

COURT OF APPEALS
TUSCARAWAS COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

HAROLD E. MANION, III

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Craig R. Baldwin, J.

Hon. Earle E. Wise, Jr., J.

Case No. 2020 AP 03 0010

O P I N I O N

CHARACTER OF PROCEEDINGS:

Appeal from the Tuscarawas County
Court of Common Pleas, Case No. 2019
CR 11 0454

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

August 25, 2020

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Hoffman, P.J.

{¶1} Appellant Harold E. Manion, III, appeals the judgment entered by the Tuscarawas County Common Pleas Court convicting him of violating a protection order (R.C. 2919.27(A)(2), (B)(3)) and sentencing him to twelve months incarceration. Appellee is the state of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} Deputy David DiGenova of the Tuscarawas County Sheriff's Office served a protection order on Appellant on August 9, 2019. The order named the protected person as Margaret Peterson, and stated Appellant "shall not initiate or have any contact with the protected person named in the order," and further Appellant "shall not cause or encourage any other person to do any act prohibited by this order."

{¶3} Officer Brian Shurtz of the Ohio Adult Parole Authority was assigned to supervise Appellant in 2017. On September 12, 2019, while Appellant was residing in the Tuscarawas County Jail, Shurtz met with Appellant's mother. Appellant's mother gave Shurtz a letter she received from Appellant which stated in pertinent part:

I just wanted to write and tell you I love you all and I go to Court on September twenty-third at eight forty-five. I might get up to five years in prison all because of Margie. I never did nothing at all. I come back from my hearing and Margie gets me on drugs and look I get charged with agg. burglary, burglary, and two counts of protection order....They could give me over ten years for Margie's bullshit....Just Margie did this bullshit to me and it really, really hurts....Mom can you please try to get a hold of Margie to help me in Court?

{¶4} Tr. 37-38.

{¶5} Appellant was indicted on one count of violating a protection order, with a specification of a prior conviction for violating a protection order. The case proceeded to jury trial. The jury returned a verdict of guilty. Appellant was sentenced to 12 months incarceration, to be served concurrently with the sentence imposed in Case No. 2019 CR 08 0349 (App. No. 2020 AP 03 0009). It is from the February 25, 2020 judgment of conviction and sentence Appellant prosecutes this appeal, assigning as error:

THE STATE FAILED TO PRODUCE ENOUGH EVIDENCE TO
SUSTAIN A CONVICTION.

{¶6} In his sole assignment of error, Appellant argues the evidence is insufficient to identify the person named in the protection order, Margaret Peterson, as the “Margie” referred to in the letter he sent his parents from jail, in which he asked his mother to contact Margie.

{¶7} An appellate court's function when reviewing the sufficiency of the evidence is to determine 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*, 61 Ohio St. 3d 259, 574 N.E.2d 492, paragraph two of the syllabus (1991).

{¶8} Appellant was convicted of violating a protection order in violation of R.C. 2919.27:

No person shall recklessly violate the terms of any of the following:

(2) A protection order issued pursuant to section 2151.34, 2903.213, or 2903.214 of the Revised Code[.]

{¶9} Officer Shurtz testified he was aware Appellant had a protection order with Margie Peterson. Shurtz had met Peterson and possessed her contact information because Appellant resided with her for a period of time while Appellant was under Shurtz's supervision. Further, in addition to the court-issued protection order, the Adult Parole Authority had ordered Appellant not to have contact with Margie. Shurtz had personally arrested Appellant at Margie Peterson's residence on a prior occasion.

{¶10} Officer Shurtz testified as far as he was aware, Appellant and Margie were no longer in a relationship. "He [Appellant] was in jail and that protection order was in place and she was cooperating with that process." Tr. 39. Shurtz testified Appellant's contact with Margie was a consistent issue in his supervision of Appellant. Appellant had a history of being at Margie's residence, not always with her permission, and Shurtz had spoken to Appellant about not attempting to contact Margie.

{¶11} On cross-examination, the following colloquy took place between Appellant's counsel and Shurtz:

Q. And also to the best of your knowledge, there's been several protection orders in place that, and there's been contact between Margie and Harold, correct?

A. Correct.

{¶12} Tr. 42-43.

{¶13} Officer Shurtz testified on re-direct that in August, 2019, Appellant was in Margie's home without her permission and in violation of the protection order, and this incident was why Appellant was in jail on September 12, 2019. Shurtz testified this incident occurring in August, 2019, gave rise to the charges Appellant referred to in his letter to his parents. He testified Appellant was indicted for burglary in that case, and Margie Peterson was the alleged victim in the case. Shurtz testified throughout his history of supervising Appellant's parole, Margie had contacted the parole office multiple times, requesting Shurtz remove Appellant from her residence. He testified the reason Appellant was ordered to have no contact with Margie as a condition of his parole, whether or not a protection order was in place at the time, was to protect Margie. Further given the history between Appellant and Margie, Shurtz believed the order was in Appellant's best interests.

{¶14} In closing argument, Appellant did not argue there was no evidence to demonstrate the "Margie" in the letter was the Margaret Peterson named in the protection order. His sole argument to the jury was there was no indication Appellant believed his mother would get in touch with Margie, and he was merely expressing frustration in the letter to his parents.

{¶15} Officer Shurtz had extensive knowledge of both the legal and personal history between Appellant and Margie Peterson. He knew there was a protection order in place. He knew where Margie lived, and had her contact information. He had previously arrested Appellant in her home. Shurtz testified the charges on which Appellant was in jail at the time he wrote the letter originated from an incident at the home

of Margie Peterson. From Shurtz's testimony, the jury could conclude the Margie Peterson named in the protection order was the same "Margie" Appellant referred to in his letter. We find the conviction is supported by sufficient evidence.

{¶16} The assignment of error is overruled. The judgment of the Tuscarawas County Common Pleas Court is affirmed.

By: Hoffman, P.J.

Baldwin, J. and

Wise, Earle, J. concur

