

SOUTH EUCLID MUNICIPAL COURT
1349 SOUTH GREEN RD.
SOUTH EUCLID, OH 44121
216-381-2880

STATE OF OHIO/) CASE NO: CRB 1400438
CITY OF SOUTH EUCLID)
Plaintiff,)
v.)
)
ALLENA SAUNDERS)
Defendant.) JUDGMENT ENTRY AND OPINION

This matter came before the Court for a bench trial on June 3, 2015. The defendant Allena Saunders was present in court with Attorney John Spiccia. Prosecutor Anthony Bondra was present on behalf of the City of South Euclid. Witnesses for the city included Sue Ellen Newett and Sgt. Jean Crotty. Sworn testimony was taken from both witnesses at the trial.

On July 11, 2014 a complaint and warrant charging Saunders of violating Ohio Revised Code §2903.22 Menacing (M4) on July 10, 2014 was filed with this Court. The defendant subsequently surrendered herself pursuant to the pending charge and appeared for arraignment with defense counsel on August 21, 2014 where she entered a plea of not guilty. Pursuant to Saunders' arraignment, this Court on its own motion issued a No Contact Order that was to remain in effect during the pendency of this case. Final pretrial in this matter was held on November 25, 2014 wherein the defendant demanded a bench trial.

Ohio Revised Code § 2903.22 states in pertinent part, "No person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person...the other person's belief may be based on words or conduct of the offender...whoever violates this is guilty of menacing...a misdemeanor of the fourth degree..." The complaint in the within matter states, "Complainant being duly sworn that the defendant, Allena D. Saunders in the City of South Euclid, County of Cuyahoga, State of Ohio, on or about July 10, 2014 did knowingly cause Sue Ellen Newett to believe that the said Allena Saunders would cause physical harm to the person or property of Sue Ellen Newett..."

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It is therefore the duty of the State to present evidence which proves beyond a reasonable doubt that the encounter between Saunders and Newett on July 10, 2014 amounted to a violation of ORC §2903.22 Menacing. However, based on the testimony taken at trial, this Court cannot find beyond a reasonable doubt that the defendant is guilty of the charge. There were inconsistencies in the testimony of the Prosecution's witnesses that were too profound to overcome. The inconsistent testimony included but was not limited to testimony that the police report as taken by South Euclid Police indicated a time of day distinctly different from the recollection of victim Newett. Additionally, and consistent with application of the statute, the State provided little evidence beyond the uncomfortable verbal exchange between Defendant Saunders and Victim Newett, there was no interaction which led the victim to believe she was in physical danger or that her property would be damaged.

This court finds that there was an exchange between Defendant Saunders and Victim Newett on July 10, 2014. This exchange was reflective of the historical experiences which have marked the interactions of the parties. The court further finds that there was a history of uncomfortable, unprofessional and discourteous quips, comments and conversations between Defendant Saunders and Victim Newett. However, this court finds that on July 10, 2014, Defendant Saunders did not engage in behavior that satisfies the legal scope, definition, and requirements of ORC §2903.22 Menacing.

Notwithstanding, this Court does find that Defendant Saunders did engaged in behavior consistent with the lesser included offense of Disorderly Conduct (MM) §ORC 2917.11(A)(2). This court further note that the Prosecution failed both in its case presentation and in summation to request that the court consider this lesser included offense. Nonetheless, such consideration is not precluded. In *State v. Wine*, 18 N. E. 2d 1207, 1215 (Ohio 2014), the Court held that after reviewing all the evidence, the trial court determines if a lesser included offense is appropriate. "A lesser included offense must be included if under any reasonable view of the evidence it is possible for the trier of fact to find the

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defendant not guilty of the greater offense and guilty of the lesser offense.” Thus, this court as the exclusive trier of fact has the authority and duty to consider the lesser offense of Disorderly Conduct.

Ohio Revised Code §2917.11(A)(2) states in pertinent part that “[N]o person shall recklessly cause inconvenience, annoyance, or alarm to another by doing any of the following:

(2) Making unreasonable noise or an offensively coarse utterance, gesture, or display or communicating unwarranted and grossly abusive language to any person...” This court finds that Defendant Saunders did recklessly cause inconvenience, annoyance, and alarm to Victim Newett by communicating abusive language to her when they walked past each other on Victim Newett’s way to the parking garage. This abusive communication was in violation of ORC §2917.11(A)(2) Disorderly Conduct (MM).

Therefore, this court finds the defendant Allena D. Sanders **not guilty** of Menacing (M4) pursuant to ORC §2903.22. However, this court finds the defendant **guilty** of the lesser included offense of Disorderly Conduct (MM) pursuant to ORC §2917.11(A)(2). Sentencing in this matter shall be set for July 23, 2015 at 6:30pm.

IT IS SO ORDERED.



JUDGE GAYLE WILLIAMS-BYERS