

[Cite as *State v. Kronenberg*, 2011-Ohio-1069.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94961

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHELLE KRONENBERG

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-528987

BEFORE: S. Gallagher, J., Stewart, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: March 10, 2011

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SEAN C. GALLAGHER, J.:

{¶ 1} Appellant Michelle Kronenberg appeals her conviction for one count of telecommunications harassment, in violation of R.C. 2917.21(A)(5), with a furthermore specification. For the reasons stated herein, we affirm the judgment of the trial court.

{¶ 2} Kronenberg was indicted on two counts of telecommunications harassment (R.C. 2917.21(A)(5) and (B)). Each count contained a furthermore specification stating that Kronenberg had previously been convicted of telecommunications harassment on February 11, 2008, in Lyndhurst Municipal Court Case No. 07CRA00568. The case proceeded to a bench trial.

{¶ 3} At trial, the victim testified that he worked with Kronenberg many years ago and that he had helped her in hard times over the past 20 years. The victim eventually began feeling harassed by Kronenberg, and he had charges brought against her in a prior telecommunications harassment case.

{¶ 4} The victim changed his phone number, but Kronenberg obtained it and again began calling the victim. The victim testified that he did not want any contact with Kronenberg and that he had informed her that he found her calls harassing.

{¶ 5} On September 16, 2009, Kronenberg called the victim, who answered and told Kronenberg not to call him and that it was against the law. Nevertheless, Kronenberg continued to repeatedly call the victim. The victim testified that Kronenberg called him 30 to 40 times within a two- to three-hour period. Kronenberg left numerous voicemail messages that were introduced into evidence.

{¶ 6} The victim went to the Mayfield Heights Police Department and reported that he was being harassed by Kronenberg. While he was there, Kronenberg called again and the victim handed the phone to officer Anthony Mele. Officer Mele testified that he answered the call and spoke to Kronenberg, who identified herself and her location. Police were dispatched to her location. Officer Mele observed at least 18 calls were made from Kronenberg to the victim's phone that evening.

{¶ 7} Kronenberg testified that when she called the victim on September 16, 2009, he did not tell her not to call him. She claimed that in the midst of her calls, the victim would answer some and she asked to be put through to his voicemail.

{¶ 8} The trial court found Kronenberg guilty of Count 1 as indicted with the furthermore specification and sentenced her on this charge. The court found her not guilty on Count 2.

{¶ 9} Kronenberg has appealed her conviction and has raised two assignments of error for our review. Her first assignment of error provides as follows:

{¶ 10} “I. Appellant’s conviction is against the manifest weight of the evidence.”

{¶ 11} In reviewing a claim challenging the manifest weight of the evidence, the question to be answered is whether “there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt. In conducting this review, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” (Internal citations and quotations omitted.) *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 81.

{¶ 12} Kronenberg was convicted of telecommunications harassment in violation of R.C. 2917.21(A)(5). The statute prohibits one from knowingly making a telecommunication to another if the caller “[k]nowingly makes the telecommunication to the recipient of the telecommunication * * * and the recipient * * * previously has told the caller not to make a telecommunication to those premises or to any persons at those premises.” R.C. 2917.21(A)(5). “A person acts knowingly, regardless of his purpose,

when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature.” R.C. 2901.22(B).

{¶ 13} The victim in this case testified that he received numerous annoying and unwanted telephone calls from Kronenberg. The evidence reflects that on September 16, 2009, Kronenberg called the victim 30 to 40 times. The victim testified he told Kronenberg not to call him during the first call. Kronenberg was aware that the victim had previously sought charges against her for this type of conduct. The state presented evidence of the prior conviction. Though Kronenberg denied that the victim told her not to call again, many of the ensuing calls were not answered by the victim and numerous voice messages were left by Kronenberg. The victim found the calls so harassing that he went to a police department to file a complaint. Officer Mele observed numerous calls that had been made by Kronenberg to the victim’s phone that evening.

{¶ 14} Upon our review, we conclude appellant’s conviction is not against the manifest weight of the evidence and we overrule her first assignment of error.

{¶ 15} Kronenberg’s second assignment of error provides as follows: “II. R.C. 2917.21(A)(5) is unconstitutionally overbroad, infringing upon appellant’s first amendment right to free speech.”

{¶ 16} Because Kronenberg failed to challenge the constitutionality of the statute in the trial court, we need not address the issue on appeal. *State v. Awan* (1986), 22 Ohio St.3d 120, 489 N.E.2d 277, syllabus. We also note that other courts that have considered this issue have found that R.C. 2917.21(A)(5) is not unconstitutionally

overbroad. *State v. Gibbs* (1999), 134 Ohio App.3d 247, 252, 730 N.E.2d 1027; *State v. Rettig* (Feb. 3, 1992), Henry App. No. 7-91-14 and 7-91-15. Kronenberg's second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant 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 common pleas court 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.

SEAN C. GALLAGHER, JUDGE

MELODY J. STEWART, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR