Supreme Court of Ohio Clerk of Court - Filed January 22, 2015 - Case No. 2015-0115

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
JACKSON COUNTY

STATE OF OHIO, :

Plaintiff-Appellee, :

v. :

ANCIL CROSS, :

Defendant-Appellant. :

FILED
COURT OF APPEALS
JACKSON CO OHIO
DEC 08 2014
SETH I. MICHAEL, CLERK

Case No. 13CA3

DECISION AND JUDGMENT ENTRY

APPEARANCES:

J. Jeffrey Benson, Benson & Sesser, LLC, and Aaron M. McHenry, Chillicothe, Ohio, for Appellant.

Michael DeWine, Attorney General of Ohio, Matthew Donahue, Assistant Attorney General of Ohio, and Christopher L. Kinsler, Assistant Attorney General of Ohio, Columbus, Ohio, for Appellee.

Hoover, J.

{¶ 1} Appellant, Ancil Cross, appeals his conviction in the Jackson County Common Pleas Court after a jury found him guilty of one count of intimidation. Cross contends that the trial court erred by allowing the appellee, the State of Ohio, to introduce other acts evidence to show proof of his character in violation of Evid.R. 404(B). Cross notes several instances of other acts testimony and trial exhibits that the trial court admitted over his objection. Because the other acts evidence he complains of was offered not to prove his character and action in conformity therewith, but rather to prove other purposes, such as motive, identity, plan, and scheme, we find that the trial court did not err in admitting the evidence.

{¶ 2} Cross also contends that the evidence presented at trial was insufficient to support a conviction, or alternatively, that the verdict was against the manifest weight of the evidence. Specifically, Cross argues that the State failed to establish an essential element of the offense of intimidation – that being that the alleged conduct was an attempt to influence, intimidate, or hinder a public servant in his duties. However, the victim, a local school board member, testified that he felt threatened by the conduct and contemplated moving his family to another county, which would have forced him to resign his position with the school board. Moreover, other testimony established that Cross, a school board member himself, had an incentive to rid of the victim because they sometimes differed on school board matters. Cross also argues that the jury's verdict was against the manifest weight of the evidence because the witnesses only guessed and speculated that he was the perpetrator. We disagree. The verdict was supported by circumstantial evidence and the testimony of an experienced handwriting expert who opined that Cross was the author of the anonymous letter that gave rise to the indictment. Thus, we cannot say that the jury lost its way or created a manifest miscarriage of justice. Accordingly, we affirm the judgment of the trial court.

{¶ 3} Cross was indicted on one count of intimidation, a third-degree felony in violation of R.C. 2921.03(A).[1] Cross entered a plea of not guilty and the case proceeded to jury trial. At the conclusion of the trial, the jury found Cross guilty of intimidation. Thereafter, the trial court sentenced Cross to 4 years of community control with sanctions that included 120 days in jail. The trial court also ordered Cross to serve 400 hours of community service and to pay a $10,000 fine. Cross subsequently filed this timely appeal.

{¶ 4} On appeal, Cross asserts the following assignments of error for our review:

First Assignment of Error:

[1] Cross was also charged with three misdemeanor counts, but the trial court ultimately dismissed those counts.

THE TRIAL COURT ERRED IN ALLOWING THE STATE TO INTRODUCE OTHER ACTS EVIDENCE DURING TRIAL.

Second Assignment of Error:

THE EVIDENCE WAS INSUFFICIENT AS A MATTER OF LAW TO CONVICT ANCIL CROSS OF INTIMIDATION; OR IN THE ALTERNATIVE, THE CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶ 5} At trial, the State argued that Cross committed intimidation by mailing an anonymous and threatening letter to Virgil Hamilton, a member of the Jackson City School Board of Education. Cross was also a member of the school board at the time of the alleged crime. The trial court permitted the State to introduce eleven additional letters and envelopes[2] that had been received by members of the Hamilton family and other members of the Jackson community in the months prior to Hamilton receiving his letter. The State also presented the testimony of William Bennett, a purported handwriting expert, who opined that Cross was the author of all the letters, including the letter received by Hamilton.

{¶ 6} The letter that gave rise to the indicted charge was postmarked November 27, 2009, and provided as follows:

> Mr. Hamilton[,] you need to listen to what people tell you and take your MC child and your FAT BITCH of a wife and leave the area[.] Piece of advise [sic] be careful crossing to postoffice [sic], my brakes could fail[.] Good luck fool!!"

The letter was handwritten and was not signed. The envelope was also handwritten and addressed to Virgil Hamilton at his business address. The return address was fictitious. At trial, Hamilton testified that the phrase "MC child" referred to his son, who has cerebral palsy. He also testified that he routinely crossed the street from his business office to the post office at approximately 11:00 AM every day, and that he would often see Cross's wife when he did so.

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[2] These letters and envelopes are in addition to the letter and envelope that form the foundation of the indicted charge.

{¶ 7} Hamilton testified further that just days prior to receiving the above letter, he received another letter at his business address. The prior letter stated the following:

> Mr. Hamilton[,] Since I have you around the middle now I see now how big a prick you really are[.] Why don't you do everyone a favor, put Hope Haven child where [he] belong's [sic] and send your FAT ASS bitch of a wife with him!! I have warned that fucking bitch for [the] last time. Good luck!!"

Again, this letter was handwritten and unsigned. The envelope was addressed to Hamilton and contained a fictitious return address. Hamilton explained that Hope Haven is a local school for children with mental disabilities, and in his opinion, the letter was suggesting that his son should leave the public school system and attend Hope Haven. Hamilton also testified that the letter was received just weeks after Travis Hughes replaced Diana Bowman on the school board. According to Hamilton, he and Bowman often sided together on board matters, whereas Hughes was a confidant of Cross and other board members.

{¶ 8} Hamilton testified that the letters made him fear for the safety of his family and that he considered leaving the community. He also explained that prior to receiving the letters, he and Cross had a disagreement regarding the confidentiality of certain e-mails exchanged by teachers in the Jackson City Schools during school hours. Bowman and Hamilton insisted that the communications were public record subject to disclosure, whereas Cross felt they were not public records. Hamilton also testified that he noticed a pattern where he and his wife would see Cross and his wife at school functions, and shortly thereafter they would receive a letter.

{¶ 9} Lee Hamilton, Virgil's wife, also testified at trial. Lee Hamilton received a total of five letters in 2009. She explained that she was involved in the Jackson City School's as a volunteer and founder of the Second Step anti-bullying program. She received her first letter in February 2009, which stated:

> Mrs. Hamilton[,] Please get your FAT ASS out of the middle school [and] take your Hope Heaven [sic] son with you!!! You both make a bad influence on my son and [the] other kids in the building[.] Concerned Mother"

In March 2009 she received a second letter that read:

> Mrs. Hamilton, I guess by now you have found out your Virgil is screwing 2 women one you know, course who could blame him, when he has to go home and look at someone like you!! We will ask you one more time to take your Hope Havean [sic] boy and go join them, before it is to [sic] late. Take good advise [sic] and use it before you loose [sic] more than just Virgil. I still have concern about someone like you around my kids. Concerned Parent"

A third letter was received later in March that stated:

> Mrs. Hamilton[,] This is your last warning to get you and your Ld kid out of our school, I get tired of seeing your fat ass in the building so do us all a favor and leave.

Lee Hamilton received a fourth letter in May 2009, which stated:

> Mrs. Hamilton[,] School is about out, next year take your Hope Heaven [sic] kid and ugly fat ass and go [to] Hope Heaven [sic] both of you[.] I think you and your family our [sic] a bad influence on the schools and our community[.] [Y]ou especialy [sic] would be better off at Hope Heaven [sic][.]

A fifth and final letter arrived in September 2009, and stated as follows:

> Mrs. Hamilton!! If you don't stay away from these school kids, you are going to find out what bullying is all about[.] [Y]our big FAT ASS is going to be around my son once to [sic] often, then I'am [sic] a going to come and get you!! Conference U.S.A.

The letters were all handwritten, some in cursive style and some printed, and were addressed to the Jackson Middle School, with attention for Lee Hamilton. The envelopes either contained fictitious return addresses and names or no return addresses at all. Lee and Virgil Hamilton testified that the letters were received contemporaneously with the Second Step anti-bullying program receiving recognition for its success in reducing bullying incidents at the school. Lee Hamilton also testified that she noticed tension between her and Cross and his wife at school

functions. Notably, she testified that the Crosses would glare at her and that a few days later she would receive a letter.

{¶ 10} Deborah Biggs also testified at trial. Biggs worked in the Jackson City Schools as a teacher and administrator for thirty-three years. In June 2009, Biggs received a letter that stated the following:

> Mrs. Biggs, you know I have better things to do than to listen to you stand up in church and tell about your dumb ass kid and the babies!! Course if the[y] turn out like you, then God will need to keep them[.] I hope they are not as self-centered fat a bitch as you. Nor as ergent [sic] as you are. So do us all a favor, and keep your big mouth shut!!

Biggs explained that the Sunday prior to receiving the letter, she stood up in church and asked that the congregation pray for her son and daughter-in-law who were expecting premature triplets. She also testified that about six months prior, the school board had voted to eliminate her supplemental salary for doing Title I paperwork. She had informed the superintendent and school board that without the supplemental salary, she would no longer act as the Title I coordinator. The letter was handwritten in cursive style. The envelope contained a fictitious name and return address.

{¶ 11} Bobbie Montgomery also testified at trial. Montgomery received a letter in May 2009 that stated as follows:

> Bobby: the b?t?h[.] Don't even think about bringing your kid to CLA school-they may encounter bullying! Plus we dont [sic] want your kind or your dad around my kid: you folks are a menice [sic] to our community[.] Why don't [you] just stay out in Montgomery Ville.

Montgomery testified that her father, Kerry Montgomery, was a former member of the school board and served with Cross. While Kerry Montgomery and Cross enjoyed a healthy relationship for most of Montgomery's tenure on the board, the two had a falling out in 2008 over a board issue. Montgomery also testified that on April 22, 2009, she met with the school superintendent

to complain about her son being bullied and to inform him of her intention to move her child to the Christian Life Academy ("CLA"), a local private school. She also testified that she gave the superintendent permission to discuss her situation with the members of the school board. Notably, Cross lives across the street from the CLA and had a grandchild who attended the CLA in 2009. The letter was handwritten in printed style of writing. The envelope contained a fictitious name and return address.

{¶ 12} Tammy Jones also received an anonymous letter in March 2009. Jones is an elementary school teacher in the Jackson City School district. The letter references her husband's affair with a fellow teacher in the school district. Jones testified that the board members were aware of the affair. The letter was handwritten, unsigned, and the envelope contained a fictitious name and return address.

{¶ 13} Diana Bowman also testified during the State's case in chief. Bowman was a member of the school board from 2005 to November 2009. Bowman also received an acrimonious letter in 2009. The letter requested her to resign her position from the school board. The letter also references an affair between Bowman's husband and another women and an alleged affair between Bowman and a principal. The letter states that Bowman's behavior at the last board meeting was "immoral and stupid." Bowman testified that at the school board meeting approximately 10 days prior to her receipt of the letter, she made controversial comments about bullying and the murder of a retired principal. According to Bowman, Cross was present at the meeting and shortly thereafter he was quoted in the local newspaper asking for her resignation. Like all the other letters, the letter was handwritten. The letter contained a fictitious signature and return address.

{¶ 14} William Bennett also testified during the State's case in chief. Bennett, a retired Columbus Police Department detective, was qualified as an expert in handwriting analysis. Bennett testified that in his opinion, Cross was the author of all the abovementioned letters and envelopes, with the exception of one envelope, which he thought it was "highly probable" that Cross authored the envelope.

{¶ 15} Bennett also explained how he was able to reach his ultimate opinion. First, Bennett was able to procure numerous handwriting exemplars from Cross. The exemplars, also referred to as known writings, contained both printed and cursive handwriting samples. Some of the exemplars were dictated, meaning Cross was requested to write a certain passage. Others were non-dictated, meaning they were known past writings of Cross. Bennett then compared the exemplars with all of the letters described above. Bennett noted several factors that supported his opinion that Cross wrote the letters. For instance, Bennett testified that the known writings and the letters, or the questioned writings, contained similar formations of "a's", "g's", "i's", "j's", "m's", "n's", "o's", "r's", "s's", "t's", "v's", and "y's". This was important, according to Bennett, because Cross had a very unique way of writing those letters. Bennett also noted that Cross was not always consistent in the way he wrote certain letters, and that the questioned writings were also not consistent. Bennett testified that inconsistency in writing among an individual is itself, unique. Bennett also noted that the slant, ratio (sizing of letters), spacing (between letters and words), base (straightness), and line quality was comparable between the known and questioned writings.

{¶ 16} On cross-examination, defense counsel questioned Bennett regarding his education and training in handwriting analysis. Bennett testified that most of his training was on-the-job training with the Columbus Police Department. He also attended seminars with the

Federal Bureau of Investigation in 1982, with the Secret Service in 1974, and at various colleges and universities in the United States. The last seminar that he attended was in 1998. He also testified that he is not certified in document examination from any professional association.

{¶ 17} Finally, Rory Pankhurst, a United States Postal Inspector, testified that he procured writing samples from all members of the school board in December 2009, and since that time he has not received any complaints of anonymous letters. Lee and Virgil Hamilton also testified that they have not received any letters since the postal service began its investigation. Pankhurst testified further, that during his investigation, he learned that the return addresses listed on some of the mailing envelopes were all fictitious.

{¶ 18} At the conclusion of the State's case, defense counsel moved for a Crim.R. 29 judgment of acquittal. The trial court denied the motion. Cross than presented the testimony of two character witnesses and his own testimony in support of his defense.

{¶ 19} While on the stand, Cross denied writing any of the letters. Cross also denied having any ill-will towards the Hamiltons. He also repudiated having any personal conflicts with Biggs and Jones. On cross-examination, Cross testified that the only issue he ever had with Bowman was the comment she made about the murder of a former teacher at a board meeting. Although Cross admitted to being opposed to the release of teacher emails, he denied having a conflict with Bowman or Hamilton regarding the release of the e-mails. Instead, he claimed that the conflict was between Bowman and the school superintendent, and that he simply backed the superintendent's viewpoint on the issue. Cross also agreed on cross-examination that the letters were hateful, derogatory, and a form of bullying.

{¶ 20} During the course of the trial, the defense counsel also objected to the presentation of testimony regarding the other letters, and objected to the other letters being published and

admitted. Defense counsel argued that they were improper other acts evidence. The trial court overruled the objections and gave the following instruction to the jury in the midst of trial:

> Ladies and Gentlemen, we're about to hear some ... we're about to see a letter that was... uh ... written to Mrs. Hamilton. I want you to remember this will apply to any letters that are introduced into evidence either [sic] than those written to Mr. Hamilton that you can't consider these letters to show that Mr. Cross has an inclination or propensity to commit a crime or that he was a person of bad character and acted in conformity with that bad character. The reason I am allowing these letters in is ...uh...to show a possible scheme or plan on the Defendant's part and to show the identity of the ... of the...uh... writer of these letters that's the only purpose that you can consider these letters other than the ones that were written to Mr. Hamilton for. [Tr. at 542.]

Again, in his final instructions to the jury, the trial judge gave a similar limiting instruction, with the addition that the evidence might be used to determine motive. [*See* Tr. at 940-941.]

{¶ 21} In his first assignment of error, Cross contends that the trial court erred when it permitted Lee Hamilton and the four other witnesses to testify about the anonymous letters they had received in the months prior to Virgil Hamilton receiving his letters. Specifically, Cross contends that the testimony and admission of the other letters is prohibited other acts evidence under Evid.R. 404(B). For the following reasons, we disagree.

{¶ 22} "Trial court decisions regarding the admissibility of other-acts evidence under Evid.R. 404(B) are evidentiary determinations that rest within the sound discretion of the trial court. Appeals of such decisions are considered by an appellate court under an abuse-of-discretion standard of review." *State v. Morris*, 132 Ohio St.3d 337, 2012-Ohio-2407, 972 N.E.2d 528, syllabus. The Ohio Supreme Court has defined "abuse of discretion" as an "unreasonable, arbitrary, or unconscionable use of discretion, or as a view or action that no conscientious judge could honestly have taken." *State v. Brady*, 119 Ohio St.3d 375, 2008-Ohio-4493, 894 N.E.2d 671, ¶ 23, citing *State v. Cunningham*, 113 Ohio St.3d 108, 2007-Ohio-1245, 863 N.E.2d 120, ¶ 25.

{¶ 23} Evid.R. 404(B) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Similarly, R.C. 2945.59 provides:

> In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto, notwithstanding that such proof may show or tend to show the commission of another crime by the defendant.

{¶ 24} "Evid.R. 404 codifies the common law with respect to evidence of other acts of wrongdoing. The rule contemplates acts that may or may not be similar to the crime at issue. If the other act is offered for some relevant purpose other than to show character and propensity to commit crime, such as one of the purposes in the listing, the other act may be admissible. Another consideration permitting the admission of certain other-acts evidence is whether the acts 'form part of the immediate background of the alleged act which forms the foundation of the crime charged in the indictment' and are 'inextricably related' to the crime." (Citations omitted.) *Morris* at ¶ 13, quoting *State v. Curry*, 43 Ohio St.2d 66, 73, 330 N.E.2d 720 (1975). "Generally, evidence of other acts is admissible if it is offered for a purpose other than to prove the character of a person in order to show action in conformity with that character, Evid.R. 404(B), it is relevant when offered for that purpose, Evid.R. 401, and the danger of unfair prejudice does not substantially outweigh its probative value, Evid.R. 403." *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 68, citing *State v. Williams*, 134 Ohio St.3d 521, 2012-Ohio-5695, 983 N.E.2d 1278, ¶ 20.

{¶ 25} The trial court did not abuse its discretion by admitting the letters received by the Hamiltons and the other witnesses. This is so because the State offered the letters for a valid purpose other than proving Cross's character in order to show that he acted in conformity with that character. Specifically, the evidence was admitted to show identity, plan, scheme, and motive of the defendant.

{¶ 26} For instance, the letters demonstrate a common plan and scheme used by the defendant – i.e. to write offensive, harassing, anonymous, and threatening letters to individuals associated with the Jackson City schools and school board with whom he has a conflict or perceived conflict. The letters are also useful evidence in establishing the identity of the perpetrator because they "form part of the immediate background of the alleged act which forms the foundation of the crime charged in the indictment" and which are "inextricably related to the alleged criminal act." *See State v. Lowe*, 69 Ohio St.3d 527, 531, 634 N.E.2d 616 (1994). The letter that ultimately gave rise to the indictment refers to prior warnings when it directs Hamilton to "listen to what people tell you". Thus, the other letters that were directed towards Hamilton and his wife are inextricably intertwined with the charged conduct, and the lack of such evidence would have prevented the jury from seeing a fair and accurate picture of the charged crime. The other letters were also useful in establishing the identity of the perpetrator because they established a *modus operandi* identifiable with Cross. *See State v. Jamison*, 49 Ohio St.3d 182, 552 N.E.2d 180 (1990), syllabus ("Other acts forming a unique, identifiable plan of criminal activity are admissible to establish identity under Evid.R. 404(B)."); *State v. Smith*, 49 Ohio St.3d 137, 141, 551 N.E.2d 190 (1990) (" 'Other acts' may be introduced to establish the identity of a perpetrator by showing that he has committed similar crimes and that a distinct, identifiable scheme, plan, or system was used in the commission of the charged offense."); *Lowe*, paragraph

one of the syllabus ("To be admissible to prove identity through a certain *modus operandi*, other-acts evidence must be related to and share common features with the crime in question.") Here, the other acts evidence share common characteristics with the letter, which formed the foundation of the charge, such that, they are useful in identifying the perpetrator. In six of the letters Lee Hamilton is referred to as "fat", including the letter that gave rise to the indictment. She is also referred to as "bitch" in two of the letters including the letter at issue. Five of the letters call Lee Hamilton an "ass". References to the Hamilton's son's handicap are also mentioned in six letters. In several of the letters, including the letter at issue, the recipients are asked to leave the area. The school or school board is mentioned is six of the letters. Many of the letters contain threats against the recipients. Almost every letter is riddled with spelling and grammar errors. Every letter is handwritten, and is either anonymous or contains a fictitious name and return address. In short, the other acts evidence in this case establishes a scheme by which Cross would send insults and threats to people who either opposed him on the school board or who had disagreements with him. Those threats and insults were carried out via anonymous letters, all of which carried common features useful in identifying the culprit. The letters also established a clear motive, i.e., to resolve school related disputes and personal vendettas by humiliating and threatening individuals perceived as a source of the problem or dispute in attempt to get them to resign their positions with the school district or leave the area altogether.

{¶ 27} The letters were also relevant to the analysis conducted by Bennett, the handwriting expert, in determining the identity of the perpetrator. The letters and envelopes provided Bennett a larger sample size for comparison with the known writings of Cross, allowing Bennett to affirmatively conclude that Cross was the author of the letters. Thus, the

letters were highly relevant to determining the identity of the perpetrator. Moreover, the evidence was relevant to refute Cross's testimony that he did not author the letter at issue and that he did not have a grudge with the Hamiltons or other recipients.

{¶ 28} Finally, the danger of unfair prejudice did not substantially outweigh the probative value of the evidence. Any potential danger of prejudice was reduced by the trial court's limiting instructions to the jury. *See State v. Jones*, 135 Ohio St.3d 10, 2012-Ohio-5677, 984 N.E.2d 948, ¶ 194 (limiting instruction "minimized the likelihood of any undue prejudice" caused by admission of Evid.R. 404(B) evidence); *see also Williams*, supra, at ¶ 24 ("This evidence is not unduly prejudicial, because the trial court instructed the jury that this evidence could not be considered to show that [the defendant] had acted in conformity with a character trait."). In fact, the trial court gave at least two instructions to the jury indicating that the jury could not consider the other acts evidence as proof of character. The probative value of the letters in establishing motive, scheme, plan, and identity is not substantially outweighed by the prejudice resulting from the letters' contents, especially in light of the instructions given by the trial judge.

{¶ 29} After reviewing the record, we conclude that the trial court did not act unreasonably, arbitrarily, or unconscionably by allowing the testimony and admission of the other acts evidence. Accordingly, we overrule Cross's first assignment of error.

{¶ 30} In his second assignment of error, Cross contends that his conviction should be overturned because it is not supported by sufficient evidence, or alternatively, is against the manifest weight of the evidence. Cross was charged with intimidation under R.C. 2921.03(A), which states: "No person, knowingly and by force [or] by unlawful threat of harm to any person or property, * * * shall attempt to influence, intimidate, or hinder a public servant, party official, or witness in the discharge of the person's duty."

{¶ 31} Specifically, with regards to his sufficiency argument, Cross contends that the State failed to prove that the letter constituted an attempt to influence, intimidate, or hinder a public servant in the discharge of their duties. In support of this argument, Cross states that there was "absolutely no evidence in the record that this letter influenced any decision Mr. Hamilton made on the Board, or that he felt the letter was an actual attempt to affect his ability to perform his duties as a board member." [Brief at 10.]

{¶ 32} "When reviewing the sufficiency of the evidence, our inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt." *State v. Davis*, 4th Dist. Ross No. 12CA3336, 2013-Ohio-1504, ¶ 12. "The standard of review is whether, after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt." *Id.*, citing *Jackson v. Virginia,* 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

{¶ 33} Therefore, when we review a sufficiency of the evidence claim in a criminal case, we review the evidence in a light most favorable to the prosecution. *State v. Hill,* 75 Ohio St.3d 195, 205, 661 N.E.2d 1068 (1996); *State v. Grant,* 67 Ohio St.3d 465, 477, 620 N.E.2d 50 (1993). A reviewing court will not overturn a conviction on a sufficiency of the evidence claim unless reasonable minds could not reach the conclusion the trier of fact did. *State v. Tibbetts,* 92 Ohio St.3d 146, 162, 749 N.E.2d 226 (2001); *State v. Treesh,* 90 Ohio St.3d 460, 484, 739 N.E.2d 749 (2001).

{¶ 34} Cross's sufficiency argument is misplaced, because even if the letter did not actually influence or intimidate Hamilton in the discharge of his duties as a school board

member, all that is required by the statute is that the threatening act be an *attempt* to influence, intimidate, or hinder. And despite Cross's contention to the contrary, Hamilton did testify that he felt threatened by the letters and that he contemplated moving out of the Jackson City school district. Furthermore, Hamilton testified that Cross's apparent dislike of his family centered around their dealings at the school and on the school board. In all, six of the letters received by the Hamiltons reference the school or school board. The other acts evidence also established a motive behind the letter, i.e. to humiliate and frighten Hamilton to the degree that he would be forced to leave the Jackson community.

{¶ 35} In short, we conclude that the State did present sufficient evidence, especially when viewing the evidence in its favor, to support a finding by the jury that the letter was an attempt to influence, intimidate, or hinder Hamilton in his school board duties.

{¶ 36} "Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence." *State v. Topping*, 4th Dist. Lawrence No. 11CA6, 2012-Ohio-5617, ¶ 60. "When an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court must dutifully examine the entire record, weigh the evidence, and consider the credibility of witnesses." *Id.* The reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. *E.g., State v. Issa,* 93 Ohio St.3d 49, 67, 752 N.E.2d 904 (2001); *State v. DeHass,* 10 Ohio St.2d 230, 39 O.O.2d 366, 227 N.E.2d 212 (1967), paragraph one of the syllabus; *State v. Murphy,* 4th Dist. Ross No. 07CA2953, 2008–Ohio–1744, ¶ 31.

{¶ 37} "Once the reviewing court finishes its examination, the court may reverse the judgment of conviction only if it appears that the fact-finder, when resolving the conflicts in

evidence, clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." (Citations omitted.) *Davis*, 2013-Ohio-1504 at ¶ 14. "A reviewing court should find a conviction against the manifest weight of the evidence only in the exceptional case in which the evidence weighs heavily against the conviction." (Citations omitted.) *Id.* at ¶ 15.

{¶ 38} In support of his manifest weight argument, Cross again argues that there was no evidence that the letter constituted an attempt to influence, intimidate, or hinder Hamilton with respect to his duties associated with the school board. However, as previously discussed, the evidence established a clear motive behind the letter, to rid of Hamilton from the community so as to eliminate his position and influence with the school district. Hamilton also testified that he felt threatened and often thought about moving his family out of Jackson County. Cross also argues that the verdict was against the manifest weight because the State failed to prove that he was the author of the letter. However, William Bennett, a qualified handwriting expert, unequivocally testified that upon comparing the letter to Cross's known writings, it was his opinion that Cross authored the letter. The jury apparently found Bennett's testimony credible. Furthermore, as discussed in our analysis of Cross's first assignment of error, the other acts evidence played a crucial role in determining the identity of the perpetrator. And while Cross denied writing the letters, we note that " '[w]hen conflicting evidence is presented at trial, a conviction is not against the manifest weight of the evidence simply because the jury believed the prosecution testimony.' " *State v. Cooper*, 170 Ohio App.3d 418, 2007-Ohio-1186, 867 N.E.2d 493, ¶ 17 (4th Dist.), quoting *State v. Mason*, 9th Dist. Summit No. 21397, 2003-Ohio-5785, ¶ 17; *see also State v. Fisher*, 4th Dist. Jackson No. 11CA10, 2012-Ohio-6260, ¶ 9 ("[T]he weight of the evidence and witness credibility are issues that the trier of fact must determine. * *

* The rationale for this view is that the trier of fact * * * is in the best position to view the witnesses and to observe their demeanor, gestures and voice inflections and to use those observations to weigh credibility. * * * Consequently, a jury may choose to believe all, part or none of the witness testimony.").

{¶ 39} This court may reverse a conviction and order a new trial only in the exceptional case where the evidence weighs heavily in favor of the defendant and where it is clear that the jury lost its way or created a manifest miscarriage of justice. This is not such a case. Rather, when viewing the record in its totality, there was substantial, competent, and credible evidence upon which the jury could base its verdict.

{¶ 40} Accordingly, the evidence was sufficient to convict Cross of intimidation, and the verdict is not against the manifest weight of the evidence. Cross's second assignment of error is overruled.

{¶ 41} Cross's assignments of error are overruled and the judgment of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED. Appellant shall pay the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Jackson County Common Pleas Court to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of the proceedings in that court. If a stay is continued by this entry, it will terminate at the earliest of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to the expiration of sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, P.J.: Concurs in Judgment and Opinion.
*Delaney, J.: Concurs in Judgment and Opinion.

For the Court

By: _____
Marie Hoover, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

*Judge Patricia A. Delaney from the Fifth Appellate District, sitting by assignment of the Supreme Court of Ohio in the Fourth Appellate District.