[Cite as *State v. Schnebeli*, 2019-Ohio-860.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Craig R. Baldwin, J.
	:	Hon. Earle E. Wise, Jr., J.
-vs-	:	
	:	
MANDY SCHNEBELI	:	Case No. 18-CA-47
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Common Pleas Court Case No. E2018-003
JUDGMENT:	Affirmed
DATE OF JUDGMENT:	March 11, 2019

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
NATALIE NOYES 20th South Second Street Fourth Floor Newark, OH 43055	ROBIN LYN GREEN P.O. Box 157 Newark, OH 43058

Wise, Earle, J.

{¶ 1} Defendant-Appellant Mandy Schnebeli appeals the May 3, 2018 judgment of conviction and sentence of the Licking County, Ohio Court of Common Pleas Juvenile Division finding her guilty of one count of contributing to the unruliness of a minor. Plaintiff-Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶ 2} V.M is the child of Mandy Schnebeli and Joseph Maitlen. On January 19, 2018 a complaint was filed in the Licking County Juvenile Court alleging parents had violated section 2919.24(B)(2) of the Ohio Revised Code, contributing to the unruliness of a child. The complaint alleged that parents acted in a way tending to cause 10 year-old V.M to become an unruly child as defined in R.C. 2151.022(B). Specifically, the complaint alleged that parents allowed V.M to be absent from school without a legitimate excuse for 30 or more consecutive hours, 42 or more hours within a month, or 72 or more hours within the 2017-2018 school year.

{¶ 3} A joint trial was held on April 4, 2018. Kristopher Gladstone, a Licking County Attendance Officer, testified for the state. He indicated that students are referred to him by a student's school after they have missed 30 or more consecutive hours unexcused, 42 hours unexcused within a month, or 72 hours unexcused within a year. V.M is a student at Heath Middle School in Licking County, Ohio. His case was referred to Gladstone by the school in November of 2017, after it was reported to Gladstone that V.M had missed 42 hours unexcused. The school provided Gladstone with documentation of this fact via a shared computer program.

{¶ 4} On November 5, 2017, Gladstone attempted to contact parents by telephone to schedule an absence intervention meeting with them, himself, and V.M's principal. One phone number he attempted was invalid. At the second number, Gladstone reached only a voice mailbox and left a message. On November 6, 2017, Gladstone unsuccessfully attempted to contact parents by phone again. He therefore sent a letter to parents advising them that the intervention meeting was scheduled for November 13, 2017. Parents failed to show for the meeting, and V.M was not in school that day.

{¶ 5} The same day, Gladstone went to the family's residence at approximately 10:30 a.m. and found parents and V.M home. V.M was sleeping. Parents advised Gladstone that V.M hated school and that there were issues between themselves and school staff. Gladstone made parents aware of the intervention plan and went over the plan with them. Parents declined Gladstone's offer to make any changes to the plan. Parents were then provided with a copy of the intervention plan and advised that if V.M missed 30 consecutive hours without an excuse or 42 hours within the following month, the matter would be turned over to the juvenile court. V.M's attendance did not improve.

{¶ 6} Gladstone testified at trial, however, that he does not personally track a student's attendance. Rather, this information is compiled by the school, and then shared with Gladstone through a shared computer program. Gladstone has no personal knowledge as to whether the attendance record is accurate. When Gladstone met with parents, however, they did not challenge the stated absences, nor did parents challenge the absences at trial.

{¶ 7} Juvenile Probation Officer Jordan Gallegos also testified for the state. Gallegos met with V.M's parents on December 18, 2017 when they appeared in juvenile

court to file unruly charges on V.M. They were provided with the appropriate paperwork for both children. Gallegos spoke with the family for approximately 30 minutes, however, parents ultimately decided against filing the complaint.

{¶ 8} William Ward is a Licking County Juvenile Court Officer and was the state's final witness. Ward was assigned to parent's case during the pendency of parent's case and was to monitor V.M's attendance. Parents never denied V.M's failure to attend school and told Ward they were unable to get V.M to attend school because he had an "aversion" to going to school.

{¶ 9} At the conclusion of state's evidence, the trial court excluded state's exhibit D, V.M's school attendance record. The court found the state had failed to establish the document was "in fact a certified copy of the attendance record and how it was formed…." Given this ruling, parents moved to dismiss the matter as the state had failed to prove the requisite number of hours missed.

{¶ 10} The trial court granted the motion in part, agreeing that without exhibit D, the state had produced no evidence that V.M was absent for 30 or more consecutive hours, nor that he had missed 72 or more hours in a school year. The court denied the motion, however, as it pertained to 42 hours missed in one month. The court found the state had presented a prima fascia case that V.M missed 42 or more hours in one month, specifically, from October 2, 2017 to November 2, 2017.

{¶ 11} Parents then each testified on their own behalf. Father does not work, and mother did not work until November 21, 2017, thereby being home with V.M full time between October 2, 2017 and November 2, 2017. Parents alleged that V.M would not go to school because a teacher had embarrassed him and he's a very sensitive child. They

claimed they asked to have his class changed, but that never took place. However, parents never met with the teacher that V.M allegedly had this issue with. Parents had their own transportation and could take V.M to school. There is also a school bus available to take V.M, but V.M frequently missed the bus. According to mother, V.M dislikes the crowd and the noise of the bus that early in the morning.

{¶ 12} Parents alleged they missed the scheduled absence intervention meeting because they never received the letter advising of the meeting and never received a phone call. Neither, however, denied that V.M was not attending school prior to Gladstone's visit. Parents stated they considered sending V.M to a school counselor, but since that did not work for their older child, they decided it would not work for V.M and took no action. Although parents testified they tried grounding V.M and taking away video games as punishment for not going to school, the first concrete action parents took to find help getting V.M to attend school did not take place until December 18, 2017 when parents went to the juvenile court to file unruly charges, but then did not follow through. According to parents, it was Gallegos who recommended they refrain from filing the charges.

{¶ 13} At the conclusion of evidence, the trial court found it was undisputed that parents were aware that V.M was missing a great deal of school, but took no corrective action until late December of 2017, and never contacted the teacher that allegedly caused this behavior in V.M. The trial court found, therefore, that parents were guilty of contributing to the unruliness of a minor between October 2, 2017 and November 2, 2017. Parents were sentenced to 30 days in jail, suspended and placed on 24 months community control.

{¶ 14} Mother filed an appeal, and the matter is now before this court for consideration. She raises one assignment of error:

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{¶ 15} "THE TRIAL ERRED IN FINDING, BEYOND A REASONABLE DOUBT, THAT APPELLANT WAS GUILTY OF CONTRIBUTING TO THE UNRULINESS OF A MINOR CHILD. THE JUDGMENT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶ 16} Mother argues her conviction is against the sufficiency and manifest weight of the evidence. We disagree.

{¶ 17} On review for sufficiency, our task is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991). "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." *Jenks* at paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). On review for manifest weight, we are to examine 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 jury 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. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). See also, *State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997). The granting of a new trial "should be exercised only in the

exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶ 18} Parents were charged with one count of contributing to the unruliness of a minor pursuant to R.C. 2919.24(B)(2). That section states that no parent shall act in a way tending to cause a child to become an unruly child as defined in R.C. 2151.022(B). The state alleged mother violated this section by failing to make V.M attend school.

{¶ 19} Mother argues that because the state failed to establish a specific number of hours that V.M missed school, there is insufficient evidence to support her conviction. It is accurate that although the state presented documentation of V.M's attendance, that documentation was not properly authenticated and was not offered into evidence through the creator of the record. Gladstone testified that although he has "read only" access to a student's attendance record, he has no independent knowledge as to whether or not it is accurate. The trial court therefore excluded the document and narrowed the dates under consideration to October 2, 2017 through November 2, 2017.

{¶ 20} In finding parents guilty of contributing the trial court stated:

> THE COURT: All right. This is the finding of the Court. In the fall of 2017, the Court finds beyond all reasonable doubt that the parents knew their son was missing a great deal of school. That's undisputed. They knew their son was missing a great deal of school. The mother says, well, I didn't know he was missing so much school that it could result in criminal charges. Well, I don't care about that. They knew he was missing a great deal of school.

> The mother also said, and evidence is consistent with mother's testimony, that the parents took no corrective action from any outside services until late November 2017 or early December 2017. That is mother's testimony. The parents took no corrective action from any outside sources, didn't ask for help until late November of 2017 or early December of 2017.
>
> At no time did they ever contact the teacher. I can't imagine, I cannot fathom my child or a child – any child telling the parents that I've been made the object of ridicule or my teacher's making fun of me and the parents not contacting the teacher immediately. ***
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> He's 10 at the time of the – of the attendance problem. I would have camped out in front of the school until I had a chance to talk to the teacher, because you're going solely upon what your son is saying. I'm not saying your son didn't tell the truth, but I can't imagine not confronting the teacher.
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> As I indicated earlier, I'm restricting the Court's findings to the period of time from October 2nd, 2017, through November the 2nd, 2017. And on that basis, the Court finds and enters a finding of guilty. * * *.

{¶ 21} Transcript of trial 139-141.

{¶ 22} Mother argues that even though the trial court restricted its finding of guilt to this period, there was still no evidence presented to show V.M had missed 42 hours of school within that time period. The state counters that it was not required to prove

unruliness beyond a reasonable doubt, but rather that mother acted in a way tending to cause her child to become unruly.

{¶ 23} In support, the state cites *State v. Gans*, 168 Ohio St. 174, 151 N.E.2d 709 (1958). *Gans* provides that where it is charged that a defendant acted in a way tending to cause delinquency in a child, it is not necessary to establish an actual delinquency for a conviction. Rather, the state must establish only that the acts of the defendant were of such a nature that they would tend to cause delinquency in such child, as delinquency is defined in Section 2151.02, Revised Code. *Gans*, at paragraph one of the syllabus.

{¶ 24} We applied the holding of *Gans* in *State v. Collins*, 5th Dist. No. CA-7312, 1988 WL 37997 (March 28, 1988). In that matter, a juvenile was sent by law enforcement officers into defendant's place of business to attempt to purchase alcohol, and defendant sold alcohol to the juvenile. Defendant was later convicted of contributing to the unruliness of a minor. Defendant appealed arguing that since the juvenile was acting at the behest of police, the juvenile could not be found to be unruly, and therefore defendant could not be guilty of contributing to the unruliness of a minor. In finding *Gans* applicable, we explained:

> [T]he State need not prove the unruliness of the minor in order to obtain a conviction for violating R.C. 2919.24(A)(2). Appellant's argument that she cannot be guilty of violating R.C. 2919.24(A)(2) because the minor in the instant case cannot, as a matter of law, be unruly because he was under the control of, as well as following the instructions of, the police fails as a consequence. It is a question of

> fact. The issue of whether the prohibited conduct "tends to cause" the minor to become unruly - the nexus between defendant's actions and the effect on the juvenile - is a question of fact. In the absence of a record demonstration of error in the court's jury charge and any assigned error challenging the sufficiency of the evidence of "tending to cause unruliness," we must defer to the verdict of the jury-factfinder. Compare *State v. McLaughlin* (1965), 4 Ohio App.2d 327, 33 O.O.2d 389, 212 N.E.2d 635 (discussing the nexus required between the conduct and future delinquency). The issue in this case is not whether a minor is unruly if he acts under police instruction and supervision; the issue is whether appellant's act will tend to cause the minor to become unruly.
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> The trial court did not err in following and applying *Gans* in the instant case.

{¶ 25} *Collins* *2.

{¶ 26} So too here. The question is not whether there was sufficient evidence to establish V.M was unruly. Rather, the question is whether the state produced sufficient evidence to show mother acted in a manner that would tend to cause V.M to become unruly as defined in R.C. 2151.022 between October 2, 2017 and November 2, 2017.

{¶ 27} V.M was 10 years-old during the relevant time frame. Although parents claimed they asked for V.M's class to be changed, parents failed to follow up with V.M's allegation that there was friction between he and a teacher, and never spoke with that

teacher. T. 82, 85. To get to school, V.M had to get on the bus. If he missed the bus, parents needed to drive him to school. Mother acknowledged the availability of a bus, but made excuses for failing to make sure V.M got on the bus by stating " … it is really, really crowded and really, really loud and he does not like all that noise that early in the morning." T. 102-103. She further testified to taking V.M to school herself only once wherein upon arriving, V.M refused to get out of the car. Asked why she did not enlist help from school personnel that day, mother answered she was "…not going to have a stranger pull my son out of the car." T. 103-104. Mother was further aware of the availability of counseling for her son at school, but failed to even attempt to engage her son in the same because identical counseling failed for her daughter. T. 86. In fact, parents sought no outside help and took no concrete action until December 18, 2017 when they showed up in the juvenile court to file unruly charges. In short, the record demonstrates parents enabled V.M's behavior for several months, including the dates considered by the trial court, and such enabling tended to cause V.M to become an unruly child. We further find the trial court did not lose its way in so finding.

{¶ 28} Mother's sole assignment of error is overruled.

{¶ 29} The judgment of conviction and sentence of the Licking County Court of Common Pleas Juvenile Division is affirmed.

By Wise, Earle, J.

Gwin, P.J. and

Baldwin, J. concur.

EEW/rw