

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

STATE OF OHIO,	:	APPEAL NO. C-170222
	:	TRIAL NO. 17CRB-1134
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MONTEZ CLAYTON,	:	
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 Montez Clayton was in a romantic relationship with Tayana Flowers. After the relationship ended, Clayton continued to contact Flowers because Flowers was pregnant with twins and he believed he was their father. Flowers eventually texted Clayton, telling him to stop contacting her. Despite the request, Clayton’s contacts continued. Flowers sent a second text five days after the first, again asking him to stop contacting her. Flowers also indicated that she would call the police if the contact continued. Clayton continued to contact Flowers. Clayton was eventually charged with one count of violating R.C. 2917.21(A)(5). He was convicted after a bench trial and sentenced accordingly.

In his first assignment of error, Clayton argues that he was deprived of his First Amendment rights, claiming that the statute under which he was convicted is overbroad. But Clayton did not make this argument below. The Ohio Supreme Court has held that the “[f]ailure to raise at the trial court level the issue of the constitutionality of a statute or its application, which issue is apparent at the time of trial, constitutes a waiver of such issue and a deviation from this state's orderly procedure, and therefore need not be heard for the first time on appeal.” *State v.*

Awan, 22 Ohio St.3d 120, 489 N.E.2d 277 (1986), syllabus. This court has previously declined to address a constitutional challenge to another subsection of R.C. 2917.21 on First Amendment grounds because the issue had not been raised below. *See State v. Pleatman*, 1st Dist. Hamilton No. C-160234, 2016-Ohio-7659, ¶ 15-19. We again conclude that the issue has been waived, and again find “no extraordinary reason to disregard the waiver doctrine.” *Id.* at ¶ 19. The first assignment of error is overruled.

In his second assignment of error, Clayton argues that his conviction was based upon insufficient evidence and was contrary to the manifest weight of the evidence. In a challenge to the sufficiency of the evidence, the question is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found all the essential elements of the crime proved beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 273, 574 N.E.2d 492 (1991), paragraph two of the syllabus. When considering a challenge to the weight of the evidence, the court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist.1983), paragraph three of the syllabus.

In relevant part, R.C. 2917.21(A)(5) states that “[n]o person shall knowingly make or cause to be made a telecommunication * * * if the caller * * * [k]nowingly makes the telecommunication to the recipient * * * and the recipient * * * previously has told the caller not to make a telecommunication to those premises or to any persons at those premises.” The trial court concluded that Clayton continued to contact Flowers after she had repeatedly instructed him to stop. This conclusion was based upon sufficient evidence and was not against the manifest weight of the evidence. Clayton claims that the communications were necessary because he

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believed that he was the father of the twins Flowers carried, but Clayton had other avenues available to him. And the nature of the subject matter of the contacts supports the conclusion that Clayton was contacting Flowers for reasons other than the welfare of the unborn twins. We overrule Clayton's second assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

MOCK, P.J., CUNNINGHAM and MYERS, JJ.

To the clerk:

Enter upon the journal of the court on February 28, 2018

per order of the court _____.

Presiding Judge