[Cite as *State v. Glass*, 2012-Ohio-2993.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 11AP-890
v.	:	(C.P.C. No. 09CR-03-1261)
Timothy M. Glass,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on June 29, 2012

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

Brian J. Rigg, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶ 1} Defendant-appellant, Timothy M. Glass ("appellant"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted him of disrupting public services and vandalism. For the following reasons, we conclude that he was not denied his constitutional right to self-representation. We also conclude that there was sufficient evidence to find that appellant committed these offenses, and his convictions were not against the manifest weight of the evidence. Accordingly, we affirm.

I. BACKGROUND

{¶ 2} On February 2, 2009, at approximately 9:15 p.m., appellant arrived at Heather Diepetro's residence to access a computer and some files that she was using in the course of her employment with him. Appellant owned and managed property, and Diepetro worked on related legal matters. Appellant called Diepetro earlier that day to confirm that he would be coming to her residence around 7:00 p.m. to work on an appeal. Diepetro informed appellant that 7:00 p.m. was too late for him to come by to start the work because she had young children and appeals work took so much time that it could not be completed at a reasonable hour.

{¶ 3} When appellant rang her doorbell that evening, Diepetro was in her bed preparing to go to sleep. Her eldest son, Ryan, was in his room in the basement preparing to do the same, and her two youngest children, age 11 and 13, were already asleep. For these reasons, Diepetro did not open the door when appellant arrived.

{¶ 4} Appellant stood on her porch making phone calls for approximately 10 to 15 minutes before returning to his van, which was parked on the street. Instead of leaving, appellant pulled into Diepetro's driveway and laid on the horn for a few minutes before he got out of his van and proceeded to walk to the back of the residence. Neither Diepetro nor Ryan, who was observing appellant's actions with her, could see what appellant was doing or where he was going. A few moments later, they heard a loud noise, which was followed by the electricity in the residence shutting off. Appellant then returned to his van and drove away. At this point, Diepetro called the police.

{¶ 5} Appellant was later pulled over by Officer Guy Cerino after Officer Cerino recognized the vehicle from a police dispatch. As Officer Cerino approached the vehicle, he saw appellant removing the jacket that he was wearing and trying to use it to cover something that was on the floor behind him. When Officer Cerino saw what appellant was doing, he asked whether the item appellant was trying to cover was an electric meter. Appellant responded in the affirmative and Officer Cerino took him into custody.

{¶ 6} On March 2, 2009, appellant was indicted by the Franklin County Grand Jury for disrupting public services (R.C. 2909.04) and vandalism (R.C. 2909.05).

Appellant was also assigned counsel by the court. A trial in August 2010 resulted in a mistrial. After the mistrial, appellant's attorney requested that appellant be evaluated for competency to stand trial, and the trial date was rescheduled from October 4 to November 30, 2010.

{¶ 7} Appellant was declared fit for trial, but the trial was postponed again due to attorney illness. This began a series of continuations that occurred for various reasons, including needing to get jurors for voir dire, wanting the victim to be present, and the court being unavailable. On March 8, 2011, the proceedings were postponed until April 11, 2011, so that appellant could get a new attorney and prepare for trial after his attorney requested to withdraw due to a breakdown in communication. Thus began another series of continuances for a variety of reasons, including additional trial preparation, appellant's attorney having a trial in another county, and the judge being ill. A new attorney was assigned to appellant on August 10, 2011 (the judge noted that it was effective on May 25, 2011).

{¶ 8} On the final continuance order, dated July 26, 2011, appellant noted his objection to the time waivers stating, "I've requested that my [attorney] stop filing tim[e] waivers! I've continuously objected." Appellant did not request to represent himself at this time. In total, there were at least 11 continuances issued in this case, and at least four of these were requested by the defense.

{¶ 9} The jury trial began on September 12, 2011. On this date, appellant asked the court to appoint a new lawyer to his case after presenting a list of concerns about his current representation.

> THE COURT: Well, are you asking me for -- are you asking for new counsel is what you're saying?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: You're not satisfied with Mr. Krapenc?
>
> THE DEFENDANT: I am not, Your Honor.

(Tr. 14.)

{¶ 10} After verifying with Mr. Krapenc that he was prepared to fully, effectively, and professionally represent appellant in trying the case, and after appellant placed his concerns on the record, the court declined to replace him. Upon the rejection of his request for new counsel, appellant requested to represent himself.

> THE COURT: All right. I appreciate your comments. I have all the confidence in the world you're represented by a very fine lawyer. If he were not a very fine lawyer I wouldn't have appointed him to represent you. And he's represented persons in very, very difficult, very, very different situations and always has done so effectively and most professionally. That is the reason I appointed him to represent you in this case
>
> THE DEFENDANT: Yes, Your Honor. In that case I would like to exercise my constitutional rights to represent myself.
>
> THE COURT: You have a constitutional right to represent yourself. But I appointed Mr. Krapenc to represent you, and Mr. Krapenc is going to continue to represent you in this matter.
>
> THE DEFENDANT: I wish to represent myself, Your Honor.

(Tr. 19.)

{¶ 11} At this point, the court asked appellant a series of questions notifying him that he would be held to the same standard as a lawyer and that he would not be given any special treatment should the court allow him to represent himself. Appellant confirmed that he understood the standard to which he would be held, and the court stated that it would allow him to represent himself, with the condition that Mr. Krapenc and an associate would remain at the table with appellant to ensure he had effective representation during the trial. Appellant then attempted to discharge Mr. Krapenc, but the court did not allow it.

{¶ 12} When the court signaled that it was ready to proceed with the trial, appellant stated that he was not prepared to proceed and represent himself at that time. After some additional discussion, the court denied appellant's request to represent himself and the trial continued.

> THE DEFENDANT: Your Honor?

THE COURT: Yes, sir.

THE DEFENDANT: I'm not prepared to proceed. I have not even received a copy of discovery.

THE COURT: Well, I am di[s]appointed you are not ready to proceed, but the Court is ready to proceed and we will proceed at this time. This case has been on the Court's docket for some time, Mr. Krapenc indicated to me just within the last five minutes he is ready to proceed to trial and we will proceed to trial. So if you wish to proceed to trial and represent yourself, you will do so but you will do so at your own peril. Mr. Krapenc, and I am bending over backwards to give you every benefit, Mr. Glass, Mr. Krapenc just indicated to me he is prepared to go to trial and represent you. So this case is going to proceed to trial.

THE DEFENDANT: If I may, Your Honor. Since I have no witnesses, and I have no evidence because my attorney has not subpoenaed any witnesses, he's not subpoenaed any evidence, and I haven't seen discovery, that puts me at a severe prejudice as far as - -

THE COURT: Mr. Glass, let [me] ask you one last time, do you want Mr. Krapenc to represent you?

THE DEFENDANT: No, Your Honor.

THE COURT: And in light of the fact, in light of the fact that you have not prepared for this case, Mr. Krapenc will represent you. I am not going to get into an arguement [sic] with you, Mr. Glass, because I want to make sure that you're well represented, Mr. Krapenc will continue to represent you.

MR. KRAPENC: The record should refelct [sic] we have reviewed the discovery with Mr. Glass, he's aware what the evidence is. He sat here during the first trial and heard every witness, essentially, testify. He mat [sic] not have a physical copy, he certainly is aware of what the evidence is.

THE COURT: You're prepared to go to trial?

MR. KRAPENC: I am prepared.

> THE COURT: Mr. Glass, I am going to bring the prospective jury in and we will proceed.
>
> THE DEFENDANT: So am I being denied my constitutional right to represent myself?
>
> THE COURT: You are being denied, the fact that you have just told me that you cannot effectively represent yourself. This case is scheduled for trial today. And Mr. Krapenc has just told me that he is prepared to represent you. He said he can do so effectively, professionally, and this case is on this court's docket for trial today and we will proceed.
>
> THE DEFENDANT: Can I simply have a continuance so I can prepare for trial?
>
> THE COURT: No. The continuance is overruled.

(Tr. 21-23.)

{¶ 13} During the trial, testimony was presented by Steven Garnick, the general manager of the city of Westerville's electricity division. Garnick testified that in almost every home serviced by the city, removing the electric meter will interrupt the service to that home, and that to remove a meter, a ring seal or cover would have needed to be broken. Simply removing or breaking the seal is not enough on its own to interrupt the flow of electricity. Additionally, Garnick testified that the electric meters are necessary for Westerville to provide electricity to the public.

{¶ 14} The jury found appellant guilty of disrupting public services and vandalism on September 13, 2011. The trial court merged the convictions for purposes of sentencing and sentenced appellant to six months in prison to be served concurrent with another sentence he was serving. At the sentencing hearing, the court asked appellant whether he wished to make a statement.

> THE COURT: I did appoint Mr. Krapenc to represent you. I think you had counsel appointed by the court before that. This is your opportunity to make a statement if you wish?
>
> THE DEFENDANT: Yes, Your Honor. I think my attorney he did a pretty good job.

(Tr. 219-20.)

II. ASSIGNMENTS OF ERROR

{¶ 15} Appellant timely filed a notice of appeal and now states the following assignments of error:

> [I.] APPELLANT WAS DENIED HIS RIGHT TO COUNSEL UNDER THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF OHIO WHEN THE TRIAL COURT REFUSED TO ALLOW THE DEFENDANT TO REPRESENT HIMSELF PRO SE AND ALLOW A CONTINUANCE OF THE TRIAL DATE.
>
> [II.] THE VERDICT IS AGAINST THE SUFFICIENCY AND MANIFEST WEIGHT OF THE EVIDENCE.
>
> [III.] THERE WAS INSUFFICIENT EVIDENCE TO CONVICT THE DEFENDANT.

III. DISCUSSION

A. First Assignment: Right To Counsel

{¶ 16} In his first assignment of error, appellant contends that the lower court erred in refusing his request for new counsel, his request to represent himself, and his request for a continuance to be granted so that he could prepare to represent himself.

{¶ 17} The United States Constitution, made applicable to states by the Sixth and Fourteenth Amendments, as well as Section 10, Article I of the Ohio Constitution, guarantees a criminal defendant the right to "professionally competent, effective representation." *State v. Brown*, 10th Dist. No. 01AP-587, 2002-Ohio-2802, ¶ 29. This right does not mean that the defendant will agree with every professional decision that his appointed counsel makes, nor does it require that the defendant and his counsel get along on a personal level. "[I]n order to discharge a court-appointed attorney, a defendant must demonstrate a significant breakdown in the attorney-client relationship—one of such magnitude so as to jeopardize the defendant's right to professionally competent, effective representation." *Id.*, citing *State v. Coleman*, 37 Ohio St.3d 286 (1988), paragraph four of the syllabus.

{¶ 18} In this case, appellant was permitted to state his concerns regarding his representation to the court. Once appellant finished his statement, the court asked Mr. Krapenc whether he was prepared to represent appellant, to which Mr. Krepnac responded, "Yes. I only have one concern as to I don't know yet if Mr. Glass is going to testify." (Tr. 17.) The trial proceeded from that point with no additional concerns regarding representation being brought to the court.

{¶ 19} Appellant also did not have any complaints to add to the record at the end of the trial. When the court asked appellant whether he had anything to say during the sentencing hearing, appellant himself said that he thought Mr. Krapenc did a "pretty good job" of representing him, to which the court responded that he believed Mr. Krapenc was effective. There is nothing in the record that supports appellant's contention that the court's refusal to appoint another attorney to his case violated his constitutional right to due process.

{¶ 20} Appellant also argues that his right to self-representation was violated when the court refused to allow him to proceed pro se. We disagree.

{¶ 21} The Supreme Court of Ohio has determined that "a defendant * * * has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he knowingly, voluntarily, and intelligently elects to do so." *State v. Gibson*, 45 Ohio St.2d 366, 377-78 (1976), citing *Faretta v. California*, 422 U.S. 806 (1975). However, this request must be unequivocally and timely asserted, and not used merely as a delay tactic. *State v. Cassano*, 96 Ohio St.3d 94, 2002-Ohio-3751, citing *Jackson v. Ylst*, 921 F.2d 882 (9th Cir.1990), and *United States v. Frazier-El*, 204 F.3d 553 (4th Cir.2000). "On appeal, where a criminal defendant challenges the denial of a tardy request for self-representation, the court reviews the trial court's ruling under the standard for abuse of discretion." *State v. Gordon*, 10th Dist. No. 03AP-281, 2004-Ohio-2644, ¶ 30. When a trial court is determining whether to grant a defendant's request for self-representation after the trial has begun, it must weigh the defendant's right to self-representation against the potential disruption of any proceedings already in progress. *Id.* at ¶ 31. Factors to be used in making this determination include the following: "the quality of

current counsel's representation, whether defendant genuinely wished to conduct his own defense or was engaging in a tactic to delay the trial, whether permitting self-representation would unduly delay the proceedings, whether defendant expressed dissatisfaction with counsel's performance prior to making the request for self-representation, whether previous delays occurred or a prior mistrial was involved, and the proclivity of defendant to change attorneys." *Id.*, citing numerous sources.

{¶ 22} Here, appellant did not seek to represent himself until his request for new counsel was denied after the start of the trial. Appellant had an attorney before Mr. Krapenc who requested to be removed from the case due to a breakdown in communication with appellant. Mr. Krapenc had previously discussed appellant's expressed concerns with appellant, explaining to him why he was making the professional choices he made in his representation of appellant, as well as the proper time to bring the motions appellant wanted him to make. Mr. Krapenc also stated that he was confident that he would proceed to represent appellant in an effective and professionally competent manner.

{¶ 23} When the trial court was considering whether to grant appellant's request to represent himself, appellant stated he would have required yet another continuance, for an undisclosed amount of time, in order to prepare for trial. He claimed that he had no witnesses, no evidence, and had been unable to review the discovery for the case. Appellant sat through the first trial and thus had a chance to see all of the witnesses and available evidence; appellant's claim that he had not seen any evidence or any of the witnesses rings false here. Mr. Krapenc also stated that he reviewed the evidence with appellant after he was assigned to represent him.

{¶ 24} We note, too, that appellant himself had objected to delays in the proceedings. In July 2011, he said that he wanted his attorney to stop filing time waivers and claimed that he had been continuously objecting to his attorney signing them in the past. The first trial ended in a mistrial. The second trial was initially scheduled to take place almost a year before it actually did, and already had been subjected to multiple continuances.

{¶ 25} Under these circumstances, we cannot conclude that the court abused its discretion in denying appellant's request to represent himself. Appellant was not prepared at the time of the trial to represent himself, and he did not make the request until the day the trial was to begin.

{¶ 26} Finally, appellant asserts that the lower court erred in refusing to grant him a continuance for time to prepare for trial. Whether to grant or deny a continuance is at the discretion of the trial court, and we will only reverse a denial if there has been an abuse of discretion. *Brown* at ¶ 30, citing *Ungar v. Sarafite,* 376 U.S. 575, 589 (1964). Factors to consider when ruling on a motion for continuance include the length of the delay requested, whether there have been other continuances, the inconvenience to the parties, witnesses, and court, whether the request is legitimate or meant to delay the proceedings, whether the defendant contributed to the circumstances giving rise to the need for a continuance, and any other factors relevant to that particular case. *Id.*

{¶ 27} In this case, appellant did not state how much time would be needed for him to prepare for trial. However, given the fact that appellant was claiming to have had no discovery, no evidence, and no witnesses, it is not unreasonable to assume that the continuance would have been rather lengthy.

{¶ 28} Given this case's history, and it's propensity to require continuances, as well as the fact that it was supposed to take place almost a year before the date it actually began, it was not unreasonable for the court to refuse to grant yet another continuance so that appellant could represent himself.

{¶ 29} For these reasons, we overrule appellant's first assignment of error.

B. Second and Third Assignments of Error: Sufficiency and Manifest Weight of the Evidence.

{¶ 30} In his second and third assignments of error, appellant contends that the verdicts were not supported by sufficient evidence and were against the manifest weight of the evidence. We disagree.

{¶ 31} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). We examine the evidence in the light most

favorable to the state and conclude whether any rational trier of fact could have found that the state proved beyond a reasonable doubt the essential elements of the crime. *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶ 78. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Jenks* at 273. In determining whether a conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *See Jenks*, paragraph two of the syllabus; *Yarbrough* at ¶ 79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶ 32} In determining whether a verdict is against the manifest weight of the evidence, we sit as a "thirteenth juror." *Thompkins* at 387. Thus, we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. *Id.* Additionally, we 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.' " *Id.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). We reverse a conviction on manifest weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact * * * unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶ 10, quoting *State v. Long*, 10th Dist. No. 96APA04-511 (Feb. 6, 1997).

1. Disrupting Public Services

{¶ 33} The jury found appellant guilty of disrupting public services. Under R.C. 2909.04(A)(2), "No person, purposely by any means or knowingly by damaging or tampering with any property, shall * * * [i]nterrupt or impair * * * power, or other utility service to the public." Here, appellant admitted to purposely removing the meter from Diepetro's home after she refused to answer her door. By removing the electric meter

from Diepetro's home, appellant caused the electrical services to her home to be interrupted.

{¶ 34} Appellant argues that the state could not prove an interruption of Diepetro's services because she was able to call the police using her cell phone, citing *State v. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937. The Supreme Court's decision in *Robinson* does not require a different result, as appellant suggests. In its decision, the Supreme Court held that destruction of a single private or cellular telephone could support a conviction under R.C. 2909.04(A)(3) if the conduct substantially impairs the response of law enforcement or medical personnel. Here, appellant's conviction under R.C. 2909.04(A)(2) had nothing to do with the victim's ability to use her cell phone. Rather, the conviction arose from appellant's removal of the victim's electric meter and the resulting interruption to the electrical service to her home.

{¶ 35} Appellant admitted to Officer Cerino that he removed the electric meter; that removal caused an interruption to Diepetro's service. This evidence was sufficient to support a conviction for disrupting public services, and it was not against the manifest weight of the evidence.

2. Vandalism

{¶ 36} The jury also convicted appellant of vandalism. Under R.C. 2909.05(B)(1)(b), "No person shall knowingly cause physical harm to property that is owned or possessed by another, when * * * [r]egardless of the value of the property or the amount of damage done, the property or its equivalent is necessary in order for its owner or possessor to engage in the owner's or possessor's profession, business, trade, or occupation." Here, appellant had to break the seal, which was owned by the city of Westerville and was protecting the electric meter, in order to remove it. Diepetro and Ryan both testified to seeing appellant go to the back of the house and to hearing a loud noise before their electricity went off. It was reasonable for the jury to assume that the loud noise was appellant breaking the seal to remove the electric meter.

{¶ 37} There was no evidence that the seal protecting Diepetro's electric meter had been broken prior to appellant's interference. While the electricity will still flow after the seal is broken, the seal is necessary to protect the electric meter from harm,

and unauthorized removal, and to prevent people from stealing electricity from the city. It is immaterial that the seals themselves are not very expensive; what matters here is that the seal is necessary for the city of Westerville to conduct its business of providing electricity to the public, in this case, Diepetro.

{¶ 38} The testimony before the trial court was sufficient for the jury to convict appellant of vandalism, and that conviction was not against the manifest weight of the evidence.

{¶ 39} For the foregoing reasons, appellant's second and third assignments of error are overruled.

IV. CONCLUSION

{¶ 40} In summary, we overrule appellant's first, second, and third assignments of error. Accordingly, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.