

[Cite as *State v. Campbell*, 2010-Ohio-261.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93034

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

PARIS CAMPBELL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-506730

BEFORE: Kilbane, P.J., McMonagle, J., and Boyle, J.

RELEASED: January 28, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

MARY EILEEN KILBANE, P.J.:

{¶ 1} Appellant, Paris Campbell (“Campbell”), appeals his convictions for failure to comply with the order or signal of a police officer and felonious assault with a deadly weapon with a peace officer specification. He argues that his convictions are against the sufficiency and manifest weight of the evidence. After a review of the law and facts, we affirm.

{¶ 2} On February 11, 2008, a Cuyahoga County Grand Jury filed a three-count indictment against Campbell. In count one of the indictment, Campbell was charged with failure to comply with the order or signal of a police officer, a third degree felony, in violation of R.C. 2921.331(B), with a furthermore specification alleging that Campbell caused a substantial risk of serious physical harm to persons or property. In count two of the indictment Campbell was charged with carrying a concealed weapon, to wit: a knife, a first degree misdemeanor, in violation of R.C. 2923.12(A)(1). In count three of the indictment Campbell was charged with felonious assault, in violation of R.C. 2903.11(A), with a further specification that the assault was committed against a peace officer, in violation of R.C. 2935.01, a first degree felony.

{¶ 3} On February 9, 2009, the court proceeded to a jury trial.

{¶ 4} On February 10, 2009, a jury found Campbell guilty on counts one and three, but not guilty on count two.

{¶ 5} On March 5, 2009, the trial court sentenced Campbell, along with

convictions from another case, to an aggregate total of five years of incarceration.

{¶ 6} On March 24, 2009, this appeal followed, asserting two assignments of error.

Statement of Facts

{¶ 7} The state of Ohio relied on the testimony of Cleveland Heights Police Officer, Jeremy Young (“Officer Young”).

{¶ 8} In the early morning hours of January 3, 2008, Officer Young testified that he observed an automobile straddling two lanes on Noble Road in Cleveland Heights, Ohio. Officer Young initiated a traffic stop to investigate whether the driver, later identified as Campbell, was operating his vehicle while intoxicated.

{¶ 9} After initiating the stop, Officer Young approached the vehicle and asked the driver for his license. Campbell did not have a driver’s license, and instead produced a state of Ohio identification. Officer Young testified that during the stop Campbell made slow, deliberate movements, slurred his speech, and had glassy eyes. Officer Young further testified that he smelled a strong odor of marijuana emanating from Campbell’s car and a slight odor of alcohol from Campbell. After Officer Young asked Campbell not to move, Campbell shifted his car into gear and sped away, driving through a red light at the intersection of Woodview and Noble Roads, where

other vehicles were present.

{¶ 10} After a high speed chase, Campbell suddenly stopped his vehicle, shifted into reverse, and jumped from the car, sending it directly into the path of Officer Young's pursuing police cruiser. Officer Young testified that after Campbell's car impacted his cruiser, he exited his vehicle and continued the chase on foot, eventually subduing Campbell by striking him in the leg with a baton. Upon inspecting Campbell's vehicle, Officer Young found a knife on the seat beside the driver's side door.

{¶ 11} Campbell testified on his own behalf and against the advice of his attorney. He admitted to having a criminal record. He testified that he was driving a friend's car down Noble Road on the evening in question with a friend of a friend. He admitted to drinking one and one-half beers that night. Campbell testified that because of the blizzard, he was driving slowly. Campbell flatly denied Officer Young's testimony, and denied knowing anything about a knife in the vehicle.

{¶ 12} Campbell's first assignment of error states:

“I. The trial court erred in denying Appellant's motion for acquittal as to the charges when the stated failed to present sufficient evidence to sustain a conviction.”

{¶ 13} When an appellate court reviews a claim of insufficient evidence, “the relevant inquiry is whether, after reviewing 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. Leonard*, 104 Ohio St.3d 54, 67, 2004-Ohio-6235, 818 N.E.2d 229, citing *State v. Jenks* (1991), 60 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus. “Pursuant to Crim.R. 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proven beyond a reasonable doubt.” *State v. Bridgeman* (1978), 55 Ohio St.2d 261, 381 N.E.2d 212, at syllabus.

{¶ 14} The evidence presented at trial was sufficient to sustain Campbell’s convictions for failure to comply with the order or signal of a police officer and for felonious assault with a deadly weapon with a peace officer specification.

A. Failure to Comply with the Order or Signal of Police Officer

{¶ 15} R.C. 2921.331(B) states: “No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person’s motor vehicle to a stop.” The “furthermore” specification in this charge states that “[t]he operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.”

{¶ 16} The testimony of Officer Young established that Campbell sped

off in the midst of the initial stop, causing a high speed chase. Officer Young's testimony also established that Campbell created a substantial risk to people and property by suddenly reversing his car, jumping from it, and fleeing on foot. We conclude that there was sufficient evidence to convict Campbell of this offense.

B. Felonious Assault

{¶ 17} R.C. 2903.11(A)(2) states: "(A) No person shall knowingly do either of the following: * * * (2) Cause or attempt to cause physical harm to another or to another's unborn by means of a deadly weapon or dangerous ordnance." In this case, the deadly weapon or ordnance in question was Campbell's automobile.

{¶ 18} R.C. 2903.11(D) states: "Whoever violates this section is guilty of felonious assault.* * * If the victim of a violation of division (A) of this section is a peace officer or an investigator of the bureau of criminal identification and investigation, felonious assault is a felony of the first degree."

{¶ 19} We disagree with Campbell's contention that there was insufficient evidence to conclude that he knowingly attempted to cause physical harm to Officer Young. A defendant acts knowingly when, although not intending the result, he or she is nevertheless aware that the result will probably occur. *State v. Reed*, Cuyahoga App. No. 89137, 2008-Ohio-312 (internal citations omitted.) See, also, R.C. 2901.22(B): "[a] person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶ 20} This court has already determined that when a defendant evades a police officer and crashes his vehicle into the officer’s cruiser, a defendant acts knowingly because it is “likely that the officer driving the cruiser would suffer physical harm as a result of the collision.” See *State v. Taylor*, Cuyahoga App. No. 90001, 2008-Ohio-3455, at ¶68.¹ When viewing the evidence in a light most favorable to the prosecution as the law requires, we conclude that Campbell acted knowingly by fleeing the initial stop and by jumping from his moving car after he shifted into reverse. Regardless of whether he intended the result, Campbell was aware of the possibility that serious physical harm to another could result from his actions. While it is true that Officer Young did not sustain serious injuries, the evidence in this case was sufficient to show that Campbell acted knowingly in fleeing the police, and in causing his vehicle to collide with Officer Young’s cruiser.

{¶ 21} Campbell’s first assignment of error is overruled.

“II. Appellant’s conviction is against the manifest weight of the evidence.”

{¶ 22} In reviewing a claim challenging the manifest weight of the evidence, the question to be answered is whether “there is substantial evidence upon which a jury could reasonably conclude that all the elements

¹Incidentally, *State v. Taylor* also stems from a police chase involving Officer Young; although in *Taylor*, Officer Young was assisting in the pursuit, and another Cleveland Heights police officer was injured when a defendant intentionally hit his police cruiser.

have been proved beyond a reasonable doubt. In conducting this review, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” (Internal citations omitted.) *Leonard*, supra, at 68.

{¶ 23} In *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541, the court illuminated its test for manifest weight of the evidence as follows:

“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.’ It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its *effect in inducing belief*.” *Id.*, quoting Black’s Law Dictionary (6th Ed. 1990) 1594. (Emphasis in original.)

{¶ 24} The court, reviewing the entire record, essentially sits as a

“thirteenth juror,” weighing the evidence and all reasonable inferences. See *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717, 720-721. In so doing, we consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, “the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Id.* The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *Id.*

{¶ 25} In this matter, we cannot say that the jury clearly lost its way and created a manifest miscarriage of justice in convicting Campbell. After reviewing Campbell’s arguments, we are not persuaded that the evidence in this matter weighs heavily against conviction.

{¶ 26} The thrust of Campbell’s argument is that the State’s version of events is not credible or believable. He argues that the jury was prejudiced against him because of Officer Young’s testimony alleging that he had an odor of alcohol and that his car smelled of marijuana. Detrimental as these facts are to Campbell’s case, these arguments ignore Campbell’s uncontroverted actions and do not detract from the quality of evidence in the record relating to those actions.

{¶ 27} Further, we note that when assessing witness’ credibility “the choice between credible witnesses and their conflicting testimony rests solely

with the finder of fact and an appellate court may not substitute its own judgment for the finder of fact.” *State v. Awan* (1986), 22 Ohio St.3d 120, 123, 489 N.E.2d 547. The factfinder is free to believe all, part, or none of the testimony of each witness appearing before it. *Hill v. Briggs* (1996), 111 Ohio App.3d 405, 412, 676 N.E.2d 547. Indeed, the court below is in a much better position than an appellate court “to view the witnesses, to observe their demeanor, gestures and voice inflections, and to weigh their credibility.” *Briggs*, citing *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80, 461 N.E.2d 1273.

{¶ 28} Here, the jury, as the trier of fact, weighed the evidence, considered the facts and the credibility of the witnesses, and found Campbell guilty. The evidence does not weigh heavily against conviction, we will not order a new trial.

{¶ 29} Campbell’s second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant’s conviction having been affirmed, any bail pending appeal is terminated.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY EILEEN KILBANE, PRESIDING JUDGE

CHRISTINE T. McMONAGLE, J., and
MARY J. BOYLE, J., CONCUR