



{¶ 2} On February 10, 2022, Boggess was served with a protection order by Montgomery County Sheriff deputies. The order, which had been filed by his ex-girlfriend, E.B., prohibited Boggess from contacting E.B. in any manner, including by text.

{¶ 3} After serving Boggess with the order, Deputy Gabrielle Dell and other officers accompanied him to E.B.'s house to get his belongings. Once there, deputies collected most of Boggess' things while he waited at the end of the driveway. While Deputy Dell and her fellow deputies were able to collect most of the belongings, they missed at least one item Boggess apparently needed – a pair of boot insoles.

{¶ 4} Soon after Boggess and the deputies left her house, E.B. received a text message from a number that did not belong to Boggess that stated: “Will you put the insouls [sic] for my boots on the porch so I can warm up my feet please it's cold as fuck out here and please don't have me arrested[.]” State's Exhibit 1. E.B. reported the message to law enforcement officers, who then determined that Boggess had twice before been convicted of violating protection orders.

{¶ 5} Boggess was indicted on one count of violating a protection order pursuant to R.C. 2919.27(A)(1). On January 31, 2023, he was found guilty after a jury trial and was ultimately sentenced to 12 months in the Montgomery County Jail. He appeals, raising a single assignment of error.

## **II. Violating a Protection Order**

{¶ 6} Boggess argues that the trial court erred when it did not grant his motion for acquittal under Crim.R. 29. He contends that the State failed to prove he sent the text message that violated the protection order.

{¶ 7} “When determining a Crim.R. 29 motion, the trial court must consider the evidence in a light most favorable to the state and determine whether reasonable minds could reach different conclusions concerning whether the evidence the state presented, if believed, proves each and every element of the offense charged beyond a reasonable doubt.” *State v. Sowry*, 2004-Ohio-399, 803 N.E.2d 867, ¶ 8 (2d Dist.), citing *State v. Bridgeman*, 55 Ohio St.2d 261, 381 N.E.2d 184 (1978). “A Crim.R. 29 motion must be granted when reasonable minds could only conclude that the evidence fails to prove the elements of the offense.” *Id.* A Crim.R. 29 motion presents an issue of law; therefore, our review of the trial court’s denial is de novo. *State v. Turner*, 2d Dist. Montgomery No. 18866, 2002 WL 10491, \*4 (Jan. 4, 2002).

{¶ 8} Because a Crim.R. 29 motion questions the sufficiency of the evidence, we apply the same standard of review that we use in reviewing the sufficiency of the evidence. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37. “[S]ufficiency is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law.” *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

{¶ 9} As to the underlying offense, violating a protection order (R.C. 2919.27(A)(1)), the State was required to prove that Boggess recklessly violated the terms of an order of protection. Boggess does not contest that he was served with such an order, nor does he challenge the fact that he had prior convictions for the crime, making this a felony; his claim is that he did not send the text message that violated the protection

order.

**{¶ 10}** Boggess' strongest argument is that the State presented no *direct* evidence linking him to the text. The victim, E.B., testified that the text was not from a number she knew was associated with Boggess and that she was uncertain if she had ever seen the number before. For his part, Boggess testified he did not send the text and that he had a different telephone number than the one from which the message came. But even though there was no direct evidence linking Boggess to the text, there was compelling circumstantial evidence.

**{¶ 11}** Under Ohio law, a conviction can be supported solely on the basis of circumstantial evidence. *State v. Nicely*, 39 Ohio St.3d 147, 151, 529 N.E.2d 1236 (1998). “[P]roof of guilt may be made by circumstantial evidence as well as by real evidence and direct or testimonial evidence, or any combination of these three classes of evidence. All three classes have equal probative value, and circumstantial evidence has no less value than the others.” *Id.* See also *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), syllabus (circumstantial evidence and direct evidence have equal probative value); *United States v. Andrino*, 501 F.2d, 1373, 1378 (9th Cir.1974) (“Circumstantial evidence is not less probative than direct evidence, and, in some instances, is even more reliable.”).

**{¶ 12}** In this case, Boggess was served with the protection order by Deputy Dell a couple of hours before the text was sent. He then rode his bike to E.B.'s house to wait at the end of the driveway while deputies retrieved his belongings (as much as he could transport on his bike). He was told by Deputy Dell that if he needed more, he would need to contact law enforcement to assist.

{¶ 13} It appears that one particular item, his boot insoles, was left at E.B.’s house. As a result, E.B. received the following text: “Will you put the insouls [sic] for my boots on the porch so I can warm up my feet please it’s cold as fuck out here and please don’t have me arrested[.]” State’s Exhibit 1. While she testified that she did not recognize the number from which the text message came and that it was not Boggess’ phone number, E.B. testified she was sure the text came from Boggess “because of the context of the message.” Trial Tr. at 101. She did not “believe anyone else could’ve sent that \* \* \* [o]ther than [Boggess].” *Id.*

{¶ 14} As E.B. noted, the context of the message clearly implicated Boggess. No one else would have been concerned about being arrested for sending a text and no one else would have known insoles were left at the house. The evidence, taken in the light most favorable to the State, was such that a reasonable juror could have found beyond a reasonable doubt that Boggess sent the text message that violated the protection order. *Accord State v. McCaleb*, 2d Dist. Greene No. 2005-CA-155, 2006-Ohio-4652 (circumstantial evidence showed text messages were sent from the defendant); *State v. Jackson*, 2d Dist. Montgomery No. 29343, 2022-Ohio-2805. The assignment of error is overruled.

**III. Conclusion**

{¶ 15} The judgment of the trial court will be affirmed.

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WELBAUM, P.J. and HUFFMAN, J., concur.