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

STATE OF OHIO,	:	APPEAL NO. C-240124 TRIAL NO. B-2305846
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
PIERRE BRADFORD,	:	
Defendant-Appellant.	:	

This court sua sponte removes this cause from the regular calendar and places it on the court's accelerated calendar, Loc.R. 11.1(C)(1), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); Loc.R. 11.1.

* * *

Appellant Pierre Bradford challenges his conviction for violating a protection order in violation of R.C. 2919.27(A)(2). In his sole assignment of error, Bradford argues that his conviction was not supported by legally sufficient evidence because the State failed to introduce evidence that he had received the relevant order or that he had received notice in accord with R.C. 2919.27(D). But Bradford stipulated to the validity and existence of the protection order at trial—and a valid protection order is one that has been adequately delivered under R.C. 2903.214(F). Therefore, based on his stipulation, we overrule Bradford's assignment of error and affirm his conviction.

BACKGROUND

On October 30, 2023, the Hamilton County Court of Common Pleas held a hearing on whether to issue a civil stalking protection order against Bradford on behalf of F.S., a Cincinnati streetcar operator, under R.C. 2903.214(E). The bases for the order, like its ex parte predecessor, were physically and sexually threatening remarks Bradford had made

toward F.S., as well as an incident in which Bradford had thrown urine on her. Bradford was present in court for this October protection-order hearing with his counsel.

Following the hearing, on November 14, 2023, the court of common pleas entered a civil stalking protection order ("the Order"), prohibiting Bradford from, among other things, (1) coming within 500 feet of F.S., (2) coming within 500 feet of any streetcar office, or (3) coming within ten feet of or being on any streetcar platform. The Order was scheduled to terminate in August 2026.

One week later, F.S. alleged that she saw Bradford approach a streetcar platform just behind the streetcar she was driving. F.S. notified her supervisor that Bradford appeared to be about to board the next streetcar in violation of the Order. Based on this conduct, Bradford was charged with and convicted of recklessly violating the Order under R.C. 2919.27(A)(2). At trial, F.S. identified Bradford on surveillance video, and an officer who had prior experience with Bradford corroborated this identification. Because Bradford had previously been found guilty of violating an earlier version of this protective order, this second offense constituted a fifth-degree felony. R.C. 2919.27(B)(4). Bradford was sentenced to 18 months of community control, with 180 days in jail, which would be terminated on completion of rehabilitative services. The court required Bradford to continue treatment at the Talbert House following the jail-based treatment services.

ASSIGNMENT OF ERROR: SUFFICIENCY OF THE EVIDENCE

In his sole assignment of error, Bradford challenges the sufficiency of the evidence against him. He argues that the State failed to prove that he had been served with the Order, as required for a conviction under R.C. 2919.27. Because Bradford did not raise this issue at trial, our review is limited to plain error. *See* Crim.R. 52(B). However, a "conviction based upon insufficient evidence amounts to plain error." *State v. Gilliam*, 2012-Ohio-5034, ¶ 20 (1st Dist.).

When reviewing for sufficiency of the evidence, an appellate court asks whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *State v. Jones*,

2021-Ohio-3311, ¶ 16. Essentially, the court "asks whether the evidence against a defendant, *if believed*, supports the conviction." (Emphasis sic.) *Id.*

The statute under which Bradford was convicted prohibits any person from "recklessly violat[ing] the terms" of a "protection order issued pursuant to section . . . 2903.214 of the Revised Code." R.C. 2919.27(A)(2). The provision governing the issuance and effect of such protection orders, in turn, requires "delivery" of any order to the respondent. R.C. 2903.214(F)(1). Thus, the Ohio Supreme Court has held that R.C. 2919.27(A)(2) requires the State to "establish, beyond a reasonable doubt, that it served the defendant with the order before the alleged violation." *State v. Smith*, 2013-Ohio-1698, syllabus. Service, in this context, means compliance with Ohio's Rules of Civil Procedure. *Id.* at ¶ 21; *see also State v. Fleming*, 2023-Ohio-849, ¶ 13-14 (1st Dist.). Since its amendment, however, R.C. 2919.27 allows the State to satisfy the "service" or "delivery" element by proving that the defendant received actual notice, i.e., that "the defendant was shown the protection order or a judge, magistrate, or law enforcement officer informed him of it" prior to the violation. *Fleming* at ¶ 15, paraphrasing R.C. 2919.27(D).

On appeal, the State contends that Bradford *did* have notice of the Order, because page two of the Order itself indicates that Bradford was present for the October 30 hearing. However, the court did not enter its Order on October 30, but two weeks later, on November 14. And nothing in the Order suggests either (a) that Bradford was present in court on that later date, or (b) that the court had notified Bradford of its decision on October 30. The Order, thus, tells us that Bradford had notice of the *hearing*, not of the *Order* that resulted.

Nor can the State rely upon the judge's directions in the praecipe at the bottom of the Order, which directed the clerk to deliver a copy of the Order to Bradford and his attorney. This praecipe tells us only that Bradford was *supposed to* be served, but provides no evidence that service was *successful*. *Compare Fleming* at ¶ 14 ("While the . . . orders contained instructions to the clerk to serve them by mail, the state presented no evidence of either a return receipt for certified mail or an entry of process on the docket in accordance with Civ.R. 4.1. Thus, there was insufficient evidence that the final order of protection was served . . . .").

Despite this glaring omission, *no one*, Bradford included, raised the notice/service requirement during the trial. This mystery is solved, however, by Bradford's agreement to stipulate to the Order's validity in the following colloquy:

> [COUNSEL FOR THE STATE]: So this case involves a violation of a protection order as Your Honor is very well aware. I believe the Defense will stipulate to the authenticity and the existence of a valid protection order in place against the Defendant at the time of the alleged offense, which we styled as State's Exhibit 1, which [Bradford's Counsel] has reviewed this morning. Is that correct?
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> [COUNSEL FOR BRADFORD]: Your Honor, just with the caveat here is that we—we stipulate that it's in existence, Judge, but we don't waive any sort of objection we have to the constitutionality of the contents of this order, Judge, to preserve the issue of the motion to dismiss, which was heard by this Court on Friday, for potential appellate purposes, Judge.
>
> THE COURT: All right. So noted. Otherwise, we'll stipulate to the authenticity and admissibility of Exhibit 1.

The constitutional issue discussed in Bradford's motion to dismiss, which Bradford's counsel referenced, concerned only Bradford's contention that the Order violated a constitutional right to travel. That argument is not before us in this appeal.

Bradford now argues that the stipulation quoted above went only to the Order's *validity*, not to *service* or *notice*. But, according to the Ohio Supreme Court, a protection order is only valid if that order was "delivered" to the respondent. *See* R.C. 2903.214(F)(1); *Smith*, 2013-Ohio-1698, at ¶ 14-16 (noting that delivery is a "requirement of R.C. 2903.214" and therefore required under R.C. 2919.27(A)(2)). Thus, by acquiescing to the Order's validity, Bradford also stipulated that he had adequate notice of that Order. Indeed, when the State sought Bradford's stipulation, his counsel made only one caveat: that Bradford wished to reserve his constitutional, right-to-travel challenge to the Order. Bradford's counsel had the opportunity to further cabin this stipulation, and could easily have clarified that he did

not believe the Order had been properly "delivered" under R.C. 2903.214(F)(1). He declined to do so.

A "stipulation between the parties will 'waive the necessity to produce evidence or the authentication of evidence.'" *State v. Saleem*, 2024-Ohio-3162, ¶ 35 (1st Dist.), quoting *Meyer v. Meyer*, 2008-Ohio-436, ¶ 22 (5th Dist.). Bradford stipulated that the Order against him was "valid." That stipulation necessarily implied the Order had been properly served. Thus, the State had no further obligation to produce evidence on that element. Any lingering ambiguity as to the scope of Bradford's stipulation (and little, if any, ambiguity lingers) can be dispelled by considering Bradford's failure to raise the issue of service or notice at *any* point during or after the trial. The issue was decided by his stipulation, and no party to the proceeding thought it worth contesting thereafter. The trial court therefore did not err—let alone *plainly* err—in finding sufficient evidence of notice and/or service to support a conviction.

* * *

Because Bradford stipulated to the Order's validity, he stipulated to its valid delivery. And because Bradford did not challenge the sufficiency of the State's evidence on any other element of the offense, we find no merit to Bradford's sufficiency argument. We therefore overrule Bradford's sole assignment of error and affirm his conviction.

We further order (1) that a certified copy of this Judgment shall constitute the mandate, (2) that said mandate be sent to the trial court for execution under App.R. 27, and (3) that costs be taxed according to App.R. 24.

CROUSE, P.J., WINKLER and **KINSLEY, JJ.**

To the clerk:
Enter upon the Journal of the Court on 9/20/2024 per Order of the Court.

By:_____
Administrative Judge