

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23023
v.	:	T.C. NO. 08 CRB 12990
JULIAN B. HEISLE	:	(Criminal appeal from Municipal Court)
Defendant-Appellant	:	

**OPINION**

Rendered on the 9<sup>th</sup> day of October, 2009.

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WOLFF, J. (by assignment)

{¶ 1} After a bench trial, Julian Heisle was found guilty of aggravated menacing. He was sentenced to 180 days incarceration, with credit for 12 days of pretrial confinement. On appeal, Heisle assigns error and states the issue on appeal as follows:

{¶ 2} “ASSIGNMENT OF ERROR

{¶ 3} “THE TRIAL COURT ERRED IN CONVICTING APPELLANT OF AGGRAVATED MENACING.

{¶ 4} “STATEMENT OF THE ISSUE

{¶ 5} “THE TRIAL COURT ERRED IN CONVICTING APPELLANT OF AGGRAVATED MENACING AS SUCH CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE AND NOT SUPPORTED BY SUFFICIENT EVIDENCE.”

{¶ 6} R.C. 2903.21(A), which defines aggravated menacing, states that no person shall knowingly cause another to believe that the offender will cause serious physical harm to the person or property of the other person, the other person’s unborn, or a member of the other person’s immediate family.

{¶ 7} The alleged victim in this case was Anthony Johnson. Heisle’s contention on appeal is aptly summarized in his appellate brief as follows:

{¶ 8} “. . .the evidence presented does not demonstrate beyond a reasonable doubt that Anthony Johnson believed that Julian Heisle would cause him physical harm as Anthony Johnson did not take Julian Heisle’s threats seriously and by not calling the police and his other actions, Anthony Johnson did not act like someone who as [sic] seriously threatened by Julian Heisle. Further, Julian Heisle did not have the gun in his possession. Consequently, the evidence presented in this matter was not sufficient, as such evidence would not convince the average person that Appellant committed the crime of Aggravated Menacing.”

{¶ 9} Anthony Johnson and Dayton Police Officer John Riegel testified for the State. The defense presented no evidence.

{¶ 10} Johnson testified that he is eighteen years old. He and Heisle had been on good terms for several years, but had not been friends for several months prior to August 16. He said that in April or May - three or four months before August 16, the day of the alleged aggravated menacing - Heisle had threatened him:

{¶ 11} “Q. And what did he say in April?”

{¶ 12} “A. When the (sic) catch me, whenever they catch me they was gon’ whup me. If they see me anywhere if I couldn’t walk no where all of ‘em’s gon’ jump on me.

{¶ 13} “Q. But nothing ever happened on those threats?”

{¶ 14} “A. Nothing ever happened.

{¶ 15} “Q. Did you take them to be serious at that time?”

{¶ 16} “A. Yeah, I started taking them to be serious.”

{¶ 17} On August 16, Johnson testified that he observed Heisle and Darrion Atkinson pass his house. He first stated that Atkinson was carrying a gun, and then said it was Heisle who had the gun. Soon after seeing Heisle and Atkinson, Heisle called him at home on his cell phone and said, according to what Johnson told the police:

{¶ 18} “Where you at; I got my shit in my bag; I’ll beat you and your dad; I’ll pop both of you.”

{¶ 19} Johnson said he took Heisle’s threat “very seriously.” Johnson testified he took “I got my shit in my bag” to mean “the gun that they was carrying” and that “pop” is a well-known slang term for “shooting.” He said, in effect, he thought Heisle meant that he

had a gun and would shoot him.

{¶ 20} Within two hours of the cell phone call, within earshot of Johnson's house, Johnson observed Heisle and Atkinson again. Heisle was holding a gun and said to Johnson: "I'ma blow your brains out." Johnson said he "never responded because I was scared that he would have shot if I would have said something." Johnson and his mother and sister, all of whom were on the porch when this latest statement was made, retreated into the house and Johnson's mother called the police.

{¶ 21} Officer Riegel and Officer Julian Saunders responded to Johnson's mother's call. He said Johnson, who was "somewhat upset," flagged them down and pointed to three individuals whom he said had threatened him and had a gun. The officers observed one of the three with a gun. After calling for additional backup, the police apprehended the three individuals. Heisle was one of the three; Atkinson was determined to have had the gun. Officer Riegel's investigation pointed to Atkinson's having had the gun.

## II.

{¶ 22} Heisle contends the evidence was insufficient to prove Johnson believed Heisle would cause him serious physical harm. He points to the facts that he and Johnson had never had a physical altercation, that Johnson had not called the police after the threat in April or May, that two hours elapsed between the cell phone threat of August 16 and the call to the police - which was made not by Johnson, but by his mother, and that Heisle did not have the gun in his possession.

## III.

{¶ 23} We disagree. None of these facts, alone or in concert, necessarily undercut

Johnson's testimony that Heisle had a gun at the ready (whether Heisle or Atkinson actually held it), and that he took very seriously Heisle's threat to shoot him. Heisle and Atkinson were in close proximity to Johnson's house for approximately two hours, in possession of a gun, and the second threat, which Heisle made from the street, was to kill Johnson. That this eighteen-year-old didn't call the police in April or May, when the first threat was made, or on August 16, after two threats were made, does not erode his testimony to the effect that he believed Heisle would cause him serious physical harm. Heisle not only threatened serious physical harm, but Johnson observed, at the least, Heisle's access to a gun: the means with which to deliver on his threats.

{¶ 24} The trial court did not lose its way.

{¶ 25} The assignment of error is overruled.

#### IV.

{¶ 26} The judgment will be affirmed.

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GRADY, J. and FROELICH, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

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