

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

STATE OF OHIO,	:	APPEAL NO. C-061068
	:	TRIAL NO. C06-CRB-39675
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
MONALO CALDWELL,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant Monalo Caldwell was charged with one count of telecommunications harassment in violation of R.C. 2917.21. The charging instrument did not indicate under which section of R.C. 2917.21 Caldwell was charged, but R.C. 2917.21(B) parallels the language of the complaint. The complaint states that “on or about September 1, 2006” Caldwell knowingly made a telecommunication with the purpose to harass Erica Sanderson. Caldwell and Sanderson have a child together. Sanderson’s affidavit stated that Caldwell had telephoned her residence, “trying to control” how she was raising their child. The affidavit also stated that Caldwell had called her place of employment, interfering with her work. Sanderson stated that Caldwell had continued to call her at work after he had been told not to call.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Caldwell appeared before the trial court on December 1, 1006. Caldwell indicated that he was not going to retain an attorney. The trial court told Caldwell that if he was found guilty, he could be sentenced to 180 days' incarceration and fined \$1000. The court also told Caldwell that he would have to comply with the rules of evidence and procedure. Caldwell told the court that he could comply with the rules because "this [was] the fourth time" that the victim had filed charges, and the victim "never show[ed] up and this is just retaliation." The court told Caldwell that if the victim appeared the case would not be reset for Caldwell to get an attorney. Caldwell signed a waiver-of-counsel form.

The victim testified at the December 15, 2006, bench trial. Caldwell was found guilty, fined \$200 and costs, and placed on community control for one year. Caldwell was informed that a community-control violation could result in 60 days' incarceration. On Caldwell's motion, the sentence was stayed pending appeal.

Caldwell's first assignment of error alleges that the trial court erred in failing to obtain a valid waiver of counsel. Caldwell argues that the court failed to inform him of the nature of the charges against him and the potential defenses he may have had, and that, therefore, his waiver of counsel was invalid.

In *State v. Vordenberge*,² we stated that to provide an effective waiver of counsel the trial court should candidly discuss with the defendant "the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter."³ The court must also inform the defendant that he is required to follow the rules of evidence and procedure.⁴

² 148 Ohio App.3d 488, 2002-Ohio-1612, 774 N.E.2d 278.

³ See *id.*, quoting *State v. Watson* (1998), 132 Ohio App.3d 57, 724 N.E.2d 469, and *Von Moltke v. Gillies* (1948), 332 U.S. 708, 68 S.Ct. 316.

⁴ See *id.*

The determination of whether a waiver of counsel was knowing and voluntary is made on a case-by-case basis.⁵

The *Vordenberge* requirements must be met for a waiver of counsel to be knowing, intelligent, and voluntary.⁶ The record shows that Caldwell was fully aware of the nature of the charge. The trial court informed Caldwell of the possible penalty and warned Caldwell that he would be required to follow the rules of evidence and procedure. At trial, the court reminded Caldwell of his right to remain silent. The record shows that Caldwell was aware of how to defend against the charge. Caldwell presented the defense that he had not intended to harass Sanderson with his telephone calls, but that he had only wanted to discuss their child. It is clear from the record that Caldwell had a “broad understanding of the whole matter” as required by *Vordenberge*. The assignment of error is overruled.

The second and third assignments of error allege that Caldwell’s conviction was based upon insufficient evidence and was against the manifest weight of the evidence. Caldwell argues that he did not intend to harass Sanderson and that he was only calling to discuss their son.

Sanderson testified that Caldwell had continued to telephone her at work and to interfere with her employment after being told to stop calling by Sanderson, her managers, and “security.” Sanderson stated that she would have been put “on probation” if she was unable to make her daily “stats,” and that Caldwell’s constant calling affected her ability to get her work finished.

The weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact to determine.⁷ We hold, after viewing the evidence in the

⁵ See *id.*, citing *State v. Watson*, *supra*.

⁶ See *State v. Obermeyer*, 152 Ohio App.3d 360, 2003-Ohio-1741, 787 N.E.2d 729.

⁷ See *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212.

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light most favorable to the prosecution, that a rational trier of fact could have found that all the essential elements of the offense had been proved beyond a reasonable doubt.⁸ Further, we cannot say that the trier of fact, in resolving conflicts in the evidence, clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.⁹ The second and third assignments of error are overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., HENDON and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on December 12, 2007
per order of the Court _____.
Presiding Judge

⁸ See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus; *State v. Roberts*, 1st Dist. No. C-040547, 2005-Ohio-6391.

⁹ See *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541; *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717.