[Cite as *Broadview Hts. v. Stovall*, 2010-Ohio-3867.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93322

CITY OF BROADVIEW HEIGHTS

PLAINTIFF-APPELLEE

vs.

MARREITTA D. STOVALL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Parma Municipal Court
Case No. 2009 TRD 00599

BEFORE: Dyke, J., McMonagle, P.J., and Jones, J.

RELEASED: August 19, 2010

JOURNALIZED:

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ANN DYKE, J.:

{¶ 1} Defendant Marreitta Stovall appeals from her conviction for resisting an enforcing official in violation of Broadview Heights Ordinances Section 404.02. We affirm.

{¶ 2} Defendant was cited for speeding and resisting an enforcing official on January 6, 2009. She pled not guilty and the matter proceeded to a jury trial on April 14, 2009.

{¶ 3} The evidence presented by the prosecuting attorney indicated that at

approximately 2:00 p.m., Broadview Heights Police Officer Dale Carlton was operating radar equipment on Mill Road. He detected defendant's vehicle traveling at 44 m.p.h. in a 25 m.p.h. zone and stopped her vehicle. At the time of the stop, defendant got out of her car and asked what she did. Officer Carlton asked her to get back into the vehicle. She did not comply with the officer's first two requests. Upon the officer's third request, defendant turned back to the officer and mouthed an obscenity, then got into the vehicle.

{¶ 4} Officer Carlton approached defendant's vehicle. As he reached it, she immediately got out of the car and demanded to know what she had done. The officer told her that she was clocked at a high rate of speed and, according to Officer Carlton, defendant accused the officer of harassing her. The officer spoke to defendant as she stood outside of the vehicle, then instructed her to return to her vehicle. She refused. Officer Carlton repeated the request, and defendant began to scream at him. After an additional request for her to return to her vehicle, defendant did so.

{¶ 5} Defendant exited her car again. Officer Carlton asked her what she was doing, and she replied that she had dropped her wallet. The officer once again instructed her to get into the vehicle. She began to curse and accused the officer of harassing her.

{¶ 6} Officer Douglas Rummery testified that he and Officer Schonberger arrived to assist Officer Carlton. According to Officer Rummery, defendant got out of her vehicle. She yelled and cursed as she walked towards the officers.

Officer Rummery ordered her back into her car “multiple times.” After she finally complied, she slammed the door and began to scream that she wanted to get out of the car. Defendant got out of the car again, got back inside and continued to yell to passing motorists.

{¶ 7} Defendant was subsequently convicted of both the speeding offense and the charge of resisting an enforcing official. The trial court fined defendant a total of $1,100, with $750 suspended, and sentenced her to 180 days incarceration, with 150 days suspended.

{¶ 8} Defendant now appeals and assigns three errors for our review.

{¶ 9} In her first assignment of error, defendant asserts that her conviction for resisting an enforcing official is not supported by sufficient evidence.

{¶ 10} An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. 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. Thompkins,* 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

{¶ 11} In this matter, defendant was convicted of resisting an enforcing official. The evidence demonstrated that when Officer Carlton stopped her vehicle, she got out. The officer asked defendant to get back into her car and

she refused, but following the officer's third request, defendant mouthed an obscenity, then got into the vehicle. She then got out of her vehicle again as the officer approached. The officer spoke to defendant and then instructed her to return to her vehicle. Defendant refused, but after an additional request for her to return to her vehicle, defendant did so. The evidence also indicated that defendant exited her car yet again, and began to curse and accused the officer of harassing her. Officer Rummery ordered defendant back into her vehicle "multiple times." After she finally complied, she slammed the door and began to scream that she wanted to get out of the car. Defendant got out of the car once again, got back inside, and continued to yell to passing motorists. In short, the evidence demonstrated that defendant was instructed to get into her vehicle and repeatedly got out of the vehicle, in violation of the repeated orders of the officers. Viewing this evidence in a light most favorable to the prosecution, we find that a rational trier of fact could have concluded beyond a reasonable doubt that defendant resisted an enforcing official.

{¶ 12} There is sufficient evidence to support the conviction, and the first assignment of error is overruled.

{¶ 13} As to the weight of the evidence supporting the conviction, we note that "[w]eight 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." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541. When a court of appeals reverses a judgment of a trial court on the basis that

the verdict is against the weight of the evidence, the appellate court sits as a "thirteenth juror" and disagrees with the factfinder's resolution of the conflicting testimony. Id. at 387, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652.

{¶ 14} In evaluating a challenge to the verdict based on the manifest weight of the evidence, this court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in evidence, the trial court clearly lost its way and created such a manifest miscarriage of justice that the judgment must be reversed and a new trial ordered. *State v. Thompkins,* supra.

{¶ 15} In this case, the state's evidence demonstrated that defendant got out of her vehicle when Officer Carlton stopped her vehicle. The officer asked her to get back into her car. Defendant refused but, following the officer's third request, she mouthed an obscenity, then got into the vehicle. The evidence also indicated that defendant got out of her vehicle again as the officer approached. The officer spoke to defendant and then instructed her to return to her vehicle. Defendant refused, but after an additional request for her to return to her vehicle, defendant did so. Defendant exited her car yet again, and began to curse and accused the officer of harassing her. Officer Rummery ordered defendant back into her vehicle "multiple times." After she finally complied, she slammed the door and began to scream that she wanted to get out of the car. She exited the car again, got back inside and shouted at passing motorists. Defendant did not

present evidence. From the foregoing, we conclude that the trial court did not lose its way nor commit a manifest miscarriage of justice in convicting her of the offense of resisting an enforcing officer.

{¶ 16} The second assignment of error is overruled.

{¶ 17} For her third assignment of error, defendant contends that the offense of resisting an enforcing officer is unconstitutionally overbroad.

{¶ 18} Initially, we note that a statute enjoys strong presumption of constitutionality. *State v. Cook*, 83 Ohio St.3d 404, 1998-Ohio-291, 700 N.E.2d 570. The presumption of constitutionality remains unless it is proven beyond a reasonable doubt that the legislation is clearly unconstitutional. *State v. Williams*, 88 Ohio St.3d 513, 2000-Ohio-428, 728 N.E.2d 342.

{¶ 19} A statute is overbroad on its face if the party challenging it can demonstrate that its potential application reaches a significant amount of constitutionally-protected conduct. *Houston v. Hill* (1987), 482 U.S. 451, 459, 107 S.Ct. 2502, 96 L.Ed.2d 398; *Akron v. Rowland*, 67 Ohio St.3d 374, 1993-Ohio-222, 618 N.E.2d 138; *State v. Roten*, 149 Ohio App.3d 182, 2002-Ohio-4488, 776 N.E.2d 551.

{¶ 20} In this matter, defendant insists that the ordinance is unconstitutional on its face because it prohibits "many innocent scenarios." She did not did not raise this overbreadth argument in the trial court, however. The "[f]ailure to raise at the trial court level the issue of the constitutionality of a statute or its application, which is apparent at the time of trial, constitutes a waiver of such

issue and a deviation from this state's orderly procedure, and therefore need not be heard for the first time on appeal." *State v. Awan* (1986), 22 Ohio St.3d 120, 489 N.E.2d 277, syllabus. Moreover, we find no plain error, as similar over breadth challenges have been rejected. See *City of Chillicothe v. Woodfork,* Ross App. No. 665. Further, this ordinance generally tracks R.C. 4513.36. The ordinance is not facially invalid.

{¶ 21} As to whether the ordinance is overbroad as applied, we note, as a preliminary matter, that during a traffic stop, an officer may require that a motorist remain inside the vehicle while the officer obtains information. *State v. Edwards,* Stark App. No. 2006-CA-00107, 2007-Ohio-705; *State v. Scimemi* (June 2, 1995), Clark App. No. 94-CA-58.

{¶ 22} Further, in *State v. Neptune* (Apr. 21, 2000), Butler App. No. 99CA25, the court held that the proper focus in a prosecution for obstructing official business is "on the defendant's conduct, verbal or physical, and its effect on the public official's ability to perform his lawful duties." Accord *State v. Jeter*, Not Reported in N.E.2d, 2005-Ohio-1872, Ohio App. 1 Dist., Apr. 22, 2005 (NO. C-040572) and *State v. Overholt* (Aug. 18, 1999), Medina App. No. 2905-M, unreported (finding defendant's refusal to leave scene and interference with officer's attempts to complete an arrest as well as profane outbursts were sufficient to constitute acts for the offense of obstructing official business).

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 Parma Municipal Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

ANN DYKE, JUDGE

LARRY A. JONES, J., CONCURS;
CHRISTINE T. MCMONAGLE, P.J., CONCURS IN JUDGMENT ONLY