

[Cite as *Cleveland v. Petrovich*, 2015-Ohio-599.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 101377

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**CITY OF CLEVELAND**

PLAINTIFF-APPELLEE

vs.

**RAD PETROVICH**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
AFFIRMED

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Criminal Appeal from the  
Cleveland Municipal Court  
Case No. 2014 CRB000173

**BEFORE:** Blackmon, J., S. Gallagher, P.J., and E.T. Gallagher, J.

**RELEASED AND JOURNALIZED:** February 19, 2015

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PATRICIA ANN BLACKMON, P.J.:

{¶1} Appellant Rad Petrovich appeals his conviction following a jury trial in the Cleveland Municipal Court. Petrovich assigns the following errors for our review:

I. The evidence was insufficient to find defendant guilty of Subsection (A)(1) of the inducing panic statute.

II. The defendant was denied effective assistance of counsel in violation of the Sixth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 10 of the Ohio Constitution.

{¶2} Having reviewed the record and pertinent law, we affirm Petrovich's conviction.

The apposite facts follow.

{¶3} On January 3, 2014, the city of Cleveland charged Petrovich with inducing panic arising from a threatening phone call received by an employee of Cuyahoga County's fiscal office. Petrovich pleaded not guilty at his arraignment. On March 26, 2014, a jury trial commenced.

### **Jury Trial**

{¶4} At trial, Christine Perczak, who is employed in the Homestead Tax Department of the Fiscal Office, testified that she fielded a telephone call at approximately 11:15 a.m. on December 30, 2013. Perczak testified that upon answering the call, an older gentleman with a foreign accent began yelling angrily about the increase in his real property taxes.

{¶5} Perczak stated that when she attempted to ask the caller questions about his property, he became more upset and then threatened to come to the office and shoot the city's employees. Perczak became startled and said "excuse me?" and the caller repeated the threat to come to the office and shoot the employees. The caller hung up the phone before Perczak could ascertain any specific information about his property.

{¶6} Perczak immediately reported the incident to her supervisor, who determined the origin of the call from the caller identification log. Perczak's supervisor reported the incident and relayed the information from the caller identification log to the sheriff's department. Perczak was so overwhelmed that she had to take a cigarette break and then go to lunch.

{¶7} After lunch, Perczak gave a written statement detailing the incident to two detectives from the sheriff's department. Later the same afternoon, the detectives played an audio recording of a male voice, and Perczak recognized that it was voice of the caller who made the threatening call. Perczak stated that she was able to recognize the voice because it was soon after the incident had occurred.

{¶8} Perczak further testified that she had no doubt that she heard and understood what the caller said when he contacted her office. Perczak stated that this was the first time that she had received a threatening phone call. Finally, Perczak said that the call in question was the only call she received where the caller had a foreign accent.

{¶9} Detective John Jerman, of the Cuyahoga County Sheriff Department's Detective Bureau, testified that he investigated the incident regarding the threatening phone call to the fiscal office. Detective Jerman and a fellow detective responded to the fiscal office and met with Perczak and her immediate supervisor. Detective Jerman stated that Perczak was visibly shaken by the call and that her voice, as well as her hands, were trembling when she was discussing the threatening call.

{¶10} After meeting with Perczak and her supervisor, Detective Jerman forwarded the phone number of where the call originated to the detective bureau to track down the caller. The detective bureau called the telephone number and the party who answered claimed that he did place a call to the fiscal office earlier that day. The detective bureau recorded the conversation.

{¶11} Detective Jerman testified that based on the detective bureau's conversation with the party, they determined that the telephone was listed to Petrovich and were able to obtain his address, vital statistic, and photograph. Detective Jerman stated that an additional background check revealed that Petrovich had no criminal record.

{¶12} Later that afternoon, Detective Jerman returned to the fiscal office with an audio recording of the bureau's telephone conversation with Petrovich. And after playing the recording, Perczak confirmed that the voice on the recording was the person who had made the threatening phone call.

{¶13} Detective Jerman testified that after Perczak confirmed the voice on the recording as Petrovich's, they met with the building's security supervisor, who indicated that they were going to increase security minimally that day and would add more security the following day. Detective Jerman gave a photograph of Petrovich to the building's security supervisor to circulate throughout the building.

{¶14} After the state rested, Petrovich motioned the court for acquittal, and the trial court denied the motion.

{¶15} Petrovich testified on his own behalf. Seventy-year-old Petrovich testified that he was born in the former Yugoslavia and has lived in the United States since 1970. Petrovich stated that because he came to the United States as a grown man, he still speaks with an accent. Petrovich testified that he did call the fiscal office regarding the increase in his property tax. Petrovich testified that when he called, there was noise in the background at the fiscal office, that sounded like "mumbo jumbo" and he could not hear, so he hung up the phone.

{¶16} At the conclusion of the trial, the jury found Petrovich guilty of the charge of inducing panic. On April 28, 2014, the trial court sentenced Petrovich to one year of community control.

### **Sufficiency of the Evidence**

{¶17} In the first assigned error, Petrovich argues his conviction for inducing panic was based on insufficient evidence.

{¶18} Crim.R. 29 mandates that the trial court issue a judgment of acquittal where the prosecution's evidence is insufficient to sustain a conviction for the offense. Crim.R. 29(A) and sufficiency of evidence review require the same analysis. *State v. Taylor*, 8th Dist. Cuyahoga No. 100315, 2014-Ohio-3134, citing *Cleveland v. Pate*, 8th Dist. Cuyahoga No. 99321, 2013-Ohio-5571, citing *State v. Mitchell*, 8th Dist. Cuyahoga No. 95095, 2011-Ohio-1241.

{¶19} A challenge to the sufficiency of the evidence supporting a conviction requires the court to determine whether the prosecution has met its burden of production at trial. *State v. Givan*, 8th Dist. Cuyahoga No. 94609, 2011-Ohio-100, citing *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541. On review for sufficiency, courts are to assess not whether the prosecution's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.*

{¶20} The jury found Petrovich guilty of inducing panic in violation of R.C. 2917.31(A)(1), which provides:

(A) No person shall cause the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing any of the following:

(1) Initiating or circulating a report or warning of an alleged or impending fire, explosion, crime, or other catastrophe, knowing that such report or warning is false.

{¶21} Preliminarily, Petrovich confirmed that he placed a call to the fiscal office on the day in question, but claimed that he hung up the phone after a few seconds without speaking to anyone. However, Perczak testified that a caller with a foreign accent threatened to come and shoot the employees of the fiscal office. Perczak testified the call lasted about five minutes.

{¶22} The evidence also established that after listening to an audio recording of the detective bureau's conversation with Petrovich, Perczak was able to confirm without a doubt that the voice on the audio was that of the caller who made the threat earlier that day. The evidence also established that Perczak, despite Petrovich's foreign accent, was certain about what Petrovich stated.

{¶23} The evidence further established that Detective Jerman testified that Perczak was visibly shaken when they met with her about the threat. Detective Jerman noted that Perczak's voice and hands were trembling when discussing the threatening phone call.

{¶24} Finally, the testimony established that based upon the reported threat, additional security, though minimal, had to be deployed to the building as a precautionary measure. In addition to the increased deployment of security personnel, photographs of Petrovich were circulated throughout the building so that security would be alerted if Petrovich did attempt to carry out the threat.

{¶25} After viewing the evidence in a light most favorable to the prosecution, the above evidence, if believed, would support the conclusion that Petrovich committed the actions alleged.

As such, any rational trier of fact would have found the essential elements of the charges that led to his conviction for inducing panic proven beyond a reasonable doubt. Consequently, the trial court did not err when it denied Petrovich's motion for acquittal.

{¶26} Nonetheless, Petrovich argues that the Fiscal office was not evacuated in response to Perczak’s report of a threat, thus there was insufficient evidence to support his conviction. Petrovich’s notion is misplaced. The absence of an evacuation does not negate a finding of serious public inconvenience or alarm under the statute. *See In re J.C.*, 11th Dist. Lake No. 2012-L-083, 2013-Ohio-1292. Pursuant R.C. 2917.31(A), a conviction for inducing panic requires the perpetrator to cause an evacuation or “otherwise cause serious public inconvenience or alarm.”

{¶27} Although neither the statute nor its legislative notes define serious public inconvenience or alarm, case law provides insight concerning what is required to satisfy this element. For instance, in *State v. Dulaney*, 180 Ohio App.3d 626, 2009-Ohio-79, 906 N.E.2d 1147, ¶ 22, (3d Dist.), a disgruntled former employee phoned his former company threatening to beat up two employees. On appeal, the court affirmed that there was serious public inconvenience or alarm, because the doors were locked, the police were called, and many of the employees were fearful as a result of the threat. *Id.* at ¶ 24.

{¶28} Here, the sense of discomfort, distress, or fear caused by the threat resulted in the deployment of additional security to the fiscal office. The increased security presence undoubtedly resulted in disruption of the employees’ normal routine. The facts of the instant case easily satisfies the “otherwise cause serious public inconvenience or alarm” element of the statute. As such, any rational trier of fact would have found the essential elements proven beyond a reasonable doubt. Consequently, the trial court properly denied the motion for acquittal.

{¶29} Nevertheless, Petrovich argues the City prosecuted him under subsection (A)(1) of the statute instead of subsection (A)(2), that provides:



(A) No person shall cause the evacuation of any public place, or otherwise cause serious public inconvenience or alarm, by doing any of the following:

(2) Threatening to commit any offense of violence;

{¶30} Petrovich states in his brief that subsection (A)(2) seems much more to apply to the factual allegation of this case. Specifically, Petrovich contends that subsection (A)(1) pertains more to calling in a fake fire alarm or bomb threat that results in mass evacuation or at least mass hysteria.

{¶31} However, the record established that the complaint did in fact charge Petrovich with violating subsection (A)(1) and the trial court instructed the jury on subsection (A)(1). As previously discussed, the City produced sufficient evidence that Petrovich made the phone call threatening to shoot up the employees of the fiscal office. The threat to shoot up the employees of the fiscal office satisfies both subsections (A)(1) and (A)(2). Because of the aforementioned precautionary steps that had to be taken in response to the report, subsection (A) was also satisfied.

{¶32} Consequently, any rational trier of fact would have found the essential elements of subsection (A)(1) proven beyond a reasonable doubt. The factfinder could find under (A)(1) that Petrovich caused serious alarm by threatening to kill the employees. As such, the trial court properly denied the motion for acquittal. Accordingly, we overrule the first assigned error.

### **Ineffective Assistance of Counsel**

{¶33} In the second assigned error, Petrovich argues he was denied the effective assistance of counsel.

{¶34} To succeed on a claim of ineffective assistance, a defendant must establish that counsel's performance was deficient and that the defendant was prejudiced by the deficient

performance. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). Counsel will only be considered deficient if his or her conduct fell below an objective standard of reasonableness. *Strickland* at 688.

{¶35} When reviewing counsel's performance, this court must be highly deferential and "must indulge a strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." *Id.* at 689. To establish resulting prejudice, a defendant must show that the outcome of the proceedings would have been different but for counsel's deficient performance. *Id.* at 694.

{¶36} Petrovich argues trial counsel was ineffective for calling him to testify. Petrovich contends that this decision allowed the jury to immediately compare his thick accent with the accent they heard played on the audio recording. Petrovich now claims that if he had not taken the stand, there would have been no comparison.

{¶37} A decision regarding whether to call a defendant to testify on his own behalf during the course of trial is a matter of trial strategy. *State v. Huber*, 8th Dist. Cuyahoga No. 98128, 2013-Ohio-97, citing *State v. Harrison*, 8th Dist. Cuyahoga No. 57617, 1990 Ohio App. LEXIS 4522 (Oct. 18, 1990). Trial strategy and even debatable trial tactics do not establish ineffective assistance of counsel. *State v. Rosa*, 8th Dist. Cuyahoga No. 96587, 2012-Ohio-1042, citing *State v. Conway*, 109 Ohio St.3d 412, 2006-Ohio-2815, 848 N.E.2d 810, ¶ 111.

{¶38} In the instant case, trial counsel's defense theory was that Petrovich did not make a threat, but because of Petrovich's foreign accent, Perczak must have been mistaken about what she heard. Because trial counsel was not arguing that Petrovich did not make the call to the

fiscal office, a comparison of the accent on the audio recording with that of Petrovich as he testified would not have been necessary.

{¶39} Here, Petrovich has the burden of proof and must overcome the strong presumption that trial counsel's decision to pursue the theory of mistake might be considered sound trial strategy. *State v. Becker*, 8th Dist. Cuyahoga No. 100524, 2014-Ohio-4565, citing *State v. Smith*, 17 Ohio St.3d 98, 100, 477 N.E.2d 1128 (1985). Petrovich is now asking this court to second guess trial counsel's trial strategy, and we decline to do so. *State v. Grasso*, 8th Dist. Cuyahoga No. 98813, 2013-Ohio-1894, ¶ 62, citing *State v. Gooden*, 8th Dist. Cuyahoga No. 88174, 2007-Ohio-2371, ¶ 38. Accordingly, we overrule the second assigned error.

{¶40} Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to the Cleveland Municipal 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.

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PATRICIA ANN BLACKMON, JUDGE

SEAN C. GALLAGHER, P.J., and  
EILEEN T. GALLAGHER, J., CONCUR

