[Cite as *State v. Spencer*, 2009-Ohio-4191.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 91944

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

GEORGE SPENCER

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-509951

BEFORE: Dyke, J., Cooney, A.J., and Rocco, J.

RELEASED: August 20, 2009

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

ANN DYKE, J.:

{¶ 1} Defendant-appellant, George Spencer ("appellant"), appeals his conviction for menacing by stalking. For the reasons set forth below, we affirm.

{¶ 2} On April 28, 2008, the Cuyahoga County Grand Jury indicted appellant on one count of menacing by stalking, in violation of R.C. 2903.211(A)(1). The sole count indictment also included furthermore specifications that he made a threat of physical harm in committing the offense, trespassed on the land or premises of the victim's employment, and/or that he had previously been convicted of menacing by stalking and intimidation. Appellant pleaded not guilty to the indictment.

{¶ 3} After appellant voluntarily waived his right to a jury trial, the court conducted the trial of this matter on June 23, 2008. At trial, the state presented the following pertinent facts.

{¶ 4} During April 2008, Anna Gardner worked the late shift on the cleaning staff at John Carroll University. During this time, she also engaged in a sexual relationship with appellant and shared an apartment with him. Gardner testified at the trial of this matter that one Tuesday in early April 2008, she and appellant argued about her spending too much time at work. During the argument, appellant threatened Gardner with physical harm and said he would sabotage her job. After the altercation, Gardner went to work.

{¶ 5} The following day, Wednesday, she returned home after her shift. Again, appellant argued with her. Gardner testified that the two wrestled and he choked her. As a result, she decided to leave the residence and, when appellant

learned of her intentions, he threatened that she would "regret it." He further informed her that he would call her work and "make trouble for her."

{¶ 6} Gardner went to work that evening but when her shift ended, she did not return home. Instead, she slept in her vehicle because she was frightened of appellant. Gardner had learned that earlier in the evening, appellant telephoned Gardner's supervisor, Steve Gilsdorf, and left a message on his voice mail. In the message, appellant provided his name and phone number and stated that Gardner was having sexual relations while at work and was stealing garbage bags from work. Gilsdorf testified that after receiving the message, he forwarded it to the John Carroll security department. Gilsdorf explained that Gardner had already notified him of the problems she was having with appellant.

{¶ 7} Gardner also testified that she apprised an officer employed by John Carroll University of her situation with appellant. Officer Warren Grugle confirmed this statement and testified that he took a report from Gardner regarding appellant's menacing and threats on April 9, 2008.

{¶ 8} Gardner further testified that she received a phone call from appellant on one of the days that she slept in her vehicle. She maintained that appellant threatened that she would "regret leaving him" and asked "why are you doing this to me?" After receiving that call, Gardner refused to respond to the numerous other phone calls from appellant that occurred in the next couple of days.

{¶ 9} Nevertheless, a couple days later, on April 16, 2008, appellant appeared at John Carroll University. Gardner testified and Gilsdorf confirmed that she was exiting her employment with Gilsdorf, Ryan Camp, and two other coworkers when appellant approached her and told her to "Come home. Come on let's go." He grabbed her arm and attempted to pull her towards him. Gardner's coworkers intervened and, believing appellant was going to cause her serious physical harm, Gardner ran behind Gilsdorf to protect herself. After being told to leave, appellant ran from Gardner and her coworkers and attempted to enter her vehicle parked nearby. When Gilsdorf and another coworker approached him in the vehicle, he ran off.

{¶ 10} Later, Officer Grugle and Ryan Camp captured appellant and detained him until Officer Tim Burgess of the University Heights Police Department arrived to arrest him. Appellant then was transported to the police station for booking.

{¶ 11} At the summation of the state's case in chief, appellant moved for acquittal pursuant to Crim.R. 29(A). The trial court denied appellant's request just as it did after appellant rested his case without presenting any testimony.

{¶ 12} On June 25, 2008, the trial court found appellant guilty of the sole count in the indictment with the furthermore specification that he threatened physical harm and/or trespassed on the land or premises of the victim's employment. As a result, the court sentenced appellant to one year

imprisonment on July 17, 2008. The court ordered said sentence to be served concurrent to the sentence imposed for a parole violation.

{¶ 13} Appellant now appeals and presents one assignment of error for our review. Appellant's single assignment of error states:

{¶ 14} "There was insufficient evidence to support the guilty verdicts for, and appellant's conviction was against the manifest weight of the evidence."

{¶ 15} Under the Due Process Clause of the Fourteenth Amendment, a defendant in a criminal case cannot be convicted except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he or she is charged. *Jackson v. Virginia* (1979), 443 U.S. 307, 316, 99 S.Ct. 2781, 61 L.Ed.2d 560; *In re Winship* (1970), 397 U.S. 358, 364, 90 S.Ct. 1068, 25 L.Ed.2d 368. In analyzing claims of insufficient evidence, the Court must determine whether "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson*, 443 U.S., at 319; *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541. An appellate court's function, when reviewing the sufficiency of the evidence to support a criminal conviction, is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. 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. Id.

{¶ 16} On the other hand, in *Thompkins*, supra, the court illuminated a different test for manifest weight of the evidence as follows:

{¶ 17} "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.' It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief. Black's [Law Dictionary (6 Ed.1990)], at 1594." Id. at 386.

{¶ 18} The court, reviewing 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. See *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717, 720-721. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. Id.

{¶ 19} Thus, the test for sufficiency of the evidence is a quantitative one, while the test in determining whether the evidence is against the manifest weight of the evidence is a qualitative one. *State v. Sanders* (Feb. 16, 1999), Stark App. No. 1998-CA-0235. Furthermore, sufficiency of the evidence is a question

of law for the trial court and manifest weight of the evidence is a question fact for the factfinder. Id. Thus, even if a judgment is sustained by sufficiency of the evidence, it may nevertheless be against the manifest weight of the evidence. Id.

{¶ 20} Within this assignment of error, appellant asserts that the state failed to present sufficient evidence and the evidence is against the manifest weight for establishing that appellant was aware that the victim did not want to see him or that he engaged in a pattern of conduct. We find appellant's arguments unpersuasive.

{¶ 21} The essential elements of menacing by stalking are defined in R.C. 2903.211(A)(1), which provides that "[n]o person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person or cause mental distress to the other person." "Pattern of conduct" is defined in R.C. 2903.211(D)(1) as "[t]wo or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents."

{¶ 22} In this matter, there are four separate incidents that are closely related in time. The initial incident occurred nearly a week before police arrested appellant. Appellant and Gardner were arguing about her job, and he told her he was going to call her job and get her fired. He also threatened her and stated, "Don't let me have to catch a case."

{¶ 23} The second incident happened the following evening. Again, the two engaged in an argument. Gardner testified that during the argument, appellant wrestled with her and choked her. When she informed him she was leaving, he threatened, "If you leave out of here you'll regret it." Additionally, appellant again threatened to sabotage Gardner's job. Gardner was clearly frightened by these first two incidents as she informed both Gilsdorf and Officer Grugle of her fears of appellant.

{¶ 24} The third incident occurred when appellant followed through with his threat and telephoned Gardner's supervisor, Gilsdorf. Gilsdorf testified that appellant stated that Gardner had sex while at work and stole supplies from her job. Gilsdorf was so disturbed by the message that he forwarded the message to campus security.

{¶ 25} The final incident occurred on April 16, 2008, when appellant appeared at John Carroll. While Gardner left the building with coworkers, appellant approached her, grabbed her arm, and attempted to take her with him. She retreated behind Gilsdorf, seeking safety. Only after her coworkers demanded, appellant fled the premises. Despite appellant's assertions to the contrary, all four incidents were sufficient to establish a pattern of behavior as defined in R.C. 2903.211(D)(1).

{¶ 26} Finally, the evidence establishes that appellant knowingly caused Gardner to believe he would cause her physical harm. As previously stated, appellant threatened Gardner on numerous occasions that she would "regret"

leaving him and that did not want to “catch a case.” Moreover, Gardner testified that appellant had previously wrestled with her and choked her. Finally, Gilsdorf confirmed Gardner’s testimony that appellant appeared at her work, spoke in an angry tone, grabbed her, and demanded that she return home with him.

{¶ 27} In the case sub judice, we find the state presented sufficient evidence establishing the elements of menacing by stalking. Additionally, we cannot say that the court clearly lost its way and created a manifest miscarriage of justice in convicting appellant of the offense as the evidence presented by the state was thorough, credible, and consistently established that appellant engaged in a pattern of conduct and knowingly caused Gardner to believe he would cause her physical harm. The conviction for menacing by stalking with the furthermore clauses is upheld, and appellant’s sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

ANN DYKE, JUDGE

COLLEEN CONWAY COONEY, A.J., and
KENNETH A. ROCCO, J., CONCUR