

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF WAYNE        )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.     14AP0013

Appellee

v.

JAMES D. MACE

APPEAL FROM JUDGMENT  
ENTERED IN THE  
WAYNE COUNTY MUNICIPAL COURT  
COUNTY OF WAYNE, OHIO  
CASE No.    CRB 12-11-01681

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 20, 2015

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WHITMORE, Judge.

{¶1} Defendant-Appellant, James Mace, appeals from his conviction in the Wayne County Municipal Court. This Court affirms.

I

{¶2} At approximately 5:43 p.m. on October 26, 2012, Mace called Beverly Theil on her cell phone. At the time, Theil was acting as a guardian for a woman named Bonnie B. Bonnie was a friend of Mace’s family, including his daughter Ashley. After Theil informed Ashley that she would no longer be allowed to have contact with Bonnie, Ashley told Mace that Theil was harassing her. It was Theil’s testimony that Mace yelled and cursed at her on the phone, threatened her job and her possessions, and warned that she “had better watch [her] back because [she] would never know when somebody was coming up behind [her].” After Theil ended the phone call with Mace, she contacted the police and reported that Mace had threatened her.

{¶3} Mace was charged with one count of telecommunications harassment in violation of R.C. 2917.21(B). A bench trial took place and, at the conclusion of the trial, the court found Mace guilty. The court sentenced Mace to 24 months of probation and a fine.

{¶4} Mace now appeals from his conviction and raises one assignment of error for our review.

## II

### Assignment of Error

THE EVIDENCE WAS INSUFFICIENT TO SUPPORT THE TRIAL COURT'S VERDICT OF "GUILTY" AS TO THE SOLE COUNT OF TELEPHONE HARASSMENT, AND THE CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, WHERE THE DEFENDANT-APPELLANT DID NOT TELEPHONE THE ALLEGED VICTIM WITH "PURPOSE TO ABUSE, THREATEN, OR HARASS" HER.

{¶5} In his sole assignment of error, Mace argues that his conviction for telecommunications harassment is based on insufficient evidence and is against the manifest weight of the evidence. We disagree.

### **Sufficiency**

{¶6} In order to determine whether the evidence before the trial court was sufficient to sustain a conviction, this Court must review the evidence in a light most favorable to the prosecution. *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991).

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.* at paragraph two of the syllabus; *see also State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997).

"In essence, sufficiency is a test of adequacy." *Thompkins* at 386.

{¶7} “No person shall make \* \* \* a telecommunication \* \* \* with purpose to abuse, threaten, or harass another person.” R.C. 2917.21(B). “A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.” Former R.C. 2901.22(A). Whoever commits the foregoing offense is guilty of telecommunications harassment. R.C. 2917.21(C)(1).

{¶8} Beverly Theil testified that, during the timeframe relevant to this appeal, she served as the guardian for Bonnie B. In her role as Bonnie’s guardian, Theil determined that Bonnie should not have contact with certain individuals. One of those individuals was Mace’s daughter, Ashley Mace. Believing that Bonnie’s contact with Ashley had upset her to a significant degree, Theil called Ashley to inform her that she could no longer have contact with Bonnie and that Theil would be mailing her a no contact letter. According to Theil, Ashley spoke rudely during their phone call and “slammed the phone down on [her].”

{¶9} Sometime after she spoke with Ashley, Theil received a call from a man whose voice she did not recognize. Theil testified that the man immediately began screaming and cursing at her and accused her of “harassing his daughter.” At that point, Theil asked the man if his name was James Mace, and Mace admitted that it was. Theil testified that Mace then told her that he “would see to it that [she] lost [her] job, [her] house, [her] car, [and] every damn thing [she] owned” as a result of her contact with his daughter. Additionally, Mace told Theil that she “had better watch [her] back because [she] would never know when somebody was coming up behind [her].” Theil testified that she was “very frightened” by the phone call and perceived Mace’s words as a threat. She explained that part of the reason she was so frightened by the call was that she did not know Mace and considered his threats to be “very irrational,” given that he

was not personally involved in Bonnie's case. In addition to taking several security measures at her home, Theil testified that she contacted the police regarding Mace's phone call.

{¶10} Officer Suzanne Trepal testified that she spoke with Theil a few minutes after Theil received Mace's phone call. Officer Trepal indicated that Theil was upset when she called and reported that Mace had sworn at her and said that "she had better watch her back and that she would never know if somebody was coming for her." As a result of Theil's call, Officer Trepal immediately called Mace. Officer Trepal testified that Mace sounded upset on the phone, but denied having threatened Theil in any manner.

{¶11} Mace argues that his conviction is based on insufficient evidence because the State failed to prove that he purposely abused, threatened, or harassed Theil. According to Mace, he never threatened or harassed Theil. He argues that he only spoke to Theil about not harassing his daughter and, during the course of the conversation, "spoke his mind" about Theil's decision to not allow Bonnie to see certain individuals. Mace points to his own trial testimony in support of his argument that he did not threaten or harass Theil.

{¶12} Mace's argument primarily concerns the weight of the State's evidence. Because this portion of his assignment of error only concerns the sufficiency of the evidence, however, the persuasiveness of the State's evidence is not at issue. *See State v. Brooks*, 9th Dist. Summit No. 23237, 2007-Ohio-1424, ¶ 7 ("[S]ufficiency tests the burden of production while manifest weight tests the burden of persuasion."). We need only decide whether, viewing the evidence in a light most favorable to the State, a rational trier of fact could have found that the State proved the elements of telecommunications harassment beyond a reasonable doubt. *See Jenks*, 61 Ohio St.3d 259, at paragraph two of the syllabus.

{¶13} Viewing the evidence in a light most favorable to the State, we must conclude that the State set forth evidence from which a rational trier of fact could have concluded that Mace purposely threatened or harassed Theil. Theil testified that Mace called her personal cell phone, screamed at her while using profanity, and threatened her job as well as her personal possessions. More importantly, she testified that Mace told her that she “had better watch [her] back because [she] would never know when somebody was coming up behind [her].” Before that point, the two had never met or even spoken, and Mace’s statement hinted that Theil had reason to fear for her personal safety. *See State v. Aberegg*, 9th Dist. Medina No. 10CA0129-M, 2012-Ohio-743, ¶ 11-12. Based on these facts and circumstances, one could reasonably conclude that Mace made the foregoing statement for the purpose of threatening Theil. Accordingly, his conviction for telecommunications harassment is not based on insufficient evidence.

### **Manifest Weight**

{¶14} In determining whether a conviction is against the manifest weight of the evidence an appellate 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 (9th Dist.1986). Weight of the evidence concerns whether a greater amount of credible evidence supports one side of the issue than supports the other. *Thompkins*, 78 Ohio St.3d at 387. Further, when reversing a conviction on the basis that the conviction was against the manifest weight of the evidence, “the appellate court sits as a ‘thirteenth juror’ and disagrees with the factfinder’s resolution of the conflicting testimony.” *Id.*, quoting *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). Therefore, the Court’s “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. Browning*, 9th Dist. Summit No. 26687, 2013-Ohio-2787, ¶ 14, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶15} Mace testified that he and his family had a long-standing relationship with Bonnie, but that he did not know Theil was Bonnie’s guardian when he called her cell phone. According to Mace, his daughter Ashley called and told him that some woman was harassing her and telling her to stay away from Bonnie. Mace then got Theil’s cell phone number from Ashley and called her to defend his daughter. He testified that he only ever told Theil to stop harassing his daughter and to stop interfering with Bonnie’s relationships. Mace denied yelling or cursing during their phone call and denied ever threatening Theil’s job or possessions. Additionally, Mace denied that he ever told Theil to watch her back.

{¶16} Mace argues that his conviction is against the manifest weight of the evidence because he did not purposely threaten or harass Theil. He avers that his sole purpose in calling Theil was to stop her from harassing his daughter. He relies upon his own testimony as evidence that he never made any threatening statements toward Theil.

{¶17} “This Court will not overturn the trial court’s verdict on a manifest weight of the evidence challenge only because the trier of fact chose to believe certain witness’ testimony over the testimony of others.” *State v. Hill*, 9th Dist. Summit No. 26519, 2013-Ohio-4022, ¶ 15. Although Mace claimed that he never threatened Theil, Theil testified that he yelled at her while using profanity, told her he would see to it that she lost her job and personal possessions, and cautioned that she “had better watch [her] back because [she] would never know when somebody was coming up behind [her].” The trial court, confronted with conflicting evidence, credited Theil’s version of the events. Having reviewed the record, we cannot conclude that this is the

exceptional case where the trier of fact lost its way in convicting Mace. *See Otten*, 33 Ohio App.3d at 340. Accordingly, his conviction for telecommunications harassment is not against the manifest weight of the evidence and his sole assignment of error is overruled.

### III

{¶18} Mace's sole assignment of error is overruled. The judgment of the Wayne County Municipal Court is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Wayne County Municipal Court, County of Wayne, 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(C). 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.

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BETH WHITMORE  
FOR THE COURT

MOORE, J.  
CONCURS.

CARR, P. J.  
CONCURS IN JUDGMENT ONLY.

APPEARANCES:

JOSEPH F. SALZGEBER, Attorney at Law, for Appellant.

DANIEL R. LUTZ, Prosecuting Attorney, and NATHAN R. SHAKER, Assistant Prosecuting Attorney, for Appellee.