daughters, they saw their grandmother fall to her knees in the gym while their mother was "tussling" with Principal Brashear at the door to the gym. Both girls denied seeing a student in a wheelchair attempting to leave the talent show at that time.

{¶ 9} After her jury trial, appellant was found guilty. The municipal court sentenced appellant to 180 days of incarceration, but suspended 150 days of that sentence, plus credited appellant with three days previously served in jail. The court further ordered that the remaining 27 days be served solely by means of electronic monitoring and placed Combs on probation for a period of six months. She was also

ordered to pay a \$150 fine and the costs of her prosecution. Appellant's sentence was suspended during the pendency of this appeal.

{¶ 10} Appellant timely appealed her conviction and was appointed counsel for the purposes of that appeal. Appellant's counsel, however, submitted a motion to withdraw pursuant to *Anders v. California* (1967), 386 U.S. 738. See, also, *State v. Duncan* (1978), 57 Ohio App.2d 93. Pursuant to *Anders*, appointed counsel may, after a conscientious examination of the case, determine it to be wholly frivolous. *Id.* at 744. He or she must then advise the appellate court of the same and request permission to withdraw. *Id.* This request must be accompanied by a brief identifying anything in the record that could arguably support the appeal. *Id.* Counsel must also furnish his or her client with a copy of the brief and request to withdraw and allow the client sufficient time to raise any matters that he or she chooses. *Id.* Once these requirements are satisfied, the appellate court is required to conduct a full examination of the proceedings held below to determine if the appeal is, indeed, frivolous. *Id.* If the appellate court determines that the appeal is frivolous, it may grant counsel's request to withdraw and dismiss the appeal without violating any constitutional requirements or may proceed to a decision on the merits if state law so requires. *Id.*

{¶ 11} In the case before us, appointed counsel for appellant satisfied the requirements set forth in *Anders*. Although notified, appellant never raised any matters for our consideration. Accordingly, we shall proceed with an examination of any arguable assignments of error set forth by counsel for appellant, and of the entire record

below, in order to determine whether this appeal lacks merit and is, therefore, wholly frivolous. Appellate counsel sets forth the following proposed assignments of error:

{¶ 12} "APPELLANT'S LANGUAGE DID NOT RISE TO THE LEVEL OF FIGHTING WORDS AND WAS THEREFORE PROTECTED SPEECH UNDER THE FIRST AND FOURTEENTH AMENDMENTS TO THE U.S. CONSTITUTION, AND ANALOGOUS PROVISIONS OF THE OHIO CONSTITUTION, THE ORDINANCE IS VAGUE AND OVERBROAD IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT AND ANALOGOUS PROVISIONS."

{¶ 13} "WHETHER THERE IS SUFFICIENT EVIDENCE IN THE RECORD TO CONVICT APPELLANT FOR HAVING VIOLATED THE SAFE SCHOOL ORDINANCE AND WHETHER THE CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE." [sic]

{¶ 14} In her first proposed assignment of error, appellant maintains that Toledo Municipal Code 537.16 is void for vagueness. This ordinance reads:

{¶ 15} "(a) No person shall assault, strike, threaten or menace a teacher, instructor, professor, person in charge of a class of students or any employee of any school, college or university, while in the performance of his duties, or disrupt, disturb or interfere with the teaching of any class of students, or disrupt, disturb or interfere with any activity conducted in a school, college, or university building, or upon the campus or grounds thereof, or in any public place, or improperly and unlawfully assault, strike, threaten,

menace, follow, pursue or lay hands upon a student or other person in a school, college or university building, or upon the grounds or campus thereof, or upon the way to or from any school, college or university, or on the way to and from any school, college or university sponsored activity."

{¶ 16} "(b) Whoever violates this section is guilty of a misdemeanor of the first degree."

{¶ 17} Appellant correctly notes that this court previously determined that this same ordinance is not void for vagueness. See *Toledo v. Thompson-Bean*, 173 Ohio App.3d 566, 2007-Ohio-4898, ¶ 24. Therefore, appellant's first proposed assignment of error is without merit.

{¶ 18} In her second proposed assignment of error, appellant contends that insufficient evidence was offered at the trial to establish that she violated the Safe School Ordinance. She further asserts that the trial court's judgment is against the manifest weight of the evidence.

{¶ 19} In *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, the Supreme Court of Ohio held that "[t]he legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different." Determining sufficiency is a question of law as to whether the evidence is legally adequate to support a jury verdict as to all elements of a crime. *Id.* "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. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶ 20} Under a manifest weight standard, however, an appellate court sits as a "thirteenth juror" and may disagree with the fact finder's resolution of the conflicting testimony. *State v. Thompkins*, 78 Ohio St.3d at 387. An 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 jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against conviction." *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 21} Viewing the evidence in a light most favorable to the prosecution, we can only conclude that appellant disrupted or interfered with a school activity, that is, the talent show, by insisting on pushing her way into the gym. Even appellant's daughters, including the daughter who had not yet performed in the talent show, noticed the commotion at the gym doors and the fact that their grandmother had fallen to the floor. Moreover, testimony was offered, including that of a teacher, Gaynell Castor, showing that appellant struck Principal Brashear and Gary Wolfe (by pushing him) while they were performing their duties. We therefore conclude that sufficient evidence was offered to prove the elements of Toledo Municipal Code 537.16.

{¶ 22} Furthermore, upon a review of the entire record of this cause, including a consideration of the credibility of the witnesses, we cannot say that the jury clearly lost its way thereby creating such a manifest miscarriage of justice that appellant's conviction must be reversed and a new trial ordered. Consequently, we find appellant's second proposed assignment of error is without merit.

{¶ 23} After engaging in further independent review of the record, we find that there are no other grounds for a meritorious appeal. This appeal is therefore determined to be wholly frivolous. Appointed counsel's motion to withdraw is found well-taken and is hereby granted. The judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.

CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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