

[Cite as *Brooklyn v. Somers*, 2009-Ohio-3468.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92225

CITY OF BROOKLYN

PLAINTIFF-APPELLEE

vs.

LINDA SOMERS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Parma Municipal Court
Case No. 08 TRD 01268

BEFORE: Cooney, A.J., McMonagle, J., and Blackmon, J.

RELEASED: July 16, 2009

JOURNALIZED:

ATTORNEY FOR APPELLANT

Philip J. Wall
20800 Center Ridge Rd.
Suite 222
Rocky River, Ohio 44116

ATTORNEY FOR APPELLEE

Hillary Goldberg
Prosecutor, City of Brooklyn
7619 Memphis Avenue
Brooklyn, Ohio 44144

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), is filed within ten (10) 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. II, Section 2(A)(1).

COLLEEN CONWAY COONEY, A.J.:

{¶ 1} Defendant-appellant, Linda Somers (“Somers”), appeals her misdemeanor conviction for making a restricted “U” turn in violation of Brooklyn Codified Ordinances (“B.C.O.”) 331.12(c). Finding no merit to the appeal, we affirm.

{¶ 2} In February 2008, Officer Anthony Psota (“Psota”) was on traffic detail for the city of Brooklyn. He parked his police cruiser in the Ridge Park Square parking lot in order to observe traffic on Ridge Road. While in his cruiser, he observed Somers proceed northbound on Ridge and drive into a lane designated for a left turn ahead at Northcliff Road. Instead of turning left at Northcliff, Somers made a left turn at a break in the roadway that was marked with a no “U” turn sign.

{¶ 3} As Somers was turning, she paused for a moment as if she did not know where to go, then proceeded to swerve into the opposite direction (southbound), and entered an exit from the shopping center parking lot marked “Do Not Enter.” Subsequently, Psota conducted a traffic stop and cited Somers for a “U” turn violation.

{¶ 4} The matter proceeded to a bench trial, at which Somers was found guilty and sentenced to a \$50 fine and court costs. Somers moved for a stay of her sentence, which the municipal court granted.

{¶ 5} Somers now appeals, raising two assignments of error for our review. In the first assignment of error, she argues that the trial court erred in failing to grant a judgment of acquittal at the close of the City's case. In the second assignment of error, she argues that the trial court erred in finding her guilty of a "U" turn violation at the close of all the evidence. We will discuss both assignments of error together, as they are interrelated.

{¶ 6} We review a challenge based on the denial of a motion for acquittal in the same manner as a challenge based upon the sufficiency of the evidence, because a motion for judgment of acquittal under Crim.R. 29 is granted only where reasonable minds could not fail to find reasonable doubt. See *State v. Ratliff* (May 8, 1997), Cuyahoga App. No. 70445; *State v. Bell* (May 26, 1994), Cuyahoga App. No. 65356.

{¶ 7} The standard of review for the sufficiency of evidence is set forth in *State v. Bridgeman* (1978), 55 Ohio St.2d 261, 381 N.E.2d 184, syllabus, which states:

"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 proved beyond a reasonable doubt."

See, also, *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 23, 514 N.E.2d 394; *State v. Davis* (1988), 49 Ohio App.3d 109, 113, 550 N.E.2d 966.

{¶ 8} *Bridgeman* must be interpreted in light of the sufficiency test outlined in *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541 and *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492. A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the State has met its burden of production at trial. *Thompkins*, at 273. On review for sufficiency, courts are to assess not whether the State's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. *Id.* 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. *Jenks*, paragraph two of the syllabus.

{¶ 9} In the instant case, Somers was convicted of making a restricted "U" turn in violation of B.C.O. 331.12(c), which provides in pertinent part:

"no vehicle shall be turned so as to proceed in the opposite direction within an intersection, or upon any street in a business district, *** or where authorized signs are erected to prohibit such movement ***."

{¶ 10} Somers claims that she did not make a "U" turn and never proceeded in the opposite direction as prohibited by B.C.O. 331.12(c). The only turn she made beyond a left turn was "at best (or at worst) an aborted J turn." She conceded that she turned into the area marked "do not enter," but did not think that she did any "backtracking."

{¶ 11} In a bench trial, the trial court, as the trier of fact is free to accept or reject all or any part of the testimony of the witnesses and assess the credibility of those witnesses. *State v. Johns*, Cuyahoga App. No. 90811, 2008-Ohio-5584; *State v. Anderson*, Cuyahoga App. No. 90460, 2008-Ohio-4240. Here, Psota testified that while he was on traffic duty in a business district (Ridge Square Park) he observed Somers make a left turn into a triangular traffic control island that only allows traffic in and out from the right onto Ridge Road. He also testified that he wrote the ticket as a “U” turn because Somers made a left turn at an area with a no “U” turn sign and completely changed direction by driving southbound before entering the parking lot exit. Psota testified that Somers proceeded in the opposite direction because he was able to see the passenger side of her vehicle.

{¶ 12} Although Somers’s testimony may conflict with Psota’s, the trial court, as the trier of fact, weighed all the evidence and reasonable inferences and found that Somers made a restricted “U” turn. In viewing the evidence in the light most favorable to the city of Brooklyn, we find that there was sufficient evidence to support conviction.

{¶ 13} Accordingly, the first and second assignments of error are overruled.

{¶ 14} Judgment is affirmed.

It is ordered that appellee recover of 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 municipal court to carry this judgment into execution.

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

COLLEEN CONWAY COONEY, ADMINISTRATIVE JUDGE

CHRISTINE T. McMONAGLE, J., and
PATRICIA A. BLACKMON, J., CONCUR