

[Cite as *Columbus v. Love*, 2011-Ohio-3657.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

City of Columbus, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 10AP-1206
 : (M.C. No. 2010 TR D 183839)
 Arletta L. Love, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on July 26, 2011

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker*, City Prosecutor, and *Jeffrey T. Stavroff*, for appellee.

Arletta L. Love, pro se.

APPEAL from the Franklin County Municipal Court.

SADLER, J.

{¶1} Defendant-appellant, Arletta L. Love, appeals from the judgment of the Franklin County Municipal Court, finding her guilty of failing to change lanes with safety, a minor-misdemeanor violation of Columbus City Code 2131.08(A)(1). For the following reasons, we affirm.

{¶2} On November 5, 2010, at approximately 6:45 p.m., Officer Greg Hudson investigated an automobile collision that occurred in the southbound lanes of Cleveland

Avenue, slightly north of Interstate 270. Hudson took statements from both motorists involved, appellant and Margo Ayers. After speaking with each motorist and investigating the scene, Hudson cited appellant for failing to safely change lanes in violation of C.C.C. 2131.08(A)(1).

{¶3} Appellant represented herself at a bench trial held on December 2, 2010. Therein, the following evidence was presented.

{¶4} Ayers testified that she drove west on Shrock Road before turning south onto Cleveland Avenue. Of the two left-turn lanes available, Ayers stated that she completed the turn in the right-most lane and proceeded south on Cleveland Avenue. According to Ayers, she remained in the right-hand lane on Cleveland Avenue, intending to take the adjacent entrance ramp onto I-270 westbound, when appellant suddenly cut in front of her and struck the front driver-side corner of her car. When asked how quickly appellant changed lanes, Ayers responded, "It happened really fast * * *. So it was when she cut in front of me is when I first saw her." (Tr. 11.) Ayers said that she never left the right lane because she planned to take the westbound entrance ramp onto I-270. After the collision, both motorists pulled off to the side of the road and contacted law enforcement.

{¶5} Hudson testified that he responded to the scene to see both cars parked off to the side of Cleveland Avenue. During an inspection of both vehicles, Hudson saw damage to the back passenger-side corner of appellant's car and to the front driver-side corner of Ayers's car. According to Hudson, both bumpers were "pretty badly damaged." (Tr. 22.) As he took separate statements from each motorist, appellant told him that Ayers caused the collision by improperly crossing into the left-hand lane.

Hudson walked to the scene of the collision, approximately 400 feet south of the intersection of Cleveland Avenue and Shrock Road, and found debris in only one of the two southbound lanes, the right-hand lane. Based on his investigation, Hudson cited appellant for failing to safely change lanes.

{¶6} Testifying on her own behalf, appellant stated that she was traveling southbound on Cleveland Avenue in the left-hand lane when she noticed Ayers's car in her rearview mirror. According to appellant, Ayers crossed into the left-hand lane and accelerated into the rear of appellant's car. Appellant presented photographs of the damage to her vehicle and of the general area near the collision.

{¶7} At the close of the evidence, the trial court found appellant guilty of violating C.C.C. 2131.08(A)(1), which provides:

Whenever any roadway has been divided into two (2) or more clearly marked lanes for traffic, or whenever traffic is lawfully moving in two (2) or more substantially continuous lines in the same direction, the following rules apply:

(1) A vehicle shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from such lane or line until the driver has first ascertained that such movement can be made with safety.

{¶8} On appeal, appellant presents the following two assignments of error for our review:

1. The Appellant asserts that the Trial court erred by not acknowledging that the ticketing officer's compromised investigation was more than enough to establish reasonable doubt[.]
2. The Appellant asserts that the Trial Court erred by failing to prove that the Appellant is the one who caused the collision by changing lanes, unsafely[.]

{¶9} We construe both of appellant's assignments of error as challenging the weight of the evidence. Therefore, we will address them together.

{¶10} In determining whether a verdict is against the manifest weight of the evidence, an appellate court sits as the "thirteenth juror" and must weigh the evidence to determine whether the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. The appellate court must bear in mind the trier of fact's superior, first-hand perspective in judging the demeanor and credibility of witnesses. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The power to reverse on "manifest weight" grounds should only be used in exceptional circumstances when "the evidence weighs heavily against the conviction." *Thompkins* at 387.

{¶11} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. While the trier of fact may take note of the inconsistencies and resolve or discount them accordingly, such inconsistencies do not render a conviction against the manifest weight or sufficiency of the evidence. *State v. Samatar*, 152 Ohio App.3d 311, 2003-Ohio-1639, ¶113. The fact-finder is free to believe all, part or none of a witness's testimony. See *State v. Antill* (1964), 176 Ohio St. 61, 67.

{¶12} Appellant argues that her testimony regarding the collision contradicted the testimony offered by Ayers and Hudson. However, conflicting testimony alone does

not justify reversal on "manifest weight" grounds. *Raver* at ¶21. Despite appellant's claim that her car was rear-ended by Ayers in the left lane, the trial court was free to believe Ayers's testimony that appellant caused the collision by abruptly crossing into Ayers's lane of travel, the right lane. This testimony was supported by Hudson, who found debris in only one of the two southbound lanes—the right lane. Although appellant claims that Hudson failed to examine the left lane for debris, this claim belies his trial testimony. Hudson described his investigation in detail, stating that he inspected both lanes for evidence. According to Hudson, "There didn't seem to be any kind of debris whatsoever in the left-hand lane." (Tr. 27.)

{¶13} The trial court was in the best position to weigh the evidence presented and to assess the demeanor of each witness. Given the great deference that must be given to the trier of fact's credibility determinations, we cannot say that the trial court clearly lost its way or created a manifest miscarriage of justice. This is simply not the exceptional case warranting reversal on "manifest weight" grounds. Accordingly, appellant's first and second assignments of error are overruled.

{¶14} Having overruled both assignments of error, we affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

TYACK and CONNOR, JJ., concur.
