

[Cite as *State v. Miller*, 2010-Ohio-4347.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93731

STATE OF OHIO

PLAINTIFF-APPELLEE

VS.

MICHAEL MILLER

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-521701

BEFORE: Stewart, J., Rocco, P.J., and McMonagle, J.

RELEASED AND JOURNALIZED: September 16, 2010

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MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Michael Miller, appeals from a judgment of conviction that found him guilty of harassment by an inmate for spitting on a correctional officer at the Cuyahoga Hills Juvenile Correctional Facility. He complains that the court's guilty finding was supported by neither the sufficiency nor the weight of the evidence, and that the indictment was defective because it failed to state the culpable mental element.

I

{¶ 2} Because it is potentially dispositive, we first consider Miller's third assignment — that the indictment returned by the grand jury failed to

allege the culpable mental state required for the offense of harassment by an inmate and was thus defective as structural error.

{¶ 3} R.C. 2921.38(A) states: “No person who is confined in a detention facility, with intent to harass, annoy, threaten, or alarm another person, shall cause or attempt to cause the other person to come into contact with blood, semen, urine, feces, or another bodily substance by throwing the bodily substance at the other person, by expelling the bodily substance upon the other person, or in any other manner.”

{¶ 4} The statute requires an “intent” to harass, annoy, threaten, or alarm. In the context of culpable mental states, “intent” and “purpose” are synonymous. See *White v. Maxwell* (1962), 174 Ohio St. 186, 188, 187 N.E.2d 878. Miller’s indictment tracked the language of R.C. 2921.38(B) by alleging that Miller “unlawfully did, while being confined at a detention facility, with intent to harass, annoy, threaten or alarm” cause the victim to come in contact with a bodily substance that Miller expelled. Hence, the indictment fully set forth the R.C. 2921.38(B) mental state of “intent” — a culpable mental state that is synonymous with “purpose.” See *State v. Horner*, ___ Ohio St.3d ___, 2010-Ohio-3830, ___ N.E.2d ___, paragraph one of the syllabus (overruling in part *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624, 885 N.E.2d 917 and *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749, 893 N.E.2d 169.

II

{¶ 5} The first and second assignments of error raise issues relating to the sufficiency and weight of the evidence.

A

{¶ 6} When reviewing a claim that there is insufficient evidence to support a conviction, we view the evidence in a light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 7} As earlier stated, the offense of harassment by an inmate requires the state to prove: (1) a person confined in a detention facility; (2) who caused or attempted to cause another person to come into contact with blood, semen, urine, feces, or another bodily substance; (3) by throwing the bodily substance at the other person; or (4) in any other manner; (5) with intent to harass, annoy, threaten, or alarm the other person.

{¶ 8} The evidence, viewed most favorably to the state, shows that the victim was a correctional officer at a youth detention facility in which Miller had been confined. Miller had been out of compliance with the facility's shower routine, so the victim wrote a "youth behavioral incident report" to document Miller's noncompliance. The victim asked Miller to sign the

report, but Miller refused. Miller then began “rapping” derogatory remarks about the victim, the victim’s wife, and his family. The victim momentarily had his attention drawn to another part of the dormitory when he felt “a glob of spit” running down the side of his face. The victim confronted Miller, the only person in the vicinity. Miller told the victim that “he would do it again.”

{¶ 9} This evidence, in reference to the elements of R.C. 2921.38(B), showed that Miller was confined in a detention facility and that he expelled a bodily substance (spit) at the victim. The circumstances surrounding the incident were sufficient to show Miller’s intent to harass or annoy the victim given that the victim had asked Miller to sign an incident report and Miller responded by insulting the victim and the victim’s family. The court could find that the state established Miller’s “intent” to commit the act was manifest from his comment that “he would do it again.” A rational trier of fact could have viewed this evidence as sufficient to prove the essential elements of harassment by an inmate beyond a reasonable doubt.

B

{¶ 10} Miller argues that his conviction for harassment by an inmate is against the manifest weight of the evidence because there were no witnesses to corroborate the victim’s testimony.

{¶ 11} When considering whether a judgment is against the manifest weight of the evidence in a trial to the court, we will not reverse a conviction

where the trial court could reasonably conclude from substantial evidence that the state has proved the offense beyond a reasonable doubt. *State v. Eskridge* (1988), 38 Ohio St.3d 56, 59, 526 N.E.2d 304. We must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trial court “clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541. Because the trier of fact has the authority to “believe or disbelieve any witness or accept part of what a witness says and reject the rest[.]” *State v. Antill* (1964), 176 Ohio St. 61, 67, 197 N.E.2d 548, our discretionary power to grant a new trial can be exercised only in exceptional cases where the evidence weighs heavily against the conviction.

{¶ 12} Miller’s argument on the absence of corroborating evidence is misplaced. While it is true that no other witness saw Miller spit on the victim, another correctional officer saw Miller and the victim “engaged in a verbal confrontation” and learned from the victim that Miller spat on the victim and said he would “do it again.” The victim’s reaction from being spat on was such that the correctional officer had to remove the victim from the unit. A state trooper called in to investigate the incident interviewed Miller. Miller told the trooper that he had been wrongly disciplined by the victim

and that as he was talking to the victim, some saliva “escaped from his mouth.”

{¶ 13} In *State v. Lundy*, 8th Dist. No. 90229, 2008-Ohio-3359, we considered a similar claim that a conviction for harassment by an inmate was against the manifest weight of the evidence because there was no corroborating physical evidence that the victims had been spat on — the two police officer victims had cleaned the saliva. We stated that the absence of physical evidence showing that Lundy spat on the officers did not lead to the conclusion that his conviction was against the manifest weight of the evidence, finding that “[p]hysical evidence merely would have bolstered the direct testimony of the state’s witnesses.” *Id.* at ¶12 (citation omitted).

{¶ 14} The court could rationally have concluded that the state’s evidence convincingly established that Miller not only spat on the victim, but that he threatened to do so again. The victim’s immediate and forceful reaction to the event was confirmed not only by the state’s witnesses, but by Miller himself. By stating to the state trooper that some of his saliva landed on the victim, Miller essentially corroborated the victim’s testimony that he had been spat on. The court was free to infer Miller’s intent to spit from the circumstances surrounding the issuance of the incident report.

Judgment affirmed.

It is ordered that appellee recover of appellant its 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 Cuyahoga County Court of Common Pleas to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
CHRISTINE T. McMONAGLE, J., CONCUR