[Cite as *State v. Koster*, 2016-Ohio-2851.]

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA25
vs.	:	
RONALD K. KOSTER,	:	DECISION AND JUDGMENT ENTRY
Defendant-Appellant.	:	

APPEARANCES:

Warren N. Morford, Jr., Ironton, Ohio, for appellant.

Brigham M. Anderson, Lawrence County Prosecuting Attorney, and Jeffrey M. Smith, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 4-20-16
ABELE, J.

{¶ 1} This is an appeal from a Lawrence County Common Pleas Court judgment of conviction and sentence. A jury found Ronald K. Koster, defendant below and appellant herein, guilty of (1) two counts of retaliation in violation of R.C. 2921.05(A), and (2) one count of aggravated menacing in violation of R.C. 2903.21(A). Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE JURY'S VERDICT OF GUILTY IS NOT SUPPORTED BY THE SUFFICIENT WEIGHT OF THE EVIDENCE."

SECOND ASSIGNMENT OF ERROR:

"THE JURY'S VERDICT OF GUILTY IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."
THIRD ASSIGNMENT OF ERROR:

"THE STATE FAILED TO PROVE EACH AND EVERY ELEMENT OF THE OFFENSES CHARGED BY THE INDICTMENT."

FOURTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT FAILED TO GIVE THE NEWLY REQUIRED JURY INSTRUCTION OR ADMONITION REGARDING THE USE OF ELECTRONIC DEVICES, COMPUTERS, TABLETS, SOCIAL MEDIA, NEWS ON THE INTERNET, ETC."

{¶ 2} Our review of the record reveals that in 2010, Sgt. Randy Goodall of the Lawrence County Sheriff's Department arrested appellant for weapons and domestic violence charges. Appellant thereafter made threats to rape Sgt. Goodall's daughter and wife, kill them and then burn down their house. Appellant was subsequently charged and convicted of the offense of retaliation and ordered to serve a prison sentence.

{¶ 3} After appellant was paroled, on February 9, 2011 Detective Aaron Bollinger of the Lawrence County Sheriff's Department accompanied the probation department to appellant's home to investigate whether he violated the terms of his parole. While there, the authorities found firearms in appellant's car that he was forbidden to have. The officers seized those weapons as evidence of a probation violation. It appears, however, that appellant chose to interpret the seizure of the weapons as Detective Bollinger "stealing" from him.

{¶ 4} On the evening of March 6, 2014, and extending into the early morning hours of March 7, 2014, the Lawrence County Sheriff's Office received a number phone calls from appellant that insulted the dispatcher, impugned the sexuality of various Sheriff's deputies and

threatened Detective Bollinger.[1] In addition to calling the detective "gutless" and a "chicken shit thieving son of a bitch," appellant also instructed the dispatcher to tell the detective to "come and deal with [him] like a man" if he grew "any god [sic] damn excuse for . . . balls." In a later call, appellant told the dispatcher "I am daring somebody, I, I want somebody with some balls to come out here and talk to me." Appellant then dared the dispatcher to meet him at "Ellisonville Park and have your pistol ready," informed the dispatcher he was "planning to kill people," instructed the dispatcher to tell Detective Bollinger that he would "not go to hell without him" and that the two of them would "skip" past the "sign going to hell." Appellant also gave the Lawrence County 911 dispatcher a brief description of how to get to Detective Bollinger's home.

{¶ 5} On March 25, 2014, the Lawrence County Grand Jury returned an indictment that charged appellant with retaliation and aggravated menacing. Appellant pled not guilty and the matter came on for a two day jury trial in July 2014. During the trial, Sargent Goodall testified as to his contact with appellant in 2010, Detective Bollinger testified as to his contact with him in 2011 (when he accompanied probation officials to appellant's home), and Lonnie Best (Director of Lawrence County 911) submitted recordings of appellant's March 6th and 7th phone calls. After hearing the evidence, the jury found appellant guilty of all three charges. The trial court sentenced appellant to serve thirty-six months in prison on each retaliation charge, as well as one hundred eighty days on the aggravated menacing charge, with all sentences to be served consecutively. This appeal followed.[2]

[1] Although recordings of the phone calls were played at trial, the content of those recordings were not transcribed into the trial transcript. We take our information from the State's "Update to Discovery" filed on July 22, 2014, that appears to contain a transcription of those calls.

[2]At the outset we note that, although appellant advances four assignments of error, his brief makes a single

I

{¶ 6} Appellant's first and third assignments of error assert, in essence, that the State failed to carry its burden of proof to establish appellant's guilt beyond a reasonable doubt.

{¶ 7} When appellate courts review cases for the sufficiency of the evidence, our inquiry must focus primarily on adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541; *State v. Jenks*, 61 Ohio St.3d 259, 274, 574 N.E.2d 492 (1991). The standard of review is whether, after viewing all of the probative evidence and inferences reasonably drawn therefrom in a light most favorable to the prosecution, any rational trier of fact could have possibly found all of the essential elements of the offense beyond a reasonable doubt. *Jenks*, 61 Ohio St.3d at 273*; Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). Further, reviewing courts are not asked to assess if the "state's evidence is to be believed, but whether, if it was believed, the evidence supports a conviction." *Thompkins*, 78 Ohio St.3d at 390 (Cook, J., concurring).

{¶ 8} R.C. 2921.05 defines the crime of "retaliation" as follows:

> "No person, purposely and by force or by unlawful threat of harm to any person or property, shall retaliate against a public servant, a party official, or an attorney or witness who was involved in a civil or criminal action or proceeding because the public servant, party official, attorney, or witness discharged the duties of the public servant, party official, attorney, or witness."

---

argument in support of all four. Generally, reviewing courts have the option of addressing appeals in this fashion, but litigants do not. *Prokos v. Hines*, 4th Dist. Athens 10CA51 & 10CA57, 2014-Ohio-1415, at ¶63; *State v. Keck*, 4th Dist. Washington App. No. 09CA50, 2011- Ohio-1643, at ¶46, fn. 11. App.R. 16(A)(7) requires a separate argument for each assignment of error. The failure to do so will allow an appellate court to disregard any assignments of error that are not so argued. See App.R. 12(A)(2); also see e.g. *State v. Campbell*, 8th Dist. Cuyahoga App. No. 96628, 2012-Ohio-1738, at ¶¶5-8; *State v. Constable*, 12th Dist. Clermont No. CA2006-12-107, 2007-Ohio-6570, at ¶7; *State v. Lattire*, 12th Dist. Butler No. CA2004–01–005, 2004-Ohio-5648, at ¶¶39-40.

R.C. 2903.21(A) defines the offense of aggravated menacing as follows:

> "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. In addition to any other basis for the other person's belief 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, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs."

{¶ 9} Our review of the transcript reveals that the uncontroverted evidence adduced at trial is that appellant telephoned threats against Detective Bollinger. Appellant told the dispatcher that he was (1) going to kill someone, and (2) dared the dispatcher to show up with a gun and meet him. While these may arguably be construed as general threats to anyone, appellant also (1) described the directions to Detective Bollinger's home, (2) informed the dispatcher that Detective Bollinger would "not go to hell without him," and (3) stated that they (appellant and Bollinger) would "skip" together past the "sign going to hell." We do not know how these comments could be taken as anything other than threats of harm to Detective Bollinger.

{¶ 10} Although we have not located it in the transcription of the calls attached to the State's "Update to Discovery, Detective Bollinger also testified that appellant said that "he wants to step twenty paces with me and then shoot and fire." The detective also testified to the effect that the various messages indicated that appellant would inflict harm to him, or to his children. He further stated that he interpreted appellant's messages as "trying to get the Deputy's [sic] to come to his home to have a shootout." We believe that this evidence, if believed, is more sufficient to establish each and every element of the offenses beyond a reasonable doubt and to

uphold the jury's determination that appellant violated R.C. 2921.05(A) and 2903.21(A).

{¶ 11} Accordingly, based upon the foregoing reasons, we hereby overrule appellant's first and third assignments of error.

III

{¶ 12} We now turn to appellant's second assignment of error in which he argues that the jury's verdict is against the manifest weight of the evidence.

{¶ 13} Generally, a reviewing court will not reverse a conviction on manifest weight of the evidence unless it is obvious that the trier of fact lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. See *State v. Earle*, 120 Ohio App.3d 457, 473, 698 N.E.2d 440 (11th Dist.1997); *State v. Garrow*, 103 Ohio App.3d 368, 370- 371, 659 N.E.2d 814 (4th Dist.1995); *State v. Davis*, 49 Ohio App.3d 109, 113, 550 N.E.2d 966 (8th Dist.1988).

{¶ 14} Appellant is not entirely clear as to why he believes that his conviction is against the manifest weight of the evidence, except to say that he "believes the evidence weighs heavily against the conviction." We believe, however, that ample competent, credible evidence adduced at trial supports the jury's conclusion that appellant committed the offenses.

{¶ 15} To the extent that appellant claims that the State's evidence against him should have been rejected, we note that weight of the evidence, and witness credibility, are issues that the trier of fact must determine. See *State v. Dye*, 82 Ohio St.3d 323, 329, 695 N.E.2d 763 (1998); *State v. Williams*, 73 Ohio St.3d 153, 165, 652 N.E.2d 721 (1995). The rationale for this view is because the jury, sitting as trier of fact, is in the best position to view the witnesses and to observe their demeanor, gestures and voice inflections and to use those observations to weigh the

credibility of their testimony. See *Myers v. Garson*, 66 Ohio St.3d 610, 615, 614 N.E.2d 742 (1993); *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273, 1276 (1984). Furthermore, a trier of fact may believe all, part or none of the testimony of any witness who appears before it. See *State v. Nichols*, 85 Ohio App.3d 65, 76, 619 N.E.2d 80 (4th Dist., 1993); *State v. Caldwell*, 79 Ohio App.3d 667, 679, 607 N.E.2d 1096 (14th Dist., 1992). That is why reviewing courts are reluctant to second-guess a trier of fact in matters of credibility. *State v. Riggs*, 4th Dist. Washington No. 02CA74, 2013-Ohio-1711, at ¶13.

{¶ 16} In the case sub judice, we see no reason to reject or to discount Detective Bollinger's testimony. To the extent that appellant claims that Sharon Mullins' testimony is "incredible," once again, this is an issue for the trier of fact to determine. We also hasten to add that Mullins' testimony (regarding an encounter that she had with appellant at Rich Oil) was largely superfluous as it had nothing to do with the threats made with respect to Detective Bollinger.

{¶ 17} Accordingly, we hereby overrule appellant's third assignment of error.

IV

{¶ 18} Appellant asserts in his fourth assignment of error that the trial court erred by not giving the "newly required jury instruction or admonition regarding use of electronic devices, computers, tablets, social media, news of the internet, etc."

{¶ 19} After our review, we find nothing in the record to suggest that appellant (1) asked for such instruction, or (2) objected to the absence of such an instruction. When no objection is made to jury instructions, our review is limited solely to the question of whether the lack of such instructions amounted to plain error. See Crim.R. 52(B). *State v. Alexander*, 4th Dist. Adams

No. 12CA945, 2013-Ohio-1913, at ¶27; *State v. Stephenson*, 4th Dist. Adams No. 12CA936, 2013-Ohio-771, at ¶23.

{¶ 20} Appellate courts generally must take notice of plain error with the utmost of caution, under the most exceptional of circumstances and only to prevent a manifest miscarriage of justice. *State v. Gardner*, 118 Ohio St.3d 420, 2008-Ohio-2787, 889 N.E.2d 995, at ¶78; *State v. Patterson*, 4th Dist. No. 05CA16, 2006-Ohio-1902, at ¶13. Plain error should only be noticed if the error seriously affects the fairness, integrity or public reputation of judicial proceedings. See *State v. Bundy*, 4th Dist. Pike No. 11CA818, 2012-Ohio-3934, 974 N.E.2d 139, at ¶66. The Ohio Supreme Court directs appellate courts to be conservative in application of plain-error review, reserving notice of plain error only for situations that involve more than merely theoretical prejudice to substantial rights. *State v. Steele*, 138 Ohio St.3d 1, 2013-Ohio-2470, 3 N.E.3d 135, at ¶30.

{¶ 21} Once again, we do not believe that the trial court erred by failing to give this instruction, let alone committed plain error. Thus, we hereby overrule his fourth assignment of error for these reasons.

{¶ 22} Having reviewed all errors assigned by appellant and argued by him in his brief, and having found merit in none of them, the judgment of the trial court is hereby affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and appellee to recover of appellant the 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 Lawrence County Common Pleas 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.

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, 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.