

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-08-111
- vs -	:	<u>OPINION</u> 3/29/2010
JENNIFER A. BAKER,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT
Case No. 2009-CRB-00275

Rachel A. Hutzel, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Richard Hempfling, 15 West Fourth Street, Suite 100, Dayton, Ohio 45402, for defendant-appellant

HENDRICKSON, J.

{¶1} Defendant-appellant, Jennifer A. Baker, appeals her conviction from the Warren County Court of Common Pleas for criminal damaging.

{¶2} On March 22, 2009, appellant went to the home of her ex-husband, Robert Baker, and his current wife, Lisa Baker, on 2752 Harlan Road in Waynesville, Ohio, to pick up her children pursuant to their established custody arrangement. Upon arriving, she parked just off the side of Rainey Road, as her ex-husband had previously

requested that she not enter his property. Appellant then called her ex-husband to notify him of her arrival, and he sent the children out to the car. As she was leaving, appellant made a u-turn and headed in the opposite direction on Rainey Road.

{¶13} Shortly after appellant's departure, Lisa Baker inspected the area where appellant had parked her car and found "ruts" in the grass. She then called the Clearcreek Township Police Department to report the incident, and Officer Nicole Cordero was dispatched to the scene. In her report, Officer Cordero noted that the "tire marks were 8 feet from the edge of the road and approximately 1½ inches at the deepest point." She took photographs of the tire marks and instructed Lisa Baker to file a complaint at the prosecutor's office.

{¶14} Two days later, Lisa Baker filed a private complaint at the prosecutor's office, alleging that appellant knowingly caused or created a substantial risk of physical harm to her property without her consent and charging appellant with criminal damaging pursuant to R.C. 2909.06. Following a trial to the court on July 7, 2009, the trial court found appellant guilty of the second-degree misdemeanor and sentenced her to one year of community control.

{¶15} Appellant timely appeals her conviction and asserts two assignments of error.

{¶16} Assignment of Error No. 1:

{¶17} "THE TRIAL COURT ERRED IN FINDING APPELLANT GUILTY OF CRIMINAL DAMAGING WHEN THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN SUCH CONVICTION."

{¶18} Appellant argues that her conviction for criminal damaging is based upon insufficient evidence. Specifically, appellant argues the state failed to prove beyond a reasonable doubt that the land allegedly damaged by appellant was owned by the

complainant, Lisa Baker. We agree.

{¶19} When reviewing the sufficiency of evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Wilson*, Warren App. No. CA2006-01-007, 2007-Ohio-2298. Therefore, "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." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶10} To convict appellant of criminal damaging, the state was required to prove, beyond a reasonable doubt, that appellant knowingly caused or created a substantial risk of physical harm to Lisa Baker's property without her consent. See R.C. 2909.06. In viewing the evidence presented in a light most favorable to the prosecution, we find the record contains insufficient evidence proving that the property allegedly damaged was owned by Lisa Baker.

{¶11} At trial, Robert Baker testified first on behalf of the state. With regard to the incident on March 22, 2009, he gave the following testimony:

{¶12} "[Prosecutor]: Okay. Then on March 22, when this incident occurred, what damage was done to the property?"

{¶13} "[Robert Baker]: The damage in the photographs left some ruts or divots in the grass like they're about maybe up to an inch deep. She pulled – by the police record – about 10 feet into the yard and that was the damage to the property.

{¶14} "[Prosecutor]: Do you have pictures of this?"

{¶15} "[Robert Baker]: The Clearcreek Township took pictures and measured everything out on the police report.

{¶16} "[Prosecutor]: You didn't bring pictures.

{¶17} "[Robert Baker]: No I did not."

{¶18} On cross-examination, however, defense counsel questioned his knowledge of the alleged damage and the location of his property line.

{¶19} "[Counsel]: And do you know where your property line is, Mr. Baker?"

{¶20} "[Robert Baker]: I believe the standard with anyone's property six feet on either side of the road is county property, I believe [sic]. I'm not sure.

{¶21} "[Counsel]: Then it sounds like [appellant] pulled in on county property.

{¶22} "[Robert Baker]: She pulled 10 feet in. It was four feet over.

{¶23} "[Counsel]: Where do you believe she pulled in 10 feet?"

{¶24} "[Robert Baker]: According to the police report it was 10 feet."

{¶25} After defense counsel presented Robert Baker with the police report, which stated that the tire marks were eight feet from the edge of the road, Mr. Baker acknowledged his statement as inaccurate.

{¶26} In addition, Lisa Baker testified on the state's behalf. In her testimony, she described the incident by stating that when appellant "got ready to leave, she decided to come up in our yard and complete a u-turn in our yard." She also testified that she and Robert Baker own the property at 2752 Harlan Road.

{¶27} On cross-examination, defense counsel presented Lisa Baker with a map from the Warren County Geographical Information System ("GIS") and elicited the following testimony:

{¶28} "[Counsel]: Do you recognize this map, Ms. Baker?"

{¶29} "[Lisa Baker]: Yes.

{¶30} "[Counsel]: What would – does it fairly, accurately and correctly describe your property?"

{¶31} "[Lisa Baker]: Yes.

{¶32} "[Counsel]: You can see on Rainey Road that there's a [red] line that describes the end of your property; is that correct?

{¶33} "[Lisa Baker]: Okay, yes.

{¶34} ***

{¶35} "[Counsel]: Doesn't that go along that line of trees that's in [the picture, which depicts the tire marks resulting from the u-turn, submitted as part of the police report taken by Officer Cordero]?

{¶36} "[Lisa Baker]: Actually, those trees that are in [the picture] are the bushes that are farther down from where this occurred at [sic].

{¶37} "[Counsel]: I understand that.

{¶38} "[Lisa Baker]: Where she was at was where these trees are up in here.

{¶39} "[Counsel]: Yes. And those trees mark your – go along your property line.

{¶40} "[Lisa Baker]: Right.

{¶41} "[Counsel]: So any ruts that may be in this picture are not on your property. [Objection omitted.] If these trees mark your property line, any of the ruts that would be in this picture could not be on your property; is that correct?

{¶42} "[Lisa Baker]: If I recall correctly, she came up right where these last three trees are to the farthest left of this picture. There was ruts [sic] right next to those trees; right where this red line is.

{¶43} "[Counsel]: Okay. Are those ruts shown in these pictures? They're not, are they?

{¶44} "[Lisa Baker]: I can't see anything in these pictures but I seen [sic] them myself."

{¶45} Later, following the state's redirect examination, defense counsel questioned Lisa Baker again about whether appellant entered onto her property while

making the u-turn.

{¶46} "[Counsel]: But again, those trees mark your property line; is that correct? And those ruts are on the outside of your property line; isn't that correct?"

{¶47} "[Lisa Baker]: If this picture is accurate then yes."

{¶48} The record demonstrates the state failed to present sufficient evidence that if believed, would convince a rational trier of fact beyond a reasonable doubt that appellant caused or created a substantial risk of physical harm to the property of Lisa Baker. Robert Baker's testimony reveals that he could not state with certainty where the county's property ends and his property begins. Lisa Baker asserted that appellant drove into her yard, but when she was confronted with a Warren County GIS map, she admitted that the alleged ruts were located outside of their property line as depicted on the map.

{¶49} Accordingly, we find the trial court erred in convicting appellant of criminal damaging. In reviewing the evidence in a light most favorable to the prosecution, we find that a trier of fact could not have found all of the essential elements of criminal damaging proven beyond a reasonable doubt. See *State v. Ansell*, Portage App. No. 2008-P-0111, 2009-Ohio-4802; *Akron v. Garrett*, Summit App. No. 24412, 2009-Ohio-1522. Appellant's first assignment of error is sustained.

{¶50} In addition, our disposition of appellant's first assignment of error renders moot her second assignment of error, that her conviction was against the manifest weight of the evidence.

{¶51} The judgment of the trial court is reversed, and we hereby discharge appellant.

BRESSLER, P.J., and POWELL, J., concur.

