

city of Cleveland Heights (“the City.”) After a thorough review of the facts and law, this court affirms.

I. Factual and Procedural History

{¶ 2} On February 17, 2022, Mahalli was charged in the Cleveland Heights Municipal Court with violating a protection order pursuant to R.C. 2919.27. Mahalli entered a not guilty plea, and the case proceeded to a bench trial on June 9, 2022, where the following evidence was elicited.

{¶ 3} In November 2021, the Cuyahoga County Court of Common Pleas issued a civil stalking protection order, prohibiting Mahalli from being within 100 feet of J.W. and J.W.’s Mother, G.W. When the protection order was issued, J.W. was renting a home from Mahalli and G.W. had been temporarily residing with J.W. for about one month. The protection order was admitted into evidence during the trial of the violation and specifically noted the following findings of fact:

[J.W.] testified that [Mahalli], the property manager of the residence where she presently stays, threatened to shoot her entire family and dogs in September of 2021. [G.W.] corroborated this threat. [J.W.] testified further that [Mahalli] attempted to attack her in her driveway later in the driveway. [J.W.] also testified that she has called the Cleveland Heights police department on several occasions as a result of [Mahalli]’s actions and aggressive demeanor. [J.W.] stated that she is afraid for her safety, the safety of her mother and the safety of her dogs. [J.W.] further stated that this situation makes her uncomfortable and she has lost time at work and school because of [Mahalli].

[Mahalli] testified that he never threatens anyone, that he manages 20 properties, and has been attempting to collect rent and take care of the property. [Mahalli]’s witnesses testified of his benevolent activities and property management. [A witness] testified that [Mahalli] knocked on [J.W.]’s car window to have her move her vehicle that blocked the

driveway and heard [J.W.] make a threat to [Mahalli]. [Mahalli] testified that the property has no heat or water at present.

The Court finds the parties and witnesses similarly credible.

The Court finds by a preponderance of the evidence that 1) [J.W.] or [J.W.]’s family or household members reasonably believed [Mahalli]’s conduct before the filing of the Petition endangered the health, welfare, or safety of [J.W.] or [J.W.]’s family or household members; 2) [Mahalli] presents a continuing danger to [J.W.] or [J.W.]’s family or household members; and (3) the following orders are equitable, fair, and necessary to protect the persons named in this Order from experiencing a continuing danger.

{¶ 4} The protection order prohibited Mahalli from being within 100 feet of both J.W. and G.W., particularly noting that this applied “wherever those protected persons may be found, or any place [Mahalli] knows or should know the protected persons are likely to be, even with a protected person’s permission.” It further clarified that “[i]f [Mahalli] accidentally comes in contact with protected persons in any public or private place, [Mahalli] must depart immediately.” The order, however, specifically noted that “[t]his order does not preclude legal proceedings, such as eviction.”

{¶ 5} G.W. testified that on February 16, 2022, around 12:25 p.m., she was at her son, Ricco Irvin’s (“Irvin”) home. Irvin resided at a property owned by Mahalli that Irvin’s wife was renting. G.W. and Irvin were in his vehicle, in the driveway, about to leave the premises, when they saw Mahalli and another man, Marvin Moskowitz (“Moskowitz”) approaching the home in separate vehicles. Moskowitz approached the property, reportedly holding documents, while Mahalli remained in his vehicle. Irvin exited the vehicle and told Moskowitz to leave the premises.

{¶ 6} While G.W. remained in the passenger seat of her son's car, Irvin approached Mahalli's vehicle. G.W. testified, "I don't know what they said between each other or whatever, but at that time, then that's when [Moskowitz] came out and [was] real aggressive to my son, he went chest-to-chest and he was arguing." (Tr. 15.) When she noticed the conversation becoming aggressive, she exited the vehicle and stood in the driveway to warn her son not to become violent or aggressive. G.W. testified that Mahalli finally exited his vehicle and began to approach the area where she was standing. She informed him that she had a protection order, but Mahalli "pushed [her] out the way" and said to "get out of the way[.]" (Tr. 16.) G.W. told Irvin's wife, who was standing on the porch, to call the police. It was G.W.'s testimony that only after she asked Irvin's wife to call the police, Mahalli retreated to his vehicle and left the scene. She testified that Mahalli was in her presence for about ten to fifteen minutes and that she was fearful of him.

{¶ 7} On cross-examination, G.W. admitted that she had a long history as a tenant at Mahalli's properties and had pursued legal action against him in the past. At the time that J.W. pursued a protection order against Mahalli, G.W. was only temporarily living with J.W. to assist her with packing her belongings and moving out of the property.

{¶ 8} Irvin testified and corroborated G.W.'s testimony, clarifying that the documents that Moskowitz was attempting to deliver were eviction papers, though he did not know it at the time because they were not left at the scene after the incident. He stated that since he began occupying the premises in August 2021, he

had not paid any rent after putting down the security deposit, claiming that he had been attempting to work out the price with Mahalli. Regarding the incident, Irvin testified that Mahalli was “within inches” of G.W. even after G.W. reminded him that there was an active protection order in place. On cross-examination, Irvin admitted that he had multiple felony convictions.

{¶ 9} Mahalli called Moskowitz as his first witness. Moskowitz testified that Mahalli had transferred the property to him by quitclaim deed and that he was there to serve a three-day notice on the tenants. Moskowitz, however, had never been to the property and was having trouble locating it. He called Mahalli, who agreed to direct him to the property. When asked why Mahalli transferred the property to him, Moskowitz stated that Mahalli asked him to take ownership of it because Mahalli desired to evict the tenants but was “blocked” from the property. (Tr. 69.) Despite the transfer, Moskowitz testified he was essentially an owner in name only and that Mahalli remained the property manager and in control of the property.

{¶ 10} He corroborated that he was engaged in a confrontation with Irvin when Mahalli exited his vehicle and came to his aid. When asked about G.W. and whether Mahalli had any contact with her, Moskowitz stated, “[T]hat part is a little bit fuzzy” and could not say for sure whether Mahalli touched G.W., or even whether Mahalli would have seen G.W. (Tr. 67.) He was unable to say for sure whether G.W. verbally informed Mahalli that she had an active protection order against him.

{¶ 11} Mahalli testified in his own defense. He testified that he had been trying to evict Irvin several times before this incident happened, but each time the

court had dismissed the proceeding. Mahalli testified that he transferred the property to Moskowitz because he was fearful of the tenants. Regarding why he was present that day, he testified that Moskowitz could not find the home. Mahalli drove to the residence to point it out to him and stated that he remained about a block away from the home because “[Moskowitz] is 75 years old and not [in] great shape, and [Irvin] is 34 [years old] with a huge criminal background.” (Tr. 82.) He testified that he decided to remain at the premises because on a prior occasion, J.W. punched Moskowitz in the face when Moskowitz attempted to serve eviction papers on her.

{¶ 12} Mahalli testified that while he was sitting in his vehicle, he saw Irvin and Moskowitz going “body-to-body” and exited his car only when he thought that Irvin was “about to beat Moskowitz.” (Tr. 84.) He testified that he exited his vehicle, told Moskowitz to leave, and then immediately departed. He testified that he was unable to remember specific details because the situation happened so quickly. When asked whether G.W. verbally informed him that he was violating a protection order, Mahalli answered, “As I said, it was — I was not concentrating on anybody except I wanted to make sure [Moskowitz was] not going to get beaten up.” (Tr. 86.) On cross-examination, Mahalli answered that he did not know if he had been given a copy of the protection order but admitted that the judge who issued the protection order told him that he was granting the order. Mahalli also acknowledged that both J.W. and G.W. were present at the hearing for the civil stalking protection order.

{¶ 13} After closing arguments, the court found Mahalli guilty of violating a protection order. The court explained:

This Court, having heard the evidence, finds that the City has proved beyond a reasonable doubt the existence of this Protection Order which prohibited the Defendant from having any contact with [G.W.], coming within a hundred feet of that individual. It also indicates that if he should accidentally come in contact with the persons in a public or private place, the respondent must depart immediately.

It does carve out, Paragraph 13, indicating that the order does not preclude legal proceedings such as eviction.

The Court finds that the events on that day were not legal proceedings, [Mahalli] was acting recklessly in going to the property and not then leaving immediately, in addition, when he knew that a protected party was at that property.

As a result, [Mahalli], I'm finding you guilty of the offense, the City having established all the elements beyond a reasonable doubt.

(Tr. 114-115.)

{¶ 14} It is from this decision that Mahalli appeals his conviction, assigning a single error for our review.

The evidence underlying Said Mahalli's conviction for violating an order of protection was insufficient and violates his state and federal rights to due process.

II. Law and Analysis

{¶ 15} On appeal, Mahalli argues that the City did not present sufficient evidence to convict him of violating a protection order.

{¶ 16} A challenge to the sufficiency of the evidence asks whether the prosecution met its burden of production. *State v. Hunter*, 8th Dist. Cuyahoga No. 86048, 2006-Ohio-20, ¶ 41, citing *State v. Thompkins*, 78 Ohio St.3d 380, 390, 678 N.E.2d 541 (1997). When reviewing the sufficiency of the evidence, appellate courts must determine “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, 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. In a sufficiency challenge, the appellate court does not assess whether the prosecution’s evidence is to be believed, but whether, if believed, the evidence admitted at trial supported the conviction. *Thompkins* at 387.

{¶ 17} To establish that Mahalli violated the protection order, the City was required to prove that Mahalli “recklessly violate[ed] the terms of * * * a protection order issued pursuant to section * * * 2903.214 * * * of the Revised Code[.]” R.C. 2919.27(A). A person acts recklessly when “with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person’s conduct is likely to cause a certain result or is likely to be of a certain nature.” R.C. 2901.22. Further, the City was required to prove (1) that Mahalli recklessly violated the terms of a protection order issued pursuant to R.C. 2903.214, and (2) that Mahalli either received service of the protection order or constructive notice of the order as provided in R.C. 2919.27(D). *Cleveland v. Bolden*, 8th Dist. Cuyahoga Nos. 111671 and 111961, 2023-Ohio-1476, ¶ 14.

{¶ 18} On appeal, Mahalli argues that he did not violate the protection order because (1) he was permitted to undertake eviction proceedings under the protection order, which he was doing; (2) the alleged interaction did not occur at the residence of either person that the order protected; and (3) the City failed to

demonstrate that Mahalli knew that G.W. was related to Irvin's wife and would be present at the subject property.

{¶ 19} After a thorough review of the record before us, we do not find merit in Mahalli's arguments.

{¶ 20} Mahalli first contends that the protection order did not preclude eviction proceedings, and on the date of the incident, he was involved in eviction proceedings. However, sufficient evidence exists upon which the trial court could have concluded that Mahalli was not participating in eviction proceedings. Mahalli admitted that he no longer owned the premises. He also admitted that he was not in the area for the purpose of serving eviction documents but was there solely for the purpose of directing Moskowitz to the correct location, and then to prevent an altercation between Moskowitz and Irvin. He even stated, "I did not go [sic] anything, because as I said, I am not serving. I wanted [Moskowitz] to do it, so when [Moskowitz] come to court, then he is witness." (Tr. 92.) This evidence, if believed, was sufficient for the trial court to find that Mahalli was not participating in eviction proceedings.

{¶ 21} Mahalli also argues that the alleged interaction did not occur at the residence of either protected person. This argument fails because the terms of the order specifically prohibited Mahalli from being within 100 feet of J.W. and G.W. and was not limited to their residences. Further, the order specifically indicated that if Mahalli accidentally found himself within 100 feet of the protected people, Mahalli

was to immediately depart. There is no evidence in the record that the protection order was limited to J.W. and G.W.'s residences.

{¶ 22} Mahalli's final argument is that the City failed to present evidence indicating that Mahalli knew that G.W. would be present at the subject property, which was rented by Irvin's wife or that Irvin's wife had any relation to G.W. or J.W. We disagree.

{¶ 23} Sufficient evidence was presented for the trial court to conclude that Mahalli was reckless as to whether G.W. could be present on the subject property. Even though the tenants at the subject property were not protected under the order, Mahalli's testimony indicates that he knew Irvin was related to both G.W. and J.W.; he had known the family for over 20 years because they rented properties from him in the past and pursued legal action against him. He also purported to know about Irvin's criminal history based on his past interactions with the family. Testimony was also received that Mahalli transferred the home to Moskowitz because he was "blocked" from the premises, implying that Mahalli knew of the relationship between Irvin and the protected people and knew of the possibility that G.W. or J.W. could be present at the premises. He specifically testified that he was avoiding the property because he "thought maybe [J.W.] is in – might be in the property." (Tr. 82.)

{¶ 24} Sufficient evidence was also presented for the trial court to conclude that Mahalli was reckless in failing to depart immediately upon realizing that G.W. was at the property. Evidence was received that Mahalli exited his vehicle after G.W.

left the vehicle and stood in the driveway. Testimony was received that she was not hiding or obscured by anything. Mahalli testified that he had known G.W. for years and would have no problem recognizing or identifying her. Mahalli first testified that he only briefly went to the driveway to break up the fight, but that he did not notice G.W. standing there. On redirect examination, he stated, “[W]hen I came to go and block the fight between [Moskowitz] and [Irvin], I saw [G.W.], but as I said, we did not pay no attention because our purpose was for him not to get beaten up.” (Tr. 105.) G.W. and Irvin both testified that Mahalli came within 100 feet of G.W., and both of them testified that Mahalli actually made physical contact with G.W., *after* G.W. verbally warned him that she had an active protection order against him.

{¶ 25} Based on the foregoing, we find that the City presented sufficient evidence that, if believed, supported the trial court’s conclusion that Mahalli recklessly came within 100 feet of G.W. or recklessly failed to retreat from her presence, which constituted a violation of the terms of the protection order.

{¶ 26} Mahalli’s sole assignment of error is overruled.

III. Conclusion

{¶ 27} The trial court’s finding that Mahalli violated a protection order was not based on insufficient evidence. From the evidence presented, the trial court could have concluded that Mahalli was not engaged in eviction proceedings and recklessly violated the protection order.

{¶ 28} 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 municipal court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending 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.

FRANK DANIEL CELEBREZZE, III, JUDGE

ANITA LASTER MAYS, A.J., and
SEAN C. GALLAGHER, J., CONCUR