[Cite as *State v. Rhines*, 2010-Ohio-3117.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23486
vs.	:	T.C. CASE NO. 09CRB00334
UNDEAN M. RHINES	:	(Criminal Appeal from Municipal Court)
Defendant-Appellant	:	

. . . . . .

O P I N I O N

Rendered on the 2nd day of July, 2010.

. . . . . .

Kent J. Depoorter, Atty. Reg. No. 0058487, City of Moraine Prosecutor's Office, 2325 Wilmington Pike, Kettering, OH 45420
Attorney for Plaintiff-Appellee

Carlo C. McGinnis, Atty. Reg. No. 0019540, 130 W. Second Street, Suite 800, Dayton, OH 45402
Attorney for Defendant-Appellant

. . . . . .

KLINE, J., (By Assignment):

{¶ 1} Undean M. Rhines (hereinafter "Rhines") appeals the judgment of the Kettering Municipal Court, which found her guilty of aggravated menacing, criminal trespass, menacing, and disorderly conduct. On appeal, Rhines contends (1) that there was insufficient evidence to support her convictions and (2) that her convictions were against the manifest weight of the evidence. We disagree. First, after viewing

the evidence in a light most favorable to the prosecution, we believe that any rational trier of fact could have found the essential elements of all four offenses proven beyond a reasonable doubt. And second, we find substantial evidence upon which the trier of fact could have reasonably concluded that all the elements of the four offenses were proven beyond a reasonable doubt. Accordingly, we overrule Rhines's assignment of error and affirm the judgment of the trial court.

I

{¶ 2} On February 26, 2009, Rhines attempted to return a baby crib to the Wal-Mart in Moraine, Ohio. Justin Alredge (hereinafter "Alredge"), Rhines's brother, was also present for this transaction. Rhines did not have a receipt for the crib, but Wal-Mart employees tried to find proof of the alleged purchase in the store's computer system. Tracy Stanfield (hereinafter "Stanfield"), the store's co-manager, assisted Rhines in trying to locate evidence of the purchase. Store employees first searched for the purchase by using Rhines's credit card number. When that did not work, store employees tried to locate the purchase through a discount card that Rhines had allegedly used. Alredge works at a different Wal-Mart, and Rhines claimed that Alredge's employee discount card was used to purchase the crib.

{¶ 3} The searches returned no evidence that Rhines had purchased the crib at that particular Wal-Mart. Rhines became belligerent after Stanfield told her that the store could not accept a return of the crib. Soon, Rhines demanded her money back and started shouting profanities. Sometime during Rhines's encounter with Stanfield, Rhines threatened to spit on Stanfield and kick her "mother-[f----- '] ass." Stanfield asked Rhines to leave the store, but Rhines refused. As a result, Stanfield

called other Wal-Mart employees for assistance.

{¶ 4} Mark Walter (hereinafter "Walter"), the store's asset protection associate, responded to the situation. According to Walter, Rhines continued shouting obscenities and refused to leave the store despite being asked repeatedly to do so. Rhines finally agreed to leave the store only after Stanfield had called the local police.

{¶ 5} Brooks Jason Rutledge (hereinafter "Rutledge"), the store manager, responded to the situation as Rhines was leaving the store. As she was leaving, Rhines took out a piece of gum and started to chew it. While standing near the exit, Rhines tried to spit the piece of gum in the direction of the Wal-Mart employees. When that did not work, Rhines took the piece of gum out of her mouth and threw it at Walter. Walter moved out of the way, and the gum hit Rutledge in the shoulder.

{¶ 6} The police had advised the Wal-Mart employees to get Rhines's license plate number. So, after she had left the building, Walter went into the parking lot looking for Rhines's vehicle. Approximately thirty minutes after she left the store, Walter saw Rhines. Walter moved closer to Rhines's vehicle as Rhines sat in the driver's seat and Alredge loaded the crib into the trunk. After Alredge finished with the crib, he got into the passenger seat of Rhines's automobile. Rhines then started the ignition, turned the vehicle toward Walter, and drove straight at him. Walter jumped into an "island" to avoid being hit.

{¶ 7} As a result of these events, Rhines was charged with aggravated menacing in violation of R.C. 2903.21(A), criminal trespass in violation of R.C. 2911.21(A)(1), menacing in violation of R.C. 2903.22(A), and disorderly conduct in

violation of R.C. 2917.11(A)(1). After Rhines pled not guilty, she had a bench trial in the Kettering Municipal Court. Stanfield, Walter, Rutledge, Rhines, and Alredge all testified at Rhines's trial. Two Moraine police officers also testified. Apparently, a surveillance camera captured video of the Wal-Mart parking lot at the time of the incident involving Rhines and Walter. Officer James R. Hogue (hereinafter "Officer Hogue") testified that he had reviewed the video, but that the video was of little value because the image was dark and Rhines's vehicle was far away from the camera. Officer Hogue assumed that, at that time, the videotape was "either in the property room or the detective section." Transcript at 43. However, neither the state nor Rhines's attorney introduced the video into evidence.

{¶ 8} The trial court found Rhines guilty of all charges. Rhines appeals and asserts the following assignment of error:

ASSIGNMENT OF ERROR

{¶ 9} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FINDING APPELLANT GUILTY OF ALL CHARGES BECAUSE THE STATE'S EVIDENCE WAS INSUFFICIENT TO SUSTAIN CONVICTIONS AND WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

II

{¶ 10} In her sole assignment of error, Rhines contends (1) that insufficient evidence supports her four convictions and (2) that her four convictions are against the manifest weight of the evidence.

A. Sufficiency of the Evidence

{¶ 11} "A sufficiency of the evidence argument challenges whether the State

has presented adequate evidence on each element of the offense to allow the case to go to the jury or to sustain the verdict as a matter of law." *State v. Hancher*, Montgomery App. No. 23515, 2010-Ohio-2507, at ¶41, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. When reviewing a case to determine if the record contains sufficient evidence to support a criminal conviction, we must "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." *State v. Jenks* (1991), 61 Ohio St.3d 259, at paragraph two of the syllabus; *Hancher,* at ¶41; see, also, *Jackson v. Virginia* (1979), 443 U.S. 307, 319.

{¶ 12} The sufficiency-of-the-evidence test raises a "question of law and will not allow a reviewing court to weigh the evidence." *City of Fairborn v. Logan* (June 25, 1991), Greene App. No. 90-CA-93, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175; *Jackson*, 443 U.S. at 319; see, also, *State v. Powell*, 177 Ohio App.3d 825, 2008-Ohio-4171, at ¶22. Instead, the sufficiency-of-the-evidence test "gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. "This court will reserve the issues of the weight given to the evidence and the credibility of witnesses for the trier of fact." *Powell* at ¶22 (internal quotation omitted); see, also, *State v. Thomas* (1982), 70 Ohio St.2d 79, 79-80; *State v. DeHass* (1967), 10 Ohio St.2d 230, at

paragraph one of the syllabus.

1. Aggravated Menacing

{¶ 13} The aggravated menacing charge related to Rhines's conduct in the Wal-Mart parking lot. It is undisputed that Rhines drove her car in Walter's direction. However, Rhines argues that there is insufficient evidence to establish that she "knowingly" caused Walter to believe that Rhines would cause him serious physical harm. Instead, Rhines argues that the evidence "establishes evidence of mistake, accident, or lack of information[.]" Brief of the Appellant p.7.

{¶ 14} Pursuant to R.C. 2903.21(A), "[n]o 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."

{¶ 15} "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).

{¶ 16} We find that sufficient evidence supports Rhines's conviction for aggravated menacing. Here, Walter testified to the following: "And as I'm standing there trying to get her plate, all of a sudden I hear the car start, engine roar, um, and you can hear that she's gunning the engine. She then, at this point, *aims the car basically towards* me." Transcript at 24-25 (emphasis added). Furthermore, Walter testified that Rhines turned her car in Walter's direction before driving at him.

{¶ 17} "Q. When [Rhines] veered to the left to come at you, did she have to

in order to get out of her parking lot? Was it necessary for her to turn left in order to get out of the parking lot?

{¶ 18} "A. No. * * *.

{¶ 19} "Q. And she could have gone straight out of her parking . . .

{¶ 20} "A. Yes. She could have went straight.

{¶ 21} "Q. And avoided you?

{¶ 22} "A. And avoided me altogether.

{¶ 23} "Q. How far were you from the car when she started the vehicle?

{¶ 24} "A. May[be] ten to fifteen feet." Id. at 26-27.

{¶ 25} Later, Walter testified that, if he "wouldn't have jumped into that islander of dirt, [Rhines would] have hit" him. Id. at 27.

{¶ 26} After viewing this testimony in a light most favorable to the prosecution, we believe that any rational trier of fact could have found the essential elements of aggravated menacing proven beyond a reasonable doubt. Rhines could have avoided Walter and exited the parking lot in any number of directions. Instead, she turned her car towards Walter and drove straight at him. Accordingly, any rational trier of fact could have found that Rhines knowingly caused Walter to believe that Rhines would cause him serious physical harm.

2. Criminal Trespass

{¶ 27} Pursuant to R.C. 2911.21(A)(1), "[n]o person, without privilege to do so, shall * * * [k]nowingly enter or remain on the land or premises of another[.]"

{¶ 28} We find that sufficient evidence supports Rhines's conviction for criminal trespass. Here, Stanfield testified that Rhines remained in the store despite

being asked to leave numerous times. Stanfield also testified that Rhines shouted the following obscenities: "I'm not leaving the mother-[f-----'] store"; "You can't make me leave the mother-[f-----'] store"; and "I'm not leaving the mother-[f-----'] store until you give me my money you ignorant, incompetent bitch." Transcript at 12-13. According to Stanfield, Rhines began to leave the store only after the police were called.

{¶ 29} Walter also testified that Rhines refused to leave the store. "What's the first thing that happened? She basically was getting in my fac[e] telling me that basically I couldn't make her leave. The whole time we kept asking her to leave[,] * * * and she was basically kind of in my face, you know, telling me I couldn't make her [f-----'] leave and it was going on from there." Id. at 21-22.

{¶ 30} After viewing this testimony in a light most favorable to the prosecution, we believe that any rational trier of fact could have found that Rhines knowingly remained at the Wal-Mart without being privileged to do so. Thus, sufficient evidence supports Rhines's criminal trespass conviction.

3. Menacing

{¶ 31} Pursuant to R.C. 2903.22(A), "[n]o person shall knowingly cause another to believe that the offender will cause 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."

{¶ 32} We find that sufficient evidence supports Rhines's conviction for menacing. Here, Stanfield testified that Rhines threatened her with physical violence. According to Stanfield, Rhines said, "I'm gonna kick your mother-[f-----']

ass." Transcript at 22. After viewing this testimony in a light most favorable to the prosecution, we believe that any rational trier of fact could have found that Rhines knowingly caused Stanfield to believe that Rhines would cause her physical harm. Thus, sufficient evidence supports Rhines's menacing conviction.

4. Disorderly Conduct

{¶ 33} Pursuant to R.C. 2917.11(A)(1), "[n]o person shall recklessly cause inconvenience, annoyance, or alarm to another by * * * [e]ngaging in fighting, in threatening harm to persons or property, or in violent or turbulent behavior[.]"

{¶ 34} We find that sufficient evidence supports Rhines's conviction for disorderly conduct. Here, the testimony of Stanfield, Walter, and Rutledge established that Rhines engaged in "violent or turbulent behavior." Rhines shouted profanities, disrupted a place of business, and even threw a piece of used bubble-gum at Walter. When Walter moved out of the way, the bubble-gum hit Rutledge in the shoulder. Furthermore, Rhines's behavior caused "inconvenience, annoyance, or alarm" because multiple Wal-Mart employees had to deal with Rhines's behavior. Eventually, the police were also called to deal with the situation. After viewing this evidence in a light most favorable to the prosecution, we believe that any rational trier of fact could have found the essential elements of disorderly conduct proven beyond a reasonable doubt.

{¶ 35} Accordingly, for the foregoing reasons, we find that sufficient evidence supports all four of Rhines's convictions.

B. Manifest Weight of the Evidence

{¶ 36} "The legal concepts of sufficiency of the evidence and weight of the

evidence are both quantitatively and qualitatively different." *Thompkins*, 78 Ohio St.3d 380, at paragraph two of the syllabus. Sufficiency is a test of the adequacy of the evidence. Id. at 386. In contrast, "[w]eight 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." Id. at 387 (internal quotation omitted) (emphasis sic).

{¶ 37} "Although a verdict is supported by sufficient evidence, a court of appeals may nevertheless conclude that the verdict is against the manifest weight of the evidence." *State v. Banks* (1992), 78 Ohio App.3d 206, 214. This is so because a "[r]eview of the manifest weight of evidence is [a] broader inquiry." *State v. Brickles* (Sept. 3, 1999), Montgomery App. No. 98-CRB-1054. When determining whether a criminal conviction is against the manifest weight of the evidence, we "will not reverse a conviction where there is substantial evidence upon which the [trier of fact] could reasonably conclude that all the elements of an offense have been proven beyond a reasonable doubt." *State v. Eskridge* (1988), 38 Ohio St.3d 56, at paragraph two of the syllabus. We "must review the entire record, weigh all of the evidence and all the reasonable inferences, consider the credibility of the witnesses and determine whether in resolving conflicts in the evidence, the fact finder 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. Dossett*, Montgomery App. No. 20997, 2006-Ohio-3367, ¶32, citing *Thompkins,* at paragraph two of the syllabus. However, "[t]he credibility of the witnesses and the weight to be given to their testimony are matters for the trier of facts to resolve." *State v. Alford*, Montgomery

App. No. 23332, 2010-Ohio-2493, at ¶17, citing *DeHass,* at paragraph one of the syllabus.

{¶ 38} Here, we cannot find that any of Rhines's convictions are against the manifest weight of the evidence. In making this finding, we considered the same evidence that we discussed in our resolution of Rhines's sufficiency-of-the-evidence challenge.

{¶ 39} As to the aggravated menacing charge, Rhines essentially contends that her and Alredge's testimony was more credible than Walter's testimony. However, "the cautious exercise of the discretionary power of a court of appeals to find that a judgment is against the manifest weight of the evidence requires that substantial deference be extended to the factfinder's determinations of credibility. The decision whether, and to what extent, to credit the testimony of particular witnesses is within the peculiar competence of the factfinder, who has seen and heard the witness." *Alford,* at ¶18, quoting *State v. Lawson* (Aug. 22, 1997), Montgomery App. No. 16288. Accordingly, "[t]his court will not substitute its judgment for that of the trier of facts on the issue of witness credibility unless it is patently apparent that the trier of facts lost its way in arriving at its verdict." *Alford,* at ¶19, citing *State v. Bradley* (Oct. 24, 1997), Champaign App. No. 97-CA-03. Because we do not believe that the trial court lost its way, we will defer to the trial court on issues of credibility. Accordingly, we find that Rhines's conviction for aggravated menacing is not against the manifest weight of the evidence.

{¶ 40} Rhines's other arguments are also meritless. As to the criminal trespass charge, Rhines apparently contends that she had a right to remain in the

store until the situation was resolved to her satisfaction. Rhines argues that the trial court found that she did not have "any right to insist that any further efforts be made to correct and undo the store's mistaken efforts to retrieve the records confirming the original purchase. In other words, it was found that this 24 hour global business enterprise had no duty to undertake such reasonable efforts for a money paying customer and therefore, [Rhines's] conduct of not promptly leaving the store constituted the crime of criminal trespass." Brief of the Appellant, p. 8-9. However, Stanfield testified that she went to great lengths in attempting to locate Rhines's alleged purchase. And regardless, Rhines lost the privilege to remain in the store when Wal-Mart employees asked her to leave. There is no exception to the criminal-trespass statute for unsatisfactory consumer transactions. Therefore, we find that Rhines's conviction for criminal trespass is not against the manifest weight of the evidence.

{¶ 41} As to the menacing and disorderly conduct charges, Rhines argues that her behavior "was directed at Tracy Stanfield's failed efforts to locate records of a[n] established purchase transaction." Brief of the Appellant, p. 9. For this reason, Rhines apparently argues that her behavior was not criminal in nature. However, we cannot discern Rhines's precise argument because there is no exception to the menacing and disorderly conduct statutes for upset consumers. Stanfield, Walter, and Rutledge all testified as to Rhines's unruly behavior in the store. Rhines and her brother testified to a different version of events, but, again, we will defer to the trial court on issues of credibility. Therefore, we cannot say that the trial court lost its way in finding Rhines guilty of menacing and disorderly conduct.

{¶ 42} After reviewing the record, we find substantial evidence upon which the jury could have reasonably concluded that all the elements of aggravated menacing, criminal trespass, menacing, and disorderly conduct were proven beyond a reasonable doubt. Therefore, we cannot find that the trier of fact clearly lost its way and created such a manifest miscarriage of justice that Rhines's convictions must be reversed.

C. The Final Paragraph of Rhines's Argument

{¶ 43} During Rhines's trial, Officer Hogue testified about a surveillance video of the Wal-Mart parking lot. Officer Hogue said that the video was of poor quality and did not appear to have any evidential value. Presumably for that reason, the state did not introduce the video into evidence. Nevertheless, in the final paragraph of her argument, Rhines writes the following: "It is important to note that the record reflects that [Rhines] indicated that one of the grounds for her appeal included a lack a [sic] incriminating and exculpatory evidence, to-wit the videotapes that were not produced by police witnesses." Brief of the Appellant, p. 9. This statement represents Rhines's entire discussion of the videotape issue.

{¶ 44} After reviewing the final paragraph of Rhines's argument, we cannot discern whether Rhines is arguing (1) that there is insufficient evidence to support her aggravated menacing conviction because the video was not introduced at trial; (2) that her conviction for aggravated menacing is against the weight of the evidence because the video was not introduced at trial; (3) that the state withheld exculpatory evidence; or (4) that her trial counsel was ineffective for failing to subpoena the video (as the state seems to suggest).

{¶ 45} Regardless of the argument, we cannot reverse Rhines's conviction for aggravated menacing because of the missing video. First, we have already rejected Rhines's sufficiency and manifest-weight arguments. Her conviction for aggravated menacing did not require the video evidence. And second, Rhines must prove the exculpatory nature of the surveillance video. *State v. Jackson* (1991), 57 Ohio St.3d 29, 33 (stating that a defendant "must prove a *Brady* [*v. Maryland* (1963), 373 U.S. 83,] violation and denial of due process"); *State v. Bradley* (1989), 42 Ohio St.3d 136, at paragraph two of the syllabus (stating that "[c]ounsel's performance will not be deemed ineffective unless and until counsel's performance is proved [that] prejudice arises from counsel's performance") (citations omitted). However, Rhines has made no effort to demonstrate that the video was actually exculpatory. Thus, we can merely speculate as to the contents of the video, and "[n]either this court nor any other that we know of reverses verdicts on speculation." *State v. Gilliam* (Sept. 30, 1999), Montgomery App. No. 17491.

D.

{¶ 46} Accordingly, for the foregoing reasons, we overrule Rhines's assignment of error and will affirm the judgment of the trial court.

DONOVAN, P.J. And FAIN, J. concur.

(Hon. Roger L. Kline, Fourth District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.)

Copies mailed to:

Kent J. Depoorter, Esq.
Carlo C. McGinnis, Esq.