

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio/City of Toledo

Court of Appeals No. L-09-1092

Appellee

Trial Court Nos. CRB 07-16480
CRB 07-25327

v.

Lawrence M. Taylor

DECISION AND JUDGMENT

Appellant

Decided: February 5, 2010

* * * * *

David Toska, Chief Prosecutor, and Joseph J. Howe,
Assistant Prosecutor, for appellee.

Stephen D. Long, for appellant.

* * * * *

SINGER, J.

{¶ 1} This is a delayed appeal from a decision of the Toledo Municipal Court finding appellant, Lawrence Taylor, guilty of coercion, menacing, and violating a protection order. Upon review, we affirm the decision of the trial court.

{¶ 2} On July 19, 2007, appellant was charged with coercion. The complaint alleged that appellant had threatened to distribute naked photographs of Tasha Lothery to her employer and the public if she did not consent to a sexual relationship with him. Appellant was also charged with menacing. That complaint alleged that appellant had threatened Lothery with physical harm and damage to her car and home. In conjunction with the above charges, the trial court issued a criminal protection order pursuant R.C. 2903.213(G)(2), protecting Lothery and restricting appellant from having any contact with Lothery.

{¶ 3} On October 30, 2007, appellant was charged with violating the protection order. The complaint alleged that appellant had gone to Lothery's place of employment to see her.

{¶ 4} A bench trial commenced on September 30, 2008. Appellant was found guilty of all charges and sentenced to 180 days in jail. Appellant now appeals setting forth the following assignments of error:

{¶ 5} "I. The trial court erred in convicting Mr. Taylor of coercion where it ruled that the misconduct prevented by the threat must, as a matter of law be 'unlawful.'

{¶ 6} "II. Mr. Taylor's conviction for coercion, menacing and violation of a protection order were not supported by sufficient evidence and against the manifest weight of evidence.

{¶ 7} "III. Mr. Taylor was denied his sixth amendment right to be informed of the nature and cause of the accusation where the he [sic] was alleged to have violated a

protection order by being present at Ms. Lothery's place of employment but found guilty based upon some other grounds."

{¶ 8} Appellant's three assignments of error will be considered together.

Appellant contends that his convictions are against the manifest weight of the evidence and are based on insufficient evidence.

{¶ 9} A verdict or finding may be overturned on appeal if it is either against the manifest weight of the evidence or because there is an insufficiency of evidence. In the former, the appeals court acts as a "thirteenth juror" to determine whether the trier of fact 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* (1997), 78 Ohio St.3d 380, 387. In the latter, the court must determine whether the evidence submitted is legally sufficient to support all of the elements of the offense charged. *Id.* at 386-387. Specifically, we must determine whether the state has presented evidence which, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The test is, viewing the evidence in a light most favorable to the prosecution, could any rational trier of fact have found the essential elements of the crime proven beyond a reasonable doubt. *Id.* at 390, *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. See, also, *State v. Eley* (1978), 56 Ohio St.2d 169; *State v. Barns* (1986), 25 Ohio St.3d 203.

{¶ 10} At trial, Lothery testified that she and appellant have been dating on and off for approximately 10 years. On July 14, 2007, Lothery testified that appellant came to

her house and asked her to agree to have sex with him five times a week. Appellant told her that if she did not agree, he would distribute postcards he had made showing Lothery naked and in various poses. The postcards also listed Lothery's name, her address, her phone number, her work address, and her work phone number. He also threatened to break the windows in her house. Lothery testified that she did not agree to appellant's request. She asked appellant to leave and she went inside her house. Lothery also testified that, in violation of the criminal protection order she obtained against appellant, he came to her place of employment on October 25, 2007.

{¶ 11} Appellant testified that he made the postcards at issue, approximately 1,000, so he could embarrass Lothery in front of her family, friends and co-workers. He testified that he wanted to embarrass her because he was tired of her continually cheating on him with other men, including men with whom she worked. Appellant testified that he specifically told Lothery that he intended to send the postcards to her employer. As for the incident on October 25, 2007, appellant claimed he approached Lothery's place of employment hoping to find some other people he knew. When he saw Lothery, he instantly turned away without speaking to her because of the protection order.

{¶ 12} Appellant was convicted of coercion, a violation of R.C. 2905.12 and a misdemeanor of the second degree. The elements are as follows:

{¶ 13} "No person, with purpose to coerce another into taking or refraining from action concerning which the other person has a legal freedom of choice, shall do any of the following:

{¶ 14} "* * *

{¶ 15} "Expose or threaten to expose any matter tending to subject any person to hatred, contempt, or ridicule, to damage any person's personal or business repute, or to impair any person's credit; * * *"

{¶ 16} Appellant contends that the court erred in rejecting his affirmative defense of reasonable response. The affirmative defense of reasonable response is contained in R.C. 2905.12(C) and provides as follows:

{¶ 17} "(C) It is an affirmative defense to a charge under division (A)(3), (4), or (5) of this section that the actor's conduct was a reasonable response to the circumstances which occasioned it, and that his purpose was limited to: (1) Compelling another to refrain from misconduct or to desist from further misconduct; (2) Preventing or redressing a wrong or injustice; (3) Preventing another from taking action for which the actor reasonably believed such other person to be disqualified; (4) Compelling another to take action which the actor reasonably believed such other person to be under a duty to take."

{¶ 18} The committee comments to the above affirmative defense explain that "[T]he [affirmative defense] excuses an offense [of coercion] when the actor's conduct was otherwise innocent and designed to prevent misconduct, redress injustice, thwart another from doing something for which the actor reasonably believed him disqualified, or compel another to do something which the actor reasonably believed him duty bound to do."

{¶ 19} In rejecting appellant's affirmative defense, the trial judge referred to the misconduct element as being "unlawful misconduct." While it is true that the reasonable response defense does not contain the word "unlawful," we find the trial judge's use of this word to be harmless error.

{¶ 20} Lothery testified that appellant used the postcards to coerce her into a sexual relationship. Appellant testified that he used the postcards in an attempt to get Lothery to be faithful to him. Whether the trier of fact believed Lothery or appellant is irrelevant here as the testimony of both parties meets the legal definition of coercion. Further, the evidence shows that appellant's action, specifically, printing 1,000 postcards listing Lothery's personal information, showing her in sexually compromising positions, and threatening to publicly distribute said postcards, was not a reasonable response to Lothery's alleged infidelities. Based on the testimony summarized above and the law, this court cannot say that the trier of facts clearly lost its way or created a manifest miscarriage of justice by finding appellant guilty of coercion. Furthermore, we find that the state presented sufficient evidence from which, when viewed in a light most favorable to the state, a rational trier of facts could have found appellant guilty beyond a reasonable doubt of coercion.

{¶ 21} Appellant was also convicted of menacing, a violation of Toledo Municipal Code 537.06 and a misdemeanor of the fourth degree. The elements of menacing are as follows: "[n]o person shall knowingly cause another to believe that the offender will

cause physical harm to the person or property of such other person or member of his immediate family."

{¶ 22} Here, it is clear that the trier of facts chose to believe the testimony of Lothery that appellant had threatened to harm her and her property. This is a matter of credibility within the province of the trier of facts, not for this court upon appeal. On review, we cannot say that the jury clearly lost its way or perpetrated a manifest miscarriage of justice in finding appellant guilty of menacing. Furthermore, we find that the state presented sufficient evidence from which, when viewed in a light most favorable to the state, a rational trier of fact could have found appellant guilty beyond a reasonable doubt of menacing.

{¶ 23} Finally, appellant was convicted of violating a protection order in violation of Toledo Municipal Code 537.20, a first degree misdemeanor. Toledo Municipal Code 537.20 provides that "no person shall recklessly enter or remain on the land or premises which is the subject of a temporary protection order issued * * *."

{¶ 24} The protection order issued against appellant barred him from entering Lothery's residence, school, business, or place of employment. Appellant contends that the October 25, 2007 encounter took place at a neighborhood center, not Lothery's place of employment and therefore, he could not have violated the protection order. Also, appellant testified that he immediately avoided contact once he saw Lothery. Lothery agreed that the encounter took place outside of her home office but she testified she was

coaching at the neighborhood center as part of her job responsibilities. She also testified that appellant attempted to enter the center after he saw Lothery.

{¶ 25} Once again, the trier of facts chose to believe the testimony of Lothery. This is a matter of credibility within the province of the trier of facts, not for this court upon appeal. On review, we cannot say that the jury clearly lost its way or perpetrated a manifest miscarriage of justice in finding appellant guilty of violating a protection order. Furthermore, we find that the state presented sufficient evidence from which, when viewed in a light most favorable to the state, a rational trier of fact could have found appellant guilty beyond a reasonable doubt of violating a protection order.

{¶ 26} Accordingly, appellant's three assignments of error are found not well-taken.

{¶ 27} On consideration whereof, the judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

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