

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

STATE OF OHIO,	:	APPEAL NOS. C-090410
		C-090411
Plaintiff-Appellee,	:	TRIAL NOS. 09CRB-3483A
		09CRB-3483B
vs.	:	
ELSON SALTER,	:	
		<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.¹

Defendant-appellant Elson Salter was found guilty following a bench trial of one count of intimidation of a crime victim and one count of aggravated menacing. The trial court imposed concurrent sentences of 180 days in jail, but suspended 90 days, gave Salter credit for three days, and placed him on community control for two years with the conditions that he attend an anger management program and stay away from the victim. Salter was also ordered to pay a \$250 fine and court costs. Salter subsequently moved for a stay of his sentences pending this appeal, which the trial court granted.

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

Salter now raises a single assignment of error for our review. He argues that his convictions were based on insufficient evidence and were against the manifest weight of the evidence.

To reverse a conviction for insufficient evidence, we must be persuaded, after viewing all the evidence in the light most favorable to the prosecution, that no rational trier of fact could have found all the elements of the crime proved beyond a reasonable doubt.² To reverse a conviction on the manifest weight of the evidence, we must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving any conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.³

Intimidation of a crime victim occurs when an individual “knowingly attempts to intimidate or hinder the victim of a crime in the * * * prosecution of criminal charges * * *.”⁴ Aggravated menacing occurs when an individual “knowingly causes another to believe that the offender will cause serious physical harm to the person * * *.”⁵

At trial, Candace Beard testified that prior to January 22, 2009, she had filed domestic-violence charges against Salter’s cousin, Orlando Brooks. According to Beard, Salter had called her numerous times after she filed the charges. The calls were initially nonconfrontational. But on January 22, 2009, Salter called her and said, “Don’t catch no bullet over this.” Beard testified that she had understood the phrase “over this” to mean the pending domestic-violence charges against Brooks

² *State v. Waddy* (1992), 63 Ohio St.3d 424, 430, 588 N.E.2d 819.

³ *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

⁴ R.C. 2921.04(A).

⁵ R.C. 2903.21(A).

and the phrase “don’t catch no bullet” to mean that Salter would shoot her if she proceeded with the charges. Beard further testified that she was terrified to appear in court, and that she had originally asked that the domestic-violence charges against Brooks be dismissed. When Salter’s calls continued, however, she decided to proceed with the charges against Brooks.

Officer Steve Hoerst testified that Beard had played a recorded conversation for him at the district stationhouse. He testified that he had heard a male and a female voice in the recording and that Beard’s voice was the female one. He further stated that he had heard the people on the recording referring to each other by name. Officer Hoerst testified that Beard had seemed terrified about appearing in court, and that he had filed a report based upon what he had heard. Detective Michael Winstead investigated the report. The detective also testified that Beard had appeared terrified about going to court because of the threats she was receiving from Salter.

Contrary to Salter’s assertions, the testimony from Beard, Officer Hoerst, and Detective Winstead was sufficient to sustain his convictions for intimidation of a crime victim and aggravated menacing. The trial court, furthermore, was in the best position to judge the credibility of the witnesses.⁶ While Salter denied threatening Beard, and both he and Brooks testified that Beard had fabricated the charges to thwart them from recovering the title to a Lexus automobile, the trial court was free to reject this testimony. Moreover, given our review of the record, we cannot conclude that the testimony of the state’s witnesses was so unreliable or unworthy of belief that the trial court lost its way and created a manifest miscarriage of justice in

⁶ *State v. Antill* (1964), 176 Ohio St.61, 197 N.E.2d 548.

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finding Salter guilty. We, therefore, overrule Salter's sole assignment of error and affirm the judgment of the trial court.

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.

CUNNINGHAM, P.J., SUNDERMANN and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 19, 2010

per order of the Court _____.
Presiding Judge