

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 2009-CA-007
Plaintiff-Appellee	:	
	:	Trial Court Case No. 2007-CR-0500
v.	:	
	:	
GUY A. LeVALLEY	:	(Criminal Appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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OPINION

Rendered on the 29th day of January, 2010.

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Attorney for Plaintiff-Appellee

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Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} Guy A. LeValley appeals from his conviction of violating a protection order having previously been convicted of a similar violation in March 2006.

{¶ 2} LeValley was convicted after a bench trial during which the parties entered into the following stipulated facts:

{¶ 3} 1) A civil protection order was issued on October 24, 2005, naming S.W. as the petitioner and Guy A. LeValley as the respondent. Also listed as a protected person on the civil protection order is [N.W.].

{¶ 4} 2) Guy LeValley was served a copy of the civil protection order prior to the incident in question.

{¶ 5} 3) [N.W.] is an employee of the Kroger grocery store in Beavercreek, Greene County, Ohio.

{¶ 6} 4) On June 27, 2007, at 8:24 p.m. Mr. LeValley made a purchase at the Beavercreek Kroger store.

{¶ 7} 5) Mr. LeValley was arrested on July 5, 2007, for a presumed violation of the civil protection order.

{¶ 8} In a memorandum submitted to the trial court, LeValley's trial counsel admitted that LeValley had been arrested on July 5, 2007 for violating a civil protection order which was effective until February 1, 2008 and listed N.W. as a protected person. LeValley noted that he was arrested for entering a Kroger store in Beavercreek, Ohio in violation of the protection order. He asserted he could not have violated the order since he knew at the time he entered the store, [N.W.] was not on the premises.

{¶ 9} The trial court rejected LeValley's argument, found him guilty and this appeal followed. LeValley has raised five assignments of error.

{¶ 10} In the first, he contends the protection order expired before the date of the alleged violation. LeValley did not raise this objection in the trial court and indeed told the trial court in his memorandum that the order was "effective until February 1, 2008." In his second, LeValley contends there was no evidence that he was served with a copy of the

protection order. Again, there is an inference from LeValley's argument to the trial court that he knew about the protection order, but he believed he would not violate it if he entered Kroger's when N.W. was not present therein. Also, the order of protection issued by the trial court on February 23, 2006, reflects that a full hearing was conducted with LeValley and his counsel present and the court ordered that LeValley and his counsel receive copies of the order. There was no evidence presented that LeValley was unaware of the existence of the protection order.

{¶ 11} In his third assignment, LeValley argues the trial court should not have convicted him of violating the protection order because there was no evidence he knew that the protected person, N.W., was still employed at Kroger on June 27, 2007. In his trial brief, LeValley never argued that he could not be found guilty of violating the protection order because he did not know that N.W. was still employed there. In our previous opinion addressing the facts of LeValley's prior conviction, we noted that there was evidence that N.W. had worked at Kroger's in Beavercreek for a substantial period of time and LeValley knew that when he entered the store in violation of the order. The protection order provided that LeValley was not to enter N.W.'s place of employment. It did not state a violation would occur only if LeValley entered with N.W. present at the job site. R.C. 2919.27 provides that no person shall recklessly violate any terms of the protection order issued. There is no dispute LeValley entered the protected party's place of employment while the protection order was in place. The Appellant's fifth assignment is similar and is overruled for the same reason.

{¶ 12} In his fourth assignment, LeValley argues the trial court erred in convicting him of a fifth-degree felony because nothing in the stipulated facts indicated LeValley had

been previously convicted of violating a protection order. LeValley argues that the trial court could not take judicial notice of his prior conviction and he did not stipulate that he had the prior conviction.

{¶ 13} It is well established in Ohio that trial courts may not take judicial notice of their own proceedings in other cases even when the cases involve the same parties. *State ex rel. Crow v. Weygandt* (1959), 170 Ohio St. 81. Even if the trial court intended to take judicial notice of appellant’s prior conviction in the Fairborn Municipal Court, it would have been error to do so. *State v. Bialek* (Feb. 17, 1992), Mont. App. No. 12323, unreported; see also *Phillips v. Rayburn* (1996), 113 Ohio App.3d 374. The fourth assignment of error is Sustained.

{¶ 14} The judgment of the trial court is Reversed and Remanded for re-sentencing.

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DONOVAN, P.J., and FROELICH, J., concur.

Copies mailed to:

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- Elizabeth A. Ellis
- Robert A. Brenner
- Hon. J. Timothy Campbell