

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-546
Patricia A. Lawson (nka Thompson),	:	(C.P.C. No. 11EP-03-200)
Defendant-Appellant.	:	(ACCELERATED CALENDAR)

D E C I S I O N

Rendered on November 8, 2011

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Swope and Swope – Attorneys at Law, and *Richard F. Swope*, for appellant.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶1} Patricia A. Thompson (formerly Lawson) is appealing from the denial of her application for expungement. She assigns two errors for our consideration:

[I.] APPELLANT DID NOT COMMIT ANY OFFENSE OF VIOLENCE AND THE DEFINITION OF OFFENSE OF VIOLENCE IS OVERLY BROAD AND DISCRIMINATES BETWEEN NON-VIOLENT OFFENDERS, ALL CONTRARY TO THE 5TH AND 14TH AMENDMENTS TO THE CONSTI-

TUTION OF THE UNITED STATES AND ARTICLE I, SECTIONS 1, 2 AND 10 OF THE OHIO CONSTITUTION.

[II.] THE COURT ERRED IN FAILING TO MAKE THE FINDINGS REQUIRED BY SECTION 2953.32(C)(1)(a)(b)(c)(d) and (e), OHIO REVISED CODE, AND IN FAILING TO HOLD A HEARING AS REQUIRED BY SECTION 2953.32(B), OHIO REVISED CODE.

{¶2} Five years ago, Thompson was convicted of two charges of menacing by stalking with trespass and one charge of violating a protection order. In March 2011, she filed an application for an order to seal or expunge the convictions.

{¶3} The facts underlying the charges are set forth in the earlier appeal of her convictions:

At trial, Kathleen Grandey ("Grandey") testified to the following on behalf of plaintiff-appellee, the State of Ohio. Grandey is a hairstylist, and appellant had been Grandey's client for approximately one and a half to two years. Around Christmas 2003, while a client of Grandey's, appellant sent to Grandey's house gifts for Grandey and Grandey's nieces and nephew. Appellant sent the gifts after the mother of Grandey's nieces and nephew was in a serious automobile accident. The accident was "common knowledge" at the hair salon where Grandey worked. (Tr. at 30.) Although Grandey had clients who "sent cards or did nice things[.]" Grandey thought it "odd" that appellant sent gifts to her house. (Tr. at 30.) Nonetheless, Grandey sent appellant a thank-you note for the gifts.

Around late February or early March 2004, appellant's relationship with Grandey "started getting odd[.]" (Tr. at 31.) Appellant "sent some cards in the mail, and [Grandey] just dismissed them." (Tr. at 32.) In addition, appellant once left Grandey a telephone message at Grandey's home asking Grandey to call her. Grandey returned the call, "and it was a strange conversation. And [Grandey] just tried to get off [the phone] as soon as [she] could." (Tr. at 32.)

In March 2004, on a night before Grandey left for Las Vegas with her boyfriend, Grandey found in her mailbox the following gifts: cookies, a card, and a book on Las Vegas. Grandey knew that the gifts were from appellant because appellant signed the card. Grandey did not respond to appellant about the gifts.

Around May 27 or 28, 2004, Grandey found on the front step of her home cookies and a card that asked Grandey to be home at a certain time. Grandey made sure that a male friend was with her during the time denoted on the card, and, at that time, the phone rang, and Grandey's friend answered the phone. Grandey's friend said hello a few times and hung up. Grandey's caller identification service identified the caller's phone number. Grandey called the number back, and Grandey received appellant's voicemail greeting. Grandey left a message telling appellant that "she needed to stop, that these games she was playing were going to end." (Tr. at 33.)

The next week, Grandey received a card in the mail that was blank on the outside. On the inside was a typed note that said appellant was sorry for upsetting Grandey. Appellant asked Grandey to call her, but Grandey did not call appellant. Grandey then spoke with her employer about appellant, and, in June 2004, Grandey's employer sent appellant a letter stating that she was no longer welcome at the hair salon.

Grandey also spoke with Police Officer Graves about appellant's conduct. Subsequently, in August 2004, Grandey "came home from work and checked [her] mail, and there was a letter – there was something sent to [her]. It was a piece of paper that had a lot of [Grandey's] personal information on it. And there was a statement about making a false complaint to Officer Graves so [Grandey] knew who it was from." (Tr. at 36.) As a result, Grandey filed a police report.

In mid-October 2004, a court awarded Grandey a civil protection order against appellant. Appellant was present when the court issued the protection order, which appellant signed. Appellee introduced into evidence a copy of the protection order. The protection order was issued, pursuant to R.C. 2903.214, and filed with the clerk of courts on October

15, 2004. The protection order expires on October 14, 2008, and prohibits appellant from contacting Grandey or entering Grandey's residence or "grounds" at her residence. (State's Exhibit 1.)

On December 30, 2004, Grandey found in her mailbox a roll of toilet paper with the handwritten words " 'I love you.' " (Tr. at 40.) Approximately January 6 or 7, 2005, Grandey received a letter asking her to be home at a certain time. Grandey made sure that her brother was with her during the stated time. At that time, Grandey's brother stayed for two and a half hours, but nothing happened. Ultimately, as Grandey's brother was leaving, and while Grandey checked for her mail, Grandey saw appellant driving by in her vehicle.

On approximately January 12, 2005, Grandey received another letter from appellant. Grandey testified that, in the letter, appellant stated "something to the fact that she knew what we were doing" and "to meet her somewhere else, I believe." (Tr. at 43.) Grandey then testified that she contacted the police, and the police filed a warrant for appellant's arrest.

Thereafter, Grandey testified:

Q Now, let's go back to the beginning, back between May 27 and October 5, 2004. How did you feel when [appellant] was doing these things to you?

A It was eerie. I got security on my house. * * * I didn't want to be alone. I always have people with me if I could. * * * I was fearful.

Q. Why were you fearful?

A It was just odd behavior. I'd never been exposed to that kind of behavior before. So I'm a person who minds my own business. When people butt into mine, it's overbearing.

Q And when did you get the security system?

A June of 2004.

* * *

Q How did you change the way you lived your life?

A Constantly looking over my shoulder, constantly looking in the rear-view mirror, not trusting people that you meet.

* * *

Q Now, let's talk about the period from December 20, 2004, to January 12, 2005. This stuff was still going on. How did you feel at this point?

A I didn't sleep, just scared to death not knowing what's going to happen next.

(Tr. at 43-44.)

Likewise, Grandey testified that "[t]here was a brief time between the end of September [2004] and Christmas where [her] parents moved in with [her] because [she] was scared to be alone." (Tr. at 44.) Grandey further testified that, after January 12, 2005, she "decided to move in with [her] brother and his family." (Tr. at 44.)

Next, Grandey testified as follows:

Q Had [appellant] ever threatened you with physical violence?

A There was a time * * * I came home from work, and when I started to open my door to get my mail, and I saw somebody coming from behind my car, and I shut the door and noticed it was [appellant]. And I remember screaming, "Get off my car, get away from me, leave me alone." * * * I tried to get out of there as fast as I could, and I drove to a gas station and called the police.

Q What time period was that?

A That was September 23, 2004.

Q * * * Exactly where was the car and where was she?

A My car [was] at the beginning [of] the driveway. She started on the passenger door. I kept trying to move my car. At that point she was at the front of my car, to the side of my car, until I could get away.

Q So it was in your driveway?

A Yes.

(Tr. at 44-45.)

On cross-examination, Grandey verified that, when she sent the thank-you note to appellant for the gifts that appellant sent to Grandey and her nieces and nephew, she wrote on the note: " 'Thanks for listening and being a friend. It means the world to me.' " (Tr. at 53.) Grandey also testified on cross-examination that, during an unspecified time before the protection order, appellant had sent Grandey cookies, flowers, and a box with a pumpkin, flowers, a sweater, and a basket. Further, the following testimony took place during Grandey's cross-examination:

Q You indicated that your parents moved in with you around December of 2003; correct?

A No. September of 2004.

Q September 2004. And that was for your protection and stuff?

A They had sold their house and were going to live with my sister but decided to live with me.

* * *

Q Okay. So it wasn't they didn't move in with you just because you wanted their protection, correct?

A Yes, they did.

Q But they also happened to be in between houses?

A Well, yes.

(Tr. at 61-62.)

Lastly, Grandey testified on cross-examination that, after she obtained the protection order in October 2004, she never saw appellant on her property. However, Grandey reiterated that she saw appellant drive by her home, and she received items from appellant in her mailbox.

Columbus Police Officer Donald Wooten testified on appellee's behalf that, on September 23, 2004, he was called to a gas station to escort [Grandey] back to her residence. Columbus Police Detective David Phillips testified on appellee's behalf that he interviewed appellant about the above-noted incidents after she was arrested. Appellant agreed to talk with the detective, and appellant admitted to "two occasions placing letters in [Grandey's] mailbox and on another occasion putting toilet paper in her mailbox." (Tr. at 23.)

After appellee rested its case-in-chief, appellee indicated that it was not going to pursue the "mental distress" element of the menacing by stalking charges. (Tr. at 77.) Thereafter, appellant did not testify, and the jury ultimately found appellant guilty of menacing by stalking with trespass and menacing by stalking an individual with a protection order. The jury was unable to agree on a verdict on the charge of violating a protection order by menacing by stalking with trespass; however, the jury found appellant guilty of the first-degree misdemeanor lesser-included offense of violating a protection order while committing the offense of menacing by stalking without trespass. The trial court then sentenced appellant accordingly.

(*State v. Lawson*, 10th Dist. No. 06AP-1112, 2007-Ohio-2656, ¶3-18.)

{¶4} Thompson asserts that the facts described above do not describe violent acts, but an "offense of violence" is defined by R.C. 2901.01(A)(a). Menacing by stalking

is defined by statute as an offense of violence. Convictions for offenses of violence cannot be expunged or sealed.

{¶5} Addressing the second assignment of error first, a full hearing was scheduled. Notice of the hearing was not received by either Thompson or her counsel, so neither appeared.

{¶6} The State of Ohio acknowledges that Thompson may not have been present for the hearing. At the same time, the State of Ohio argues that Thompson waived part or all of the constitutional issues set forth in the first assignment of error by not raising it in the trial court.

{¶7} Fundamental Fairness and Due Process of Law require that a party have a full opportunity to develop the record, especially when attacking a statute as being unconstitutional. Statutes are strongly presumed to be constitutional. One attacking a statute has a heavy burden to bear. Such a person should be allowed their day in court to present their position.

{¶8} The second assignment of error is sustained. As a result, the first issue is not ripe for review.

{¶9} The judgment of the trial court is vacated and the case is remanded for further proceedings.

*Judgment vacated and remanded
for further proceedings.*

BROWN and DORRIAN, JJ., concur.
