[Cite as *State v. Wooden*, 2005-Ohio-6604.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

State of Ohio,	:	
	:	
Plaintiff-Appellee,	:	
	:	Case No. 05CA19
v.	:	
	:	DECISION AND
Darren J. Wooden,	:	JUDGMENT ENTRY
	:	
Defendant-Appellant.	:	File-Stamped Date: 12-7-05

APPEARANCES:

David Reid Dillon, Ironton, Ohio, for appellant.

J.B. Collier, Lawrence County Prosecutor and Brigham Anderson, Assistant Lawrence County Prosecutor, Ironton, Ohio, for appellee.

Kline, J.:

{¶ 1} Darren J. Wooden appeals the judgment of the Ironton Municipal Court finding him guilty of aggravated menacing in violation of R.C. 2903.21. Wooden contends that his conviction is against the manifest weight of the evidence because his testimony was more credible than that of the victim, Heather Ackison. Because the trial court was in the best position to assess the credibility of the witnesses, and the record contains substantial evidence, which supports a finding that the state proved all of the elements of the offense beyond a reasonable doubt,

we disagree. Accordingly, we overrule Wooden's sole assignment of error and affirm the trial court's judgment.

I.

{¶ 2} Wooden is the father of at least one, and possibly two, of Ackison's children.[1] During the course of their relationship, Wooden was incarcerated for a period of time. Upon his release in August 2004, they continued their relationship and resided together for a period of time. On January 20, 2005, the police were called to the residence that Wooden and Ackison shared. Ackison executed a criminal affidavit, wherein she averred that Wooden pointed a Taurus 9mm handgun in her face, threatened to kill her and her two children, and then fled the scene when police arrived.

{¶ 3} On March 28, 2005, the Lawrence County Prosecutor issued a complaint upon Ackison's affidavit, charging Wooden with aggravated menacing in violation of R.C. 2903.21, a first degree misdemeanor. Thereafter, Wooden was arrested in Columbus.

{¶ 4} At trial, the court heard the testimony of Ackison and Wooden. Ackison testified that she and Wooden resided together in Ironton after his release

[1] At trial, both parties acknowledged that Wooden was the father of Ackison's four-year-old child. At that time, Ackison was nine months pregnant with her third child, and claimed that Wooden was the father of her unborn child as well. However, in his testimony, Wooden denied being the unborn child's father. Additionally, Ackison had a two-year-old child, fathered by another unidentified man.

from prison. They did not get along with each other and had argued for some time. On the day of the incident in question, he was supposed to get his things together to leave the residence. Their argument led to a conflict where he held a loaded 9mm gun to her face, and her children's faces, and threatened their lives. Ackison stated that she feared that Wooden would cause her and her children physical harm.

{¶ 5} In contrast, Wooden testified that he broke up with Ackison in November or December 2004, and moved to Columbus. He claimed he was not even in Ironton on January 20, 2005, and that Ackison fabricated the entire incident because she was jealous of his relationship with her cousin. Wooden further testified that he never held any gun in Ackison's face.

{¶ 6} At the close of evidence, the trial court found Wooden guilty of aggravated menacing in violation of R.C. 2903.21 and sentenced him to six months incarceration, suspended three months, with credit for time served. The court also imposed a fine of $200 plus court costs, and ordered that Wooden serve one year of probation upon his release from prison. The court further granted Ackison's request for a restraining order.

{¶ 7} Wooden timely appeals, raising the following assignment of error: "THE TRIAL COURT'S FINDING OF GUILTY WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

II.

{¶ 8} Initially, we note that Wooden has the burden of affirmatively demonstrating error on appeal. *U.S. Aviation Underwriters, Inc. v. B.F. Goodrich Co.*, 149 Ohio App.3d 569, 2002-Ohio-5429, at ¶29, citing *Angle v. W. Res. Mut. Ins. Co*. (Sept. 16, 1998), Medina App. No. 2729-M; *Frecska v. Frecska* (Oct. 1, 1997), Wayne App. No. 96CA0086. Pursuant to App.R. 16(A)(7), an appellant's brief must include argument and law, "containing the contentions of appellant with respect to each assignment of error presented for review * * *, with citations to the authorities, statutes, and parts of the record on which appellant relies." We are not obligated to search for authority to support an appellant's argument as to an alleged error. See *Kremer v. Cox* (1996), 114 Ohio App.3d 41, 60. However, even though Wooden's brief falls short in these areas, in the interest of justice, we shall address his assignment of error.

{¶ 9} In his sole assignment of error, Wooden contends that the trial court's judgment is against the manifest weight of the evidence because his testimony was more credible than Ackison's. Wooden notes that Ackison testified that she had

called the police approximately six times to report prior incidents involving him, but that charges were never filed because the police could not find him. Yet, Wooden argues that Ackison's failure to call the police during the two weeks preceding the incident at hand, when she knew that there were outstanding warrants against him and also knew of his whereabouts, demonstrates that her testimony is not credible. Wooden also contends that the state presented no evidence other than Ackison's uncorroborated testimony. Additionally, Wooden claims that Ackison's testimony corroborated his own testimony that he was dating her cousin. Finally, he implies that her testimony is not credible, because she denied that she was jealous of that relationship.

{¶ 10} We will not reverse a judgment as being against the manifest weight of the evidence when some competent, credible evidence going to all the essential elements of the case supports the judgment. *C.E. Morris Co. v. Foley Construction Co.* (1978), 54 Ohio St.2d 279, syllabus. In determining whether a criminal conviction is against the manifest weight of the evidence, we weigh the evidence and all reasonable inferences, consider the credibility of witnesses and 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. *State v. Garrow* (1995), 103 Ohio App.3d 368,

370-71; *State v. Martin* (1983), 20 Ohio App.3d 172, 175. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *Martin* at 175.

{¶ 11} Noting that the weight to be given to the evidence and the credibility of the witnesses are primarily for the trier of fact, the Ohio Supreme Court has declined to hold that a verdict based only on uncorroborated statements of the victim is manifestly against the weight of the evidence as a matter of law. *State v. Hannah* (1978), 54 Ohio St.2d 84, 90-91, citing *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Further, the court has specifically recognized that, in Ohio, an accused may be convicted on the uncorroborated testimony of the victim in substantially all criminal cases. *State v. Economo* (1996), 76 Ohio St.3d 56, 61.

{¶ 12} In order to convict a defendant of aggravated menacing, the state must prove, beyond a reasonable doubt, that the defendant "knowingly cause[d] another to believe that [he would] 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." R.C. 2903.21(A). The Ohio Supreme Court has previously stated that "the pointing of a deadly weapon would undoubtedly justify a [trier of fact] in concluding that the accused had committed the offense of 'aggravated

menacing' as defined in R.C. 2903.21." *State v. Brooks* (1989), 44 Ohio St.3d 185, 192.

{¶ 13} Here, the trial court heard Ackison's testimony that Wooden held a loaded 9mm gun to her face, and her children's faces, and threatened their lives. While Woodson testified that he was not even in Ironton the day that the incident took place, the trial court obviously found Ackison's testimony to be more credible. After a careful review of the record, we are not persuaded by Wooden's contention that the trial court's judgment is against the manifest weight of the evidence. The trial court was in the best position to observe the witnesses and make credibility determinations. We cannot say that the court clearly lost its way and created a manifest miscarriage of justice in making such credibility determinations. Accordingly, we overrule Wooden's sole assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED. Appellee shall recover of appellant costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ironton Municipal Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure. Exceptions.

Abele, P.J. and McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY:_____
Roger L. Kline, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.