

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

State of Ohio

Court of Appeals Nos. WD-09-073
WD-09-089

Appellee

Trial Court Nos. 2009CR0078
2007CR0271

v.

Jose Reyes

DECISION AND JUDGMENT

Appellant

Decided: September 30, 2010

* * * * *

Paul A. Dobson, Wood County Prosecuting Attorney, and
Melissa A. Freeman, Assistant Prosecuting Attorney, for appellee.

Christy L. Cole, for appellant.

* * * * *

OSOWIK, P.J.

{¶ 1} This is an appeal from a judgment of the Wood County Court of Common Pleas, which found appellant guilty of one count of retaliation, in violation of R.C. 2921.05, a felony of the third degree. Appellant was sentenced to a three year term of incarceration. For the following reasons, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Jose Reyes, sets forth the following assignment of error:

{¶ 3} "The trial court committed error when it convicted appellant of retaliation as said conviction was based on insufficient evidence."

{¶ 4} The following undisputed facts are relevant to the issues raised on appeal. On January 29, 2009, appellant, an inmate at the Wood County Justice Center, attempted to enter a shower. Sergeant Randy Aspacher instructed appellant to return to his cell as it was not the designated time for the shower. In response, appellant threw his soap and soap tray against the wall of the shower. Due to appellant's tantrum, Sergeant Aspacher ordered another deputy present to throw away the soap.

{¶ 5} On February 3, 2009, Deputy Matt Hoffman found a strip of blanket folded and placed above the shower curtain rod. It was discovered that the strip of blanket belonged to appellant. Erika Burkholder, a mental health professional, spoke to appellant regarding his intentions with the blanket. Specifically, she inquired as to whether appellant was contemplating suicide. Appellant responded that he did not have any intentions of harming himself. On the contrary, appellant disclosed that he was planning on using the blanket to harm Sergeant Aspacher. Appellant conveyed that he was disgruntled with him in connection with his soap being discarded following the shower incident. On June 19, 2009, the court found appellant guilty of one count of retaliation, a felony of the third degree. On July 16, 2009, appellant was sentenced to a term of three years in the Ohio Department of Rehabilitation and Corrections.

{¶ 6} In his single assignment of error, appellant claims that "the trial court committed error when it convicted appellant of retaliation as said conviction was based on insufficient evidence." Specifically, appellant argues that he "communicated no threat of harm to the alleged victim."

{¶ 7} This court must ascertain whether there was sufficient evidence to support appellant's conviction as a matter of law. *State v. Tompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541. In determining whether evidence is sufficient, this court must decide "whether 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.

{¶ 8} Appellant was charged with violating R.C. 2921.05(A), which states:

{¶ 9} "No person, purposely and by force or by unlawful threat of harm to any person or property, shall retaliate against a public servant, a party official, or an attorney or witness who was involved in a civil or criminal action or proceeding because the public servant, party official, attorney, or witness discharged the duties of the public servant, party official, attorney, or witness."

{¶ 10} In *State v. Welch*, an appellant inmate made threats against an officer and another inmate for testifying against him in a trial. This court found for the appellant inmate because there was no reason for the inmate to believe that his threats would be communicated to the officer and the other inmate. This court held "where 'the defendant was either aware that the threats would be communicated to the intended victim by the

third person or could reasonably have expected the threats to be so conveyed,' he is guilty of the type of unlawful threat of harm required by the retaliation statute." *State v. Welch* (2008), 6th Dist. No.WD-07-057, 2008-Ohio-6540, citing *State v. Farthing* (2001), 146 Ohio App.3d 720, 724. Given our decision in *Welch*, our analysis in the current case must center upon whether appellant's threat was conveyed to anyone who could reasonably have been expected by appellant to make that threat known to the intended victim.

{¶ 11} Significantly, the record establishes that appellant's threat was directly communicated to Burkholder. The record likewise shows that appellant signed a waiver prior to a group meeting which clearly and unambiguously informed him that certain information, such as a threat of harm to others, communicated to Burkholder was not confidential. Accordingly, Burkholder could have reasonably been expected to relay the threat to Sergeant Aspacher, the intended victim. As such, the record in this case encompasses ample evidence in support of the disputed retaliation conviction. We find that appellant was not prejudiced or prevented from having a fair trial. Appellant's assignment of error is not well-taken.

{¶ 12} The judgment of the Wood County Court of Common Pleas 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, P.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:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.