[Cite as *State v. Kronenberg*, 2015-Ohio-1020.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101403

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MICHELLE L. KRONENBERG

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-13-579027-A

BEFORE: Boyle, J., Keough, P.J., and E.A. Gallagher, J.

RELEASED AND JOURNALIZED: March 19, 2015

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MARY J. BOYLE, J.:

{¶1} Defendant-appellant, Michelle Kronenberg, appeals her conviction for violating a protection order and telecommunications harassment. Finding no merit to the appeal, we affirm.

Procedural History and Facts

{¶2} In October 2013, Kronenberg was indicted on two counts: (1) violating a protection order in violation of R.C. 2919.27(A), a third-degree felony, and (2) telecommunications harassment in violation of R.C. 2917.21(B), a felony of the fifth degree.[1] Kronenberg pleaded not guilty to the charges.

{¶3} Prior to trial, the court referred Kronenberg to the court psychiatric clinic for a competency evaluation to stand trial and to waive her right to counsel. Based on the inquiry by the trial court and the court psychiatric clinic reports provided, the trial court allowed Kronenberg to invoke her right to self-representation, and the matter proceeded to a bench trial.

{¶4} The state presented two witnesses at trial: Mayfield Heights Police Officer Matthew Mikolay, and the victim, James LaMarca. Through the witnesses' testimony, the state presented the following evidence.

{¶5} LaMarca, a funeral home director for DiCicco Funeral Homes in Mayfield Heights, first met Kronenberg around 1989 when she worked for the funeral home as a telemarketer. Kronenberg worked at the funeral home for approximately one year, during which time the two became friends. According to LaMarca, he remained friends with Kronenberg for approximately ten years after she no longer worked at the funeral home. In

[1] Kronenberg was also indicted in a separate case — Cuyahoga C.P. No. CR-13-578701 — for violating a protection order in violation of R.C. 2919.27(A)(2) and telecommunications harassment in violation of R.C. 2917.21(A)(5). That case was tried with the underlying case but dismissed after the close of the state's evidence. It is not a part of the case on appeal.

2000, however, LaMarca asked Kronenberg to stop calling him because the calls had become very disruptive in his life. LaMarca explained that Kronenberg sometimes would call "50 to 100 times a day," calling his home phone number, his cell phone, and his work number. LaMarca changed his cell phone number as a result of the calls but Kronenberg somehow learned of his new cell number. LaMarca testified that Kronenberg not only disrupted his life but also scared his family, which resulted in LaMarca contacting the authorities and ultimately seeking a civil protection order against Kronenberg in March 2010.

{¶6} LaMarca further testified that Kronenberg's refusal to stop contacting him, despite being asked "many times" and ordered to do so, resulted in a few court cases in Lyndhurst and cases filed "down here." LaMarca specifically testified that Kronenberg had previously been convicted of telecommunications harassment in Judge Sutula's courtroom in 2011 and that she received a three-year prison sentence. He further indicated that there were other earlier cases prosecuted in common pleas court against Kronenberg in 2008 and 2009.

{¶7} As to the facts giving rise to the instant case, LaMarca testified that Kronenberg called his cell phone approximately five days after she was released from prison and left a voicemail, asking LaMarca for cigarettes, pop, and a ride to her father's house. The state offered the recorded voicemail message into evidence. LaMarca testified that he has received calls like this from Kronenberg in the past, prompting LaMarca to contact the police and resulting in criminal prosecution against Kronenberg. LaMarca further explained the anxiety and terror associated with these calls and that he told Kronenberg at the last trial that he "didn't want anything to do with her."

{¶8} Officer Mikolay testified that he responded to the complaint concerning Kronenberg violating a protective order. Officer Mikolay confirmed that a protective order was

in place, contacted Kronenberg's parole officer, and then ultimately took Kronenberg into custody. According to Officer Mikolay, Kronenberg admitted to calling LaMarca, leaving him a message, and asking for help.

{¶9} The trial court ultimately found Kronenberg guilty of both counts of the indictment. The court merged the two counts as allied offenses, and the state elected to proceed on Count 1. The trial court imposed the maximum sentence of three years in prison.

{¶10} Kronenberg now appeals, raising the following three assignments of error:

> I. The evidence was insufficient as a matter of law to support a finding beyond a reasonable doubt that appellant was guilty of the telecommunications harassment and violating a protection order.
>
> II. The trial court erred by imposing the maximum sentence and failing to make the required findings under R.C. 2929.11 and R.C. 2929.12.
>
> III. The trial court erred when it failed to grant the appellant's motion to dismiss count two of the indictment.

Sufficiency of the Evidence

{¶11} In her first assignment of error, Kronenberg argues that the state failed to present sufficient evidence to convict her of telecommunication harassment and violating a protection order. We disagree.

{¶12} When an appellate court reviews a record upon a sufficiency challenge, "'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.'" *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 77, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

A. Telecommunications Harassment

{¶13} Kronenberg was convicted of telecommunications harassment in violation of R.C. 2917.21(B), which states the following:

> No person shall make or cause to be made a telecommunication, or permit a telecommunication to be made from a telecommunications device under the person's control, with purpose to abuse, threaten, or harass another person.

{¶14} Kronenberg argues that the state failed to produce sufficient evidence that she placed a telephone call with the "purpose to abuse, threaten, or harass" LaMarca. According to Kronenberg, the state only produced evidence that she called LaMarca a single time for the purpose of asking for help. She argues that the mere fact that LaMarca felt harassed by the telephone call is irrelevant for satisfying the purpose element of the offense.

{¶15} Initially, we note that R.C. 2917.21(B) does not require more than a single phone call in order to constitute telephone harassment. *State v. Stanley*, 10th Dist. Franklin No. 06AP-65, 2006-Ohio-4632, ¶ 13. The critical inquiry of telecommunications harassment is not whether the person who received the call was in fact threatened, harassed or annoyed by the call, but rather whether the purpose of the person who made the call was to abuse, threaten or harass the person called. *State v. Bonifas*, 91 Ohio App.3d 208, 211-212, 632 N.E.2d 531 (3d Dist.1993). In the absence of direct evidence, a defendant's intent to threaten, harass, or annoy, however, may be established by the facts and circumstances surrounding the call. *State v. Pariscoff*, 10th Dist. Franklin No. 09AP-848, 2010-Ohio-2070, ¶ 15, citing *State v. Lucas*, 7th Dist. Belmont No. 05BE10, 2005-Ohio-6786, ¶ 15.

{¶16} Under R.C. 2901.22(A), a person acts "purposely" when "it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature." Further, "[h]arass has been defined in case law

as 'to persistently torment the recipient of the telephone call.'" *Stanley* at ¶ 14, quoting *State v. Dennis*, 3d Dist. Allen No. 1-97-42, 1997 Ohio App. LEXIS 5049 (Oct. 30, 1997).

{¶17} Here, we find that the state produced sufficient evidence that Kronenberg's purpose of calling LaMarca was to harass him. The record reveals that Kronenberg has a history of ignoring the protection order and contacting LaMarca, despite knowing the torment that her calls inflict upon him and his family. Kronenberg couching the call as a request for help does not change the true nature of the call — an attempt to renew a relationship that had been terminated years earlier. In this case, Kronenberg contacted LaMarca almost immediately after being released from prison for similar unlawful conduct. Given these circumstances, any rational trier of fact could have found that Kronenberg acted with the requisite purpose to commit telecommunications harassment. *See State v. Kronenberg*, 8th Dist. Cuyahoga No. 96797, 2012-Ohio-589 (finding that state presented sufficient evidence to prove the requisite purpose to support a conviction of telecommunications harassment under nearly identical facts involving same victim and same defendant).

{¶18} Kronenberg next argues that her felony conviction of telecommunications harassment required proof that "this was a subsequent offense under this section." She argues that the state failed to submit a certified journal entry of any prior conviction for telecommunications harassment and therefore failed to meet its burden of proof. Kronenberg, however, fails to offer any authority in support of her claim that the state must prove the prior offense with a "certified journal entry."

{¶19} Through LaMarca's testimony, the state offered evidence that Kronenberg has previously been convicted of telecommunications harassment. We find that this evidence is

sufficient to establish that the underlying case is a "subsequent offense" of telecommunications harassment.

B. Violating a Protection Order

{¶20} Kronenberg was also convicted of violating a protection order under R.C. 2919.27(A)(2) "while committing a felony offense," which elevated the offense to a third-degree felony. *See* R.C. 2921.27(B)(4). Relying on her earlier argument, Kronenberg contends that the state's failure to present a certified copy of a prior conviction precluded a felony conviction of telecommunications harassment. But having found that this argument lacks merit, we likewise reject this claim.

{¶21} This first assignment of error is overruled.

Maximum Sentence

{¶22} In her second assignment of error, Kronenberg argues that the trial court erred in imposing a three-year maximum sentence without first making the required findings under R.C. 2929.11 and 2929.12. Specifically, Kronenberg argues that the trial court failed to consider the purposes and principles of sentencing under R.C. 2929.11 or the seriousness and recidivism factors listed in R.C. 2929.12.

{¶23} R.C. 2953.08(G)(2) states that when reviewing prison sentences, "[t]he appellate court's standard for review is not whether the sentencing court abused its discretion." Instead, the statute permits the appellate court to "'increase, reduce, or otherwise modify a sentence * * * or may vacate the sentence and remand the matter to the sentencing court for resentencing'" if we determine that "'the record clearly and convincingly * * * does not support the sentencing court's findings under [various provisions]; [or] [t]hat the sentence is otherwise contrary to law.'"

State v. Bement, 8th Dist. Cuyahoga No. 99914, 2013-Ohio-5437, ¶ 13, quoting R.C. 2953.08(G)(2).

{¶24} The trial court has the full discretion to impose any term of imprisonment within the statutory range, but it must consider the sentencing purposes in R.C. 2929.11 and the guidelines contained in R.C. 2929.12. *State v. Holmes*, 8th Dist. Cuyahoga No. 99783, 2014-Ohio-603, ¶ 8.

{¶25} R.C. 2929.11(A) provides that the "overriding purposes of felony sentencing are to protect the public from future crime by the offender and others and to punish the offender using the minimum sanctions that the court determines accomplish those purposes." R.C. 2929.11(B) requires that, in addition to achieving these goals, a sentence must be "commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim."

{¶26} R.C. 2929.12 provides a nonexhaustive list of factors the court must consider in determining the relative seriousness of the underlying crime and the likelihood that the defendant will commit another offense in the future. *State v. Wright*, 8th Dist. Cuyahoga No. 100283, 2014-Ohio-3321, ¶ 9, citing *State v. Townsend*, 8th Dist. Cuyahoga No. 99896, 2014-Ohio-924, ¶ 11. The factors include: (1) the physical, psychological, and economic harm suffered by the victim, (2) the defendant's prior criminal record, (3) whether the defendant shows any remorse, and (4) any other relevant factors. R.C. 2929.12(B) and (D).

{¶27} Contrary to Kronenberg's assertion, the trial court was not required to make any factual findings under R.C. 2929.11 or 2929.12 before imposing a maximum sentence. *Bement*, 8th Dist. Cuyahoga No. 99914, 2013-Ohio-5437, ¶ 17. Indeed, "[a]lthough there is a mandatory duty to 'consider' the statutory factors, the trial court is not required to explain its analysis of those factors in a given case." *Wright* at ¶ 10. And this court has consistently recognized that

a trial court's statement in the journal entry that it considered the required statutory factors, without more, is sufficient to fulfill its obligations under the sentencing statutes. *Id.*, citing *State v. Kamleh*, 8th Dist. Cuyahoga No. 97092, 2012-Ohio-2061, ¶ 61.

{¶28} The trial court's journal entry indicates that the court considered "all required factors of the law" and concluded that prison is consistent with the purpose of R.C. 2929.11. Further, although not required, the trial court even stated on the record its reasoning for imposing the maximum sentence, noting the following:

> I have imposed the maximum sentence that the court could impose in this matter based on all of the facts and circumstances surrounding the case, as well as and mostly including the numerous convictions and repeated convictions for the same offense and the same victim.
>
> Also, for the fact that she has committed this crime while on post-release control from her other case that she had served a three-year sentence on, the court does feel that a maximum sentence is appropriate in this matter.

{¶29} Thus, given that the trial court properly considered the purposes and principles of felony sentencing set forth in R.C. 2929.11 and the relevant seriousness and recidivism factors listed in R.C. 2929.12, we find no merit to Kronenberg's second assignment of error and overrule it.

Constitutionality of R.C. 2917.21(B)

{¶30} In her final assignment of error, Kronenberg argues that R.C. 2917.21(B) is unconstitutionally vague and over broad and, therefore, the trial court should have granted her motion to dismiss Count 2 of the indictment. We disagree.

{¶31} Initially, we note that there is a strong presumption in favor of the constitutionality of statutes. *State v. Anderson*, 57 Ohio St.3d 168, 171, 566 N.E.2d 1224 (1991). The party challenging a statute must prove that it is unconstitutional beyond a reasonable doubt. *Id.*

Vagueness

{¶32} In order to survive a void-for-vagueness challenge, "the statute must be written so that a person of common intelligence is able to determine what conduct is prohibited, and secondly, the statute must provide sufficient standards to prevent arbitrary or discriminatory enforcement." *State v. Baumgartner*, 8th Dist. Cuyahoga Nos. 89190, 91027, and 91028, 2009-Ohio-624, ¶ 42, citing *State v. Williams*, 88 Ohio St.3d 513, 728 N.E.2d 570 (2000).

{¶33} The Ohio Supreme Court has explained the rationale for the "void for vagueness" doctrine as follows:

> Three "values" rationales are advanced to support the "void for vagueness" doctrine. * * * These values are first, to provide fair warning to the ordinary citizen so behavior may comport with the dictates of the statute; second, to preclude arbitrary, capricious and generally discriminatory enforcement by officials given too much authority and too few constraints; and third, to ensure that fundamental constitutionally protected freedoms are not unreasonably impinged or inhibited.

State v. Tanner, 14 Ohio St.3d 1, 3, 472 N.E.2d 689 (1984).

{¶34} Kronenberg argues that R.C. 2917.21(B) is unconstitutionally vague because "the statute does not define the elements of abuse, threaten or harass."

At least one other Ohio court has addressed and rejected this exact argument,

stating the following:

> The fact that the statute does not place legal definitions on each of these terms demonstrates that the General Assembly intended to prohibit conduct that is easily definable by the common everyday meaning of these words. A person of ordinary intelligence would know what type of conduct is prohibited. A person is prohibited from making a telephone call with the purpose to mistreat another person, to express a threat to another person, * * * or to persistently torment the recipient of the telephone call. Although R.C. 2917.21(B) implicates a First Amendment freedom by regulating speech, the statute is not vague for not establishing a standard of conduct.

State v. Dennis, 3d Dist. Allen No. 1-97-42, 1997 Ohio App. LEXIS 5049, *5-6

(Oct. 30, 1997).[2]

{¶35} The *Dennis* court upheld the statute as constitutional, recognizing that the statute specifically identifies types of similar behavior that will not be tolerated from persons using the telephone, namely, that a person cannot make a telephone call with the purpose of being abusive, threatening, or harassing to another person. We find their reasoning persuasive and likewise hold that the statute is not unconstitutionally vague.

Overbreadth

{¶36} A statute is over broad if within its reach it prohibits constitutionally protected First Amendment conduct. *Baumgartner*, 8th Dist. Cuyahoga Nos. 89190, 91027, and 91028, 2009-Ohio-624, ¶ 43, citing *Akron v. Rowland*, 67 Ohio St.3d 374, 381, 618 N.E.2d 138 (1993).

{¶37} When performing an overbreadth analysis, courts first consider if the statute regulates speech content or speech-related conduct. *State v. Kinstle*, 3d Dist. Allen No. 1-11-45, 2012-Ohio-5952, ¶ 21. If a statute regulates speech content, it must be narrowly tailored to further a compelling state interest. *Id.*, citing *Broadrick v. Oklahoma*, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). But "'where conduct and not merely speech is involved, * * * the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep.'" *Id.*, quoting *Broadrick* at 615. Since R.C. 2917.21 is not a content-based restriction, Kronenberg has the burden of showing that the statute "reaches a significant amount of protected speech." *State v. Snyder*, 155 Ohio App.3d 453, 2003-Ohio-6399, 801 N.E.2d 876, ¶ 18 (3d Dist.).

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[2] R.C. 2917.21(B) has been amended since the *Dennis* decision. The current version does not include the additional purpose to "annoy." Despite the amendment, we find the *Dennis* reasoning equally applies to the current version of the statute because it still includes "with the purpose to abuse, threaten, or harass another person."

{¶38} Kronenberg argues that the "statute prohibits constitutionally protected conduct that would otherwise be legal." She contends that the statute punishes a simple call for help and her right to free speech. We find her argument unpersuasive. The statute operates to prohibit people from purposely making abusive, threatening, or harassing telecommunications; it does not restrict protected speech. *See generally State v. Gibbs*, 134 Ohio App.3d 247, 730 N.E.2d 1027 (12th Dist.1999) (finding R.C. 2917.21(A)(5) is not unconstitutionally over broad, even though statute restricts person's ability to make a telephone call). Indeed, Kronenberg does not have a constitutionally protected right to make a telephone call for the purpose of harassing another person. R.C. 2917.21(B) is not over broad since the First Amendment does not protect the type of activity that Kronenberg committed.

{¶39} The third assignment of error is overruled.

{¶40} Judgment affirmed.

It is ordered that appellee recover from appellant the 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.

MARY J. BOYLE, JUDGE

KATHLEEN ANN KEOUGH, P.J., CONCURS ON ASSIGNMENTS OF ERROR 2 AND 3 BUT CONCURS IN JUDGMENT ONLY ON ASSIGNMENT OF ERROR 1 (SEE SEPARATE OPINION);

EILEEN A. GALLAGHER, J., CONCURS ON ASSIGNMENTS OF ERROR 2 AND 3 AND CONCURS WITH JUDGE KEOUGH'S SEPARATE OPINION ON ASSIGNMENT OF ERROR 1

KATHLEEN ANN KEOUGH, P.J., CONCURRING IN JUDGMENT ONLY IN PART:

{¶41} I concur in judgment only with the majority's resolution of Kronenberg's first assignment of error and write separately to address the "prior offense" and "prior conviction" distinction. I concur fully with the remaining majority opinion.

{¶42} In her first assignment of error, Kronenberg contends that insufficient evidence exists to support her felony conviction for telecommunications harassment because the state failed to submit a certified journal entry of any prior conviction for telecommunications harassment. Insofar as Kronenberg is attempting to rely on R.C. 2945.75 in support of her position, the Ohio Supreme Court in *State v. Gwen*, 134 Ohio St.3d 284, 2012-Ohio-5046, 982 N.E.2d 626, has clarified that a judgment entry of conviction pursuant to R.C. 2945.75(B)(1) is one method of proving a prior conviction for purposes of elevating the degree of the offense, but not the exclusive method.

{¶43} The court recognized that other means of proving a prior conviction exists including stipulation and admission. *Id*. at ¶ 12, 14. The court also recognized that proof of prior conviction can be achieved by testimony of a witness who has both knowledge of the prior convictions, and who also can identify the accused as the offender involved in them. *Id*. at ¶ 22, citing *State v. Frambach*, 81 Ohio App.3d 834, 843, 612 N.E.2d 424 (9th Dist.1992) ("uncontested avowal to the effect that Frambach had suffered 'a prior theft conviction' was sufficient to allow the jurors to conclude beyond all reasonable doubt that this element of the

offense had been established"); *State v. Chaney*, 128 Ohio App.3d 100, 105-106, 713 N.E.2d 1118 (12th Dist.1998) (uncertified court records and defendant's testimony coupled with the arresting officer's testimony that he was in court when defendant was convicted of prior charge is sufficient); *In re R.B.*, 6th Dist. Huron Nos. H-10-018 and H-10-019, 2011-Ohio-5042, ¶ 10 (testimony by victim and child's mother regarding the prior offense and adjudication); *see also State v. Matheny*, 12th Dist. Preble No. CA87-09-025 (Mar. 21, 1988) (testimony of the officer who investigated prior offense that defendant was convicted of both the prior offense and the present offense was sufficient to prove conviction of prior offense). Therefore, a judgment entry of conviction is not necessarily required to prove a prior conviction.

{¶44} In this case, however, proof of a *prior conviction* was not required for the state to elevate the degree of the offense. Rather, R.C. 2917.21(C)(2) provides, in relevant part, that "a violation of division * * *(B) of this section is a misdemeanor of the first degree on a first offense and a felony of the fifth degree on each subsequent offense." Therefore, according to the majority's resolution, the state needed only to establish that Kronenberg had a *prior offense* of telephone harassment pursuant to R.C. 2917.21 to find her guilty of the elevated degree of telecommunications harassment. While I agree with the majority's conclusions, I believe that the "prior offense" needs to ultimately result in a conviction for the state to use the prior offense as a means to elevate the degree of the offense on a subsequent offense.

{¶45} Whether a statute requires a "prior offense" or "prior conviction," it remains that this prior "'does not simply enhance the penalty but transforms the crime itself by increasing its degree.'" *State v. Salupo*, 177 Ohio App.3d 354, 2008-Ohio-3721, 894 N.E.2d 746, ¶ 15 (9th Dist.), quoting *State v. Brooke*, 113 Ohio St.3d 199, 2007-Ohio-1533, 863 N.E.2d 1024, ¶ 8. Therefore, the prior offense or conviction becomes an essential element of the crime that the state

must prove beyond a reasonable doubt. *Id.*; *see also State v. Cooper*, 8th Dist. Cuyahoga No. 90629, 2008-Ohio-5485, ¶ 17-18 (finding the indictment flawed because it did not allege a prior conviction or indicate the degree of the offense for telecommunications harassment).

{¶46} In *State v. Brantley*, 1 Ohio St.2d 139, 205 N.E.2d 391 (1965), the Ohio Supreme Court distinguished between the words "offense" and "conviction" when addressing degree enhancements for subsequent offenses. In *Brantley*, the defendant committed a "subsequent offense" for gaming prior to his conviction for his first violation of the gaming statute. The court held at its syllabus,

> Where a statute provides that one who violates it shall be punished as for a misdemeanor "for a first offense" and punished as for a felony "for each subsequent offense," a second violation of that statute may be punished as a "subsequent offense" thereunder if the offender has been convicted of a previous violation of that statute before his indictment for the second violation thereof although the second violation occurred prior to his conviction of the previous violation. (Paragraph two of the syllabus of *Carey v. State*, 70 Ohio St. 121, distinguished.)

{¶47} Therefore, in my opinion, while a prior conviction is not needed to indict the person with the elevated degree of a subsequent offense, the prior offense must result in a conviction prior to the resolution of the subsequent offense for a defendant to be convicted on the enhanced degree of the subsequent offense. The state cannot merely rely on a prior offense without a conviction of that offense to elevate the degree of a subsequent offense. Without this ultimate conviction, complaints, unfounded charges, dismissal of charges, or even acquittals of

those prior offenses could serve as the basis for a felony conviction for a subsequent offense even though no conviction was ever obtained on that prior offense.

{¶48} In this case, the state was required to prove that Kronenberg had a prior offense for telecommunications harassment to withstand its burden of proving the subsequent felony charge for telecommunications harassment. However, I would find that the prior offense must have resulted in a conviction. Proof of the prior offense would be of the same manner and methods as set forth in the Ohio Supreme Court's opinion in *Gwen*, 134 Ohio St.3d 284, 2012-Ohio-5046, 982 N.E.2d 626. Therefore, applying *Gwen* to the case before this court, the state offered sufficient evidence through the victim's testimony to prove that Kronenberg had a prior offense, which resulted in a conviction, for telephone harassment. The victim identified that Kronenberg previously was charged with telephone harassment, he was the victim of the offense, and Kronenberg was convicted and was sentenced to prison.