

[Cite as *State v. Williams*, 2009-Ohio-4031.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92227

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

ROBERT WILLIAMS

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-502620

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

RELEASED: August 13, 2009

JOURNALIZED:

ATTORNEY FOR APPELLANT

Patrick E. Talty
20325 Center Ridge Road
Suite 512
Rocky River, Ohio 44116-4386

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor
Angela Thomas
Assistant County Prosecutor
Justice Center
1200 Ontario Street
Cleveland, Ohio 44113

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).

MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Robert Williams, appeals from an order convicting him of assault against a peace officer, failure to comply with an order or signal of a police officer, and possession of drugs. Finding no merit to the appeal, we affirm.

Procedural History and Facts

{¶ 2} In October 2007, Robert Williams was indicted on six counts: two counts of felonious assault, in violation of R.C. 2903.11(A)(2), with furthermore clauses that the assault was against a peace officer; failure to comply with order or signal of a police officer, in violation of R.C. 2921.331(B); possession of criminal tools, in violation of R.C. 2923.24(A); trafficking in drugs, in violation of R.C. 2925.03(A)(2), with a forfeiture specification; and drug possession, in violation of R.C. 2925.11(A), with a forfeiture specification.

{¶ 3} Prior to trial, Williams moved to suppress all evidence seized by police and all statements obtained in violation of his constitutional rights. He argued that the police conducted an illegal search and seizure because they did not have specific and articulable facts warranting the search. After a hearing on the matter, the trial court denied the motion.

{¶ 4} The following evidence was presented at a bench trial.

{¶ 5} Rodney McClendon, a detective for the Cleveland Police Department, testified that on the night of September 30, 2007, he was working with Detective George Peters on patrol in an unmarked police car as part of the Six City Gang Initiative. They were “touring the area,” which was a high crime area, when they observed a male (later identified to be Williams) walk out of a store that sold alcohol on East 105th Street and Somerset. Detective McClendon said that Williams had “what we expected to be an open can of beer in his hand.” The detective stated that the can was in a brown paper bag, but they could see that the top of the can was silver because it was sticking out of the bag.

{¶ 6} The police pulled their vehicle behind Williams. Detective McClendon approached Williams to issue him a citation if he did, in fact, have an open container. Detective McClendon was wearing “regular street clothes,” and he was also wearing his “police flap jacket” with “police” written on the back and the front. He also said that he had his “great big gold badge” on his chest attached to a chain. Detective Peters was wearing the same jacket but had his vest on the outside, and he was also wearing his gold detective badge on a chain that was “showing.” Detective Peters further explained that his jacket had “retractable flaps * * * that [said] ‘police’ and the

flaps were fluorescent orange or green with * * * fluorescent police written on it.”

{¶ 7} Detective Peters testified that he approached the driver’s side of Williams’s car and that he immediately said, “police.” He stated that Williams started “going for the key.” Detective Peters told him, “don’t turn that car on.” Williams looked “straight” at him and turned the car on. Williams then began driving his car in reverse. Williams hit the detectives’ vehicle and almost hit them as well. The detectives got back into their car and chased Williams with their lights and sirens on. Williams continued to drive in reverse until he hit a pole and then crashed into a fence. After the crash, Williams got out of his car and ran to another street where he was caught by officers David Oliver and Louis Vertosnik. After he was caught, the police discovered that the brown paper bag contained an unopened energy drink.

{¶ 8} Officer Oliver testified that he was working in the area of East 105th Street on September 30, 2007, with his partner, Officer Vertosnik, and they saw Williams driving his car backwards out of a parking lot onto Osten Street, which is a one-way street. Williams continued to travel on Osten the wrong way. They pulled in front of his vehicle and turned on their police lights. As they exited their car, Williams continued to drive in reverse. When

officers Oliver and Vertosnik got back in their car, they received a radio broadcast from detectives Peters and McClendon saying that they almost got hit by a car in the area. Then, Officer Oliver saw the detectives' vehicle drive out of the same parking lot following the car traveling in reverse. At this time, they turned on their sirens and joined in pursuit of the vehicle.

{¶ 9} Officer Vertosnik searched Williams and found seven packets of heroin, \$118, and two cell phones. After Williams was taken into custody, Detective Peters searched his car and found several plastic bags of sand, packaged in a similar manner as the heroin found on his person.

{¶ 10} At the end of the trial, Williams moved for a Crim.R. 29 motion for acquittal. The trial court granted his motion in part regarding possession of criminal tools, but denied it with respect to all other charges.

{¶ 11} The trial court found Williams guilty of two counts of assault on a peace officer, as the lesser included offense of felonious assault, failure to comply, and possession of drugs with the forfeiture specification. It found him not guilty of drug trafficking. The trial court sentenced him to eight months in prison for each count of assault, one year for failure to comply, and six months for possession of drugs. The trial court ordered the sentences for assault and possession of drugs be served concurrently and the sentence for failure to comply to be served consecutive to all other charges, for a total of one

year and eight months in prison. The trial court also sentenced him to three years of postrelease control upon his release from prison.

{¶ 12} It is from this judgment that Williams appeals, raising one assignment of error for our review:

{¶ 13} “[1.] The trial court erred in denying appellant’s motion for acquittal where the evidence is not sufficient to support conviction of failure to comply.”

{¶ 14} Under Crim.R. 29(A), a trial court “shall not order an entry 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 proven beyond a reasonable doubt.” *State v. Bridgeman* (1978), 55 Ohio St.2d 261, syllabus. The test an appellate court must apply in reviewing a challenge based on the denial of a motion of acquittal is the same as a challenge based on the sufficiency of the evidence to support a conviction. *State v. Bell* (May 26, 1994), 8th Dist. No. 65356.

{¶ 15} An appellate court’s function in 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. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. “In essence,

sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law.” *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. 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* at 273.

{¶ 16} Williams was convicted of failure to comply with order or signal of police officer, under R.C. 2921.331(B), which provides, in pertinent part, that “[n]o person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person’s motor vehicle to a stop.”

{¶ 17} Williams maintains that the state did not present sufficient evidence to prove that he willfully eluded or fled a police officer. Specifically, Williams argues, “[t]here is simply no evidence that Mr, [sic] Williams knew that Detective McClendon and his partner were police officers” because 1) they approached his car at night; 2) it was a high crime area; 3) they were not wearing their uniforms; 4) they were in an unmarked vehicle; 5) they approached his car from behind; and 6) his field of view was based only on what he could see through his rear windows.

{¶ 18} After reviewing the evidence in a light most favorable to the prosecution, we conclude that any rational trier of fact could have found the essential elements of failure to comply were proven beyond a reasonable doubt.

{¶ 19} The evidence, if believed, established that the detectives approached Williams's vehicle, immediately said, "police," and told Williams not to start his car, but Williams defied their order. Although they were in an unmarked police car, they were wearing jackets that had "police" written on the front and back, and they both had gold badges identifying them as police. Detective Peters also had "retractable flaps" on his jacket that said "police," and the flaps were "fluorescent orange or green" and had "fluorescent police written on it." Detective Peters further testified that Williams looked directly at him before driving off, and Williams continued to drive down the street after they had turned on their lights and sirens. Further, Williams continued to drive until he crashed, and after he crashed, he got out of the car and tried to run away. This evidence is sufficient to establish beyond a reasonable doubt that Williams operated a motor vehicle to willfully elude or flee a police officer after receiving a visible or audible signal from police to bring his vehicle to a stop.

{¶ 20} Accordingly, Williams's sole assignment of error is overruled.

Judgment 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 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.

MARY J. BOYLE, JUDGE

COLLEEN CONWAY COONEY, A.J., and
CHRISTINE T. McMONAGLE, J., CONCUR