[Cite as *State v. Ford*, 2015-Ohio-4093.]

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. William B. Hoffman, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 2014CA00145
	:	
BRYAN K. FORD	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Canton Municipal Court, Case No. 2013CRB04234
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	September 28, 2015

APPEARANCES:

For Plaintiff-Appellee:	For Defendant-Appellant:
JOSEPH MARTUCCIO CANTON CITY LAW DIRECTOR TASHA FORCHIONE 218 Cleveland Ave. SW Canton, OH 44702	KRISTINE W. BEARD 4450 Belden Village St. NW Suite 703 Canton, OH 44718

Delaney, J.

{¶1} Appellant Bryan K. Ford appeals from the July 24, 2014 Judgment Entry of the Canton Municipal Court. Appellee is the state of Ohio.

FACTS AND PROCEDURAL HISTORY

{¶2} This case began with a road rage incident on October 5, 2013 in the city of Canton. Misty Milburn, Tracy Haynes Sr., Jerry Hartley, and Hartley's minor daughter A.H. were towing a vehicle on 12th Street when a small white car pulled out in front of them. The Milburn group continued to follow behind the white car driven by a woman later identified as Natalie Roosa. Roosa had one passenger in her car, an unidentified female. Near the intersection of 12th Street and Fulton, Roosa slammed on her brakes and exchanged words with the Milburn group.

{¶3} At one point, the cars stopped and Millburn, Haynes, and Roosa got out of their vehicles. A brief physical confrontation ensued during which Milburn and Roosa shoved each other back and forth. Everyone returned to their vehicles and traveled on. Hartley noticed Roosa followed them to their destination. When they stopped, however, she drove off and Hartley assumed the incident was over. The Milburn group proceeded to work with the towed vehicles.

{¶4} Several minutes later, Roosa reappeared in her car, along with a second car, a white Buick. Roosa and her passenger got out, along with the driver of the Buick, later identified as appellant, and appellant's unidentified male passenger.

{¶5} Appellant ran up to the Milburn group and pulled a gun from his waistband. He waved the gun at the group, yelling "who put their hands on my girl?" Milburn recognized appellant as someone from her mother's neighborhood whom she

knew as "Mud," and she recognized Roosa as a worker at Direct TV. Roosa also wore a Direct TV shirt during the incident. At some point Roosa told Milburn she would hurt her if Milburn got her fired.

{¶6} Haynes told appellant no one hit his girlfriend and said the incident started because Roosa pulled out directly in front of them. Appellant put the gun away and was encouraged to leave the scene by the unidentified male and female passengers.

{¶7} The Milburn group reported the incident to Canton police, who identified "Mud" as appellant and searched the Direct TV parking lot for a small white car matching the description provided. Upon finding the car, detectives identified Roosa as the woman involved.

{¶8} Roosa was criminally charged although the record does not reflect with what. Appellant was charged with four counts of aggravated menacing pursuant to R.C. 2903.21, all misdemeanors of the first degree. Each count represented a different victim: A.H., Milburn, Haynes, and Hartley. Appellant entered pleas of not guilty and the case proceeded to jury trial.

{¶9} Upon appellant's request for a transcript, court personnel discovered a deficiency in the record. The record therefore contains an affidavit of the administrator of the Canton Municipal Court stating the beginning of the trial was not recorded, through preliminary jury instructions. (T. 6A, 6B.) Those portions of the record are therefore not contained in the trial transcript.

{¶10} Pursuant to our order of October 28, 2014, the trial court filed a Judgment Entry supplementing the record with the relevant information regarding the jury selection process. Per the judgment entry, seventeen prospective jurors appeared and two were

African-American. Appellee challenged one prospective African-American juror and appellant objected on the basis of *Batson*.[1] At sidebar, appellee argued the juror stated "she did not feel comfortable judging another and she could not render a decision if asked to deliberate a verdict." Appellant declined a full hearing on the *Batson* objection and the trial court found appellee's reason for the challenge for cause to be race-neutral. The juror was dismissed for cause.

{¶11} Eight jurors were eventually chosen; one of those jurors was African-American. Appellant objected to the jury pool "because 'the jurors did not live in the hood or receive welfare,'" an objection which was overruled by the trial court.

{¶12} Appellant made motions for acquittal pursuant to Crim.R. 29(A) at the close of appellee's evidence and at the close of all of the evidence. The motions were overruled. The jury found appellant guilty as charged and the trial court sentenced him to an aggregate jail term of sixty days.

{¶13} Appellant now appeals from the judgment entry of his conviction and sentence.

{¶14} Appellant raises two assignments of error:

ASSIGNMENTS OF ERROR

{¶15} "I. APPELLANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO BE TRIED BY A JURY OF HIS PEERS."

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[1] In order to succeed on a *Batson* challenge, the complaining party must state a prima facie case of purposeful discrimination demonstrating (1) that members of a recognized racial group were peremptorily challenged; and (2) that the facts and circumstances raise an inference that the prosecutor used the peremptory challenge to exclude the jurors on account of their race. See, *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986).

{¶16} "II. APPELLANT'S CONVICTIONS FOR FOUR COUNTS OF AGGRAVATED MENACING ARE AGAINST THE SUFFICIENCY AND MANIFEST WEIGHT OF THE EVIDENCE."

ANALYSIS

I.

{¶17} In his first assignment of error, appellant argues the trial court should have granted his motion for mistrial because he was not tried by a "jury of his peers." We disagree.

{¶18} We first note appellant does not make a *Batson* claim, as described supra in footnote one, because he does not argue any prospective jurors were excluded on the basis of race. Instead, he argues he is from the inner city, thus a jury of his peers should consist of individuals "likely low income or welfare recipients [that] are subjected to criminal activity (the 'hood') more so that (*sic*) citizens in other parts of the Canton Municipal Court District." (Brief, 8.) Appellant's stated rationale is that to such jurors, the incident following the road rage was "normal behavior" that does not rise to the level of aggravated menacing. (Brief, 10.)

{¶19} Setting aside the socioeconomic stereotyping and denigration inherent in appellant's argument, we note it is well-established appellant has no affirmative right to a jury of a particular racial, gender or age composition. *State v. Seymour*, 5th Dist. Richland No. 03-CA-37, 2004-Ohio-3835, ¶ 54, citing *United States v. Mack,* 159 F.3d 208 (6th Cir.1998); *Taylor v. Louisiana,* 419 U.S. 522, 538, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). The Sixth Amendment guarantee to a jury trial “contemplates a jury drawn from a fair cross section of the community.” *Taylor,* 419 U.S. at 444. To establish a

violation of this requirement, the “defendant must prove: (1) that the group alleged to be excluded is a ‘distinctive’ group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that the representation is due to systematic exclusion of the group in the jury-selection process.” *State v. Fulton*, 57 Ohio St.3d 120, 566 N.E.2d 1195 (1991), paragraph two of the syllabus, citing *Duren v. Missouri*, 439 U.S. 357, 364, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979).

{¶20} Appellant's characterization of persons from the "hood" is not a distinctive group in the community; nor has appellant argued systematic exclusion of low income or welfare recipients. He has therefore failed to establish a 6th-Amendment violation. In *Seymour,* for example, we found a trial court did not err in excluding college students from a jury pool because neither “young adults” nor “college students” are a “distinct group” cognizable for purposes of *Taylor's* fair cross-section requirement. *Seymour*, supra, 2004-Ohio-3835 at ¶ 54, citing *United States v. Maxwell*, 160 F.3d 1071, 1075-76 (6th Cir.1998); *United States v. Fletcher*, 965 F .2d 781,782 (9th Cir., 1992); *Ford v. Seabold*, 841 F.2d 677, 681-82, cert. denied, 488 U.S. 928, 109 S.Ct. 315, 102 L.Ed.2d 334 (6th Cir.1988*)*. Further, we noted the appellant's systematic-exclusion claim was based solely on alleged under-representation on *his* venire, "[b]ut under representation on a single venire is not *systematic* exclusion." Id., citing *State v. McNeill*, 83 Ohio St.3d 438, 444, 700 N.E.2d 596 (1998).

{¶21} Appellant's first assignment of error is overruled.

II.

{¶22} In his second assignment of error, appellant argues his convictions upon four counts of aggravated menacing are not supported by sufficient evidence and are against the manifest weight of the evidence. We disagree.

{¶23} The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541, paragraph two of the syllabus. The standard of review for a challenge to the sufficiency of the evidence is set forth in *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991) at paragraph two of the syllabus, in which the Ohio Supreme Court held, "An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. 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."

{¶24} In determining whether a conviction is against the manifest weight of the evidence, the court of appeals functions as the "thirteenth juror," and after "reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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 overturned and a new trial ordered." *State v. Thompkins*, supra, 78 Ohio St.3d at 387. Reversing a conviction as being against the manifest weight of the

evidence and ordering a new trial should be reserved for only the “exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

{¶25} Appellant was convicted of four counts of aggravated menacing pursuant to R.C. 2903.21(A), stating in pertinent part: "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 * * * or a member of the other person's immediate family. * * * *." Specifically, appellant argues he was not identified as the perpetrator of the offenses; there is no credible evidence he had a gun; and the man who approached the group acted reasonably under the circumstances. Upon our review of the record, we disagree.

{¶26} We find the evidence was sufficient to support appellant's convictions and that the evidence does not weigh heavily against appellant's conviction. Milburn testified she recognized appellant as someone she knew from her mother's neighborhood, "Mud." "Mud" was traceable by the Canton Police Department because the Special Investigations Unit knew him to be appellant Bryan K. Ford. The witnesses identified appellant to investigators and at trial. Detective Pierson testified the witnesses' stories were consistent in the pertinent details: appellant exited the car, yelled "who hit my girl" repeatedly, and waved a gun at them. Milburn, Haynes, and Hartley told Pierson they believed appellant would shoot them, and Hartley feared appellant would shoot his minor daughter who was present at the scene. The credibility of the trial witnesses was a matter for the jury to determine. *State v. Yarbrough*, 95 Ohio St.3d 227, 231, 2002-Ohio-2126, 767 N.E.2d 216, ¶ 79. In light of the

uncontroverted evidence appellant was the offender, we cannot find the jury lost its way in finding him guilty of the offenses.

{¶27} Appellant's convictions are supported by sufficient evidence and are not against the manifest weight of the evidence. His second assignment of error is therefore overruled.

CONCLUSION

{¶28} Appellant's two assignments of error are overruled and the judgment of the Canton Municipal Court is affirmed.

By: Delaney, J. and

Hoffman, P.J.

Wise, J., concur.