

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio/City of Toledo

Court of Appeals No. L-14-1182

Appellee

Trial Court No. CRB-14-09833

v.

Issac McClure

DECISION AND JUDGMENT

Appellant

Decided: June 30, 2015

* * * * *

David Toska, City of Toledo Chief Prosecutor, and
Henry Schaefer, Assistant Prosecutor, for appellee.

Brett A. Klimkowsky, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a July 23, 2014 judgment of the Toledo Municipal Court, which convicted appellant of one count of violating a protection order, in violation of Toledo Municipal Code 537.27(A)(1). For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} On appeal, appellant sets forth the following sole assignment of error:

Appellant's conviction for violating a personal protection order was against the manifest weight of the evidence. Since a manifest weight of the evidence claim is being raised, this Court must review the entire trial record. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678, N.E.2d 541.

{¶ 3} The following undisputed facts are relevant to this appeal. On June 11, 2014, Toledo resident Cheryl Mills ("Mills") was granted a protection order applicable to appellant, Issac McClure. The protection order was obtained given a history of domestic incidents between the parties. The parties were previously involved in a relationship and had formerly lived together prior to the events underlying this case.

{¶ 4} Notably, approximately ten years ago, appellant had shot Mills in the midst of a domestic dispute. Appellant served an eight-year prison sentence following his conviction of attempted murder in connection to that incident.

{¶ 5} Despite these events, appellant repeatedly wrote Mills letters from prison. Mills did not respond to appellant's correspondence. On June 13, 2014, shortly before being released from prison, appellant was served with the protection order from which this case arises. On June 20, 2014, appellant was released from prison. On the very same day that appellant was released, he was observed multiple times driving past Mills' house, in violation of the protection order.

{¶ 6} On June 26, 2014, appellee filed a complaint against appellant. Appellant was charged with violating the protection order, in violation of Toledo Municipal Code 537.27(A)(1). The matter subsequently proceeded to a bench trial.

{¶ 7} At trial, both Mills and her next-door neighbor, Lavelle Lamar Jones (“Jones”), were called to testify for appellee. Mills stated that on June 13, 2014, she observed appellant driving past her house. Mills further testified that she immediately recognized appellant, made direct eye contact with him, and noted that he was wearing an orange jogging suit.

{¶ 8} Following the sighting of appellant in contravention of the order, Mills’ daughter warned their neighbor, Jones, to keep a look out for the specific car that Mills observed appellant driving. Jones testified that he saw the referenced vehicle slowly drive past Mills’ home twice during the relevant time period.

{¶ 9} Appellant testified on his own behalf. Appellant denied driving past Mills’ home that day. Appellant claimed that he was with a friend on the other side of town. However, no witnesses, including the referenced friend who was the basis of appellant’s alibi claim, testified on appellant’s behalf so as to potentially corroborate appellant’s claim.

{¶ 10} On July 23, 2014, following the bench trial, the trial court found appellant guilty of the charge. Appellant was sentenced to serve 180 days in jail. This appeal ensued.

{¶ 11} In the sole assignment of error, appellant contends that the trial court's finding that appellant drove past Mills' house on June 13, 2014, in violation of the court order, was against the manifest weight of the evidence. Appellant claims that Mills' testimony lacks credibility because she reported the incident several hours after it occurred.

{¶ 12} In determining whether a verdict is against the manifest weight of the evidence, the appellate court "weighs the evidence and all reasonable inferences, and considers the credibility of witnesses." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678, N.E.2d 541 (1997). The court must then decide if, when determining the evidence, the factfinder "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Id.* This manifest weight standard allows the appellate court to act as a "thirteenth juror," permitting it to disagree with the factfinder's verdict on the conflicting testimony. *Id.*

{¶ 13} It is well-established that appellate review grants much deference to trial court determinations because, "the trial court's role enables it to directly assess witnesses and evidence in reaching its conclusion." *State v. Scott*, 6th Dist. Wood No. WD-05-095, 2007-Ohio-564, ¶ 12.

{¶ 14} We have reviewed and considered the record of evidence in this matter. The record does not reflect that the trial court lost its way or caused a miscarriage of justice. Appellant unconvincingly argues, "Apparently, despite there being a possible shotgun-toting, murderous, felon on the prowl for whom Mills was so fearful that she had

sought a personal protection order, Mills had more pressing matters to which to tend than to be bothered with summoning police assistance. Believable Mills is not.” By contrast, appellee presented uncontroverted testimony by two eyewitnesses, both supporting appellant’s guilt. The disputed judgment was not against the weight of the evidence. Wherefore, we find appellant’s sole assignment of error not well-taken.

{¶ 15} On consideration whereof, the judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the costs of this pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Thomas J. Osowik, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio’s Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court’s web site at:
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