[Cite as *State v. Colon*, 2022-Ohio-2009.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JACK O. COLON,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 21 CO 0012

Criminal Appeal from the
Columbiana County Municipal Court of Columbiana County, Ohio
Case No. 2021 CR B 000063

BEFORE:
David A. D'Apolito, Gene Donofrio, Cheryl L. Waite, Judges.

JUDGMENT:
Affirmed.

Atty. Vito Abruzzino, Columbiana County Prosecutor and *Atty. Sean J. O'Brien,* Assistant Prosecuting Attorney, Columbiana County Prosecutor's Office, 38832 Saltwell Road, Lisbon, Ohio 44432, for Plaintiff-Appellee and

Atty. James R. Wise, Hartford & Wise, Co., LPA, 91 West Taggart, P.O. Box 85, East Palestine, Ohio 44413, for Defendant-Appellant.

Dated: June 6, 2022

D'APOLITO, J.

{¶1} Appellant, Jack O. Colon, appeals from the May 12, 2021 judgment of the Columbiana County Municipal Court convicting him for aggravated menacing following a trial by jury and sentencing him to 180 days in jail. On appeal, Appellant argues that Appellee, the State of Ohio, presented insufficient evidence and that his conviction is against the manifest weight of the evidence. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

{¶2} On January 21, 2021, a criminal complaint was filed against Appellant charging him with one count of aggravated menacing, a misdemeanor of the first degree, in violation of R.C. 2903.21(A). The complaint alleged that Appellant threatened to hang the Governor of the State of Ohio, members of the Columbiana County Clerk of Courts, members of the Prosecutor's Office, and School District employees that required children to wear masks. Appellant was appointed counsel and pled not guilty at his initial appearance. Following a competency evaluation and an April 26, 2021 hearing, Appellant was found competent to stand trial.

{¶3} A trial by jury was held on May 12, 2021. Appellant proceeded pro se with standby counsel.

{¶4} The State presented two witnesses: Michael Shane Patrone, the Chief Deputy with the Columbiana County Clerk's Office; and Deputy Jeff Haugh, with the Columbiana County Sheriff's Office.

{¶5} On January 21, 2021, around 9:00 a.m., Appellant went to the Clerk's Office to file treason charges against the Governor. (5/12/2021 Trial by Jury T.p., 56-57). A deputy clerk spoke with Appellant through clear plexiglass which was installed due to Covid. (*Id.* at 59). The clerk attempted but was unable to convey to Appellant that he was in the wrong office and that her office could not accept the filing. (*Id.* at 57). The clerk requested Patrone's assistance. (*Id.*)

{¶6} Patrone testified that he spoke with Appellant for ten minutes and indicated that the Clerk's Office could not accept his filing. (*Id.* at 58). Patrone stated that Appellant

became "confrontational," "seemed to be agitated, voice was raised," "physically upset," "very insistent," and "his voice got louder." (*Id.* at 58-59). Appellant started talking about unrelated matters involving China and Washington, D.C. (*Id.* at 59). Appellant "wanted to hang the Governor" in the public square. (*Id*.) Appellant was upset that no one would help him. (*Id.*) Patrone said that Appellant leaned up to the plexiglass, "pointed his finger," and stated "[y]ou'll hang" to both Patrone and the deputy clerk. (*Id.* at 59-60). Patrone indicated that Appellant "aggressively" grabbed the papers, stated that "if nobody will help save the children [from mask wearing] he will go to [the] school district and take care of it himself," and "stormed out of the office." (*Id.* at 60).

{¶7} As a result of Appellant's threats against Patrone, the deputy clerk, and the school district, Patrone went to the prosecutor's office and filled out an affidavit. (*Id*; State's Exhibit No. 1). Patrone revealed he felt "threatened," "concerned there would be some kind of danger," including "serious physical harm" regarding himself, the deputy clerk, other clerks, and the school district. (*Id.* at 60-61).

{¶8} On cross-examination, Patrone was asked if he knowingly believed Appellant meant to cause him serious physical harm and if he felt threatened that Appellant was going to harm him. (*Id.* at 69, 74). Patrone replied, "Yes. I think when you pointed directly at me and at the deputy clerk you told us that we would hang * * * yes, I felt there was a threat for both me, my clerk, and unfortunately, the students in our school district." (*Id.* at 74).

{¶9} Deputy Haugh testified that he became involved in this matter after Appellant made threats at the county courthouse. (*Id.* at 78). Deputy Haugh spoke with Patrone who advised him "of some threats [Appellant] had made towards his staff, himself, the Governor, the prosecutor here, et cetera, and other courthouses." (*Id.*) After obtaining Patrone's affidavit, Deputy Haugh filed a charge of aggravated menacing against Appellant. (*Id.*) Deputy Haugh said that "[p]retty much the entire shift went out looking for [Appellant] at the time because of the extent of the threats involving different school systems and county officials." (*Id.* at 79). Deputy Haugh stated "[i]t was determined we needed to find him." (*Id.*)

{¶10} At the close of the State's case, Appellant moved for an acquittal pursuant to Crim.R. 29, which was overruled by the trial court.

{¶11} Appellant presented three witnesses: Patrone, Chief Deputy Jennifer Tucker, and Sheriff Brian McLaughlin.

{¶12} Patrone testified he "believed that [Appellant was] intending on harming us when [he] stated that [he was] going to hang us." (*Id.* at 94). Tucker testified Appellant's mood is usually "feisty" when he comes to the courthouse. (*Id.* at 98). Tucker became aware of Appellant's threats from the incident at issue. (*Id.* at 99). Regarding the threats, Tucker believed Appellant said that he "wanted to hang the Governor and go to the local schools and hang them as well." (*Id.*) Sheriff McLaughlin testified he was unaware that treason is a hanging offense. (*Id.* at 104).

{¶13} At the conclusion of all of the evidence, Appellant renewed the Crim.R. 29 motion for acquittal, which was overruled by the trial court.

{¶14} The jury found Appellant guilty of aggravated menacing as charged in the complaint.

{¶15} On May 12, 2021, the trial court sentenced Appellant to 180 days in jail, with 111 days credit for time served. Appellant filed a timely appeal. Appellant, through appointed counsel, raises one assignment of error for our review.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED IN FINDING THE DEFENDANT GUILTY OF AGGRAVATED MENACING AS THERE WAS INSUFFICIENT EVIDENCE IN WHICH TO CONVICT THE DEFENDANT AND THE FINDING IS AGAINST THE WEIGHT OF THE EVIDENCE.

{¶16} In his sole assignment of error, Appellant calls into question the sufficiency and weight of the evidence adduced at trial. Appellant specifically contends that the State did not present evidence that Appellant caused Patrone to believe that Appellant would cause serious physical harm to him "in the moment." (1/4/2022 Appellant's Brief, p. 8).

> "When a court reviews a record for sufficiency, '(t)he 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.*

> *Maxwell*, 139 Ohio St.3d 12, 2014-Ohio-1019, 9 N.E.3d 930, ¶ 146, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).
>
> In determining whether a criminal conviction is against the manifest weight of the evidence, an Appellate court 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 trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 119.* * *
>
> The weight to be given to the evidence and the credibility of the witnesses are nonetheless issues for the trier of fact. *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967). The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 674 N.E.2d 1159 (1997).

State v. T.D.J., 7th Dist. Mahoning No. 16 MA 0104, 2018-Ohio-2766, ¶ 46-48.

{¶17} "'(C)ircumstantial evidence and direct evidence inherently possess the same probative value.'" *State v. Biros*, 78 Ohio St.3d 426, 447, 678 N.E.2d 891 (1997), quoting *Jenks, supra*, paragraph one of the syllabus.

{¶18} For the reasons addressed below, we determine the judgment is not against the manifest weight of the evidence and further conclude it is supported by sufficient evidence.

{¶19} Appellant takes issue with the guilty finding for aggravated menacing, a misdemeanor of the first degree, in violation of R.C. 2903.21, which states:

> (A) No person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family. In addition to any other basis for the other person's belief that the offender will cause serious physical harm to the person or property of the other person, the other person's unborn, or a member of the other person's immediate family, the other person's belief may be based on words or conduct of the offender that are directed at or identify a corporation, association, or other organization that employs the other person or to which the other person belongs.

R.C. 2903.21(A).

{¶20} "A person acts knowingly, regardless of purpose, when the person is aware that the person's conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when the person is aware that such circumstances probably exist." R.C. 2901.22(B).

{¶21} "Serious physical harm to persons" includes "[a]ny physical harm that carries a substantial risk of death[.]" R.C. 2901.01(A)(5)(b).

{¶22} 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; *see also State v. Flannery*, 1st Dist. Hamilton No. C-140426, 2015-Ohio-1360, ¶ 17 (victim's testimony that he believed defendant would kill him coupled with circumstantial evidence supporting the statement was sufficient to prove a charge of aggravated menacing); *State v. Smith*, 1st Dist. Hamilton No. C-180499, 2019-Ohio-3257, ¶ 29.

{¶23} This court's review of the record establishes that there was ample proof that Appellant "knowingly cause[d] another to believe [he would] cause serious physical harm to the person[.]" R.C. 2903.21(A); R.C. 2901.22(B); R.C. 2901.01(A)(5)(b). Patrone's "testimony that [Appellant] threatened to [hang] him and he believed him, along with circumstantial evidence, such as the fact that he reported the incident to police, sufficed,

if believed, to prove the elements of the crime of aggravated menacing." *Smith*, *supra,* at ¶ 29.

{¶24} As stated, Appellant went to the Clerk's Office to file treason charges against the Governor. (5/12/2021 Trial by Jury T.p., 56-57). Appellant became agitated with the deputy clerk and Patrone because they would not accept his filing. (*Id.* at 57-58). Patrone testified for the State that Appellant became "confrontational," "seemed to be agitated, voice was raised," "physically upset," "very insistent," and "his voice got louder." (*Id.* at 58-59). Appellant "wanted to hang the Governor" in the public square. (*Id*.) Appellant was upset that no one would help him. (*Id.*) Patrone said that Appellant leaned up to the plexiglass, "pointed his finger," and stated "[y]ou'll hang" to both Patrone and the deputy clerk. (*Id.* at 59-60). Patrone indicated that Appellant "aggressively" grabbed the papers, stated that "if nobody will help save the children [from mask wearing] he will go to [the] school district and take care of it himself," and "stormed out of the office." (*Id.* at 60).

{¶25} As a result of Appellant's threats against Patrone, the deputy clerk, and the school district, Patrone went to the prosecutor's office and filled out an affidavit. (*Id*; State's Exhibit No. 1). Patrone revealed he felt "threatened," "concerned there would be some kind of danger," including "serious physical harm" regarding himself, the deputy clerk, other clerks, and the school district. (*Id.* at 60-61).

{¶26} On cross-examination, Patrone was asked if he knowingly believed Appellant meant to cause him serious physical harm and if he felt threatened that Appellant was going to harm him. (*Id.* at 69, 74). Patrone replied, "Yes. I think when you pointed directly at me and at the deputy clerk you told us that we would hang * * * yes, I felt there was a threat for both me, my clerk, and unfortunately, the students in our school district." (*Id.* at 74).

{¶27} The context of the facts presented justifies Patrone's concern and reasonable belief, regarding Appellant's actions and statement that he would "hang him," that Appellant would cause Patrone serious physical harm.

{¶28} Pursuant to *Jenks, supra*, there is sufficient evidence upon which the jury could reasonably conclude beyond a reasonable doubt that the elements of aggravated

menacing were proven. Thus, the trial court did not err in overruling Appellant's Crim.R. 29 motion.

{¶29} Also, the jury chose to believe the State's witnesses. *DeHass, supra*, at paragraph one of the syllabus. Based on the evidence presented, as previously stated, the jury did not clearly lose its way in finding Appellant guilty of aggravated menacing. *Thompkins, supra*, at 387.

CONCLUSION

{¶30} For the foregoing reasons, Appellant's sole assignment of error is not well-taken. The judgment of the Columbiana County Municipal Court convicting Appellant for aggravated menacing following a trial by jury and sentencing him to 180 days in jail is affirmed.

Donofrio, P.J., concurs.

Waite, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Columbiana County Municipal Court of Columbiana County, Ohio, is affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.