

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

RAWLIN MADARIS,	:	APPEAL NO. C-170627
	:	TRIAL NO. SK1700366
Petitioner-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
CANDACE TUBBS,	:	
	:	
Respondent-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.

Candace Tubbs appeals the judgment of the Hamilton County Court of Common Pleas granting a civil stalking protection order (“CSPO”) against her in favor of her next-door neighbor, Rawlin Madaris. In two assignments of error, Tubbs challenges the sufficiency and weight of the evidence underlying the issuance of the CSPO. Neither assignment of error has merit.

In March 2017, Madaris filed a petition for a CSPO against Tubbs, alleging that she had threatened him with a gun, had lied to police about him, and had called his employer. The magistrate granted an ex parte CSPO and set the matter for a full evidentiary hearing.

At the hearing, Madaris testified that Tubbs had repeatedly made false reports about him to the police. In the summer of 2016, Tubbs threatened to have her brothers come over to shoot Madaris’s house up, and also threatened to have the police come and shoot him.

Madaris also presented the testimony of Nayila Richardson, Madaris’s supervisor at UPS. Richardson testified that Madaris was a seasonal driver for UPS and

that Tubbs called UPS in early March 2017 to report that Madaris was dealing drugs out of a UPS vehicle on the street in front of her home. She knew this was not true and testified that in March of 2017, Madaris had not been working for UPS for three months. Richardson let Madaris know about this false report from Tubbs.

Tubbs presented the testimony of her friend, April Kariuki, who said that Tubbs's February 2017 neck surgery would have prevented her from being able to speak on the telephone in early March, when Tubbs allegedly made the telephone call to UPS. In addition, Tubbs's sister, Karen Miller, testified that she saw Madaris engage in a drug transaction in March 2017.

At the conclusion of the hearing, the magistrate found that Madaris had proven by a preponderance of the evidence that Tubbs had engaged in a pattern of conduct that had caused him to fear for his safety and had caused him mental distress. The magistrate found that "the credibility of the evidence falls on [Madaris's] side." The magistrate granted a CSPO, which was adopted by the trial court. The trial court overruled Tubbs's objections to the order, and this appeal followed.

To obtain a CSPO under R.C. 2903.214, a petitioner must show by a preponderance of the evidence that the respondent engaged in conduct constituting menacing by stalking in violation of R.C. 2903.211(A)(1). R.C. 2903.214(C)(1); *Smith v. Hein*, 1st Dist. Hamilton No. C-140529, 2015-Ohio-2749, ¶ 4. R.C. 2903.211(A)(1) provides in relevant part: "No person by engaging in a pattern of conduct shall knowingly cause another person to believe that the offender will cause physical harm to the other person \* \* \* or cause mental distress to the other person \* \* \*." In R.C. 2903.211(D)(1), a "pattern of conduct" is defined as: "two or more actions or incidents closely related in time, whether or not there has been a prior conviction based on any of those actions or incidents \* \* \*."

Whether actions or incidents were closely related in time should be determined by the trier of fact on a case-by-case basis. *See State v. Dario*, 106 Ohio App.3d 232, 238, 665 N.E.2d 759 (1st Dist.1995). In determining what constitutes a pattern of

conduct for purposes of R.C. 2903.211(D)(1), the trier of fact should consider the evidence in the context of all the circumstances of the case, even if some of the offender's actions, when considered in isolation, may not seem particularly threatening. *See Middletown v. Jones*, 167 Ohio App.3d 679, 2006-Ohio-3465, 856 N.E.2d 1003, ¶ 10 (12th Dist.).

In reviewing the sufficiency of the evidence supporting the trial court's judgment, we must determine whether evidence exists to support each element. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 19; *see also Denney v. Sanders*, 1st Dist. Hamilton No. C-150556, 2016-Ohio-5113, ¶ 22. In reviewing a challenge to the manifest weight of the evidence, we must determine whether the trial court's judgment was supported by the greater amount of credible evidence, that is, whether the petitioner met his burden of persuasion by a preponderance of the evidence. *See Eastley* at ¶ 19.

Following our review of the record, we find that Madaris presented sufficient evidence to prove that Tubbs had engaged in menacing by stalking in violation of R.C. 2903.211. The evidence demonstrated that Tubbs had repeatedly made false reports to the police about Madaris, had threatened to have him and his home shot up by her brothers and the police, and several months later, had called his seasonal employer to make a serious and false accusation about him.

The trial court's determination that Tubbs's actions constituted a pattern because they were closely related in time was supported by the record. Madaris testified that Tubbs on more than one occasion called the police while he was outside working on his food truck. In addition, Tubbs's threat of serious physical harm in the summer of 2016 was within months of her false report of drug activity to UPS. *See N.P. v. T.N.*, 8th Dist. Cuyahoga No. 106314, 2018-Ohio-2647 (the respondents' continuous interference with the petitioner's privacy and enjoyment of her property, including the continual reporting of unfounded activities to authorities, occurred during a two-year period, including events occurring within the six-month period preceding the filing of

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the petitions for protective orders); *Johnson v. Miller*, 2d Dist. Miami No. 2017-CA-18, 2018-Ohio-2113 (a pattern of conduct was established where the respondent repeatedly texted, called, and threatened the petitioner over a four-month period); *Jones*, 167 Ohio App.3d 679, 2006-Ohio-3465, 856 N.E.2d 1003, at ¶ 11 (incidents occurred over a four-year period, including two incidents within the month of the defendant's arrest for menacing by stalking).

Moreover, the trial court's determination that Tubbs knowingly caused Madaris to believe that Tubbs would cause physical harm to him was supported by the record. She threatened to have her brothers come and shoot his house up. And she threatened to have the police come and shoot him.

And we cannot say that the trial court lost its way and committed such a manifest miscarriage of justice that the judgment must be reversed. *See Eastley* at ¶ 20.

Accordingly, the judgment was supported by sufficient evidence and was not against the manifest weight of the evidence. Therefore, we overrule both assignments of error and affirm the trial court's judgment.

Further, 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., MYERS and DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on November 7, 2018

per order of the court \_\_\_\_\_  
Presiding Judge