[Cite as *State v. Rembert*, 2017-Ohio-7922.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF LORAIN	)	

STATE OF OHIO	C.A. No. 16CA010975
Appellee	
v.	APPEAL FROM JUDGMENT ENTERED IN THE
MALIK REMBERT	COURT OF COMMON PLEAS COUNTY OF LORAIN, OHIO
Appellant	CASE No. 15CR092545

DECISION AND JOURNAL ENTRY

Dated: September 29, 2017

CALLAHAN, Judge

{¶1} Defendant-Appellant, Malik Rembert, appeals from his conviction in the Lorain County Court of Common Pleas. This Court affirms.

I.

{¶2} Mr. Rembert was arrested after leading the police on a high-speed police pursuit that ended after a police officer conducted a "pit maneuver" to force his vehicle to come to a stop. The police vehicle suffered damage as a result of the maneuver and Mr. Rembert was charged with a number of offenses, including failure to comply with an order or signal of a police officer ("failure to comply"). The indictment for that offense alleged that Mr. Rembert's operation of the motor vehicle "was a proximate cause of serious physical harm to persons or property[,]" thus making it a third-degree felony.

{¶3} At trial, Mr. Rembert made a Crim.R. 29 motion challenging the sufficiency of the State's evidence regarding the serious physical harm to the police vehicle. The trial court

denied his motion and subsequently found Mr. Rembert guilty of several offenses, including the third-degree felony failure to comply. Mr. Rembert now appeals, raising a single assignment of error.

II.

ASSIGNMENT OF ERROR

> THE TRIAL COURT ERRED BY NOT GRANTING AN ACQUITTAL (OR A REDUCTION) OF COUNT ONE OF THE INDICTMENT DUE TO INSUFFICIENT EVIDENCE OF SERIOUS PHYSICAL HARM TO PROPERTY.

{¶4} In his sole assignment of error, Mr. Rembert argues the trial court erred when it overruled his Crim.R. 29 motion for acquittal or reduction because the State failed to provide sufficient evidence of serious physical harm to Sergeant Mathewson's police vehicle. This Court disagrees.

{¶5} "A sufficiency challenge of a criminal conviction presents a question of law, which we review de novo." *State v. Spear*, 9th Dist. Summit No. 28181, 2017-Ohio-169, ¶ 6, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). "Sufficiency concerns the burden of production and tests whether the prosecution presented adequate evidence for the case to go to the [trier of fact]." *State v. Bressi*, 9th Dist. Summit No. 27575, 2016-Ohio-5211, ¶ 25, citing *Thompkins* at 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.'" *Bressi* at ¶ 25, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. In analyzing sufficiency, this Court "[does] not resolve evidentiary conflicts or assess the credibility of witnesses, because these functions belong to the trier of fact." *State v. Hall*, 9th Dist. Summit No. 27827, 2017-Ohio-73, ¶ 10.

{¶6} The failure to comply statute provides 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." R.C. 2921.331(B). The statute further provides:

> A violation of division (B) of this section is a felony of the third degree if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt:
> (i) The operation of the motor vehicle by the offender was a proximate cause of serious physical harm to persons or property.
> (ii) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

R.C. 2921.331(C)(5)(a)(i)-(ii).

{¶7} When charging Mr. Rembert with a third-degree felony for failure to comply, the State used the language contained in R.C. 2921.331(C)(5)(a)(i). The trial court found Mr. Rembert guilty of failure to comply and further found that his "operation of the motor vehicle was a proximate cause of serious physical harm to property." Mr. Rembert only challenges the element of "serious physical harm to property" on appeal.

{¶8} R.C. 2901.01(A)(6) provides:

> "Serious physical harm to property" means any physical harm to property that does either of the following:
> (a) Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;
> (b) Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.

{¶9} Mr. Rembert argues the only evidence pertaining to the damage of the police vehicle was "vague testimony" by Sergeant Mathewson. Mr. Rembert further argues the State failed to provide documentation from the body shop, such as a repair bill, or any police logs, documenting the use or non-use of the vehicle.

{¶10} Sergeant Mathewson described the following damage to his police vehicle during his testimony: "the push bar was broken. The front bumper, towards the passenger side was damaged. The passenger side headlight assembly was damaged. And the passenger side fender was damaged." He testified that he drove the vehicle home that night, removed his gear, then took the vehicle to the city garage for service the next day. According to Sergeant Mathewson, "[the police vehicle] obviously had major damage to it, so they then ha[d] to contact the body shop. * * * In all, it took, I believe, a month to get the car back, or close to it." Thus, Sergeant Mathewson's testimony provided sufficient evidence regarding the damage to his police vehicle and that the damage temporarily prevented or interfered with its use.

{¶11} Regarding the lack of repair bills and logs, Mr. Rembert cites to no legal authority requiring such additional, corroborating evidence. *See* App.R. 16(A)(7). Further, while Mr. Rembert complains that "[t]here was no documentation as to exactly how much time, effort, or money was spent to repair the vehicle[,]" such documentation is relevant to the first definition of serious physical harm. *See* R.C. 2901.01(A)(6)(a). It is not necessary under the second definition wherein the harm temporarily prevents or interferes with the use or enjoyment of the property. *See* R.C. 2901.01(A)(6)(b). As the statute provided alternative definitions, the State only needed to provide evidence that the police vehicle sustained physical harm which, "regardless of value or repairability, render[ed] the [vehicle] temporarily unusable or interfere[d] with its use." 1973 Legislative Service Commission Note, R.C. 2901.01. The State provided this evidence through the testimony of Sergeant Mathewson.

{¶12} Viewing the evidence in a light most favorable to the State, a rational trier of fact could have found that the State proved the element of serious physical harm to Sergeant

Mathewson's police vehicle beyond a reasonable doubt. *See Jenks*, 61 Ohio St.3d 259, at paragraph two of the syllabus.

{¶13} Mr. Rembert's sole assignment of error is overruled.

III.

{¶14} Having overruled Mr. Rembert's sole assignment of error, this Court affirms the judgment of the Lorain County Court of Common Pleas.

Judgment affirmed.

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 Lorain, 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(C). 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.

LYNNE S. CALLAHAN
FOR THE COURT

SCHAFER, P. J.
TEODOSIO, J.
CONCUR.

APPEARANCES:

STEPHEN P. HANUDEL, Attorney at Law, for Appellant.

DENNIS P. WILL, Prosecuting Attorney, and ELIZABETH LINDBERG, Assistant Prosecuting Attorney, for Appellee.