

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. John W. Wise, J.
-vs-	:	
	:	
KEVIN L. POOLE	:	Case No. 2009CA00155
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,  
Case No. 2009CR0371

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: February 8, 2010

APPEARANCES:

For Plaintiff-Appellee

JOHN D. FERRERO  
Stark County Prosecutor

By: RENEE M. WATSON  
Assistant Prosecuting Attorney  
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For Defendant-Appellant

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*Farmer, J.*

{¶1} In September of 2008, Madison Garner lived in an apartment unit on Alan Page Drive with her sister, Darcell Garner, and Darcell's boyfriend, appellant, Kevin Poole. Chetoia Robinson and Amanda Murphy lived in a nearby apartment.

{¶2} On September 14, 2008, Ms. Garner, Ms. Robinson, and Ms. Murphy observed appellant chasing Darcell around the outside of the apartment building. Ms. Garner observed appellant grab Darcell by the back of her neck and pull her down. Ms. Garner called 911.

{¶3} Canton City Police Officer Ryan Davis came out to investigate and took a report.

{¶4} The next day, the three women took Darcell to a domestic violence shelter. When they returned, all the windows of the apartment occupied by Ms. Robinson and Ms. Murphy were broken. Appellant was in the parking lot and threatened the women.

{¶5} Canton City Police Detective Jerry Fuelling came out to investigate and took a report.

{¶6} On April 21, 2009, the Stark County Grand Jury indicted appellant on one count of domestic violence in violation of R.C. 2919.25(A), one count of vandalism in violation of R.C. 2909.05(A), and one count of aggravated menacing in violation of R.C. 2903.21(A).

{¶7} A jury trial commenced on May 27, 2009. The jury found appellant not guilty of domestic violence, but guilty of assault in violation of R.C. 2903.13(A). The jury also found appellant guilty of vandalism and aggravated menacing. By judgment entry

filed June 9, 2009, the trial court sentenced appellant to an aggregate term of twelve months in prison.

{¶8} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶9} "THE EVIDENCE WAS INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTION FOR VANDALISM UNDER R.C. 2909.05(A)."

II

{¶10} "THE EVIDENCE WAS INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTION FOR AGGRAVATED MENACING UNDER R.C. 2903.21(A)."

III

{¶11} "THE EVIDENCE WAS INSUFFICIENT TO SUPPORT APPELLANT'S CONVICTION FOR ASSAULT UNDER R.C. 2903.13(A)."

{¶12} Appellant's three assignments of error challenge the sufficiency of the evidence to support his convictions. On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259. "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* (1979), 443 U.S. 307.

I

{¶13} Appellant claims his conviction for vandalism was against the sufficiency of the evidence. We disagree.

{¶14} Appellant was convicted of vandalism in violation of R.C. 2909.05(A) which states, "No person shall knowingly cause serious physical harm to an occupied structure or any of its contents."

{¶15} Appellant argues there were no eyewitnesses to the breaking of the windows and there were inconsistencies in the witnesses' statements; therefore there was insufficient credible evidence to convict him of vandalism.

{¶16} Appellant argues the inconsistencies concern whether Darcell was present when Detective Fuelling investigated the broken windows to the Robinson/Murphy apartment. These inconsistencies were not important to the central question of who broke the windows.

{¶17} The uncontradicted testimony of Ms. Garner, Ms. Robinson, and Ms. Murphy was that appellant admitted to them that he broke the windows. When they returned to the apartment building, they observed appellant in the parking lot and he stated, "yeah, I did it, I busted out your windows, bitches, and I'll do it again, and I'll go get a gun and come back and kill every last one of you." T. at 160, 192, 211-212.

{¶18} It is unrefuted that the windows in the apartment belonging to Ms. Robinson and Ms. Murphy were broken and damaged in excess of \$1,186.00. T. at 145-146; State's Exhibit 1. During his investigation, Detective Fuelling discovered a rock near one of the broken windows. T. at 236.

{¶19} Upon review, we find sufficient credible evidence to support the vandalism conviction via appellant's own admissions.

{¶20} Assignment of Error I is denied.

## II

{¶21} Appellant claims his conviction for aggravated menacing was against the sufficiency of the evidence. We disagree.

{¶22} Appellant was convicted of aggravated menacing in violation of R.C. 2903.21(A) which states, "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."

{¶23} Appellant argues the evidence does not support a finding that he caused Ms. Robinson and Ms. Murphy to believe that he would cause them serious physical harm. Ms. Garner, Ms. Robinson, and Ms. Murphy testified that appellant stated he would get a gun and shoot them. T. at 160, 192, 212. None of the women saw a gun, but all testified that appellant was "intimidating and scary," "high and mighty," and screaming. T. at 160, 192, 213. Ms. Robinson and Ms. Murphy testified his words and actions caused them to be scared and to flee into their apartment. T. at 161-163, 212. Detective Fuelling testified the women appeared very upset. T. at 235.

{¶24} We find this evidence, coupled with the fact that the women had called 911 on appellant the day before and had transported Darcell to a domestic violence shelter the day the threat was made, is more than sufficient to establish the elements of aggravated menacing.

{¶25} Upon review, we find sufficient credible evidence to support the aggravated menacing conviction.

{¶26} Assignment of Error II is denied.

### III

{¶27} Appellant claims his conviction for assault was against the sufficiency of the evidence. We disagree.

{¶28} Appellant was convicted of assault in violation of R.C. 2903.13(A) which states, "No person shall knowingly cause or attempt to cause physical harm to another or to another's unborn."

{¶29} Appellant argues no one testified that he touched Darcell. Ms. Robinson and Ms. Murphy observed appellant chasing Darcell around the apartment building. T. at 155-156, 208. Ms. Murphy described appellant's actions as "trying to beat her up." T. at 207. Ms. Garner also observed appellant chasing Darcell, and also observed appellant grab Darcell "by the back of her neck and pull her down." T. at 184-185. Officer Davis testified Darcell was "distraught, crying, and had some visible marks on her." T. at 221. The jury had the benefit of State's Exhibits 2 through 16, photographs depicting the injuries to Darcell.

{¶30} Upon review, we find sufficient credible evidence to support the assault conviction.

{¶31} Assignment of Error III is denied.

{¶32} The judgment of the Court of Common Pleas of Stark County, Ohio is hereby affirmed.

By Farmer, J.

Hoffman, P.J. and

Wise, J. concur.

s/ Sheila G. Farmer

s/ William B. Hoffman

s/ John W. Wise

JUDGES

SGF/sg 0122

