

[Cite as *Cleveland v. Reynolds*, 2018-Ohio-97.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 105546

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

MAURICE REYNOLDS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2016 CRB 002994

BEFORE: Stewart, J., E.T. Gallagher, P.J., and Blackmon, J.

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MELODY J. STEWART, J.:

{¶1} The court found defendant-appellant Maurice Reynolds guilty of a first-degree misdemeanor count of aggravated menacing on evidence that during an argument with his girlfriend about his infidelity he threatened to “kick [her] teeth down [her] throat.” Reynolds complains that in finding him guilty, the court improperly relied on other acts evidence to establish the victim’s belief that he would cause her serious physical harm. He also complains that the evidence did not establish the victim’s subjective belief that he would inflict serious physical harm upon her. We find no error and affirm the conviction.

I. Sufficiency of the Evidence

{¶2} Because it could potentially be dispositive, we first address Reynolds’s argument that the city failed to provide any evidence that the victim was in fear of serious physical harm from his threat. He maintains that the victim testified that his statement put her in “fear,” and being in “fear” was not enough to establish a subjective belief that she would be subject to imminent serious physical harm.

{¶3} We review challenges to the legal sufficiency of the evidence supporting a conviction by viewing the evidence in a light most favorable to prosecution and determining whether any rational trier of fact could find that the evidence established an essential element of an offense beyond a reasonable doubt. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Employing that standard of review, we conclude that the city offered sufficient evidence on each element of the offense.

{¶4} The city of Cleveland charged Reynolds with aggravated menacing under Cleveland Codified Ordinances 621.06(a). That ordinance, which is identical to R.C. 2903.21(A), states that “[n]o person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of such other person or member of his or her immediate family.”

{¶5} Reynolds does not argue that kicking a person’s teeth down that person’s throat would not constitute serious physical harm for purposes of R.C. 2901.01(A)(5) (defining “serious physical harm” as, among other things, “[a]ny physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement.”). What remains then is whether the victim subjectively believed that Reynolds’s threat would lead to serious physical harm.

{¶6} For the offense of aggravated menacing, “[i]t is sufficient to prove that the victim, in the moment, believed the defendant to be in earnest and capable of acting.” *State v. Marcum*, 7th Dist. Columbiana No. 10 CO 17, 2011-Ohio-6140, ¶ 37, citing *State v. Collie*, 108 Ohio App.3d 580, 582-583, 671 N.E.2d 338 (2d Dist.1996). “Evidence of a person’s belief that an offender will cause serious physical harm can be proven with circumstantial evidence.” *State v. Landrum*, 1st Dist. Hamilton No. C-150718, 2016-Ohio-5666, ¶ 9.

{¶7} When asked how she reacted to Reynolds’s threat to kick her teeth down her throat, the victim testified that “[w]ell, obviously, I was in fear.” She explained that she took this threat seriously because “[h]e’s put his hands on me before” — “[m]ore times than I can count.” A rational trier of fact could find this evidence sufficient to establish the victim’s belief that Reynolds would cause her serious physical harm.

{¶8} Additionally, Reynolds argues that the court reached its verdict by relying on facts not in evidence; namely, that Reynolds also told the victim that “I’ll put your head through the wall.”

{¶9} We agree with Reynolds that there was no evidence that he made this statement. The court quoted it in its summation of the evidence when ruling on Reynolds’s Crim.R. 29(A) motion for judgment of acquittal: “Also quote, ‘I’ll put your head through the wall.’” It appears that the court read this statement from an affidavit for an arrest warrant that is contained in the record (the affidavit quotes the victim as saying that Reynolds “stated, ‘say it again and I’ll put your head through the wall.’”)

{¶10} With there being no testimony concerning this statement, nor the admission of any document containing that statement, the court erred by referencing it when announcing its verdict. That error, however, was harmless under Crim.R. 52(A). The city charged a single count of aggravated menacing, and evidence that Reynolds threatened to kick the victim's teeth down her throat was by itself a sufficient basis for his guilt on that count. Any mention of other statements was cumulative.

II. Other Acts Evidence

{¶11} In response to the question of whether Reynolds had threatened her before, the victim testified that Reynolds "put his hands on me before." She testified that "I've had bruises head to toe in 2012. He actually did a year for that case." When asked what has happened to her in the past, the victim testified about the physical abuse she has suffered from Reynolds. She said that the acts happened at least ten times and Reynolds had a prior conviction for domestic violence against her. Reynolds argues that this testimony contained other acts evidence prohibited by Evid.R. 404(B).

{¶12} Evid.R. 404(B) prohibits the introduction of evidence of other crimes or acts to "prove the character of a person in order to show action in conformity therewith." In aggravated menacing cases where the victim's subjective belief that the offender will cause the victim physical harm is an element of the offense, "evidence of a defendant's violent character is admissible to prove that the victim believed that the defendant would cause physical harm." *Cleveland v. McCoy*, 8th Dist. Cuyahoga No. 103276, 2016-Ohio-3451, ¶ 4. Decisions to admit other acts evidence under Evid.R. 404(B) rest

within the sound discretion of the trial court. *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, syllabus.

{¶13} The city elicited the victim's testimony about Reynolds's prior acts in order to show that when he had, in the past, threatened her, he followed through on those threats:

Q. Has he made threats to you before?

A. Yes, he has.

* * *

Q. Ma'am, when he has threatened you before, has he done anything as a result of that to you?

A. Yes, he has. * * *

Q What's happened before?

A. I mean, I've been choked [sic] been punched. I've been kicked. You name it, I've had it done.

{¶14} That Reynolds had previously followed through on threats of physical violence was relevant to proving the victim's subjective belief that Reynolds would cause her serious physical harm by threatening to kick her teeth down her throat. Importantly, the other acts evidence did not encompass acts committed by Reynolds that had no direct relevance to proving the victim's subjective belief that he would harm her. On this basis, we find that the court did not abuse its discretion by admitting the testimony.

{¶15} Even if admissible, other acts evidence is subject to Evid.R. 403, and can be barred if its probative value is substantially outweighed by the danger of unfair prejudice.

Reynolds fails to make this argument; he argues only that "the harm caused by the admission of this evidence is clear from the court's reliance on this evidence in finding Appellant guilty of the instant crime." Appellant's brief at 8. But of course, if the

other acts evidence was admissible and relevant to proving an element of the offense, the court could rely on it to find Reynolds guilty.

{¶16} In any event, it is unclear how much weight the court gave the other acts evidence. The court stated that Reynolds's statement that he would "kick your teeth down your throat" was a threat. It found it credible that the victim would be afraid: "Actually her words were, of course, I was afraid. Who wouldn't be?" And while the victim testified that Reynolds was on "probation" at the time he made his threat, Reynolds mentioned that same fact without prompting during his testimony on direct examination. This opened the door for the city to elicit from Reynolds that he had previously pleaded no contest to, and had been convicted of, committing aggravated menacing. The court mentioned the other acts evidence when announcing its verdict, including the prior conviction for aggravated menacing, but gave particular emphasis to rejecting Reynolds's argument that the victim's allegations were lies. The other acts were far from being the sole basis of the court's verdict, so they were not so prejudicial that their use as evidence denied Reynolds a fair trial.

{¶17} 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 issue out of this court directing the Cleveland Municipal Court to carry this judgment into execution.

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

MELODY J. STEWART, JUDGE

EILEEN T. GALLAGHER, P.J., and
PATRICIA ANN BLACKMON, J., CONCUR