

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. William B. Hoffman, J.
	:	Hon. Sheila G. Farmer, J.
-vs-	:	
	:	
REGINALD ARRINGTON	:	Case No. 10CA39
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 09CR593H

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: December 7, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Farmer, J.

{¶1} On August 10, 2009, the Richland County Grand Jury indicted appellant, Reginald Arrington, on one count of failure to comply with order or signal of a police officer in violation of R.C. 2921.331, one count of possession of controlled substances in violation of R.C. 2925.11, and one count of unauthorized use of a motor vehicle in violation of R.C. 2913.03.

{¶2} A jury trial commenced on March 4, 2010. The jury found appellant not guilty of possessing a controlled substance and guilty of the remaining two counts. By sentencing entry filed March 11, 2010, the trial court sentenced appellant to an aggregate term of three years in prison.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶4} "THE JURY VERDICT IN COUNT I, FAILURE TO COMPLY WITH THE ORDER OR SIGNAL OF A POLICE OFFICER WAS AGAINST THE SUFFICIENCY OF THE EVIDENCE."

II

{¶5} "THE JURY VERDICT IN COUNT I, FAILURE TO COMPLY WITH THE ORDER OR SIGNAL OF A POLICE OFFICER, WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

III

{¶6} "THE JURY VERDICT IN COUNT III, UNAUTHORIZED USE OF A MOTOR VEHICLE, WAS AGAINST THE SUFFICIENCY OF THE EVIDENCE."

IV

{¶7} "THE JURY VERDICT IN COUNT III, UNAUTHORIZED USE OF A MOTOR VEHICLE, WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I, II, III, IV

{¶8} Appellant challenges his convictions as being against the sufficiency and manifest weight of the evidence. We disagree.

{¶9} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259. "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 paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307. On review for manifest weight, a reviewing court is to examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses 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." *State v. Martin* (1983), 20 Ohio App.3d 172, 175. See also, *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. The granting of a new trial "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Martin* at 175.

{¶10} Appellant was convicted of failure to comply with order or signal of a police officer in violation of R.C. 2921.331(B) which states, "[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." Appellant was also convicted of unauthorized use of a motor vehicle in violation of R.C. 2913.03(A) which states, "[n]o person shall knowingly use or operate an aircraft, motor vehicle, motorcycle, motorboat, or other motor-propelled vehicle without the consent of the owner or person authorized to give consent."

{¶11} Appellant's arguments center upon the believability and truth-worthiness of Ohio State Highway Patrol Sergeant Lawrence Firmi's identification of appellant as the operator of the vehicle that fled from him, and the credibility of Latayia Bronson who testified she did not mention appellant as a possible person of interest regarding her missing vehicle.

{¶12} There is no challenge to the fact that a motor vehicle owned by Ms. Bronson fled from Sergeant Firmi as he attempted to stop the driver of the vehicle for speeding at 3:00 a.m. on July 5, 2008. T. at 84, 92, 99-100. In response to Sergeant Firmi's cruiser lights, the driver pulled over and stopped, but sped away as Sergeant Firmi approached the vehicle and spoke to the driver. T. at 91-92. Sergeant Firmi pursued the vehicle when eventually the driver "exited the vehicle, left the vehicle coasting, and fled on foot." T. at 96.

{¶13} Sergeant Firmi testified he could identify appellant as the driver of the motor vehicle because he had observed him from a distance of four to five feet when he had approached the vehicle. T. at 84, 92-93. Sergeant Firmi stated he got a good look at the driver. T. at 93.

{¶14} Mansfield Police Detective Frank Foti testified he spoke with Ms. Bronson about her missing vehicle and appellant's name came up as a possible person of

interest. T. at 139. Ms. Bronson had mentioned that appellant could have taken the keys from her purse while they were at a bar in Mansfield. T. at 140.

{¶15} After appellant's name was relayed to Sergeant Firmi, he compared appellant's BMV photo to his recollection of the driver he had just stopped and was absolutely certain that the driver was appellant. T. at 102.

{¶16} Sergeant Firmi testified the driver's height, weight, and general description were consistent with appellant's driver's license information. T. at 104. Sergeant Firmi stated the BMV photograph was the same individual he had stopped, as determined by the "same forehead, facial hair, eyebrows." T. at 103.

{¶17} Appellant argued he could not have been the driver of the vehicle on the day and time in question as he had an alibi which consisted of his brothers and cousins. Appellant's brother, Ricardo Arrington, testified he had picked up appellant in Mansfield on July 4, 2008 at noon and drove him to Mr. Arrington's home in Toledo. T. at 146-147. Mr. Arrington had a 4th of July party, attended by 50 to 75 people, including appellant's friends and family members. T. at 148. Around 11:00 p.m., Mr. Arrington and appellant went to a bar and stayed until around 2:30/3:00 a.m. T. at 149. Thereafter, they went back to Mr. Arrington's house and appellant spent the night. T. at 150. Appellant returned to Mansfield at around noon on July 5, 2008. T. at 156. Appellant's cousins, Andre Davis, Lonnie Mays, Tyran Aolison, and Sherell Moses, and appellant's brother, Rodney Moses, all testified they saw appellant at Mr. Arrington's 4th of July party. T. at 160, 170, 177, 179-180, 185-186, 189-191. Mr. Davis and Mr. Moses testified they observed appellant at the bar until 2:00/2:30 a.m. on July 5, 2008. T. at 161, 173.

{¶18} The jury was faced with balancing Sergeant Firmi's positive identification of appellant and the alibi testimony offered by appellant's relatives. We note appellant's main witness, his brother Ricardo, had been convicted of falsification in 2000. T. at 152.

{¶19} The jury also heard the unbelievable testimony of Ms. Bronson, that the police somehow developed appellant as the driver of her vehicle out of thin air, as she denied that she had ever mentioned to the investigating police officer that appellant could have had her vehicle. T. at 123-125. It was Ms. Bronson's statements to Detective Foti that caused appellant to be developed as a suspect. From that identification, Sergeant Firmi was able to identify appellant from his BMV record.

{¶20} As in many cases, the resolution of the factual issues results from a determination of "whom can you trust?" The weight to be given to the evidence and the credibility of the witnesses are issues for the trier of fact. *State v. Jamison* (1990), 49 Ohio St.3d 182, certiorari denied (1990), 498 U.S. 881. The trier of fact "has the best opportunity to view the demeanor, attitude, and credibility of each witness, something that does not translate well on the written page." *Davis v. Flickinger*, 77 Ohio St.3d 415, 418, 1997-Ohio-260.

{¶21} If the jury resolved the credibility issue in favor of the police officers, there was sufficient credible evidence to support the guilty finding beyond a reasonable doubt for failure to comply.

{¶22} Ms. Bronson denied that appellant had her vehicle, but reported it as missing. If the jury resolved the credibility issue in favor of the state, then a conviction naturally flowed from that resolution to the guilty finding for unauthorized use of a motor vehicle.

{¶23} Upon review, we find sufficient credible evidence, if believed, to support the jury's finding of guilty on both counts, and no manifest miscarriage of justice.

{¶24} Assignments of Error I, II, III and IV are denied.

{¶25} The judgment of the Court of Common Pleas of Richland County, Ohio is hereby affirmed.

By Farmer, J.

Gwin, P.J. and

Hoffman, J. concur.

s/ Sheila G. Farmer

s/ W. Scott Gwin

s/ William B. Hoffman

JUDGES

SGF/sg 1102

