[Cite as *State v. Turner*, 2009-Ohio-2640.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	
PLAINTIFF-APPELLEE,	)	
	)	
VS.	)	CASE NO. 08-MA-4
	)	
JOSHUA TURNER,	)	OPINION
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Court of Common Pleas of Mahoning County, Ohio Case No. 06CR850
JUDGMENT:	Affirmed
APPEARANCES: For Plaintiff-Appellee	Paul Gains Prosecutor Ralph M. Rivera Assistant Prosecutor 21 W. Boardman St., 6th Floor Youngstown, Ohio 44503
For Defendant-Appellant	Attorney Douglas A. King Hartford, Dickey & King Co., LPA 91 West Taggart Street, P.O. Box 85 East Palestine, Ohio 44413

JUDGES:

Hon. Gene Donofrio
Hon. Joseph J. Vukovich
Hon. Cheryl L. Waite

Dated: June 3, 2009

[Cite as *State v. Turner*, 2009-Ohio-2640.]
DONOFRIO, J.

{¶1} Defendant-appellant, Joshua Turner, appeals from a Mahoning County Common Pleas Court judgment convicting him of two counts of menacing by stalking after a bench trial.

{¶2} This case centers around an on-again, off-again relationship between appellant and his ex-girlfriend, Erica Jenkins. The two had been a couple and lived together in South Carolina for two years. During that time, Jenkins called the police on appellant numerous times. According to Jenkins, the relationship was abusive. Jenkins left appellant and moved to Youngstown, Ohio to live with her mother.

{¶3} After a few months passed, appellant contacted Jenkins and came to Youngstown to see her. He eventually moved into Jenkins's mother's house with her where he remained for a few months. Jenkins and appellant then had an argument and she kicked appellant out of her mother's house. She later allowed him to move back in. She then kicked him out again, this time for good.

{¶4} Appellant called Jenkins repeatedly, telling her things such as he was outside of her house and "strange things" would happen if she did not come out to see him. Jenkins stated that she was afraid of appellant and what he might do. Jenkins eventually called the police.

{¶5} As a result, a Mahoning County grand jury indicted appellant on one count of menacing by stalking, a fourth-degree felony in violation of R.C. 2903.211(A)(1)(B)(2)(c), one count of intimidation of a victim or witness in a criminal case, a first-degree misdemeanor in violation of R.C. 2921.04(A)(D), and one count of menacing by stalking, a fourth-degree felony in violation of R.C. 2903.211(A)(1)(B)(2)(e).

{¶6} Appellant waived his right to a jury trial and the matter proceeded to a bench trial. The trial court found appellant guilty of the two menacing by stalking counts and not guilty of the intimidation of a victim or witness count. The court later sentenced appellant to three years of community control to be monitored by the Adult Parole Authority.

{¶7} Appellant filed a timely notice of appeal on January 4, 2008. He now raises seven assignments of error, the first of which states:

{¶8} "DEFENDANT/APPELLANT'S CONVICTION IN COUNT I MUST BE REVERSED AS THE STATE OF OHIO FAILED TO PROVE BEYOND A REASONABLE DOUBT THE ELEMENT OF TRESPASS."

{¶9} Appellant argues that the state failed to prove he trespassed onto the land where Jenkins lived, was employed, or attended school as was required to support a conviction on the first count of menacing by stalking. He points out that the land onto which he supposedly trespassed was that of Jenkins's mother. He further points out that Jenkins testified that her mother and appellant had a good relationship. Appellant asserts that the state presented no evidence that he actually entered the land of Jenkins's mother and further presented no evidence that he did so without privilege to be there.

{¶10} The first count of menacing by stalking for which the court convicted appellant was a violation of R.C. 2903.211(A)(1)(B)(2)(c), which provides in pertinent part:

{¶11} "(A)(1) 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.

{¶12} "* * *

{¶13} "(B) Whoever violates this section is guilty of menacing by stalking.

{¶14} "* * *

{¶15} "(2) Menacing by stalking is a felony of the fourth degree if any of the following applies:

{¶16} "* * *

{¶17} "(c) In committing the offense * * *, the offender trespassed on the land or premises where the victim lives, is employed, or attends school * * *."

{¶18} Appellant contends that the state failed to prove that he trespassed onto the land where Jenkins lives, is employed, or attends school.

{¶19} While the menacing by stalking statute does not define "trespass," criminal trespass is defined in R.C. 2911.21. There, criminal trespass includes "knowingly" and "without privilege" entering or remaining on the land or premises of another. R.C. 2911.21(A)(1).

{¶20} Firstly, appellant seems to contend that because the land where he trespassed did not belong to Jenkins this element was not met. However, the statute merely requires that the offender trespassed upon land where the victim "lives." It does not require that the land actually belong to the victim. Jenkins clearly testified that she lives at her mother's house. (Tr. 21).

{¶21} Secondly, appellant points out that Jenkins testified he had a good relationship with her mother. (Tr. 62). He therefore argues that he may have been on the property with Jenkins's mother's permission. But Jenkins's testimony rebuts this contention. Jenkins testified that she kicked appellant out of her mother's house. (Tr. 36-38).

{¶22} Thirdly, appellant contends that the state did not prove that he was actually on Jenkins's mother's property when he made the threats to Jenkins. But once again Jenkins's testimony refutes this contention. Jenkins testified that appellant would come to her window; that she could hear his voice outside; that although she could not see him, she knew he was there because of his voice; and that one time he even came up on the porch. (Tr. 37-40).

{¶23} In sum, Jenkins's testimony refutes each of appellant's arguments. The state proved through Jenkins's testimony that appellant knowingly and without privilege entered onto the land where Jenkins lived.

{¶24} Accordingly, appellant's first assignment of error is without merit.

{¶25} Appellant's second assignment of error states:

{¶26} "DEFENDANT/APPELLANT'S CONVICTION IN COUNTS ONE AND THREE OF THE SUPERCEDING INDICTMENT MUST BE REVERSED AS THE STATE OF OHIO FAILED TO PROVE BEYOND A REASONABLE DOUBT THE ELEMENT OF A PATTERN OF CONDUCT."

{¶27} Appellant argues here that the state failed to establish that he engaged in a "pattern of conduct" as was required to prove the second count of menacing by stalking. He asserts that the state did not prove that the incidents in question were closely related in time because they spanned a long time period.

{¶28} The second count of menacing by stalking that the court convicted appellant under was R.C. 2903.211(A)(1)(B)(2)(e). The elements of this subsection are the same as those listed above for the first count of menacing by stalking with the only difference being that instead of proving that the offender trespassed, the state must prove that, "[t]he offender has a history of violence toward the victim or any other person or a history of other violent acts toward the victim or any other person." R.C. 2903.211(B)(2)(e).

{¶29} R.C. 2903.211(D)(1) defines "pattern of conduct" 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." The issue of whether the acts constituting a pattern of conduct were closely related in time is a question for the trier of fact. *State v. Crowe*, 9th Dist. No. 05CA0066-M, 2006-Ohio-2409, at ¶27, citing *State v. Werfel*, *State v. Werfel*, 11th Dist. Nos. 2002-L-101, 2002-L-102, 2003-Ohio-6958.

{¶30} The indictment lists the dates between which the pattern of conduct was alleged to have occurred as July 20, 2006, to January 1, 2007.

{¶31} Jenkins testified that appellant moved into her mother's house on June 10, 2006. (Tr. 60). He lived there a while before Jenkins kicked him out for good. (Tr. 36-37). That was when she told appellant not to call her or come by anymore. (Tr. 37). However, Jenkins testified that appellant continued to come by and call her. (Tr. 37-40). Additionally, the evidence demonstrated that appellant called Jenkins approximately 400 times in July 2006. (Ex. 6).

{¶32} Appellant is correct that in her testimony Jenkins does not give precise dates. But from the testimony cited above, it is apparent that a pattern of conduct existed during a relatively short time period. Appellant did not move into Jenkins's

mother's house until June 10, 2006. He lived there for a short time before she kicked him out for good. After she kicked him out for good, he continued to call her and come by her mother's house despite her requests that he leave her alone. Phone records indicated that he called her approximately 400 times in July 2006. Thus, the trial court had ample evidence from which to conclude that appellant engaged in a "pattern of conduct."

{¶33} Accordingly, appellant's second assignment of error is without merit.

{¶34} Appellant's third assignment of error states:

{¶35} "COUNT THREE OF THE SUPERCEDING INDICTMENT IS VOID FOR VAUGUENESS ON ITS FACE."

{¶36} Appellant alleges here that R.C. 2903.211(A)(1)(B)(2)(e) is void for vagueness and, consequently, is unconstitutional. He claims that this subsection provides no standard with regard to what constitutes a "history of violence."

{¶37} Appellant failed to assert in the trial court that R.C. 2903.211(A)(1)(B)(2)(e) is unconstitutional. The Ohio State Supreme Court has held that the failure to raise the issue of a statute's constitutionality in the trial court constitutes waiver of the issue on appeal. *State v. Awan* (1986), 22 Ohio St.3d 120, 489 N.E.2d 277, at the syllabus. However, the Court later held that the *Awan* waiver doctrine is discretionary and a reviewing court may consider first-time constitutional challenges to the application of statutes "in specific cases of plain error or where the rights and interests involved may warrant it." *In re MD* (1988), 38 Ohio St.3d 149, 527 N.E.2d 286, at the syllabus.

{¶38} In this case, no plain error occurred. This conclusion, however, is based on our review of appellant's allegation that R.C. 2903.211(A)(1)(B)(2)(e) is unconstitutionally vague.

{¶39} We must start with the presumption that the statute in question is constitutional. *State v. Cook* (1998), 83 Ohio St.3d 404, 409, 700 N.E.2d 570. Furthermore, the party asserting that a statute is unconstitutional must prove his

assertion beyond a reasonable doubt. *Hilton v. Toledo* (1980), 62 Ohio St.2d 394, 396, 405 N.E.2d 1047.

{¶40} In order to prove that a statute is unconstitutional, the challenger must demonstrate that upon examining the statute, a person of ordinary intelligence would not understand what he is required to do under the law. *State v. Anderson* (1991), 57 Ohio St.3d 168, 566 N.E.2d 1224. Further, in order for a statute to be unconstitutionally vague, it must lack explicit standards such that it permits arbitrary and discriminatory enforcement. *State v. Schwab* (1997), 119 Ohio App.3d 463, 468, 695 N.E.2d 801, citing *Akron v. Rowland* (1993), 67 Ohio St.3d 374, 383-84, 618 N.E.2d 138; *State v. Collier* (1991), 62 Ohio St.3d 267, 271, 581 N.E.2d 552. Thus, in this case, appellant would have to show that a person of ordinary intelligence would not understand what constitutes a "history of violence" and that a "history of violence" is not explicit. He cannot do so.

{¶41} Additionally, "[t]he Supreme Court of the United States has noted that a statute is not unconstitutionally vague merely because it fails to define specific terms: 'many statutes will have some inherent vagueness, for in most English words and phrases there lurk uncertainties. Even trained lawyers may find it necessary to consult legal dictionaries, treatises, and judicial opinions before they may say with any certainty what some statutes may compel or forbid.' *Rose v. Locke* (1975), 423 U.S. 48, 50, 96 S.Ct. 243, 46 L.Ed.2d 185 (citations and internal quotations omitted). Thus, a statute is not vague if the meaning of words can be ascertained from these sources or, for words in common usage, from the meaning commonly attributed to them. See [*State v.*] *Glover* [1984], 17 Ohio St.3d [256] at 258, 479 N.E.2d 254 (citations omitted); *Jeandell v. State* (2005), 165 Md.App. 26, 884 A.2d 739." *State v. Sommerfield*, 3d Dist. No. 14-05-23, 2006-Ohio-1420, at ¶16.

{¶42} This court previously found R.C. 2903.211 to be constitutional in its entirety, but that was before the statute's amendment. See *State v. Smith* (1998), 126 Ohio App.3d 193, 211, 709 N.E.2d 1245; 1999 H 137, effective March 10, 2000.

The prior version of the statute did not contain the subsection dealing with a "history of violence." Thus, our prior decision is not helpful here.

{¶43} More helpful is *Werfel*, 11th Dist. Nos. 2002-L-101, 2002-L-102. In addressing the appellant's over breadth allegation, the Eleventh District stated:

{¶44} "Although the phrases 'history of violence' and 'violent acts' are not specifically defined, *such phrases have an ordinary meaning* that does not include benign, otherwise protected conduct * * *. The conduct must be of a violent variety; *such language is simple and easily understood*. Therefore, the language of R.C. 2903.211 is not so broad as to sweep within its prohibitions what may not otherwise be constitutionally punished." (Emphasis added). Id. at ¶58.

{¶45} We agree with the Eleventh District's conclusion. Both the words "history" and "violence" are simple and easily understood. Merriam-Webster's On-line Dictionary defines "history" as including "an established record" such as "a prisoner with a history of violence." http://www.merriam-webster.com/dictionary/history. And it defines "violence" in part as an "exertion of physical force so as to injure or abuse." http://www.merriam-webster.com/dictionary/violence. Both of these terms have simple, direct meanings and are commonly understood. A person of ordinary intelligence could easily determine that repeated occurrences of injurious or abusive conduct constitute a "history of violence."

{¶46} Accordingly, appellant's third assignment of error is without merit.

{¶47} Appellant's fourth assignment of error states:

{¶48} "COUNT THREE OF THE SUPERCEDING INDICTMENT IS VOID FOR VAGUENESS AS APPLIED TO DEFENDANT/APPELLANT."

{¶49} Here appellant contends that R.C. 2903.211(A)(1)(B)(2)(e) is void for vagueness as applied to him because the determination as to what constituted a "history of violence" was made by a single fact-finder. This argument is flawed because appellant himself waived his right to a jury trial. He had the right to have a jury of 12 of his peers determine whether his actions constituted a "history of

violence." Instead, appellant chose to waive this right and proceed to a bench trial where one judge would make this determination. This was appellant's choice.

{¶50} Furthermore, the record more than supports the court's determination that appellant had a history of violence against Jenkins. Jenkins testified that appellant was violent, abusive, hit her numerous times, and threatened her life. (Tr. 23-24, 26). She also stated that she called the police on appellant five times in South Carolina and again in Youngstown. (Tr. 24, 54). Thus, the court had ample evidence from which to determine that appellant had a history of violence towards Jenkins.

{¶51} Accordingly, appellant's fourth assignment of error is without merit.

{¶52} Appellant's fifth and sixth assignments of error share a common basis in fact. Therefore, we will address them together. They state:

{¶53} "THE EVIDENCE AT TRIAL WAS INSUFFICIENT TO SUPPORT A CONVICTION."

{¶54} "THE VERDICTS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

{¶55} Appellant contends that his convictions are against both the sufficiency and the weight of the evidence. He asserts that Jenkins's testimony did not demonstrate that she believed he would cause her harm or that he caused her mental distress. He points out that Jenkins testified she was not afraid of him, she took up residence with him on numerous occasions, she visited him, and she called him on the phone. Appellant further asserts the state failed to prove a pattern of conduct.

{¶56} Sufficiency of the evidence is the legal standard applied to determine whether the case may go to the jury or whether the evidence is legally sufficient as a matter of law to support the verdict. *State v. Smith* (1997), 80 Ohio St.3d 89, 113, 684 N.E.2d 668. In essence, sufficiency is a test of adequacy. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541. Whether the evidence is legally sufficient to sustain a verdict is a question of law. Id. In reviewing the record for sufficiency, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Smith,* 80 Ohio St.3d at 113.

{¶57} In determining whether a verdict is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *Thompkins,* 78 Ohio St.3d at 387. "Weight of the evidence concerns 'the inclination of the *greater amount of credible evidence,* offered in a trial, to support one side of the issue rather than the other.'" Id. (Emphasis sic.) In making its determination, a reviewing court is not required to view the evidence in a light most favorable to the prosecution but may consider and weigh all of the evidence produced at trial. Id. at 390.

{¶58} Still, determinations of witness credibility, conflicting testimony, and evidence weight are primarily for the trier of the facts. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

{¶59} A reviewing court will not reverse a judgment as against the manifest weight of the evidence in a bench trial where the trial court could reasonably conclude from substantial evidence that the state has proved the offense beyond a reasonable doubt. *State v. Eskridge* (1988), 38 Ohio St.3d 56, 59, 526 N.E.2d 304.

{¶60} The trial court convicted appellant of two counts of menacing by stalking. In the first count, the state had to prove that appellant knowingly engaged in a pattern of conduct that caused Jenkins to believe that he would cause her physical harm or that caused her mental distress and that in committing the offense appellant trespassed on the land or premises where Jenkins lived. R.C. 2903.211(A)(1)(B)(2)(c). In the second count, the state had to prove that appellant knowingly engaged in a pattern of conduct that caused Jenkins to believe he would cause her physical harm or caused her mental distress and that appellant had a history of violence towards Jenkins. R.C. 2903.211(A)(1)(B)(2)(e).

{¶61} Only two witnesses testified in this trial, Jenkins and her aunt, Mildred Epps. We must consider their testimony to determine if the court's verdict was supported by both sufficient evidence and by the weight of the evidence.

{¶62} Jenkins testified that she and appellant resided together for two years in South Carolina. (Tr. 22-23). Jenkins stated that her three-year old daughter, China, also lived with them part of that time, but her mother did not trust appellant so China went to live with Jenkins's mother. (Tr. 26). During this time, Jenkins stated, appellant was "really violent" and "abusive." (Tr. 23). She stated that he called her names, hit her, and threatened her life. (Tr. 23, 26). He also kicked in her apartment door. (Tr. 66). Consequently, Jenkins called the police five times on appellant, although she never followed through with the reports. (Tr. 24).

{¶63} Jenkins moved to Youngstown to live with her mother after getting into an argument with appellant during which he hit her and smashed her phone. (Tr. 26-28). At first she had no contact with appellant. (Tr. 29-30). A few months later, however, they reconciled. (Tr. 30-31). Jenkins allowed appellant to move in with her at her mother's house. (Tr. 32). He stayed there for a brief time. (Tr. 32-33). After another big argument, Jenkins kicked appellant out of her mother's house. (Tr. 33-35). Appellant slept on Jenkins's mother's porch that night and then went to a homeless shelter. (Tr. 35-36). Once again, appellant apologized and Jenkins took him back. (Tr. 36). However, the two then got into another fight. (Tr. 36). This time Jenkins kicked appellant out of her mother's house for good. (Tr. 36-37).

{¶64} After kicking appellant out of her mother's house for good, Jenkins told appellant not to call her anymore and not to come by the house. (Tr. 37). Nonetheless, he still came by and he still called Jenkins. (Tr. 37). She stated that she quit answering her phone and eventually had to get her phone turned off because of appellant's persistent calls. (Tr. 37).

{¶65} Jenkins gave an example of a time when appellant called and left her a message that if she did not answer the door for him, "some strange things are going to start happening around here." (Tr. 38). Jenkins stated that this frightened her and

made her fear for her child because she did not know what appellant was capable of doing. (Tr. 38, 50). She stated that this fear was based on her history with him in South Carolina. (Tr. 38, 50-51).

{¶66} Jenkins gave another example of how appellant would come to her window and just look in or call her name. (Tr. 38-39). She stated that this also frightened her. (Tr. 39). She stated that she knew appellant was outside without seeing him because she could hear his voice. (Tr. 39).

{¶67} Jenkins next testified that appellant even kicked in her mother's door. (Tr. 39-40).

{¶68} Jenkins gave yet another example where appellant showed up on her mother's porch and her daughter China saw him. (Tr. 40). China told Jenkins that she saw appellant and wanted to hide. (Tr. 40). Jenkins further stated that appellant showed up a couple of times and offered her money, which she refused. (Tr. 43).

{¶69} Jenkins testified that during all of appellant's phone calls she was scared of him and was scared that he might do something to her or China. (Tr. 41). She further stated that as a result of appellant's actions, it was difficult for her to date and she did not trust many people. (Tr. 44). Additionally, Jenkins stated she is now scared for China and does not let her play outside alone. (Tr. 44).

{¶70} Jenkins also testified that throughout July, she received "a lot" of phone calls from appellant, including a phone call he made from jail. (Tr. 47-50: Ex. 4). In fact, appellant called Jenkins approximately 400 times in the month of July. (Ex. 6).

{¶71} On cross-examination, Jenkins admitted that as of June 10, 2006, she allowed appellant to move in at her mother's house and that they had a physical relationship at that time. (Tr. 60-61). She also admitted that appellant then got an Ohio identification card using her mother's address as his own. (Tr. 61-62). Jenkins stated that her mother was okay with this because she had a bond with appellant. (Tr. 62). Jenkins further admitted that she called appellant on two occasions "trying to talk sweet" so she could get him on the phone. (Tr. 69-70; Ex. 14). She stated that she left him those messages because she wanted to "get face to face" with him

so he could hear what she had to say. (Tr. 71). On re-direct she explained that even though she called appellant and left him these messages, she was still afraid of him. (Tr. 71-72). Finally, on cross-examination, Jenkins admitted that at the preliminary hearing, she stated she was "just a little bit" afraid of appellant. (Tr. 74). But on re-direct, she explained that she had become less afraid of appellant because by that time the court system was involved. (Tr. 75).

{¶72} Mildred Epps was the only other witness to testify. She stated that appellant admitted to her that he hit Jenkins. (Tr. 80). Epps also testified that after Jenkins kicked appellant out of the house, he called her asking to talk with Jenkins. (Tr. 80-81). She stated that she told him that Jenkins did not want to talk to him and to stop calling. (Tr. 81).

{¶73} As discussed in detail in appellant's second assignment of error, the state proved the element of a "pattern of conduct." And as discussed in appellant's first assignment of error, the state also proved the element of trespass.

{¶74} The evidence further demonstrated that appellant caused Jenkins mental distress and that he caused her to believe he would cause her physical harm. Jenkins specifically testified that she was frightened of appellant and what he might do. She also testified that as a result of appellant's conduct, she has difficulty dating, does not trust people, and does not allow her daughter to play outside alone. Appellant's history with Jenkins gives support to her fears. She testified that throughout their relationship appellant hit her, called her names, and threatened her life. And while Jenkins did call appellant and did previously state she was "just a little bit afraid" of him, she said that was because once the court system got involved with appellant, she became less fearful of him.

{¶75} Finally, the evidence further demonstrated that appellant has a history of violence towards Jenkins. Jenkins testified that during their two-year relationship, appellant hit her, threatened her, and called her names. She also stated that he kicked in the door of her apartment and kicked in her mother's door.

{¶76} Based on this evidence, appellant's convictions are supported by both the weight and the sufficiency of the evidence. The state presented evidence going to each and every element of both counts of menacing by stalking. Furthermore, the trial court could reasonably conclude from the evidence discussed above that the state proved both offenses beyond a reasonable doubt.

{¶77} Accordingly, appellant's fifth and sixth assignments of error are without merit.

{¶78} Appellant's seventh assignment of error states:

{¶79} "DEFENDANT/APPELLANT WAS DENIED A FAIR TRIAL DUE TO THE CUMULATIVE EFFECT OF THE ERRORS AS SET FORTH HEREIN."

{¶80} Here appellant argues that the cumulative effect of the errors he has alleged denied him a fair trial.

{¶81} "The cumulative error doctrine refers to a situation in which the existence of multiple errors, which may not individually require reversal, may violate a defendant's right to a fair trial. To affirm a conviction in spite of multiple errors, we must determine that the cumulative effect of the errors is harmless beyond a reasonable doubt. The errors may be considered harmless if there is overwhelming evidence of guilt, if Appellant's substantial rights were not affected, or if there are other indicia that the errors did not contribute to the conviction." (Internal citations omitted.) *State v. Anderson,* 7th Dist. No. 03-MA-252, 2006-Ohio-4618, at ¶80.

{¶82} It is not enough for a party to simply "'intone the phrase cumulative error.'" *State v. Young*, 7th Dist. No. 07-MA-120, 2008-Ohio-5046, at ¶65, quoting *State v. Bethel,* 110 Ohio St.3d 416, 854 N.E.2d 150, 2006-Ohio-4853, ¶197. Consequently, where an appellant raises the doctrine of cumulative error without further analysis, the assignment of error lacks substance. Id. That is precisely what appellant did here. He raised this assignment of error but did not give it any analysis. On this basis alone, we can conclude that this assignment of error is meritless. Furthermore, none of the errors appellant alleged have merit.

{¶83} Accordingly, appellant's seventh assignment of error is without merit.

{¶84} For the reasons stated above, the trial court's judgment is hereby affirmed.

Vukovich, P.J., concurs.

Waite, J., concurs.