[Cite as *State v. Kaseda*, 2012-Ohio-4652.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2012-L-002**
- vs -	:	
TIMOTHY D. KASEDA,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 11 CR 000100.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Karen A. Sheppert*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Aaron T. Baker, 38109 Euclid Avenue, Willoughby, OH 44094 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, Timothy D. Kaseda, appeals from a judgment of the Lake County Court of Common Pleas, finding him guilty of one count of Violating a Protection Order pursuant to a jury verdict. Mr. Kaseda challenges the sufficiency of the state's evidence, along with the manifest weight of the evidence. We find that the state presented sufficient evidence on every element of the charge to withstand a motion for

a directed verdict, and that the evidence in the record supports the jury's finding of guilt. Therefore, we affirm the judgment of the Lake County Court of Common Pleas.

Substantive Facts and Procedural History

{¶2} In January 2011, a protection order was in place naming Mr. Kaseda as respondent and Ruby Williams as the protected individual. Ms. Williams is the mother of Mr. Kaseda's girlfriend, Brenda Williams, and grandmother to all four of his children. The protection order prohibited Mr. Kaseda from coming within 500 feet of Ms. Williams or members of her family residing with her at her Nebraska Street residence in Painesville, Ohio. Brenda was not part of this protection order, and continued to reside with Mr. Kaseda and their four children in Eastlake. The four grandchildren did, however, spend substantial time over at Ms. Williams' home.

{¶3} On January 10, 2011, Ms. Williams called the Painesville Police Department and reported a disturbance at her home. This occurred just after Brenda had pulled into Ms. Williams' driveway, with Mr. Kaseda in the passenger seat. Three officers were dispatched to the scene. Officer Jeff Baldrey knocked on the front door, once backup arrived, and entered the home in search of Ms. Williams and Mr. Kaseda. From inside the home, Officer Baldrey observed that the back door of the house was wide open.

{¶4} Officer Shane Rahz went around the side of the house and also observed the wide-open back door. He further observed a fresh pair of footprints in the snow, descending the steps from the back door and crossing the backyard. The footsteps were spaced as if the individual had been running. Together, the officers followed the footprints to a house two doors down from Ms. Williams' home. The officers knocked on

the door, and found Mr. Kaseda in the upstairs apartment. The officers took photographs of the shoeprints in the snow, observed a square pattern in the shoe prints, took Mr. Kaseda's shoes into evidence, and observed a similar square pattern on the bottom of his shoes.

{¶5} Mr. Kaseda was indicted on one count of Violating a Protection Order in violation of R.C. 2919.27(A)(1), a felony of the fifth degree, and the matter was tried to a jury. At trial, the state presented testimony from Officers Baldrey and Rahz, and submitted the photographs of the shoe prints and the shoe. Ms. Williams, the complaining witness, did not testify, despite a subpoena having been served to compel her attendance. After the state rested, Mr. Kaseda moved the court for a directed verdict pursuant to Crim.R. 29, arguing that the state had failed to present sufficient evidence to sustain a verdict. The motion was overruled.

{¶6} In his defense, Mr. Kaseda presented testimony from Brenda, who stated that although he was in the car with her when she arrived at her mother's house, he quickly realized he was in violation of the protection order, and ran off to the home two-doors down, where her sister's boyfriend lived. The sister, Michaelene, was in fact on the protection order as well. She testified that Mr. Kaseda never entered Ms. Williams' home that evening. At the close of his case, Mr. Kaseda renewed his Crim.R. 29 motion, which was again overruled. A day after retiring, the jury returned a verdict of guilty as to the one count.

{¶7} Mr. Kaseda was sentenced in accordance with a joint recommendation, and received a six-month sentence of incarceration, which was to be served

consecutively to two unrelated charges to which he had agreed to plead guilty. Mr. Kaseda filed a timely notice of appeal, and now brings the following assignment of error:

{¶8} "Appellant's conviction of recklessly violating a protection order was without sufficient evidence and against the manifest weight of the evidence."

Sufficiency of the Evidence

{¶9} A trial court shall grant a motion for acquittal when there is insufficient evidence to sustain a conviction. Crim.R. 29(A). When reviewing a challenge to the sufficiency of the evidence, a reviewing court examines the evidence admitted at trial and determines whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259 (1991), at paragraph two of the syllabus. "The pertinent 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*.

{¶10} A sufficiency challenge requires this court to review the record to determine whether the state presented evidence on each of the elements of the offense. This test involves a question of law and does not permit us to weigh the evidence. *State v. Martin*, 20 Ohio App.3d 172, 175 (1983).

{¶11} Mr. Kaseda was charged under R.C. 2919.27(A)(1), which states that "[n]o person shall recklessly violate the terms of * * * [a] protection order issued or consent agreement approved pursuant to section 2919.26 or 3113.31 of the Revised Code." During its case in chief, the state presented evidence that a protection order was in effect at the time that Mr. Kaseda was arrested, and that he was apprehended within 500 feet from the residence of Ms. Williams. Brenda testified that Mr. Kaseda

was aware of the existence of the protection order, thus his presence anywhere near the home of Ms. Williams can be nothing less than reckless.

{¶12} Viewing the evidence in the light most favorable to the state, it is clear that any rational trier of fact could have found Mr. Kaseda guilty of violating the protection order beyond a reasonable doubt. Thus, the state presented sufficient evidence to withstand a Crim.R. 29 motion for a directed verdict, and the trial court did not err in denying Mr. Kaseda's motion for acquittal.

Manifest Weight

{¶13} "Unlike sufficiency of the evidence**,** manifest weight of the evidence raises a factual issue. 'The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the 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.'" *State v. Higgins*, 11th Dist. No. 2005-L-215, 2006-Ohio-5372, ¶35, quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1987).

{¶14} "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." *State v. Fritts*, 11th Dist. No. 2003-L-026, 2004-Ohio-3690, ¶23, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, (1st Dist.1983).

{¶15} "[T]he weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus. When examining witness credibility, "the choice between credible witnesses and their conflicting testimony rests solely with the finder of

fact and an appellate court may not substitute its own judgment for that of the finder of fact." *State v. Awan*, 22 Ohio St.3d 120, 123 (1986). A fact finder is free to believe all, some, or none of the testimony of each witness appearing before it. *State v. Thomas*, 11th Dist. No. 2004-L-176, 2005-Ohio-6570, ¶29.

{¶16} "When reviewing a judgment under a manifest-weight-of-the-evidence standard, a court has an obligation to presume that the findings of the trier of fact are correct. * * * This presumption arises because the [jury] had an opportunity to view the witnesses and observe their demeanor in weighing the credibility of the witnesses." *State v. Reeves*, 11th Dist. No. 2006-T-0099, 2007-Ohio-4765, ¶14, citing *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 79-81 (1984).

{¶17} A review of the record reveals that the jury did not clearly lose its way in finding Mr. Kaseda guilty. Although Mr. Kaseda argues that the bulk of the evidence against him is circumstantial, as the police did not actually observe him within Ms. Williams' home and Ms. Williams did not testify as to what occurred in her home that night, this does not change the value of the evidence. "[T]here can be no bright-line distinction regarding the probative force of circumstantial and direct evidence. * * * Circumstantial evidence and direct evidence inherently possess the same probative value." *Jenks, supra,* at 272.

{¶18} At trial, the state presented evidence, both in the form of officer testimony and photographic evidence, that the back door to Ms. Williams' home was wide open, and fresh foot-steps left in the snow clearly left a distinctive path of rapid travel from the back door, across the backyard, and into a house two doors down from Ms. Williams' home. Mr. Kaseda answered the door when the officers knocked. Both officers testified

that, although they did not measure the distance from Ms. Williams' home to the house in which Mr. Kaseda was found with a tape measure, they estimated the distance to be no more than 150 feet away. Both stated that no question existed that the home was well within the 500 feet radius prohibited by the protection order. Furthermore, Brenda confirmed Mr. Kaseda's presence in Ms. Williams' driveway, even if he never entered the home.

{¶19} Officer Rahz also stated that he noticed a particular square pattern in the fresh footsteps in the snow leading to Mr. Kaseda's location. He observed a similar pattern on the bottom of Mr. Kaseda's shoes.

{¶20} Direct evidence, in the form of police testimony, established that Mr. Kaseda was less than 500 feet away from Ms. Williams' residence, and circumstantial evidence, in the form of the footprints in the snow, indicated that Mr. Kaseda had, in fact, been at or in Ms. Williams' residence. This was enough to convince the jury of Mr. Kaseda's guilt, and we cannot find that the jury lost its way in coming to that determination. We cannot say that the jury so clearly lost its way that it created such a manifest miscarriage of justice that a new trial is required; therefore, Mr. Kaseda's sole assignment of error is without merit.

{¶21} The decision of the Lake County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, P.J.,

DIANE V. GRENDELL, J.,

concur.