

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-190525
		C-190526
Plaintiff-Appellee,	:	C-190527
		TRIAL NOS. 19CRB-980
vs.	:	19CRB-2764
		19CRB-8738
DEANDRE SIMPSON,	:	
		<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Deandre Simpson appeals his convictions for violating a protection order under the appeal numbered C-190526, and telecommunications harassment in the appeal numbered C-190527. In his appellate brief, Simpson abandoned his appeal numbered C-190525 involving his conviction for a probation violation, and therefore, we dismiss that appeal but affirm the trial court’s judgments in the remaining two appeals.

On January 15, 2019, a protection order was entered against Simpson, ordering him to stay away from and not contact (including by telephone and text messaging) his ex-girlfriend, Cheyenne Johnson. Despite the protection order, in the middle of the night on February 4, 2019, Simpson telephoned Johnson’s 12-year-old daughter, Harmony, and said, “I’m going to hurt her. She’s done too much to me, there’s no letting go.” Harmony testified at the bench trial that she recognized Simpson’s voice

and believed that Simpson was referring to her mother, Johnson. Harmony testified that she immediately relayed the threats to her mother because she was unsure whether Simpson would follow through on them. Johnson testified that after talking with Harmony, she immediately called the police.

At the separate bench trial on telecommunications harassment, Johnson testified that she had received telephone calls and text messages from Simpson between March 28, 2019, and April 11, 2019, from two different telephone numbers. The text messages said things like “make sure your smoke detectors work,” “call your mom for help,” “someone call your dad Clyde,” and “the AC is what is going to get you.” Johnson, having known Simpson for seven years, testified that when Simpson had telephoned her from these unknown numbers, she recognized his voice even though he would pretend to be somebody else, such as “Sandy” or “Frank.” Johnson also testified that she knew it was Simpson making the phone calls because even though he would pretend to be someone else, he would always respond when she called him by his name, Deandre.

Simpson testified that he was not associated with the two telephone numbers that had been used to call and text Johnson in March and April of 2019.

In his first assignment of error, Simpson contests the sufficiency and weight of the evidence underlying his conviction for violating a protection order.

After reviewing the evidence in a light most favorable to the prosecution, we hold that a rational trier of fact could find the essential elements of violating a protection order proved beyond a reasonable doubt. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991). Additionally, after weighing the evidence and all reasonable inferences, we hold that the trial court did not lose its way and create a

manifest miscarriage of justice by finding Simpson guilty of violating a protection order. *See State v. Thompkins*, 78 Ohio St.3d 380, 678 N.E.2d 541 (1997).

R.C. 2919.27(A) (1) provides that “[n]o person shall recklessly violate the terms of any * * * protection order issued.” “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(C).

Because Harmony managed to record part of her telephone conversation with Simpson, there was no dispute at trial as to what Simpson had said. Simpson argued at trial and now on appeal that the state did not prove he had contacted Johnson because he did not direct Harmony to relay his threats to Johnson. However, it is unreasonable to believe that a young child, who is woken in the middle of the night by a caller who threatens to hurt the child’s mother, would not relay those threats to her parent. Simpson knew he could not contact Johnson, but calling her young daughter was simply his attempt to circumvent the protection order and get a message to Johnson. The first assignment of error is overruled.

In his second assignment, Simpson argues that his conviction for telecommunications fraud is against the manifest weight of the evidence. Under this assignment, Simpson argues that Johnson’s testimony that Simpson had pretended to be someone else and was therefore the perpetrator of numerous phone calls and text messages was outweighed by Simpson’s testimony that he did not have any association with those telephone numbers. But Johnson also testified that she had known Simpson for seven years and had recognized his voice when she answered the telephone calls from the unknown numbers.

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A conviction is not against the manifest weight of the evidence simply because the trier of fact believed the state's version of events over the defendant's version. *State v. Saxton*, 2016-Ohio-1233, 61 N.E.3d 830, ¶ 15 (10th Dist.). Given there were no inconsistencies in Johnson's testimony, there is nothing in the record to demonstrate that the trier of fact lost its way in finding Simpson guilty of telecommunications harassment. Accordingly, the second assignment of error is overruled.

The judgments of the trial court in the appeals numbered C-190526 and C-190527 are affirmed. The appeal numbered C-190525 is dismissed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., CROUSE and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on March 19, 2021,
per order of the court _____.
Presiding Judge