

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 25533

Appellee

v.

SHERLYN D. JACOBS

APPEAL FROM JUDGMENT
ENTERED IN THE
STOW MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 2010CRB00648

Appellant

DECISION AND JOURNAL ENTRY

Dated: June 29, 2011

WHITMORE, Presiding Judge.

{¶1} Defendant-Appellant, Sherlyn Jacobs, appeals from her conviction in the Stow Municipal Court. This Court affirms.

I

{¶2} At approximately 5:20 p.m. on March 14, 2010, Jacobs presented to the Stow Police Department to report some vandalism that had occurred outside her apartment. Officer Jesse Reedy spoke with Jacobs who informed him that she saw her neighbor, Lisa Patterson, walk through the parking lot of their apartment complex and scratch the entire driver’s side of Jacobs’ car, hit and crack the mirror on Jacobs’ car door, and then strike and damage a flower pot located at the end of the apartment complex’s parking lot.

{¶3} Officer Reedy contacted Patterson and staff at the apartment complex to verify Jacobs’ account of the damage. Though Patterson admitted that she and Jacobs had prior disputes with one another, she denied any involvement or knowledge of the damage that Jacobs

reported to the police. Officer Reedy questioned staff at the apartment complex who indicated that the damage to the flower pots had occurred prior to March 14th and was caused by snow plows clearing the parking lot during winter. Throughout his investigation, Officer Reedy found several other inconsistencies in the information that Jacobs had provided to him about the event and ultimately closed the case, as he was unable to prove that Patterson was involved in causing any of the damage reported by Jacobs. Patterson, however, was angered by the accusation and filed a complaint for falsification against Jacobs, alleging that Jacobs had made a false statement to police with the intent to incriminate her.

{¶4} Following a bench trial in July 2010, the trial court found Jacobs guilty of falsification pursuant to R.C. 2921.13, a misdemeanor of the first degree. She was sentenced to 180 days in jail, all of which was suspended, and fined \$1,000, of which \$850 was suspended on the condition that Jacobs avoid contact with Patterson. Jacobs has timely appealed from her conviction and asserts one assignment of error for our review.

II

Assignment of Error

“THE STATE FAILED TO[]PRESENT SUFFICIENT EVIDENCE TO WARRANT A CONVICTION AND THE DECISION OF THE TRIAL COURT WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶5} In her captioned assignment of error, Jacobs argues both that there was insufficient evidence to support her conviction and that her conviction was against the manifest weight of the evidence. Her argument, however, sounds solely in a challenge to the weight of the evidence, as her sufficiency argument merely states that “for the reason set forth [in her manifest weight argument], *** the [State] did not present sufficient evidence beyond a reasonable doubt to support [her] conviction.” Thus, we limit our analysis to whether her

conviction was against the manifest weight of the evidence. See *State v. Maple*, 9th Dist. No. 25331, 2011-Ohio-1516, at ¶6 (refusing to address defendant’s manifest weight argument because he did not provide a separate argument in support of that issue pursuant to App.R. 12(A)(2)).

{¶6} In essence, Jacobs argues that her conviction was against the manifest weight of the evidence because Officer Reedy failed to fully investigate the damage to her car or to determine if Patterson had inflicted further damage to the already-cracked flower pots. Instead, she argues that the trial court found her guilty based on an assumption that she was lying because of the history of past disputes between the two. We disagree.

{¶7} When considering a manifest weight argument, the 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. The discretionary power to grant a new trial should be exercised only in exceptional cases where the evidence weighs heavily against the conviction.” *State v. Otten* (1986), 33 Ohio App.3d 339, 340.

A weight of the evidence challenge indicates that a greater amount of credible evidence supports one side of the issues than supports the other. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. Further, when reversing a conviction on the basis that the conviction was against the manifest weight of the evidence, the appellate court sits as the “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony. *Id.*

{¶8} Pursuant to R.C. 2921.13(A)(2), “[n]o person shall knowingly make a false statement *** when *** the statement is made with purpose to incriminate another.” “A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause

a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist.” R.C. 2901.22(B).

{¶9} At trial, Officer Reedy testified that Jacobs seemed to change her account of the vandalism that had occurred outside her apartment the longer he talked to her at the police station. Initially, she told Officer Reedy that she “thought” Patterson might have damaged her car based on a statement to that effect that Patterson’s husband and son had made to Jacobs that day, in addition to the fact that the two women had long history of disputes as neighbors. Later in the conversation, however, Jacobs told Officer Reedy that she had actually seen Patterson inflict the damage and was certain it was her. Jacobs went on to tell Officer Reedy that she saw Patterson walk by the car and scratch it, then proceed across the parking lot and strike one of the flower pots, causing it to crack. Jacobs told Officer Reedy that she did not confront Patterson or her husband at the time because they were both heavily intoxicated, so she called the apartment manager who instructed her to file a police report if she wanted to pursue an action against Patterson, which she did.

{¶10} Officer Reedy contacted Patterson after his discussion with Jacobs. He testified that Patterson seemed shocked by the accusation and immediately came to the police station to discuss the matter with him. Officer Reedy testified that Patterson did not seem at all intoxicated throughout their discussion. She admitted that she had disputes with Jacobs in the past, which is why she avoids having any contact with Jacobs or her property. Patterson adamantly denied being near Jacobs’ car or the flower pots, but did note that she thought the pots had been damaged prior to that day.

{¶11} Officer Reedy went to the apartment complex the next day to investigate the damage and obtained a statement from the apartment complex manager who confirmed that both

of the flower pots at the edge of the parking lot had been damaged by the snow plows during winter. Officer Reedy's assessment of the scene caused him to conclude that Jacobs' account of the damage was "very implausible," as the flower pots were essentially crushed and in his opinion were "definitely broken by the snow plow," not a person hitting them with an object in her hand. After examining the scene, Officer Reedy also felt that Jacobs would have been unable to see the damage she alleged based on her description of where she was located, in relationship to where her car and the flower pots were located. The maintenance supervisor from the apartment complex also testified at trial, corroborating Patterson and the apartment manager's statements to police that the flower pots had been heavily damaged before March 14th when the parking lot was plowed earlier in the year. Further, there was photographic evidence introduced at trial demonstrating that the flower pots were damaged beyond repair, as they were crumbling and broken into several pieces on the ground.

{¶12} Patterson testified consistent with her statements to Officer Reedy that she had nothing to do with the damage to Jacobs' car or the flower pots and that Jacobs' report to police was an "absolute lie." Though Jacobs testified at trial that she saw Patterson commit the foregoing acts, the trial court was free to believe Patterson's testimony over that of Jacobs. *State v. Helms*, 9th Dist. No. 25034, 2010-Ohio-2327, at ¶12. Moreover, our review of the record reveals that Jacobs' testimony as to the events that occurred that day continued to change at trial, where she indicated that she had told police that Patterson had also made a racial slur against her while vandalizing her car. The State recalled Officer Reedy who confirmed that Jacobs did not, in fact, ever report this to police.

{¶13} Because there was credible evidence presented at trial that Jacobs knowingly made a false statement to police in order to incriminate Patterson, we cannot conclude that the

trial court lost its way in convicting her of falsification. See *State v. Willis* (Dec. 15, 1998), 7th Dist. No. 97 BA 27, at *1-3 (affirming a conviction for falsification where defendant's story continued to change over time and did not align with the testimony of other witnesses). Based on the foregoing, this Court is not convinced that Jacobs' conviction for falsification is against the weight of the evidence. Consequently, Jacobs' sole assignment of error is overruled.

III

{¶14} Jacobs' sole assignment of error is overruled. The judgment of the Stow Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Stow Municipal Court, 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.

BETH WHITMORE
FOR THE COURT

MOORE, J.
DICKINSON, J.
CONCUR

APPEARANCES:

MARTHA HOM, Attorney at Law, for Appellant.

JOHN A. SCAVELLI, JR., Attorney at Law, for Appellee.