

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

STATE OF OHIO,	:	APPEAL NO. C-170139
Plaintiff-Appellee,	:	TRIAL NO. 16CRB-33914
vs.	:	<i>JUDGMENT ENTRY.</i>
JOSEPH MARTIN,	:	
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 Joseph Martin appeals his conviction for telecommunications harassment in violation of R.C. 2917.21(B). In his first assignment of error, Martin argues that the trial court abused its discretion and violated his due-process rights by denying his request for a continuance to procure witnesses.

On the morning of trial, Martin’s counsel requested a continuance to procure “potentially relevant testimony from neighbors about the alleged victim’s behavior in the apartment building.” Importantly, Martin did not elaborate regarding the identity of these neighbor-witnesses, when they could be expected to testify, or the substance of their expected testimony, beyond a vague reference to the victim’s

behavior. Therefore, Martin failed to establish that the potential witnesses' testimony would have been relevant to the telecommunications charge. *See State v. Johnson*, 140 Ohio App.3d 385, 393, 747 N.E.2d 863 (1st Dist.2000) (where the defendant did not proffer witnesses' testimony, the court could not hold that the defendant was prejudiced by the denial of the continuance); *State v. Brooks*, 44 Ohio St.3d 185, 195, 542 N.E.2d 636 (1989) (in arguing that a denial of a continuance violates the right to compulsory process, the defendant must show that the witnesses' testimony would have been relevant and material to the defense). We determine that the trial court did not abuse its discretion in denying the continuance. *State v. Unger*, 67 Ohio St.2d 65, 67, 423 N.E.2d 1078 (1981). We overrule Martin's first assignment of error.

In his second assignment of error, Martin argues that his conviction was against the manifest weight of the evidence. Martin specifically argues that the state failed to prove that he made the phone call "with purpose to abuse, threaten, or harass another person." *See* R.C. 2917.21(B)(1). According to Martin, he had left the victim a voicemail warning her about potential burglars. The victim and the responding officer testified that Martin's voicemail, which he had left at 4 a.m., had threatened the victim. Martin stated that he would have his friends go to the victim's home, break in, and take her things. The victim also testified that Martin had been romantically pursuing her prior to this call, and that she had rebuffed his advances. The trial court sitting as a factfinder makes credibility determinations, and the trial court was well within reason to believe the victim's side of the story over Martin's. *See State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus (credibility of witnesses is primarily for the trier of fact). Therefore, Martin's conviction is not against the manifest weight of the evidence. *See State v.*

**OHIO FIRST DISTRICT COURT OF APPEALS**

---

*Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). We overrule Martin's second assignment of error.

The judgment of the trial court is affirmed.

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., MILLER and DETERS, JJ.**

To the clerk:

Enter upon the journal of the court on December 20, 2017

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