[Cite as *State v. Pettress*, 2019-Ohio-2692.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
COLUMBIANA COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

CHANDOR PETTRESS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 18 CO 0011

Criminal Appeal from the
Municipal Court of Columbiana County, Ohio
Case No. 17 CRB 1091

BEFORE:
Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:
Affirmed

Atty. Robert Herron, Prosecutor, *Atty. Don Humphrey, Jr., Assistant Prosecutor*, Columbiana County Prosecutor's Office, 38832 Saltwell Road, Lisbon, Ohio 44432, for Plaintiff-Appellee, and

Atty. Cynthia Henry, P.O. Box 4332, Youngstown, Ohio 44515, for Defendant-Appellant.

Dated:
June 26, 2019

Donofrio, J.

{¶1} Defendant-appellant, Chandor Pettress, appeals from a Columbiana County municipal court judgment convicting him of obstructing official business and harassing a police dog following a bench trial.

{¶2} On September 11, 2017, Salem Police Officers David Beeson and Michael Garber responded to a call of a suspicious vehicle and suspicious people who might be engaged in drug activity that was located in the 100 block of Jennings Avenue. When they arrived on the scene, Officer Garber's canine officer, Simon, alerted to the odor of narcotics on the vehicle at the apartment. A man named Reeder then exited one of the units in a three-apartment building and approached the officers. When questioned by police, Reeder told the officers nobody was in his apartment. The officers, however, noticed that while Reeder was outside, his apartment door closed and they heard a deadbolt turned to lock. Reeder then told police that a woman named Christy was in his apartment. He described her to the officers. The officers thought the description matched that of a woman named Christy whom they knew to have an active warrant for her arrest. Reeder then called the woman out from his apartment.

{¶3} Although Reeder continually denied knowledge of anyone else in his apartment, the woman admitted that there were two men inside. The officers then knocked on the apartment door and ordered the men to come out. After approximately one minute of the officers knocking and ordering them out, appellant and another man exited the apartment. The men told the officers to back up and asked if they had a warrant. The officers decided to handcuff the men for their safety while they further investigated in response to the report of possible drug activity. According to the officers, when Officer Garber first attempted to handcuff appellant, appellant pulled his arm away from the officer.

{¶4} Once appellant and the other man were handcuffed, the officers had them take a seat outside next to a shed. During this time, canine officer Simon remained outside near Officer Garber. While appellant was seated, he repeatedly made a

clicking/kissing sound toward Simon. He also whistled at Simon. While making these noises, appellant was leaning toward Simon. According to Officer Garber, Simon had begun to creep toward appellant. Officer Garber then called Simon to come to him.

{¶5} Police charged appellant with obstructing official business, a second-degree misdemeanor in violation of R.C. 2921.31, and harassing a police dog, a second-degree misdemeanor in violation of R.C. 2921.321. The matter proceeded to a bench trial.

{¶6} The trial court found appellant guilty of both charges. It then sentenced him to 90 days in jail and a $150 fine.

{¶7} On appellant's motion, this court stayed his sentence pending this appeal. Appellant now raises three assignments of error.

{¶8} Appellant's first assignment of error states:

> COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE AND [sic.] MOTION TO DISMISS AND/OR A MOTION TO SUPPRESS WERE [sic.] OFFICERS HAD NO PROBABLE CAUSE OR REASONABLE SUSPICION TO INVESTIGATE, AND BY IMPLICATION, HAD NO BASIS TO CHARGE APPELLANT WITH OBSTRUCTION OF OFFICIAL BUSING [sic.] THUS VIOLATING THE APPELLANT'S CONSTITUTIONAL RIGHT TO DUE PROCESS.

{¶9} In his first assignment of error, appellant contends his trial counsel was ineffective.

{¶10} To prove an allegation of ineffective assistance of counsel, the appellant must satisfy a two-prong test. First, appellant must establish that counsel's performance has fallen below an objective standard of reasonable representation. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989), paragraph two of the syllabus. Second, appellant must demonstrate that he was prejudiced by counsel's performance. *Id.* To show that he has been prejudiced by counsel's deficient performance, appellant must prove that, but for counsel's errors, the result of the trial would have been different. *Bradley*, at paragraph three of the syllabus.

{¶11} Appellant bears the burden of proof on the issue of counsel's ineffectiveness. *State v. Calhoun*, 86 Ohio St.3d 279, 289, 714 N.E.2d 905 (1999). In Ohio, a licensed attorney is presumed competent. *Id*.

{¶12} Appellant contends his trial counsel was ineffective for two reasons.

{¶13} First, appellant asserts his counsel should have filed a motion to suppress. He claims that while the police responded to a call regarding a suspicious vehicle with possible drug activity, there were no additional facts to support a reasonable suspicion that the individuals inside the residence were involved in criminal activity. He characterizes the investigation as a "fishing expedition" to illegally obtain evidence. Therefore, appellant argues, the charges against him had no basis.

{¶14} In this case, there was no basis for counsel to file a motion to suppress. The police responded to a call of a suspicious vehicle and suspected drug activity. When they arrived at the specified location, the canine officer alerted to the odor of narcotics on the vehicle. The occupant of a nearby apartment then came out to talk with the officers and lied to them about others being present in his apartment, which further raised the officers' suspicions. The officers ordered the two men, including appellant, to come out of the apartment. The officers never entered the apartment. When appellant came out, the police handcuffed him while they further investigated the situation. At that point, the officers had reasonable suspicion that some sort of illegal drug activity was taking place. Thus, there was no basis on which appellant's counsel would have filed a motion to suppress.

{¶15} Second, appellant asserts his counsel should have filed a motion to dismiss the charges against him.

{¶16} Appellant's counsel did make a Crim.R. 29 motion for acquittal during trial, which the trial court overruled. (Tr. 104-106). Thus, counsel did move to dismiss the charges against appellant.

{¶17} Based on the above, appellant cannot demonstrate a claim for ineffective assistance of counsel.

{¶18} Accordingly, appellant's first assignment of error is without merit and is overruled.

{¶19} Appellant's second assignment of error states:

STATE FAILED TO PRODUCE SUFFICIENT EVIDENCE TO PROVE, BEYOND A REASONABLE DOUBT, THAT APPELLANT OBSTRUCTED OFFICIAL BUSINESS AND THE CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶20} Here appellant argues his conviction for obstructing official business was not supported by sufficient evidence. He also claims this conviction was against the manifest weight of the evidence. Appellant contends the police lacked reasonable suspicion to investigate the residence in question. Therefore, he contends the officers could not be engaged in an "authorized act" as required by the obstructing official business statute. Furthermore, appellant asserts the state failed to prove that he acted with purpose or specific intent to prevent, obstruct, or delay the officers in the performance of their duties. He claims that the approximately 50-second delay in responding to the officer's order was a de minimis delay that did not establish the required mental state.

{¶21} The court convicted appellant of obstructing official business in violation of R.C. 2921.31(A), which provides:

{¶22} No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official's official capacity, shall do any act that hampers or impedes a public official in the performance of the public official's lawful duties.

{¶23} To act "purposely" is to act with a "specific intention to cause a certain result." R.C. 2901.22(A). Moreover, when the offense at issue "is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is the offender's specific intention to engage in conduct of that nature." R.C. 2901.22(A).

{¶24} Thus, we must examine the evidence presented at trial to determine whether appellant's conviction was supported by sufficient evidence and whether it was against the manifest weight of the evidence.

{¶25} Sufficiency of the evidence is the legal standard applied to determine whether the case may go to the jury or whether the evidence is legally sufficient as a matter of law to support the verdict. *State v. Smith*, 80 Ohio St.3d 89, 113, 684 N.E.2d 668 (1997). In essence, sufficiency is a test of adequacy. *State v. Thompkins*, 78 Ohio

St.3d 380, 386, 678 N.E.2d 541 (1997). Whether the evidence is legally sufficient to sustain a verdict is a question of law. *Id*. In reviewing the record for sufficiency, 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. *Smith,* 80 Ohio St.3d at 113.

{¶26} As to the obstructing official business count, the state presented the following evidence.

{¶27} Officer Beeson testified first. He testified that on the day in question, he and Officer Garber responded to a complaint of suspicious persons, possibly narcotics related, in the 100 block of Jennings Avenue. (Tr. 13-15). While they were investigating, Reeder exited his apartment and approached the officers. (Tr. 16). The officers asked Reeder whether there were any other individuals inside his residence. (Tr. 16). Reeder stated that there were not. (Tr. 16). But Officer Beeson then noticed the door to Reeder's apartment close and he heard a dead bolt lock. (Tr. 17). This caused Officer Beeson to further inquire. (Tr. 17). Reeder eventually admitted there was a woman in his apartment named Christy. (Tr. 17). The description Reeder gave the officers of Christy was consistent with a woman named Christy the officers knew who had an active warrant. (Tr. 17). At the officers' request, Reeder called for Christy to come out of the apartment. (Tr. 17-18). Christy informed Officer Garber that two men were inside the apartment. (Tr. 18). Consequently, the officers approached the building, announced themselves, and yelled for the men to come outside. (Tr. 19). After at least three police commands, appellant and another man came out. (Tr. 19-20).

{¶28} Officer Beeson testified that they handcuffed appellant and the other man for their safety while they investigated. (Tr. 20).

{¶29} Officer Garber was the only other witness. He is a canine handler for the Salem Police Department. (Tr. 52). As such, he is canine officer Simon's handler. (Tr. 53). Officer Garber testified that Simon was with him on the day in question. (Tr. 53-54). Officer Garber testified that when they arrived on the scene, he deployed Simon for an "open air" sniff of the area. (Tr. 59). Simon indicated the presence of a narcotic odor on the suspect vehicle. (Tr. 59-60).

{¶30} Officer Garber further stated that he kept Simon nearby because appellant and the other defendant were not complying. (Tr. 55). He described appellant's behavior as passive resistance. (Tr. 55). He stated that when he attempted to detain appellant for safety, appellant pulled his arm away. (Tr. 56). The officer testified that this action hampered his ability to conduct the investigation he was engaged in. (Tr. 56-57). Officer Garber stated that appellant's actions delayed him from securing appellant and the other person who had been inside the apartment. (Tr. 57, 86).

{¶31} The state presented sufficient evidence to support appellant's conviction for obstructing official business. The trial court summed up the sufficient evidence effectively:

> The Court does not believe based on the evidence that it has heard, that until the Defendants, Defendant, there were two of them but this Defendant, appeared at the top of the stairs, this Court does not have enough evidence to conclude that at that point, despite the pounding and the officers making repeated requests, at this - - based on the evidence I don't see obstructing at that point for a number of reasons.
>
> * * *
>
> However, we then have after that the Defendant at the top of the stairs, coming down, hesitating. Now, that hesitation was caused by this Defendant, not by the other person who was with him because it's clear from the evidence that this Defendant was leading to way. * * * There were hesitations where the Defendant deliberately stopped, did not go and continued to engage in conversation, which was perfectly legitimate with the officers.
>
> There were other affirmative acts of the Defendant pulling away which caused - - which this Court considers to be obstructing.
>
> The Court also considers as - - although it is being dealt with in a separate charge, it is also obstructing to the delay caused by the activities toward the animal. The whistling, * * *. That the dog - - and that he leaned

> forward, that he made these kissing noises or clucking noises or whatever it was and that he whistled.
>
> * * * The reaction of the animal, although not necessary, is proof that it was perceived by the animal who, in this case, started to react and responded to the questions of - - or the commands of its controller further delaying him from being able at that time also to conduct his duties.
>
> The Court finds beyond a reasonable doubt that although there was not obstruction in the lack of prompt response there was subsequently more than one act of obstruction and that the Defendant is guilty of Obstructing Official Business.

(Tr. 126-130).

{¶32} This evidence, construed in a light most favorable to the prosecution, was sufficient to support a conviction for obstruction of official business. The state presented evidence going to each element of the offense. It demonstrated that appellant impeded the officers' investigation by pulling away from the handcuffs and by taunting the canine, which required the officer to stop his investigation in order to attend to the canine.

{¶33} Next, we must examine whether appellant's conviction was against the manifest weight of the evidence.

{¶34} In determining whether a verdict is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences 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. *Thompkins*, 78 Ohio St.3d at 387. "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.'" *Id*. (Emphasis sic.) In making its determination, a reviewing court is not required to view the evidence in a light most favorable to the prosecution but may consider and weigh all of the evidence produced at trial. *Id*. at 390.

{¶35} *Thompkins* addressed a manifest weight argument in the context of a jury trial. But the standard of review is equally applicable when reviewing a manifest weight

challenge from a bench trial. *State v. Layne*, 7th Dist. Mahoning No. 97 CA 172, 2000 WL 246589, at *5 (Mar. 1, 2000). A reviewing court will not reverse a judgment as being against the manifest weight of the evidence in a bench trial where the trial court could reasonably conclude from substantial evidence that the state has proved the offense beyond a reasonable doubt. *State v. Hill*, 7th Dist. Mahoning No. 09-MA-202, 2011-Ohio-6217, ¶ 49, citing *State v. Eskridge*, 38 Ohio St.3d 56, 59, 526 N.E.2d 304 (1988).

{¶36} Yet granting a new trial is only appropriate in extraordinary cases where the evidence weighs heavily against the conviction. *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). This is because determinations of witness credibility, conflicting testimony, and evidence weight are primarily for the trier of the facts who sits in the best position to judge the weight of the evidence and the witnesses' credibility by observing their gestures, voice inflections, and demeanor. *State v. Rouse*, 7th Dist. Belmont No. 04-BE-53, 2005-Ohio-6328, ¶ 49, citing *State v. Hill*, 75 Ohio St.3d 195, 205, 661 N.E.2d 1068 (1996); *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. Thus, "[w]hen there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one we believe." *State v. Dyke*, 7th Dist. Mahoning No. 99-CA-149, 2002-Ohio-1152.

{¶37} Appellant did not present any evidence in his defense. Thus, there is no additional evidence to consider on the obstructing official business conviction.

{¶38} Appellant argues that his approximately 50-second delay in responding to the officers' orders to exit the apartment was a de minimis delay, which could not support his obstruction conviction.

{¶39} But the trial court did not base appellant's conviction on his delay from exiting the apartment. In finding appellant guilty, the court stated that it was not basing appellant's conviction on his delay in exiting the apartment. (Tr. 126-127). Instead, the court found appellant guilty based on his pulling away from Officer Garber and based on his taunting the canine, which required the officer to stop his investigation in order to attend to the canine. (Tr. 127-128, 130).

{¶40} Based on the evidence, the trial court could reasonably conclude that the state proved the offense of obstructing official business beyond a reasonable doubt.

{¶41} Accordingly, appellant's second assignment of error is without merit and is overruled.

{¶42} Appellant's third assignment of error states:

> THE CONVICTION FOR TAUNTING A POLICE DOG IN VIOLATION OF ORC 2921.321(B)(1) IS AGAINST THE SUFFICIENCY AND THE MANIFEST WEIGHT OF THE EVIDENCE.

{¶43} Appellant asserts his conviction for taunting a police dog is against both the sufficiency and the weight of the evidence. He contends that leaning forward toward a dog and making kissing noises at it is not taunting. Instead, appellant claims these were sounds of affection toward the dog. Moreover, appellant argues, his actions were meant to comfort the dog. Therefore, he asserts, the state did not prove that he acted recklessly.

{¶44} The court convicted appellant of taunting a police dog in violation of R.C. 2921.321(B)(1). Pursuant to that statute, no person shall recklessly "[t]aunt, torment, or strike a police dog or horse." The Revised Code defines "recklessly" as:

> A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person's conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.

R.C. 2901.22(D).

{¶45} The state presented the following evidence as to the taunting a police dog count.

{¶46} Officer Garber testified that once appellant was handcuffed and sitting on a stoop, he heard appellant make clicking/kissing noises toward Simon. (Tr. 60). He also heard appellant whistle at Simon. (Tr. 60). The officer further noticed appellant was leaning forward toward Simon while he was making these sounds at him. (Tr. 61). Simon

began to creep forward toward appellant. (Tr. 61). Officer Garber had to order Simon to stop and come to him. (Tr. 61). Officer Garber testified that appellant's actions toward Simon had the effect of taunting the dog. (Tr. 86). He stated that when appellant started making noises at Simon, Simon went into "alert behavior." (Tr. 86). The officer noted that Simon's ears "went sharp," he became focused on appellant, and he began to creep forward toward appellant. (Tr. 86).

{¶47} Officer Garber testified that a cruiser was present with a dash-cam video. (Tr. 63). And Officer Garber was equipped with audio recording. (Tr. 64). The court viewed this video. (Ex. 2; Tr. 73). The view from the video does not show appellant. Nonetheless, the audio from the officers and appellant is audible.

{¶48} Officer Beeson testified that while appellant was handcuffed, he noticed appellant lean forward toward Simon and make a kissing sound toward the dog. (Tr. 21). He also heard appellant whistle at Simon. (Tr. 38). During this time, Officer Beeson's patrol car was recording a dash-cam video and he was equipped with audio recording. The court viewed the video. (Ex. 1; Tr. 31-37). Like the other video, appellant is not visible. But appellant and the officers are clearly heard on the audio portion.

{¶49} This evidence was sufficient to support appellant's conviction for taunting a police dog.

{¶50} Appellant claims his actions were ones of affection toward the dog and do not meet the definition of "taunting." R.C. 2921.321 does not define the word "taunt." Merriam-Webster's online dictionary defines "taunt" as "to reproach or challenge in a mocking or insulting manner**:** jeer at."

{¶51} Appellant's actions toward Simon can be construed as challenging or mocking him, as the state asserts, or as a sign of affection, as appellant suggests. In reviewing the record on a sufficiency challenge, however, we are to construe the evidence in the light most favorable to the prosecution. In so doing, we conclude that appellant's actions taunted Simon.

{¶52} Appellant also contends his actions did not demonstrate the requisite mental state of "recklessly." Appellant's actions, however, demonstrate that he acted recklessly. Appellant was making various noises at an on-duty police canine while leaning toward it. Appellant's actions caused the canine to go into "alert mode" and the

canine begin to creep toward him. Had Officer Garber not called Simon to come to him, appellant could have been attacked. Appellant's actions demonstrated that he acted with indifference to the consequences he might cause and that he disregarded the risk that the canine posed to him.

{¶53} Thus, sufficient evidence supports appellant's taunting a police dog conviction.

{¶54} As to his manifest weight challenge, we cannot conclude that the trial court clearly lost its way in convicting appellant. The evidence was undisputed that appellant leaned toward an on-duty police dog, repeatedly made kissing/clicking sounds at him, and whistled at him to the point where the dog's handler had to call him to back down from appellant. A new trial is only appropriate on a manifest weight challenge only in extraordinary cases where the evidence weighs heavily against the conviction. *Martin*, 20 Ohio App.3d at 175. Such is not the case here.

{¶55} Accordingly, appellant's third assignment of error is without merit and is overruled.

{¶56} For the reasons stated above, the trial court's judgment is hereby affirmed.

Waite, P. J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Municipal Court of Columbiana County, Ohio, is affirmed. Costs to be waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.