

[Cite as *State v. Hutton*, 2015-Ohio-2940.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

BRIAN HUTTON

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 15 CA 01

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Cambridge Municipal
Court, Case No. 14 CRB 01315

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

July 17, 2015

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

MYRA K. SCHEURER
Assistant Law Director, Cambridge
150 Highland Avenue, Suite 2
Cambridge, Ohio 43725

MARK A. PERLAKY
111 W. Main St.
Newcomerstown, Ohio 43832

Hoffman, P.J.

{¶1} Defendant-appellant Brian Hutton appeals his conviction for aggravated menacing entered by the Cambridge Municipal Court. Plaintiff-Appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On October 30, 2014, Michelle Witt called the Guernsey County Sheriff's Office to report Appellant, her ex-husband, was chasing her in his automobile and she was scared for her safety.

{¶3} Jeremy Wilkinson, the Dispatcher Deputy for the Guernsey County Sheriff's Office, instructed Witt to drive to the Sheriff's Office parking lot. Deputy Wilkinson observed a black Volkswagen Jetta driving in a reckless manner, following a red vehicle driven by Witt. Deputy Wilkinson then proceeded to the parking lot and radioed the Cambridge Police Department to cover his station. Deputy Wilkinson observed Appellant at the window of Witt's vehicle. Appellant was escorted into the Sheriff's Department without incident, and charged with aggravated menacing, in violation of R.C. 2903.21.

{¶4} The matter proceeded to a bench trial on December 22, 2014. The trial court found Appellant guilty as charged and sentenced him to sixty days in the Guernsey County Jail, with fifty-seven days suspended. Appellant was further ordered to serve a twelve month term of unsupervised probation, and ordered to pay a fine and court costs.

{¶5} Appellant appeals assigning as error:

{¶6} "I. THE TRIAL COURT ERRED IN FINDING APPELLANT GUILTY OF AGGRAVATED MENACING, AS SAID FINDING WAS BASED ON INSUFFICIENT EVIDENCE.

{¶7} "II. THE TRIAL COURT ERRED IN FINDING APPELLANT GUILTY OF AGGRAVATED MENACING, AS SAID FINDING WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I. and II.

{¶8} Appellant's assigned errors raise common and interrelated issues; therefore, we will address the arguments together.

{¶9} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997), paragraph two of the syllabus. The standard of review for a challenge to the sufficiency of the evidence is set forth in *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991) at paragraph two of the syllabus, in which the Ohio Supreme Court held, "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 guilty 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."

{¶10} In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as the "thirteenth juror," and after "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 overturned and a new trial ordered.” *State v. Thompkins*, supra, at 387, 678 N.E.2d 541. Reversing a conviction as being against the manifest weight of the evidence and ordering a new trial should be reserved for only the “exceptional case in which the evidence weighs heavily against the conviction.” *Id.* The weighing of the evidence and judging of the credibility of the witnesses is best left to the trier of fact.

{¶11} Appellant was charged with one count of aggravating menacing, in violation of R.C. 2903.21(A), which reads,

(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. In addition to any other basis for the other person's belief 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, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

"Serious physical harm" is defined as,

(5) “Serious physical harm to persons” means any of the following:

(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

(b) Any physical harm that carries a substantial risk of death;

(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

{¶12} Appellant maintains there was no testimony or evidence Michelle Witt believed she would suffer serious physical harm.

{¶13} Deputy Wilkinson testified he observed Appellant driving in a reckless manner, and would have hit Witt's car if she would have even tapped the brakes. Tr at 7. Deputy Wilkinson testified Appellant had taken an aggressive stance at the vehicle and was acting very irrationally. Tr at 9-10. He testified it was a stance someone would take if they wanted to fight. Tr at 10. He observed Witt was in fear and was in fear for her children as well. Tr at 11.

{¶14} Deputy Wilkinson concluded his testimony by stating,

Q. Michelle Witt did believe that Brian Hutton would cause her physical, serious physical harm?

A. Absolutely. And I believed, as a law enforcement officer by what I viewed in those vehicles, when I went outside I absolutely believed that if I did not intercede that Brian Hutton, not only through the use of the vehicle, but if I did not intercede, would cause Michelle Witt serious physical harm, absolutely.

Q. And a collision of a car can cause serious physical harm?

A. That is correct. His, his vehicle was what made, made it the aggravated.

Q. And you were able to clearly observe all of the events that you have testified to?

A. Yes, Sir, I was able to observe it very clearly.

Q. Thank you.

Tr at 28-29.

{¶15} Michelle Witt testified at trial she believed Appellant would cause her and her children serious physical harm, and he had been acting irrationally the previous week. Tr at 33. She testified she feared for her safety and for the safety of her children. Tr at 33. She testified Appellant was chasing her and her children to serve her papers while driving, and she was worried he would crash into her vehicle.

{¶16} Based on the above, we find the trial court did not err in finding Appellant guilty of the charge of aggravating menacing as there was competent, credible evidence offered at trial to support the finding.

{¶17} The first and second assignments of error are overruled.

{¶18} Appellant's conviction in the Cambridge Municipal Court is affirmed.

By: Hoffman, P.J.

Farmer, J. and

Wise, J. concur