

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2014-10-208
- vs -	:	<u>OPINION</u>
	:	7/13/2015
DARREN SALINGER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM HAMILTON MUNICIPAL COURT
Case No. 14 CRB 02111

Mary K. Dudley, Hamilton City Prosecutor, 345 High Street, 7th Fl., Hamilton, Ohio 45011, for plaintiff-appellee

Christopher P. Frederick, 304 North Second Street, Hamilton, Ohio 45011, for defendant-appellant

PIPER, P.J.

{¶ 1} Defendant-appellant, Darren Salinger, appeals from his conviction in the Hamilton Municipal Court for aggravated menacing. For the reasons discussed below, we affirm the decision of the trial court.

{¶ 2} On March 31, 2014, an incident occurred between appellant and Patrick Simmons in the parking lot of the Hamilton Police Department. Appellant took his daughter

to the police department for the purpose of exchanging custody with his ex-wife, Cecily. Patrick is the current husband of Cecily.

{¶ 3} Patrick and Cecily arrived at the police department together. Upon retrieving the daughter, Cecily walked passed appellant's car in the parking lot. When she did so, appellant yelled at her stating that he "didn't want to play anymore f *** games." When Patrick overheard appellant's comment, he got out of his vehicle and shouted at appellant for cursing at his wife. As Cecily and the child got into their vehicle, an argument ensued between appellant and Patrick.

{¶ 4} The argument escalated and appellant retrieved a pool stick from the trunk of his vehicle. The pool stick was about four feet long and one and half inches in diameter. Although appellant remained 10 to 15 feet away from Patrick, he went towards Patrick and crossed a median in the parking lot that was separating the two. Upon observing appellant retrieve the pool stick, Cecily called 911.

{¶ 5} Soon thereafter, Officer Brian Gleason with the Hamilton Police Department arrived in his cruiser. By this time, appellant had returned the pool stick to the trunk of his vehicle. When Officer Gleason interviewed appellant and Patrick, both appeared calm and neither wanted to press criminal charges. As the custody exchange was complete, the parties left the area.

{¶ 6} On June 12, 2014, Patrick filed a private complaint against appellant. The complaint alleged appellant committed aggravated menacing when he threatened Patrick at the custody exchange by brandishing a pool stick while walking towards Patrick.

{¶ 7} On October 1, 2014, a bench trial was held where Patrick, Cecily, Officer Gleason, and appellant all testified. A surveillance video showing appellant retrieving the pool stick from the trunk of his vehicle during the custody exchange was admitted into evidence. After hearing all the evidence, the trial court found appellant guilty of aggravated

menacing.

{¶ 8} Appellant now appeals his conviction, raising two assignments of error. For ease of discussion, we will address appellant's assignments of error together.

{¶ 9} Assignment of Error No. 1:

{¶ 10} THE STATE PRESENTED INSUFFICIENT EVIDENCE TO CONVICT [APPELLANT] OF AGGRAVATED MENACING.

{¶ 11} Assignment of Error No. 2:

{¶ 12} [APPELLANT'S] CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 13} Appellant argues his conviction for aggravated menacing was not supported by sufficient evidence and was against the manifest weight of the evidence. Specifically, appellant argues the state failed to meet its burden of showing Patrick believed appellant would cause him serious physical harm. In support, appellant maintains he only made a general threat prior to retrieving the pool stick.

{¶ 14} Whether a conviction is supported by sufficient evidence is a question of law. *State v. Harry*, 12th Dist. Butler No. CA2008-01-0013, 2008-Ohio-6380, ¶ 43; *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). The relevant inquiry for a reviewing court for a claim of insufficient evidence 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." *State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio-6046, ¶ 70, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

{¶ 15} In determining whether a conviction is against the manifest weight of the evidence, the reviewing court must look at 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." *Thompkins* at 387; *Harry* at ¶ 45. A reviewing court must be mindful the trier of fact has the primary role of weighing the evidence and evaluating witness credibility. *State v. DeHass*, 10 Ohio St.2d 230, 231 (1967). Granting a new trial through use of discretionary power should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *Thompkins* at 387. If a trial court's finding is supported by the manifest weight of the evidence, then the finding is also supported by sufficient evidence. *Harry* at ¶ 46; *Thompkins* at 388.

{¶ 16} The aggravated menacing statute, R.C. 2903.21(A), provides, "No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family." According to R.C. 2901.22(B), "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature."

{¶ 17} "Serious physical harm" is defined by R.C. 2901.01(A)(5) as,

- (a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- (b) Any physical harm that carries a substantial risk of death;
- (c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- (d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
- (e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

To be convicted of aggravated menacing, the state is not required "to prove that the offender is able to carry out the threat or even that the offender intended to carry out the threat." *State v. Russell*, 12th Dist. Warren Nos. CA2011-06-058 and CA2011-09-097, 2012-Ohio-1127, ¶ 12.

{¶ 18} At trial, Patrick testified he got out of his car only after he heard appellant cursing his wife and admits yelling at appellant. Patrick testified appellant then threatened to harm him by "beat[ing] his ass" and stating he was trained in the military to "hurt people." Patrick testified appellant said he had something for Patrick, went to his car, retrieved a long metal pole from the trunk, and started walking towards Patrick while waiving the pole in the air. Patrick stated he felt threatened and thought appellant was going to carry out his threat.

{¶ 19} While appellant's testimony differed in some respects, appellant admitted yelling profanities at Cecily and acknowledged getting a pool stick from his trunk. Appellant stated he retrieved the pool stick because Patrick threatened to "kick" *his* "ass."

{¶ 20} The fact Patrick testified appellant threatened him before appellant retrieved the pool stick shows appellant knowingly intended to make Patrick believe appellant was going to harm him. As the trial court stated, "The only reason you get into your trunk to get [a pool stick] out is to cause another person to believe that you're going to harm them." Additionally, wielding a pool stick, especially in conjunction with appellant's military training, could easily cause serious physical injury. Furthermore, the trial court was in the best position to weigh the evidence and evaluate the witnesses' credibility. The trial court viewed the surveillance video and believed Patrick's testimony that he felt threatened when appellant came towards him with the pool stick. Accordingly, the trial court did not lose its way or create a manifest miscarriage of justice when it convicted appellant of aggravated menacing.

{¶ 21} As appellant's conviction for aggravated menacing is not against the manifest

weight of the evidence, it is also supported by sufficient evidence. Appellant's first and second assignments of error are overruled.

{¶ 22} Judgment affirmed.

S. POWELL and M. POWELL, JJ., concur.