

[Cite as *State v. Robinson*, 2010-Ohio-5245.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94333

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ORRIN ROBINSON

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-527693

BEFORE: McMonagle, J., Gallagher, A.J., and Sweeney, J.

RELEASED AND JOURNALIZED: October 28, 2010

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CHRISTINE T. McMONAGLE, J.:

{¶ 1} Defendant-appellant, Orrin Robinson, appeals his conviction, rendered after a bench trial, for assault on a police officer. He also contends that he was denied the effective assistance of counsel. We affirm.

I

{¶ 2} Robinson was indicted in a four-count indictment as follows: Count 1, assault on a police officer; Count 2, obstructing official business; Count 3, resisting arrest; and Count 4, failure to comply. He waived his right to a jury trial, and the case proceeded to a bench trial. The court found

Robinson not guilty of failing to comply, but guilty on the remaining counts. He was sentenced to a one-year prison term.

II

{¶ 3} The following facts were elicited at trial. Officer Thomas Schill, of the Brooklyn Police Department, conducted a traffic stop of a vehicle driven by Robinson because he was talking on a cell phone while driving, in violation of the city's ordinances. The officer testified that he approached Robinson in the vehicle, told him why he had stopped him, and asked for his driver's license. Robinson became enraged and verbally lashed out at the officer. Robinson testified at trial, and admitted that he was enraged and swearing at the officer. His 11-year old son, who was a passenger in the car, testified that his father acted "outrageously," and "mouthed off" at Schill.

{¶ 4} Because of Robinson's behavior, Schill returned to his police cruiser and radioed for back-up assistance. Robinson twice got out his vehicle, but was ordered back in. Robinson testified that he got out of his car because he was trying to give the officer his driver's license. When back-up officers arrived, they approached Robinson's vehicle, removed him, and arrested him for failure to provide his license.

{¶ 5} Robinson struggled with the police while they were handcuffing him. Schill testified that, after Robinson was handcuffed, he and another officer, Alex Zamblauskas, were walking Robinson to the police cruiser, with

each officer holding one of Robinson's arms, when Robinson "stopped, planted his feet, turned and looked at me and [made a derogatory comment] and head-butted me above my right eye." The officers "took Robinson to the ground" to gain control of him and then walked him to the police cruiser. Force was needed to get him the car. Zamblauskas corroborated Schill's testimony. Schill testified that he had a headache for several days after the incident.

{¶ 6} Robinson denied "head-butting" Schill and testified instead that the police assaulted him. His son testified that he did not witness any physical altercation between his father and the police.

III

{¶ 7} In his first assignment of error, Robinson contends that his conviction for assault on a police officer was against the manifest weight of the evidence.

{¶ 8} 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 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 and quotations omitted.) *State v. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶81.

{¶ 9} Under R.C. 2903.13(A), the state was required to prove that Robinson knowingly caused or attempted to cause physical harm to Officer Schill. Robinson denies that he “head-butted” Officer Schill, but both Officers Schill and Zamblauskas testified that Robinson did so. Moreover, the testimony from all the witnesses, including Robinson and his son, demonstrated Robinson’s belligerent behavior during the course of the incident.

{¶ 10} Robinson cites his son’s testimony that there was no physical altercation between him and the police in support of his contention that he did not “head-butt” Officer Schill. But Robinson testified that the police assaulted him and his son did not corroborate that testimony. The court reconciled the testimony, finding the son’s testimony “credible,” but “not complete. He didn’t see [Robinson] go down to the ground, whether it be because of [Robinson’s] own actions or whether or not the police were assaulting him. Regardless of the purpose of [Robinson] being on the ground, [the son] didn’t see that, didn’t see everything that happened during this case.”

{¶ 11} Robinson insinuates that the officers' testimonies about their respective positions when he "head-butted" Schill demonstrates that they were less than truthful. At one point, both officers testified that they were on Robinson's left side as they escorted him to the police cruiser. But Officer Zamblauskas resolved the conflict, testifying, "I need to correct myself. I would have been on his right side. Officer Schill would have been on his left side. That was a mistake on my part."

{¶ 12} On this record, we do not find that the trial court "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Leonard*, supra, ¶81. The first assignment of error is therefore overruled.

IV

{¶ 13} For his second assigned error, Robinson contends that he was denied effective assistance of counsel because his trial attorney did not file a motion to suppress.

{¶ 14} "To obtain a reversal of a conviction on the basis of ineffective assistance of counsel, the defendant must prove (1) that counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced the defendant resulting in an unreliable or fundamentally unfair outcome of the proceeding." *State v. Madrigal*, 87 Ohio St.3d 378, 388-89, 2000-Ohio-448, 721 N.E.2d 52, citing

Strickland v. Washington (1984), 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674.

{¶ 15} “To establish ineffective assistance of counsel for failure to file a motion to suppress, a defendant must prove that there was a basis to suppress the evidence in question.’ Even if there is a reasonable probability that the motion would have been granted, the failure to pursue it cannot be prejudicial unless there is also a reasonable probability that, without the excluded evidence, the defendant would have been acquitted.” (Internal citation omitted.) *State v. Rucker*, Summit App. No. 25081, 2010-Ohio-3005, ¶46, quoting *State v. Brown*, 115 Ohio St.3d 55, 2007-Ohio-4837, 873 N.E.2d 858, at ¶65.

{¶ 16} Robinson makes the blanket assertion that the “stop was unconstitutional, and that this omission by his attorney equates to ineffective assistance of counsel.” We disagree. The record demonstrates that Robinson was stopped because he was talking on his cell phone while driving, in violation of the Codified Ordinances of the City of Brooklyn. Robinson’s son testified that Robinson was talking on his cell phone while driving, and Robinson admitted it, testifying “[w]hen I got in the car, pulled out, I was on my cell phone.” Nothing was seized from Robinson and, therefore, on this record, there was no basis to file a motion to suppress. The second assignment of error is therefore 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. 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.

CHRISTINE T. McMONAGLE, JUDGE

SEAN C. GALLAGHER, A.J., and
JAMES J. SWEENEY, J., CONCUR