

[Cite as *State v. Mayes*, 2015-Ohio-1052.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO)	CASE NO. 14 MA 10
)	
PLAINTIFF-APPELLEE)	
)	
VS.)	OPINION
)	
GREGORY MAYES)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from the Mahoning County Court No 2, Boardman Ohio Case No. 2013 CRB 1421

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee: Atty. Paul J. Gains
Mahoning County Prosecutor
Atty. Ralph M. Rivera
Assistant Prosecuting Attorney
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Youngstown, OH 44503

For Defendant-Appellant: Atty. Mark A. Carfolo
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JUDGES:

Hon. Carol Ann Robb
Hon. Cheryl L. Waite
Hon. Mary DeGenaro

Dated: March 10, 2015

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ROBB, J.

{¶1} Defendant-appellant Gregory Mayes (“Appellant”) appeals his conviction for domestic violence under R.C. 2919.25(C), a fourth-degree misdemeanor by Mahoning County Court No. 2. The issue is whether the conviction is against the manifest weight of the evidence. For reasons expressed below, the conviction is hereby affirmed.

Statement of the Case

{¶2} The victim, Jennifer Mayes (“Jennifer”), filed a fourth-degree misdemeanor domestic violence complaint against Appellant on October 8, 2013. The complaint alleged that Jennifer is a family or household member of Appellant and that Appellant threatened her causing her to believe that Appellant would cause her imminent physical harm. 10/08/13 Complaint by Individual (Rule 4).

{¶3} The facts are as follows. On October 7, 2013, Jennifer was a passenger in her car with the car being driven by Benjamin Donlow (“Donlow”). The vehicle was stopped in traffic at a red light on U.S. Route 224 at the intersection of Tippecanoe Road. Appellant approached the car on foot and told Jennifer he was going to shoot her. In response to Appellant’s threat, Donlow ran the red light and crossed into the curb lane in front of traffic. At the time of the incident Jennifer and Appellant were married, but had recently separated. 10/08/13 Boardman Police Department Incident Report, Narrative Supplement.

{¶4} Appellant was arraigned on October 17, 2013 and released on bond. A bench trial was heard on January 21, 2014. The trial court found Appellant guilty of “threat of domestic violence.” Appellant was sentenced to thirty-days in jail with twenty days suspended. He was fined \$250 and ordered to pay costs. Appellant was placed under 12 months of community control, ordered to be assessed for anger management, and to have no contact with Jennifer or Donlow. 01/21/14 J.E.

{¶5} Appellant timely appealed his conviction. He requested a stay of the jail sentence, which the trial court granted.

Assignment of Error

“The trial court denied appellant due process under the Fourteenth Amendment due to the fact he was found guilty of domestis [sic] violence pursuant to R.C. 2919.25(C) when said conviction was not based upon sufficient evidence displaying appellant’s guilt beyond a reasonable doubt and the trial court’s verdict was inconsistent with the evidence and testimony presented at trial.”

{¶16} Appellant’s argument is that the conviction is against the manifest weight of the evidence.

{¶17} “Weight of the evidence concerns the inclination of the *greater amount of credible evidence*, offered in a trial, to support one side of the issue rather than the other.” (Emphasis sic.) *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). When a conviction is challenged on appeal as being against the weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, 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.” *Id.* “Weight is not a question of mathematics, but depends on its *effect in inducing belief.*” (Emphasis sic.) *Id.*, quoting Black’s Law Dictionary (6 Ed.1990) 1594.

{¶18} A conviction will only be reversed as against the manifest weight of the evidence in exceptional circumstances. *Id.* This is so because the trier of fact is in a better position to determine credibility issues since it personally viewed the demeanor, voice inflections and gestures of the witnesses. *State v. Hill*, 75 Ohio St.3d 195, 204, 661 N.E.2d 1068 (1996); *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). Thus, “[w]hen there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one we believe.” *State v. Dyke*, 7th Dist. No. 99CA149 (Mar. 13, 2002), citing *State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125 (7th Dist.1999).

{¶19} Appellant was convicted of R.C. 2919.25(C), which states “No person, by threat of force, shall knowingly cause a family or household member to believe that the offender will cause imminent physical harm to the family or household member.” R.C. 2919.25(C).

{¶10} Appellant’s argument that the conviction is against the manifest weight of the evidence is two-fold. First, he asserts that Jennifer and Donlow’s testimony is unbelievable. Second, he focuses on the imminent physical harm element of the offense and contends that even if their testimony is believed his action did not place Jennifer in fear of imminent physical harm.

{¶11} As to believability, although there is no evidence to dispute Jennifer and Donlow’s allegations that on the afternoon of October 7, 2013, while they were sitting at the red light at the intersection of U.S. Route 224 and Tippecanoe Road, Appellant approached Jennifer’s car on foot and threatened her, Appellant asserts that there are inconsistencies between Jennifer and Donlow’s testimony rendering their testimony not credible. This court disagrees and does not see any material inconsistencies. They both testified Donlow was driving, Jennifer was the passenger, they were stopped at the red light on U.S. Route 224 at the intersection of Tippecanoe Road, and they were traveling in the lane next to the curbside lane. 01/21/14 Tr. 6-7, 15-16, 19, 25-28, 32. They both indicated Appellant approached on foot and threatened Jennifer. 01/21/14 Tr. 8-9, 17-18, 26. Jennifer testified Appellant walked within 10 feet of her car and yelled, “I am going to shoot both of you mother fuckers.” 01/21/14 Tr. 11. Donlow testified Appellant walked within six feet of the car and yelled “I’m going to shoot y’all mother fuckers.” 01/21/14 Tr. 26. They both avowed Jennifer made Donlow veer in front of the car in the curbside lane and turn onto Tippecanoe Road. 01/21/14 Tr. 19-20, 28-29.

{¶12} It is a credibility question as to whether the trial court believed their testimony that Appellant threatened to shoot them. As previously stated, the trial court is in the best position to determine credibility and we will not second guess it. *Hill*, 75 Ohio St.3d at 204.

{¶13} As for the issue of belief of imminent physical harm by Jennifer, Appellant's focus is on the actions of both Donlow and Jennifer following the threat. Donlow is not an alleged victim in this case, only Jennifer.

{¶14} Following the incident, Jennifer drove home to Poland, Ohio after leaving Donlow at Creekside Fitness. She had received a restraining order against Appellant the day before and had intended to take the restraining order to the Mahoning County Sheriff's Department that day. However, after the incident she was flustered from the events. On cross-examination, Jennifer admitted that on her route home she crossed Market Street and she could have gone to Boardman Police Department to file a report. 01/21/14 Tr. 23. However, she waited until the next day. 01/21/14 Tr. 23.

{¶15} That fact, however, does not mean she did not fear imminent physical harm. As stated above, Jennifer and Appellant had recently separated and had a "bad break-up." 1/21/14 Tr. 8, 20. Due to that "bad break-up", a restraining order had been issued against Appellant the day before the incident. Furthermore, at the time of the incident, Jennifer urged Donlow to turn right on red even though he was not in the curb lane. 01/21/14 Tr. 19-20. Donlow had to maneuver the vehicle in front of the curb lane of traffic to turn right on red. 01/21/14 Tr. 19-20, 26-28. Jennifer testified that following the incident she was flustered. Her first action was to call her mom to make sure her child was safe. 01/21/14 Tr. 20-22. Her testimony further established that her mother feared for Jennifer's safety; Jennifer testified that her mother instructed her to come home immediately because of this fear for Jennifer's life. 01/21/14 Tr. 21. These factors indicate her mental state and support the conclusion that she did fear for imminent safety.

{¶16} Consequently, the sole assignment of error lacks merit. The conviction is not against the manifest weight of the evidence. The conviction and sentence are hereby affirmed.

Waite, J., Concurr.
DeGenaro, J. Concurr,