

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT      )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C. A. No.     24450

Appellee

v.

MICHAEL B. HAMAD

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CR 07 12 4097

Appellant

DECISION AND JOURNAL ENTRY

Dated: July 29, 2009

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CARR, Judge.

{¶1} Appellant, Michael Hamad, appeals his convictions out of the Summit County Court of Common Pleas for two minor misdemeanors. This Court affirms.

I.

{¶2} On October 31, 2007, at approximately 11:00 p.m., Hamad was driving eastbound on interstate 76 in the right lane of the four-lane highway. Eric Coplin was also driving eastbound ahead of Hamad. Hamad’s vehicle hit Coplin’s vehicle from behind. Coplin suffered serious physical injuries, and his car suffered significant physical damage, as a result of the crash.

{¶3} On December 18, 2007, Hamad was indicted on one count of vehicular assault in violation of R.C. 2903.08(A)(2), a felony of the fourth degree; one count of stopping after accident/hit skip in violation of R.C. 4549.02, a felony of the fifth degree; one count of speeding in violation of R.C. 4511.21, a minor misdemeanor; and one count of assured clear distance in violation of R.C. 4511.21, a minor misdemeanor. Hamad pled not guilty to the charges and the

matter proceeded to trial. At the conclusion of trial, the jury found Hamad not guilty of vehicular assault, but guilty of stopping after accident/hit skip. The trial court judge then considered the minor misdemeanor charges and found Hamad guilty of both. The trial court sentenced Hamad to one year in prison and imposed a \$2,500.00 fine for the hit/skip, and imposed a \$150.00 fine for each of the minor misdemeanors. Hamad filed a timely appeal, raising five assignments of error for review. This Court consolidates the assignments of error for ease of discussion.

## II.

### **ASSIGNMENT OF ERROR I**

“APPELLANT’S CONVICTION FOR SPEEDING UNDER R.C. 4511.21 WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION.”

### **ASSIGNMENT OF ERROR II**

“APPELLANT’S CONVICTION FOR SPEEDING UNDER R.C. 4511.21 WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION ON THE CHARGE IN VIOLAITON OF SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION.”

### **ASSIGNMENT OF ERROR III**

“APPELLANT’S CONVICTION FOR ASSURED CLEAR DISTANCE UNDER R.C. 4511.21(A) WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION.”

### **ASSIGNMENT OF ERROR IV**

“APPELLANT’S CONVICTION FOR ASSURED CLEAR DISTANCE UNDER R.C. 4511.21 WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION ON THE CHARGE IN VIOLATION OF SECTION 16, ARTICLE I OF THE OHIO CONSTITUTION.”

### **ASSIGNMENT OF ERROR V**

“THE EVIDENCE AT THE TRIAL IN THIS CASE WAS INSUFFICIENT TO FIND THE APPELLANT GUILTY OF SPEEDING AND ASSURED CLEAR DISTANCE, VIOLATIONS OF R.C. 4511.21, AND THE COURT ERRED IN OVERRULING THE DEFENDANT’S MOTION FOR JUDGMENT OF ACQUITTAL MADE PURSUANT TO RULE 29 OF THE OHIO RULES OF CRIMINAL PROCEDURE.”

{¶4} Hamad argues that his convictions for speeding and assured clear distance are not supported by sufficient evidence and are against the manifest weight of the evidence. This Court disagrees.

{¶5} Crim.R. 29 provides, in relevant part:

“(A) The court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment, information, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the state’s case.”

{¶6} A review of the sufficiency of the State’s evidence and the manifest weight of the evidence adduced at trial are separate and legally distinct determinations. *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. 19600. “While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion.” *Id.*, citing *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390 (Cook J., concurring). When reviewing the sufficiency of the evidence, this Court must review the evidence in a light most favorable to the prosecution to determine whether the evidence before the trial court was sufficient to sustain a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259, 279.

“An appellate court’s function when 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. 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.” *Id.* at paragraph two of the syllabus.

{¶7} A determination of whether a conviction is against the manifest weight of the evidence, however, does not permit this Court to view the evidence in the light most favorable to the State to determine whether the State has met its burden of persuasion. *State v. Love*, 9th Dist. No. 21654, 2004-Ohio-1422, at ¶11. Rather,

“an appellate court must review 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 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. Otten* (1986), 33 Ohio App.3d 339, 340.

“Weight of the evidence concerns the tendency of a greater amount of credible evidence to support one side of the issue more than the other. *Thompkins*, 78 Ohio St.3d at 387. Further when reversing a conviction on the basis that it was against the manifest weight of the evidence, an appellate court sits as a ‘thirteenth juror,’ and disagrees with the factfinder’s resolution of the conflicting testimony. *Id.*” *State v. Tucker*, 9th Dist. No. 06CA0035-M, 2006-Ohio-6914, at ¶5.

This discretionary power should be exercised only in exceptional cases where the evidence presented weighs heavily in favor of the defendant and against conviction. *Thompkins*, 78 Ohio St.3d at 387.

### Speeding

{¶8} Hamad was charged with speeding in violation of R.C. 4511.21, which states, in relevant part as charged in the indictment, that “[n]o person shall operate a motor vehicle \*\*\* at a speed greater \*\*\* than is reasonable or proper \*\*\*.” R.C. 4511.21(A).

{¶9} R.C. 4511.21(B) states that it is *prima facie* lawful to operate a motor vehicle at a speed not exceeding the rates of speed further enumerated in that subsection. R.C. 4511.21(B)(5), (9), (10), (11) and (12) all establish a speed limit of fifty-five miles an hour for highways or freeways under most situations. R.C. 4511.21(D) states that “[n]o person shall

operate a motor vehicle \*\*\* upon a street or highway \*\*\* [a]t a speed exceeding fifty-five miles per hour, except upon a freeway as provided in division (B)(13) of this section[.]” R.C. 4511.21(B)(13) establishes a maximum speed of sixty-five miles an hour for operators of motor vehicles in certain limited situations.

{¶10} R.C. 4511.21(C) states that “[i]t is prima-facie unlawful for any person to exceed any of the speed limitations in divisions (B)(1)(a), (2), (3), (4), (6), (7), and (8) of this section \*\*\* and it is unlawful for any person to exceed any of the speed limitations in division (D) of this section.” A violation of R.C. 4511.21(D) constitutes a per se violation. See, e.g., *Columbus v. Conley*, 10th Dist. No. 05AP-1332, 2006-Ohio-4625, at ¶12-13; *State v. Bank*, 5th Dist. No. 2004CA00086, 2005-Ohio-3562, at ¶24. This Court has recognized, on the other hand, that when a defendant is charged pursuant to R.C. 4511.21(A), the State’s evidence that the defendant was traveling in excess of the speed limit establishes merely a prima facie case of a violation, but not unlawful conduct per se. *In re Zindle* (1995), 107 Ohio App.3d 342, 347, citing *Cleveland v. Keah* (1952), 157 Ohio St. 331. The *Keah* court held:

“Where a municipal ordinance makes it prima facie unlawful for a motor vehicle to exceed a certain speed limit in a described locality, a speed greater than that specified does not establish the commission of an offense or constitute unlawful conduct per se, but establishes only a prima facie case under the ordinance. Such a provision as to speed is merely a rule of evidence raising a rebuttable presumption which may be overcome by evidence showing that in the circumstances the speed was neither excessive nor unreasonable.” *Id.* at paragraph one of the syllabus.

{¶11} The Ohio Supreme Court has held:

“What is ‘reasonable and proper under the circumstances,’ within the meaning of R.C. 4511.21, is a question of fact. Where there is sufficient evidence to support a finding of guilty, a conviction will not be set aside.” *State v. Neff* (1975), 41 Ohio St.2d 17, 18.

{¶12} In regard to the rebuttable presumption, this Court has stated:

“Where a statutory presumption is present in a criminal case, the trier of facts must consider and weigh the prima facie evidence adduced, and after such reflection may determine whether the evidence is sufficient to establish the fact of guilt beyond a reasonable doubt. The trier of the facts may determine that the prima facie evidence, alone, is sufficient to establish a fact. However, the trier of the facts is not required to make such determination and may be swayed by other evidence or by the facts and circumstances of a case.

“\*\*\*

“Either party may introduce evidence to either bolster or rebut the presumption set forth in the statute or ordinance. A fact finder must weigh any evidence introduced \*\*\*. The amount of evidence needed to counter the presumption is only that amount necessary to combat the state’s ability to prove its case beyond a reasonable doubt.

“The degree of proof necessary to remove a presumption is not to be confused with the degree necessary to sustain the burden of proof. When a party is not required to sustain the burden of proof upon some particular issue, a rebuttable presumption arising out of such issue may be overcome by evidence which counterbalances the evidence to sustain the presumption; however, when such party is required to assume the burden of proof upon an issue, any rebuttable presumption arising therefrom must be removed by the same degree of proof necessary to sustain the issue.” (Internal citations and quotations omitted.) *In re Zindle* at 347-48.

{¶13} Hamad argues that the State presented insufficient evidence to support his conviction for speeding because (1) he was not charged with an express subsection of R.C. 4511.21; (2) the State failed to present evidence of the speed of his vehicle; and (3) the State failed to present evidence that his speed was unreasonable.

{¶14} The Ohio Supreme Court has stated that “[t]he purposes of an indictment are to give an accused adequate notice of the charge, and enable an accused to protect himself or herself from any future prosecutions for the same incident.” *State v. Buehner*, 110 Ohio St.3d 403, 2006-Ohio-4707, at ¶7. Further, “[t]he statement may be in the words of the applicable section of the statute, provided the words of that statute charge an offense, or in words sufficient to give the defendant notice of all the elements of the offense with which the defendant is

charged.” *State v. Childs* (2000), 88 Ohio St.3d 558, 564-65. The indictment charging speeding in this case put Hamad on notice of the elements of the offense as delineated in R.C. 4511.21(A). Accordingly, he was not put on notice regarding a per se violation of the statute. Rather, he was put on notice that he might rebut the presumption of a statutory violation in the event the State made a prima facie showing of a violation. In any event, the indictment properly gave Hamad adequate notice of the charge.

{¶15} Furthermore, under Crim.R. 12, challenges to the sufficiency of an indictment must be made prior to the commencement of trial. Crim.R. 12 states, in part:

“(C) Prior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue. The following must be raised before trial:

“(1) Defenses and objections based on defects in the institution of the prosecution;

“(2) Defenses and objections based on defects in the indictment, information, or complaint (other than failure to show jurisdiction in the court or to change an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding)[.]”

{¶16} Hamad did not challenge the sufficiency of the indictment by motion before the trial court. Therefore, he forfeited all but plain error with respect to defects in the charging instrument. See *State v. Pasqualon*, 121 Ohio St.3d 186, 2009-Ohio-315, at ¶40. This Court has long held that “an appellate court will not consider as error any issue a party was aware of but failed to bring to the trial court’s attention[.]” at a time when the trial court might have corrected the error. *State v. Dent*, 9th Dist. No. 20907, 2002-Ohio-4522, at ¶6. “[F]orfeiture is a failure to preserve an objection[.] \*\*\* [A] mere forfeiture does not extinguish a claim of plain error under Crim.R. 52(B).” (Internal citations omitted.) *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, at ¶23. By failing to raise the issue below, Hamad has forfeited his challenge to the sufficiency of the indictment. Further, as Hamad has failed to argue plain error on appeal, this

Court will not consider its applicability. See *State v. Knight*, 9th Dist. No. 03CA008239, 2004-Ohio-1227, at ¶10.

{¶17} At trial, Officer Kenneth Clark of the Akron Police Department testified that he performed the accident reconstruction in regard to this case. He testified that he has attended the Ohio State Patrol Academy for basic and advanced crash investigation, the Institute of Police Technology Traffic Management for the University of Northern Florida for reconstruction training, Northwestern University for speed measuring and vehicle dynamics courses, as well as various refresher courses over the years since 1989. He testified that he performed accident reconstruction analyses for hundreds of the thousands of crashes he has worked over the past 28 years. Officer Clark described various techniques he uses to determine the speed of a vehicle prior to a crash and testified that those techniques are widely accepted among law enforcement personnel across the country for use in accident reconstruction. The trial court then qualified Officer Clark as an expert in the area of accident reconstruction.

{¶18} On direct examination, Officer Clark testified that the speed limit in the area in which the accident occurred was fifty-five miles per hour. He testified that he arrived on the scene at approximately 11:00 p.m. on October 31, 2007, and took measurements and otherwise documented the scene. He testified that, based on the length of the skid marks left by Hamad's car and the drag factor (or abrasiveness) of the roadway, he was able to calculate the speed of Hamad's car immediately before impact and braking by utilizing a "basic slide-to-stop formula." The officer testified that he used a coefficient of friction of .7 in his calculations because "[f]rom different applications of skid testing, that's a number that we feel is a fair representation of a roadway." He testified that it is not feasible for the police to run an independent test to determine the coefficient of friction on every roadway, particularly because of the safety issues



implicated in conducting such tests. Therefore, he testified that he uses predetermined coefficients from an authorized written source. Officer Clark testified within a reasonable degree of scientific certainty that Hamad's car was traveling at 80 miles per hour prior to the collision.

{¶19} Officer Clark identified photographs taken at the scene. It is evident from the photographs that it was dark at the time of the accident.

{¶20} On cross-examination, Officer Clark testified that Sergeant McHenry, formerly of the Akron Police Department, had also performed some speed calculations in regard to this case. Officer Clark testified that Sergeant McHenry retired soon thereafter. The State admitted Sergeant McHenry's speed analysis report into evidence. The report indicated Sergeant McHenry's opinion that Hamad's vehicle "was traveling between 74 and 80 MPH in a 55 MPH Zone when the crash occurred." Sergeant McHenry based his opinion on different analyses, applying different formulae to measurements taken from the scene. He used the same friction level (.7) as Officer Clark did in some calculations and a different one (.6) for another calculation. Sergeant McHenry estimated Hamad's post-collision speed to be between 75 and 78 mph.

{¶21} Officer Clark testified that, while his slide-to-stop calculation indicated Hamad was traveling at approximately 70 mph post-collision, he added 10 mph to obtain his final speed immediately prior to impact to account for energy dissipation upon impact. He testified that he calculated that "the collision damage absorbed at least ten miles an hour" of Hamad's vehicle.

{¶22} Reviewing the evidence in a light most favorable to the State, this Court concludes that any rational trier of fact could have found the essential elements of the charge of speeding were proved beyond a reasonable doubt. See *Jenks* at paragraph two of the syllabus. The State presented evidence that the speed limit was 55 mph and Hamad was traveling in excess

of that. Accordingly, the State presented a prima facie case that Hamad violated the speeding statute. In addition, the State presented evidence of the conditions at the time of the collision, specifically, that it was dark. Furthermore, any rational trier of fact could have found that the prima facie evidence was sufficient to establish the essential elements of the crime, even in the absence of evidence regarding the reasonableness of speeds in excess of the speed limit under the relevant conditions. See *In re Zindle* at 347. Hamad's second assignment of error is overruled.

{¶23} Hamad argues that his speeding conviction is against the manifest weight of the evidence because (1) the State failed to establish the speed of the vehicle; (2) the State failed to prove the existence of any traffic control device which Hamad failed to obey; and (3) there was no evidence that Hamad's speed was unreasonable under the conditions existing at the time.

{¶24} Hamad cites the Second District's decision in *State v. Kilgore*, 175 Ohio App.3d 665, 2008-Ohio-1162, for the proposition that the State must present evidence of the existence of a traffic-control device. *Id.* at ¶13. The holding in *Kilgore* is inapposite to the instant appeal, however, because Hamad was not charged with failing to obey a traffic-control device.

{¶25} At trial, Officer Clark testified that Hamad's vehicle was traveling approximately 80 mph in a 55 mph zone immediately prior to the collision with Coplin's vehicle. Sergeant McHenry's report indicated that Hamad's vehicle was traveling between 74 and 80 mph in a 55 mph zone at the time of the collision. The evidence further shows that it was dark when the collision occurred.

{¶26} Hamad testified in his own defense. He testified that he was traveling eastbound on interstate 76 just after 11:00 p.m. on October 31, 2007, at the time of the collision. Hamad admitted that he was traveling "65, 60 [mph], in that area somewhere[.]" although he testified that he did not look at his speedometer. He testified that he knew that the police would be

monitoring the area for speed that evening because it was Halloween, but also that the police would not generally issue a ticket for speeding “if you do 8, 9 miles per hour over the limit[.]”

{¶27} Hamad testified that it was dark and overcast the night of the collision, with “basically no traffic.” He testified that he was not using his cruise control because he was traveling through a “high construction area[.]”

{¶28} Although there was some conflicting evidence in this case, this Court will not disturb the trial court’s factual determinations because the trier of fact is in the best position to determine the credibility of the witnesses during trial. *State v. Crowe*, 9th Dist. No. 04CA0098-M, 2005-Ohio-4082, at ¶22. In addition, this Court will not overturn the trial court’s verdict on a manifest weight of the evidence challenge only because the trier of fact chose to believe certain witness’ testimony over the testimony of others. *Id.*

{¶29} A review of the record indicates that this is not the exceptional case, where the evidence weighs heavily in favor of Hamad. A thorough review of the record compels this Court to find no indication that the trial court lost its way and committed a manifest miscarriage of justice in convicting Hamad of speeding. The weight of the evidence supports the conclusion that Hamad, even by his own admission, was traveling in excess of the speed limit. Hamad failed to rebut the presumption of a speeding violation. The weight of the evidence supports the conclusion that Hamad’s speed was greater than was reasonable or proper under the conditions. Hamad admitted that it was dark and overcast, that he believed the police would be on heightened guard for speeding vehicles on Halloween night, and that he was traveling through a high construction area. Accordingly, Hamad’s conviction for speeding is not against the weight of the evidence.

Assured clear distance

{¶30} Hamad was further charged with assured clear distance in violation of R.C. 4511.21, which states, in relevant part, that “no person shall drive any motor vehicle \*\*\* upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead.” R.C. 4511.21(A). The Ohio Supreme Court stated:

“Ohio case law has consistently held that a person violates the assured clear distance ahead statute if there is evidence that the driver collided with an object which (1) was ahead of him in his path of travel, (2) was stationary or moving in the same direction as the driver, (3) did not suddenly appear in the driver’s path, and (4) was reasonably discernible. Thus a driver violates the statute as a matter of law if the party invoking the statute presents uncontroverted evidence establishing all of the elements necessary to constitute a statutory violation.

“Where there is conflicting evidence and reasonable minds could differ concerning any one of the elements necessary to constitute a violation of the statute, a jury question exists with regard to that element.” (Internal citations and quotations omitted.) *Pond v. Leslein* (1995), 72 Ohio St.3d 50, 52.

{¶31} Hamad argues that the State presented insufficient evidence to support his conviction for assured clear distance. This Court disagrees.

{¶32} Officer Clark testified that both vehicles were traveling eastbound and that “[Hamad’s] Infiniti struck the rear of [Coplin’s] Cavalier.” He further authenticated photographs taken at the scene of the collision. The photographs show that the entire back end of Coplin’s car was smashed in, while the entire front end of Hamad’s car was smashed in. Officer Clark testified that he could not determine the speed of Coplin’s car at the time of impact because of the significant damage to the vehicle and the lack of information which might otherwise have been obtained from the Cavalier’s data recorder. He admitted that Sergeant McHenry opined that Coplin’s car could have been stopped at the time of impact. Sergeant McHenry’s report did not indicate that Coplin’s car could have been traveling backwards. In addition, Officer Clark

testified that Sergeant McHenry determined that Hamad took no evasive action prior to the collision.

{¶33} Officer Dan Gump of the Akron Police Department testified that he responded to a motor vehicle crash on eastbound interstate 76 around 11:00 p.m. on October 31, 2007. He testified to the condition of the vehicles involved in the crash. Officer Gump testified that the Infiniti had “heavy front end damage[,]” while the Cavalier had “extensive damage to the rear[.]”

{¶34} Keith Robertson and Bud Andrews testified that they were at a McDonald’s at the top of an exit ramp close to the highway at approximately 11:00 p.m. on October 31, 2007, when they heard the squealing or screeching of tires, followed by a crash. They both testified that they ran down the ramp and saw two vehicles which had been involved in a collision.

{¶35} Reviewing the evidence in a light most favorable to the State, this Court concludes that any rational trier of fact could have found the essential elements of the charge of assured clear distance were proved beyond a reasonable doubt. See *Jenks* at paragraph two of the syllabus. There was evidence that Hamad collided with Coplin’s vehicle directly from the rear, indicating that the vehicle was ahead of him for a period of time and discernable, and that Hamad attempted to brake to avoid the collision. In addition, there was evidence that Coplin’s car was either traveling forward or was stopped. Accordingly, the State presented sufficient evidence of the crime. Hamad’s fourth assignment of error is overruled. Furthermore, as the State presented sufficient evidence in regard to both minor misdemeanors, the fifth assignment of error is also overruled.

{¶36} Hamad argues that his conviction for assured clear distance is against the manifest weight of the evidence. This Court disagrees.

{¶37} Again, the State presented evidence that Hamad’s vehicle collided with the rear end of Coplin’s vehicle. Officer Clark testified that the data retrieved from Coplin’s vehicle was inconclusive as to its speed, while Sergeant McHenry’s report indicated only that Coplin’s vehicle was either stopped or moving slowly forward, and that Hamad took no evasive action to avoid the collision.

{¶38} Hamad testified that he was traveling in the far right lane of the 4-lane highway and that he noticed Coplin’s vehicle traveling in the far left lane approximately 200 feet ahead of him. He testified that Coplin was driving “[e]xtremely slow, if not zero” when he hit Coplin’s vehicle. Hamad testified that he saw Coplin’s brake lights and then Coplin “veered over three lanes into my lane and was right in front of me going extremely slow, if not stopped.” Hamad testified that he did not have time to hit his own brakes.

{¶39} Although there was some conflicting evidence in this case, this Court will not disturb the trial court’s factual determinations because the trier of fact is in the best position to determine the credibility of the witnesses during trial. *Crowe* at ¶22. In addition, this Court will not overturn the trial court’s verdict on a manifest weight of the evidence challenge only because the trier of fact chose to believe certain witness’ testimony over the testimony of others. *Id.*

{¶40} A review of the record indicates that this is not the exceptional case, where the evidence weighs heavily in favor of Hamad. A thorough review of the record compels this Court to find no indication that the trial court lost its way and committed a manifest miscarriage of justice in convicting Hamad of assured clear distance. The weight of the evidence supports the conclusion that Hamad saw Coplin’s vehicle ahead of him in his path of travel and that Coplin’s vehicle was either moving forward or was stationary. In addition, the trial court was in the best position to judge the credibility of the witnesses and could, therefore, discount as incredible

Hamad's testimony that Coplin's vehicle veered across four lanes to come to a near or complete stop in front of Hamad's vehicle. The weight of the evidence supports the conclusion that Coplin's vehicle did not suddenly appear in Hamad's path. Accordingly, Hamad's conviction for assured clear distance is not against the weight of the evidence. Hamad's third assignment of error is overruled.

III.

{¶41} Hamad's assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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DONNA J. CARR  
FOR THE COURT

WHITMORE, J.  
DICKINSON, P. J.  
CONCUR

APPEARANCES:

DAVID M. LOWRY, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.