

[Cite as *State v. Sanchez*, 2010-Ohio-4660.]

STATE OF OHIO)
)ss:
COUNTY OF LORAIN)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 09CA009582

Appellee

v.

JESUS SANCHEZ

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF LORAIN, OHIO
CASE No. 07CR072917

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 30, 2010

DICKINSON, Presiding Judge.

INTRODUCTION

{¶1} Jesus Sanchez was working as a police officer when he met Sarah Long and became interested in pursuing an extra-marital relationship with her. Ms. Long testified that for a year and a half, Mr. Sanchez would frequently try to contact her by calling, stopping at her house, or pulling her over in traffic. Ms. Long eventually filed a police report against him. Mr. Sanchez’s superior officer ordered him to stay away from Ms. Long, but two weeks later, police found him pounding on her front door demanding to speak with her. Rather than arresting him, police let him go home and later disciplined him. Ms. Long filed a civil lawsuit against Mr. Sanchez and the city of Lorain. In his deposition in the civil case, Mr. Sanchez admitted to many of Ms. Long’s allegations, but said that all contact was consensual. The police reopened the investigation and brought charges against Mr. Sanchez for menacing by stalking with a firearm specification. Following a bench trial, the trial court found him guilty of menacing by stalking,

but not guilty of the specification. Mr. Sanchez has appealed his conviction. This Court affirms because: (1) the conviction is supported by sufficient evidence, (2) it is not against the manifest weight of the evidence, and (3) Mr. Sanchez was not entitled to compel the State to produce evidence to support his retaliatory prosecution claim because it was not *Brady* material and Mr. Sanchez failed to produce any evidence that similarly situated police officers who had not publicly disparaged the Lorain Police Department could have been, but were not, prosecuted for conduct similar to that with which he had been charged.

BACKGROUND

{¶2} Ms. Long testified that she met Mr. Sanchez at a bingo game she attended with her mother near the end of 2000. Mr. Sanchez was wearing his Lorain Police Department uniform, and the two chatted briefly about Ms. Long's pending divorce. According to Ms. Long, Mr. Sanchez soon began contacting her by calling, stopping by her house, or by pulling her over on the street. She testified that, if Mr. Sanchez saw her in traffic while driving his police cruiser, he would operate his air horn and overhead lights and initiate a traffic stop in order to talk to her. A couple of times, he gave her children money for ice cream, but he never accused her of violating any traffic laws. She testified that Mr. Sanchez told her that her estranged husband was living with a drug dealer and warned her that she should have her trunk packed and be ready to leave at a moment's notice if Mr. Sanchez were to call her because her husband could be preparing to hurt her.

{¶3} Although Ms. Long initially appreciated Mr. Sanchez's warnings, after several months she began to suspect that he was not giving her accurate information about her estranged husband. She testified that she started refusing to answer the door or pick up the telephone. She said that Mr. Sanchez would then leave messages saying things like, "This is my fourth time

calling you. I've [driven] by. I know you're there. The next time I call, please do yourself a favor and pick up the phone."

{¶4} Ms. Long also testified that Mr. Sanchez would frequently shine a police spotlight on her house at night and then call her and say, "Guess who?" She said that, although he did not always call, if she looked for the source of the spotlight, she would always see Mr. Sanchez in a police cruiser. The man Ms. Long was dating at the time of these events testified that there was frequently a spotlight on the house at night and that it often coincided with a phone call from a man and a police cruiser driving slowly by the house.

{¶5} According to Ms. Long, things changed with Mr. Sanchez after he lent her money in early 2001. According to her, Mr. Sanchez happened to stop by her house the day she received a letter from the domestic relations court demanding \$1000 and warning that she could be put in jail for failure to pay. The next day, Mr. Sanchez returned and convinced her to take two money orders totaling \$600, the additional amount she needed to pay the bill. She said that she told him that she could not pay it back, but he insisted she take it and told her to do what she could to return the money when she was able.

{¶6} According to Ms. Long, Mr. Sanchez's demeanor toward her changed immediately after she accepted the money. She said that "[t]he stopping by became more frequent, the phone calls became way more frequent, the pulling over doubled, and then [he] started the touching." Ms. Long testified that she became scared because she felt like Mr. Sanchez knew the route she took around town because he began stopping her almost daily. She said that their interaction was uncomfortable for her as he began to caress her hair or her arm and engage in what she described as "relationship talk." Ms. Long testified that Mr. Sanchez would say that she was a "pretty girl" and that he could not understand how her estranged husband

could treat her as he had because “if [Mr. Sanchez] was lucky enough to have someone like me . . . he would never . . . divorce[] me” Ms. Long said that, although he never gave her a ticket, she was scared to leave the scene of a traffic stop without Mr. Sanchez’s permission because he was a police officer and he had told her that she could not leave until he was done with her.

{¶7} Ms. Long described several incidents of unwanted touching and forced kissing. She said one happened while she was driving to the Century Telephone Company with her friend and her children. Mr. Sanchez initiated a traffic stop and then called her over to his driver-side door and spoke to her through the open window. He asked if she was avoiding him, and she said, “At this point, Jesse, yes.” He told her that he had something important to tell her. Because she is deaf in one ear and wears a hearing aide in the other, she said that she had to lean down to the window and put her good ear toward the source of the sound. She testified that Mr. Sanchez turned his head and kissed her near the right side of her mouth. Ms. Long said that she immediately backed up and returned to her car.

{¶8} Ms. Long also described an incident that she thought happened in the summer of 2001. Due to a civil protection order against her estranged husband, Ms. Long needed a police escort to help her collect the mail from her estranged husband’s home. After she had waited 45 minutes at a friend’s house, Mr. Sanchez responded to her call for assistance. He explained that the delay was due to the fact that he had heard her name over the radio and accepted the call from dispatch despite being across town at the time. He drove her to her estranged husband’s home in his police cruiser. Ms. Long testified that, after he retrieved the mail, he drove the wrong direction, away from her friend’s house. She said that she nervously talked about needing to get back to her kids and tried to get out of the car, but there was no door handle in the back

seat. Mr. Sanchez soon parked the car, got out, and came to her partially-lowered window. She said that he reached in, grabbed her collar, pulled her upward, kissed her, and tried to forcibly put his tongue in her mouth. Then he released her and returned her to her friend's house. Although she said that she was crying and her face was red, she did not tell her friend what had happened.

{¶9} Things deteriorated further for Ms. Long in late summer 2001, when she approached Bill Engle, a police captain who had lived with his mother in the house next door to hers. She asked him “[h]ypothetically” what she should do if one of his officers was “harassing” and “bothering” her. She said that Captain Engle knew which officer she was talking about and that she felt better after speaking with him. But, that conversation did not stop Mr. Sanchez. In fact, according to Ms. Long, Mr. Sanchez became angry with her and knocked on her door the next day. She said that he told her “to keep [her] mouth shut to Bill Engle.” Ms. Long said that after that, she never had another one-on-one conversation with Mr. Sanchez. She began trying to avoid him at any cost, even staying inside her house to avoid seeing him on the street, but he continued to stop by her house two to three times a week. He also continued to leave her telephone messages demanding that she answer her phone and asking why she was avoiding him.

{¶10} Ms. Long was more than six-months pregnant in November 2001 when Mr. Sanchez pushed his way inside her front door and started backing her off of the landing and down the few steps to the basement. As he pressed her back against the wall at the foot of the stairs, Ms. Long said that he took both of her arms and pinned them above her head while he ran his other hand over her stomach and vagina and told her that she was “too pretty to be pregnant with [an African-American] baby.” She said that she was crying and asking him to stop until he covered her mouth with his and started shoving his tongue in her mouth. Suddenly, he backed

away from her, laughing, and walked out of the house. Ms. Long's oldest son testified that he witnessed the incident between Mr. Sanchez and Ms. Long in the basement, and he corroborated Ms. Long's account. Ms. Long said that she did not immediately report Mr. Sanchez to the police because she knew that Mr. Sanchez would find out and she was "scared to death of what he was capable of."

{¶11} According to Ms. Long, if she ignored Mr. Sanchez's calls and refused to answer the door, he would get angry. He would try to entice her children to open the door for him or he would pound on the door and scream obscenities and racial epithets in reference to her boyfriend. The boyfriend testified that he was in Ms. Long's kitchen one night when a man in a police uniform came to the door and began cussing and yelling when Ms. Long refused to come to the door to speak with him. Although the boyfriend did not live with Ms. Long, he said that he began staying there three to four nights a week because Ms. Long was scared of Mr. Sanchez.

{¶12} Ms. Long said that she asked Mr. Sanchez "over and over again" to "please leave [her] alone," reminding him that he had a wife and kids, but "he would just pretty much laugh that off." Ms. Long testified that, at some point, she blocked Mr. Sanchez's cell phone number on her home telephone, but he got around it by calling from land lines located at his various part-time security jobs. Eventually, she changed her phone number. In his civil deposition, Mr. Sanchez testified that he recalled having difficulty completing calls to her house for a period of time. He admitted that it crossed his mind that she might be blocking his number, but he said he avoided the block by trying to find her around town.

{¶13} Ms. Long testified that the harassment continued and she continued to do her best to avoid Mr. Sanchez until her sister got a speeding ticket and asked her to ask Mr. Sanchez to help her with it. Ms. Long said that she told her sister she was not speaking to Mr. Sanchez, but

she agreed to call him at the police station and leave a voice mail asking him to call her at her sister's house. When Ms. Long later heard from her sister that Mr. Sanchez had warned her sister that Ms. Long's children could be taken away from her due to the condition of her home, Ms. Long decided it was time to go to the police. She said that she filed a police report against Mr. Sanchez on September 4, 2002, because she was angry with him for threatening to take her children away, her boyfriend had pushed her to report the harassment, and she finally understood that Mr. Sanchez was never going to stop.

{¶14} Less than two weeks later, on September 15, 2002, Ms. Long heard Mr. Sanchez "pounding" on her front door. He yelled through the door that he needed to talk to her right away and, according to Ms. Long, he "seemed very angry." She said that she yelled back, asking him to please leave. Ms. Long was "distraught," and she called the police.

{¶15} Lorain police officers who responded to Ms. Long's 911 call testified about the incident. The first officer to arrive at the scene testified that he saw Officer Sanchez "pounding on the door" of Ms. Long's house. A supervising officer testified that, when he arrived, Mr. Sanchez's personal van was parked illegally against traffic directly in front of Ms. Long's house. The supervisor said that Mr. Sanchez was sitting in the van operating a hand-held tape recorder. Although the supervisor testified that Ms. Long "was nervous and appeared scared or uncertain what was happening," he said that he let Mr. Sanchez go because Ms. Long told him that Mr. Sanchez had not threatened her.

SUFFICIENCY

{¶16} Mr. Sanchez's first assignment of error is that his conviction for menacing by stalking is not supported by sufficient evidence. He has argued that the State failed to present evidence that he knowingly caused Ms. Long mental distress or knowingly caused her to believe

that he would cause her physical harm. See R.C. 2903.21.1(A)(1). Whether a conviction is supported by sufficient evidence is a question of law that this Court reviews de novo. *State v. Thompkins*, 78 Ohio St. 3d 380, 386 (1997); *State v. West*, 9th Dist. No. 04CA008554, 2005-Ohio-990, at ¶33. We must determine whether, viewing the evidence in a light most favorable to the prosecution, it could have convinced the average finder of fact of Mr. Sanchez’s guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St. 3d 259, paragraph two of the syllabus (1991).

{¶17} Section 2903.21.1(A)(1) of the Ohio Revised Code 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.” “A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.” R.C. 2901.22(B). Mental distress includes “[a]ny mental illness or condition that would normally require psychiatric treatment, psychological treatment, or other mental health services” R.C. 2903.21.1(D)(2)(b).

{¶18} Mr. Sanchez has argued that the State did not present sufficient evidence that he knowingly caused Ms. Long to suffer mental distress. Although he has admitted that he never got to know Ms. Long very well, he has claimed that he enjoyed a mutual friendship with her that he thought might have developed into more. In his brief, Mr. Sanchez admitted to going to Ms. Long’s home on just one occasion after he “perhaps had . . . knowledge that Ms. Long wanted him to stop contacting her” due to the fact that his boss had previously ordered him to stay away from her and her family. Mr. Sanchez has argued, however, that one incident does not create the “pattern of conduct” required for conviction of menacing by stalking. R.C.

2903.21.1(A)(1). The Ohio Revised Code defines “[p]attern of conduct” as “two or more actions or incidents closely related in time, [regardless of] whether . . . there has been a prior conviction based on any of those actions or incidents.” R.C. 2903.21.1(D)(1).

{¶19} Ms. Long testified that, since dealing with these events, she has been receiving therapy and has begun taking various prescription medications to control panic attacks and mood problems that she did not have before meeting Mr. Sanchez. She said that, six years after the final incident, she is still scared of police officers and is often scared to leave her house.

{¶20} According to Ms. Long, her perception of Mr. Sanchez changed over time. Although a nuisance, Mr. Sanchez seemed helpful at first, but his attitude toward her later changed. Ms. Long testified that Mr. Sanchez contacted her with increasing frequency and began to sound angry and more demanding when she would duck his calls or refuse to answer the door. She also testified that his messages became more intimidating after she spoke with Captain Engle about him. She said that she repeatedly asked Mr. Sanchez to stop contacting her, but he would not listen. Ms. Long testified that she was sobbing and begging him to stop when he kissed her in the back of his police cruiser, and she and her son both testified that, during the November 2001 incident in her basement, Ms. Long was crying and asking Mr. Sanchez to leave. Thus, there was sufficient evidence that Mr. Sanchez knowingly continued to contact Ms. Long after a reasonable person would have realized that she did not wish to speak with him, much less kiss him.

{¶21} Whether multiple incidents are “closely related in time” so as to create a “pattern of conduct” under Section 2903.21.1 is a question for the trier of fact to determine “considering the evidence in the context of all the circumstances of the case.” *State v. Payne*, 178 Ohio App. 3d 617, 2008-Ohio-5447, at ¶12 (quoting *Middletown v. Jones*, 167 Ohio App. 3d 679, 2006-

Ohio-3465, ¶10). Although Ms. Long was unable to offer a clear timeline of the events, the parties agreed that all of the incidents took place over 18 months and Ms. Long testified that Mr. Sanchez was trying to contact her multiple times per week for most of that time. There was sufficient evidence before the trial court to allow a rational trier of fact to determine, under Section 2903.21.1, that Mr. Sanchez had engaged in a “pattern of conduct” over the course of 18 months whereby he knowingly caused Ms. Long mental distress. R.C. 2903.21.1(A)(1), (D)(1). Viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence to have convinced the average finder of fact of Mr. Sanchez’s guilt beyond a reasonable doubt. Mr. Sanchez’s first assignment of error is overruled.

MANIFEST WEIGHT

{¶22} Mr. Sanchez’s second assignment of error is that his conviction is against the manifest weight of the evidence. He has argued that the trier of fact lost its way because the evidence “was clearly contradictory, inconsistent, unreliable, vague, and subject to memory failure.” If a defendant argues that his convictions are against the manifest weight of the evidence, this Court “must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact 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. Otten*, 33 Ohio App. 3d 339, 340 (1986).

{¶23} Mr. Sanchez has argued that Ms. Long failed to “corroborate her story” that she wanted the relationship to end before she filed the police report. The State has correctly pointed out that most criminal statutes, including Section 2903.21.1, do not require corroboration of a victim’s testimony to support a conviction. See *State v. Economo*, 76 Ohio St. 3d 56, 58 (1996);

R.C. 2903.21.1(A)(1). In any event, many aspects of Ms. Long's testimony were corroborated, most notably by Mr. Sanchez in his civil deposition.

{¶24} In his deposition, Mr. Sanchez denied kissing Ms. Long when he took her to pick up the mail at her estranged husband's house, but did admit that he put her in the back of the police cruiser, leaving her without access to a door handle. He did admit that he kissed her on two other occasions. He said they shared a mutual kiss in the Century Telephone parking lot after he stopped her car, using his police cruiser, because he wished to speak with her. He also testified that they shared a consensual kiss in November 2001 in her basement while he held her hands over her head with one hand and rubbed her stomach with the other. He said that he held her hands over her head as a form of "[h]orseplay" and that he touched her stomach in an attempt to arouse her. He said that he stopped when she "jumped like it was ticklish" and turned toward one of her children who had been watching the interaction. Ms. Long's oldest son corroborated his mother's testimony that she was crying while Mr. Sanchez was kissing her during the incident in the basement.

{¶25} Mr. Sanchez has argued that Ms. Long's testimony is not believable because she waited a year and a half before reporting him to police. Ms. Long testified, however, that she discussed her concerns about the harassment with her neighbor, Lorain Police Captain Bill Engle, in late summer 2001. Captain Engle, though unsure of the date, confirmed that Ms. Long had spoken to him about being harassed by a police officer. Contrary to Ms. Long's testimony, Captain Engle said that he was unable to take any action on her behalf because she did not name the officer. Ms. Long also testified that she was afraid to go to the police after that because Mr. Sanchez had gotten so angry with her for speaking to Captain Engle. In his deposition, Mr. Sanchez did not deny, but said that he did not recall telling Ms. Long that she better watch what

she says to Captain Engle. Ms. Long testified that she was afraid to file a police report against Mr. Sanchez because she believed that, if she did, Mr. Sanchez would become more threatening toward her and the police would not stop him. The trial court was permitted to credit Ms. Long's testimony in that regard.

{¶26} Mr. Sanchez has argued that Ms. Long's testimony lacks credibility because she accepted emotional and financial support from him, frequently placed herself in close proximity to him, and had a motive to lie to bolster her civil lawsuit. He has pointed out that the telephone records reveal there was more than six hours of conversation between them over nineteen months with some calls "continuing on for over forty minutes." A review of the phone records does not support his argument because they do not reveal any single phone call lasting more than 19 minutes. Furthermore, Ms. Long testified on cross-examination that Mr. Sanchez tended to do all the talking during these phone calls and that she did not hang up on him because it would cause him to stop by her house. She testified that letting him have his say over the phone was preferable to having him pounding on her front door.

{¶27} Captain Whitely, a police officer from the Elyria Police Department who testified regarding his investigation into Mr. Sanchez's admissions of wrongdoing, corroborated aspects of Ms. Long's testimony. He said that the phone records he obtained revealed that Mr. Sanchez had made 95 phone calls to Ms. Long's home phone from his cell phone beginning in early February 2001 and ending in mid-September 2002. The records also revealed many instances of multiple calls being made in the same day or even within a few minutes. Although Captain Whitely did not confirm with the telephone company that Ms. Long had blocked Mr. Sanchez's cell phone number as she claimed, he noted a four-month gap in the phone calls during 2002.

{¶28} Mr. Sanchez has also argued that the contact was consensual because Ms. Long allowed him into her home during the November 2001 kissing incident and willingly left the safety of her vehicle to stand by his car window and allow him to kiss her in the phone company parking lot. Ms. Long repeatedly testified that she did not invite Mr. Sanchez into her home in November 2001 or at any other time. Ms. Long explained that she was willing to ride in Mr. Sanchez's police cruiser to retrieve mail from her estranged husband's house because she had been waiting for 45 minutes for a police officer to take her just two houses down the street. She also testified that, in the phone company parking lot, Mr. Sanchez tricked her into leaning into his car and then quickly moved his head to kiss her before she could step away.

{¶29} Mr. Sanchez has argued that Ms. Long's testimony at trial is materially different from the account she gave police in early September 2002. For instance, Officer Smith testified that, according to his notes, Ms. Long reported that Mr. Sanchez had stopped at her house "numerous times," but at trial she said that he stopped by two to three times each week. The trial court was also able to consider Mr. Sanchez's own testimony regarding how often he stopped at Ms. Long's house. Mr. Sanchez testified by deposition that he believed he had stopped by Ms. Sanchez's house less than 100 times in the year and a half that he knew her, but was unable to narrow his estimate any further. He also admitted to using the air horn, flasher bar, and /or the regular horn on his police cruiser to pull Ms. Long over in traffic about 15 times.

{¶30} Mr. Sanchez has argued that Ms. Long's allegations about the spotlight being shined on her house at night are innocently explained away by Captain Engle's testimony that he had occasionally asked officers to shine a light on the neighboring house for his mother's benefit. The trial court was free to believe Ms. Long's testimony, as supported by her boyfriend's testimony, that the spotlight on her house often coincided with a phone call from Mr. Sanchez

and visual confirmation that Mr. Sanchez was simultaneously driving slowly by the house. In his deposition, Mr. Sanchez did not deny having trained a spotlight on Ms. Long's house at night, but said that he did not recall doing it.

{¶31} This Court has reviewed the entire record and concludes that, despite conflicting evidence, the trial court did not lose its way in finding Mr. Sanchez guilty of menacing by stalking. In addition to Ms. Long's testimony and that of various police officers and other witnesses, the trial court had the benefit of considering Mr. Sanchez's sworn deposition testimony from the civil case. The trial court was entitled to find Ms. Long's testimony more credible than Mr. Sanchez's testimony regarding whether their interactions were consensual. Mr. Sanchez's conviction is not against the manifest weight of the evidence. His second assignment of error is overruled.

SELECTIVE PROSECUTION

{¶32} Mr. Sanchez's third assignment of error is that the trial court denied him due process of law by denying his motion to compel discovery, thereby preventing him from presenting a defense of selective prosecution. In his motion to compel, Mr. Sanchez alleged that the State brought charges against him because an affidavit he had written for Ms. Long's civil case had been released to the media. In his motion to compel, Mr. Sanchez wrote that the affidavit contained claims that "there is a pervasive pattern of sexual misconduct by Lorain Police officers while on duty, and that despite complaints, the department ignored the reports and failed to impose discipline, let alone prosecution." Mr. Sanchez has argued that he should have been permitted to complete discovery to support a motion to dismiss the indictment based on his claim that the prosecutor's office brought these charges against him only because he publically accused the Lorain Police Department of wrongdoing. The State has argued that Mr. Sanchez

was investigated and later prosecuted because, during the civil case, Mr. Sanchez admitted under oath that he had engaged in criminal conduct.

{¶33} “A selective-prosecution claim is not a defense on the merits to the criminal charge itself, but an independent assertion that the prosecutor has brought the charge for reasons forbidden by the Constitution.” *State v. Getsy*, 84 Ohio St. 3d 180, 203 (1998). Although “[t]he decision whether to prosecute a criminal offense is generally left to the discretion of the prosecutor, . . . [t]hat discretion is . . . subject to constitutional equal-protection principles . . . prohibit[ing] prosecutors from selectively prosecuting individuals based on ‘an unjustifiable standard such as race, religion, or other arbitrary classification.’” *State v. LaMar*, 95 Ohio St. 3d 181, 2002-Ohio-2128, at ¶43 (quoting *United States v. Armstrong*, 517 U.S. 456, 464 (1996)). “To support a claim of selective prosecution, ‘a defendant bears the heavy burden of establishing, at least prima facie, (1) that, while others similarly situated have not generally been proceeded against because of conduct of the type forming the basis of the charge against him, he has been singled out for prosecution, and (2) that the government’s discriminatory selection of him for prosecution has been invidious or in bad faith, i.e., based upon such impermissible considerations as race, religion, or the desire to prevent his exercise of constitutional rights.’” *Id.* at ¶44 (quoting *State v. Flynt*, 63 Ohio St. 2d 132, 134 (1980)).

{¶34} Mr. Sanchez moved the trial court to compel the State of Ohio to produce “the City of Lorain Police Department’s investigations into sexual misconduct by officers.” In his motion to compel, he argued that the files would be exculpatory under *Brady v. Maryland*, 373 U.S. 83 (1963), and relevant to his claim of selective prosecution. The Ohio Supreme Court, however, has held that evidence supporting a claim of selective prosecution is not evidence of mitigation, exculpation, or impeachment, so it is neither favorable nor material to guilt or

punishment within the meaning of *Brady* and Rule 16 of the Ohio Rules of Criminal Procedure. *State v. Keene*, 81 Ohio St. 3d 646, 650-51 (1998). Therefore, the prosecution is not required to disclose such information to the defense. *Id.*

{¶35} Mr. Sanchez has also argued that the trial court had a constitutional obligation to permit the requested discovery. The Ohio Supreme Court has held that the standard for obtaining discovery on a selective prosecution claim “is deliberately ‘rigorous’ . . . because ‘the showing necessary to obtain discovery should itself be a significant barrier to the litigation of insubstantial claims.’” *State v. Keene*, 81 Ohio St. 3d 646, 651 (1998) (quoting *United States v. Armstrong*, 517 U.S. 456, 464, 468 (1996)). Thus, in order to compel discovery in a selective prosecution claim, a defendant “must ‘produce some evidence that similarly situated [individuals falling outside the protected group] could have been prosecuted, but were not’” *Id.* (quoting *Armstrong*, 517 U.S. at 469).

{¶36} In this case, Mr. Sanchez moved to compel discovery on his selective prosecution claim without producing any evidentiary materials tending to show that similarly situated police officers could have been prosecuted, but were not. Although he included in his motion a brief description of six cases he claimed were similar to his, only two involved allegations of stalking, and Mr. Sanchez failed to provide any evidence that either of those officers had avoided prosecution after being accused of conduct similar to that at issue in this case. See *State v. Keene*, 81 Ohio St. 3d 646, 651 (1998). Mr. Sanchez claimed to know the identities of the officers involved in the cases he described, but did not present any affidavits or other evidence describing how the situations were similar to his own. Mr. Sanchez’s unsworn statements in his motion to compel are not “evidence that similarly situated [individuals] . . . could have been prosecuted, but were not” *Id.* (quoting *United States v. Armstrong*, 517 U.S. 456, 469

(1996)). Therefore, Mr. Sanchez was not entitled to the requested discovery. Mr. Sanchez's third assignment of error is overruled.

CONCLUSION

{¶37} Mr. Sanchez's first and second assignments of error are overruled because his conviction for menacing by stalking is supported by sufficient evidence and is not against the manifest weight of the evidence. His third assignment of error is also overruled. Mr. Sanchez was not entitled to compel discovery to support his selective prosecution claim because the requested evidence was not *Brady* material and he failed to present any evidence that similarly situated police officers who had not publically disparaged the Lorain Police Department could have been, but were not, prosecuted for conduct similar to that with which he had been charged.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Lorain, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to appellant.

CLAIR E. DICKINSON
FOR THE COURT

CARR, J.
WHITMORE, J.
CONCUR

APPEARANCES:

TERRY H. GILBERT, attorney at law, for appellant.

DENNIS WILL, prosecuting attorney, and MARY R. SLANCZKA, assistant prosecuting attorney, for appellee.