

[Cite as *State v. Wheeler*, 2017-Ohio-1200.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 27166
	:	
v.	:	T.C. NO. 15-CRB-5449
	:	
ERIC WHEELER	:	(Criminal Appeal from
	:	Municipal Court)
Defendant-Appellant	:	
	:	

.....  
**OPINION**

Rendered on the 31<sup>st</sup> day of March, 2017.

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FROELICH, J.

{¶ 1} Eric Wheeler appeals from a judgment of the Dayton Municipal Court, which found him guilty after a trial to the court of one count of failing to comply with an order or signal of a police officer, a misdemeanor of the first degree. The trial court sentenced him to 180 days in jail, which was suspended, suspended his driver’s license for three

years, and fined him \$250. Wheeler appeals from his conviction.

{¶ 2} For the following reasons, the judgment of the trial court will be affirmed.

### **I. Facts and Procedural History**

{¶ 3} On August 16, 2015, uniformed Dayton Police Officer Lucas Rose, who was patrolling in a marked cruiser with his partner, observed a man driving a red Pontiac. Rose knew from prior interactions with the man that he did not have a valid driver's license, although he did not immediately recall the man's name. The officers attempted to make a traffic stop. The man, who Rose later identified by name as Wheeler, initially pulled his vehicle to the side of the road, but he drove away when the officers got out of their cruiser and approached his vehicle. Although Wheeler was not located that day, the car in which he had been driving was found a short distance away. It was owned by a woman with whom Wheeler had previously been in a relationship. Wheeler was charged, in two complaints, with failure to comply with the order or signal of a police officer under R.C. 2921.331(A) and (B).

{¶ 4} Wheeler filed a "Rule 12 Motion to Dismiss for Lack of Jurisdiction," in which he claimed that the complaints failed to state "all the essential facts constituting the crime"; he acknowledged that the complaints tracked the language of the statute, R.C. 2921.331. The trial court overruled the motion. A bench trial was conducted, and Wheeler was convicted of failure to comply in violation of R.C. 2921.331(B). He was sentenced as described above.

{¶ 5} Wheeler raises two assignments of error on appeal.

### **II. Sufficiency of Complaints**

{¶ 6} In his first assignment of error, Wheeler argues that the complaints charging

him with failure to comply were insufficient because they “failed to allege any facts that constitute the crime of failing to comply with an order or signal of a police officer,” notwithstanding that it contained the “numerical criminal statute.” He asserts that the complaints did not allege all of the essential elements of the offenses, although he does not identify an element that is missing.

{¶ 7} The primary purpose of a charging instrument in a criminal prosecution is to inform the defendant of the nature of the offense with which he is charged; accordingly, Ohio law has consistently held that an indictment or complaint that does not set forth all of the essential elements of the crime is invalid. *State v. Sampson*, 2d Dist. Montgomery No. 22214, 2008-Ohio-775, ¶ 9, citing *State v. Cimpritz*, 158 Ohio St. 490, 110 N.E.2d 416 (1953), and others. Crim.R. 3 governs complaints filed in misdemeanor cases, and states that the complaint must contain the “essential facts constituting the offense charged.” Ohio courts have uniformly held that this phrase means those facts which the State must prove in order to obtain a conviction, i.e., the essential elements of the crime charged. *Id.* at ¶ 10. Generally, the requirements of a complaint or indictment may be met by reciting the language of the criminal statute. *State v. Childs*, 88 Ohio St.3d 194, 199, 724 N.E.2d 781 (2000), citing *State v. Murphy*, 65 Ohio St.3d 554, 583, 605 N.E.2d 884 (1992).

{¶ 8} Wheeler was charged by two complaints. In the first complaint, he was charged with failure to comply with an order or signal of the police officer, in violation of R.C. 2921.331(A), which states: “No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic.” The complaint stated that Wheeler committed the offense “in that [he] did unlawfully, fail

to comply with a lawful order or direction of a police officer invested with the authority to direct control or regulate traffic.” The complaint adequately described the essential elements of the crime, as contained in the statute. Thus, it was a sufficient charging instrument.

{¶ 9} In the second complaint, Wheeler was charged with a violation of R.C. 2921.331(B), which states: “No 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.” The complaint stated that “Eric Wheeler did unlawfully, 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 his motor vehicle to a stop.” Again, this complaint adequately described the essential elements of the offense.

{¶ 10} Wheeler suggests that the complaint should have included some “essential facts of the crime,” such as the time, address, and/or nature of the officers’ order. He has cited no legal authority for this proposition, and we are aware of none. Although Wheeler cites a case, *State v. Ghaster*, which mentions that dates and a brief description of at least some of the conduct for which the appellant was charged were included in the complaint in that case, as well as the essential elements of the offenses, this case does not stand for the proposition that such additional information is required. See *State v. Ghaster*, 8th Dist. Cuyahoga No. 90838, 2009-Ohio-2117, ¶ 28.

{¶ 11} Because the complaints adequately described the offenses with which Wheeler was charged, his arguments that the complaints were “fatally invalid,” that the trial court lacked jurisdiction, and that his convictions were void are without merit.

{¶ 12} The first assignment of error is overruled.

### III. Sufficiency and Weight of the Evidence

{¶ 13} In his second assignment of error, Wheeler argues that there was insufficient evidence to support his conviction, that his conviction was against the manifest weight of the evidence, and that he could not have been found guilty beyond a reasonable doubt based on the evidence presented. He also claims that “the court did not distinguish” whether it found him guilty under R.C. 2912.331(A) or (B), which are defined differently.

{¶ 14} An argument based on the sufficiency of the evidence challenges whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or to sustain the verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Under a sufficiency analysis, an appellate court does not make any determinations regarding the credibility of witnesses. *State v. Goff*, 82 Ohio St.3d 123, 139, 694 N.E.2d 916 (1998), citing *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. “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.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 15} In contrast, when reviewing an argument challenging the weight of the evidence, the court reviews the entire record, weighs the evidence and all reasonable

inferences, considers the credibility of witnesses, and determines whether, in resolving conflicts in the evidence, the finder 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 the exceptional case in which evidence weighs heavily against the conviction.’ ” *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 16} Where an appellate court determines that a conviction is not against the manifest weight of the evidence, the conviction is necessarily based on legally sufficient evidence. *State v. Million*, 2d Dist. Montgomery No. 24744, 2012-Ohio-1774, ¶ 23; *State v. Combs*, 2d Dist. Montgomery No. 19853, 2004-Ohio-2419, ¶ 12.

{¶ 17} Officer Rose testified that he was on patrol on August 16, 2015, at approximately 4:00 p.m. on Pointview Avenue near Main Street when he observed a red sedan pulling out of the parking lot of the Super Duper. He testified that it was a clear, sunny day with no clouds and nothing to obstruct his view of the vehicle; he also stated that the sun had not affected his ability to see. Rose “immediately recognized the driver from previous traffic stops and court appearance.” After reviewing computer information about the vehicle, Rose identified the driver as Wheeler. Rose further testified that he knew Wheeler did not possess a valid driver’s license.

{¶ 18} Officer Rose testified that he pulled his cruiser directly behind Wheeler’s vehicle and activated his lights and sirens; he also notified dispatch of the traffic stop. However, as Rose exited the cruiser, the red vehicle fled. Rose did not pursue the vehicle because police department policy prohibits pursuing vehicles for traffic violations only. He notified dispatch of these developments.

**{¶ 19}** Based on their previous encounters, Officer Rose believed that Wheeler lived on Pointview Avenue, so he and his partner checked the “immediate area” for the red vehicle. They found the vehicle parked one block north on Fernwood Avenue. Rose stated that he knew it was the same vehicle because the “registration” was the same, i.e., he had recorded the license plate number of the vehicle he had attempted to stop. The vehicle on Fernwood was unoccupied, and Rose called for a tow truck.

**{¶ 20}** After entering the license plate number into the computer, Rose learned that the red Pontiac was registered to a person named Janelle English, who lived at 54 Pointview. When Rose went to 54 Pointview, English indicated that she knew Wheeler but that no one had permission to be driving her car, which she thought was parked in front of her house. She allowed the officers to search her home, but Wheeler was not present. Rose informed her that the red Pontiac had been towed.

**{¶ 21}** Officer Geoffrey Orndorff, the police officer who was working with Rose on August 16, 2015, corroborated Rose’s account of the manner in which they had encountered the red Pontiac, Rose’s assertion that he recognized the driver from the prior encounter, and the driver’s departure from the scene after the officers had activated their lights and sirens to effectuate a traffic stop. A video of the traffic stop was also played at trial.

**{¶ 22}** Wheeler testified that he had a son with Janelle English and had driven her cars in the past, but he denied driving her car on August 16, 2015. He also stated that he was “no where around” Pointview Avenue on that date.

**{¶ 23}** Based on the evidence presented, the trial court could have reasonably credited Officer Rose’s testimony that Wheeler had been driving the red Pontiac on

August 16, 2015, and that he (Rose) had recognized Wheeler and knew Wheeler did not have a valid driver's license. Although Wheeler claims in his brief that the angle at which the sun was shining through the windshield of the cruiser – as evidenced by the video -- would have prevented a positive identification, the video of the traffic encounter did not compel this conclusion. Moreover, Officer Rose's testimony directly contradicted the assertion that glare from the sun had prevented him from identifying the driver of the car. The trial court did not clearly lose its way or create a manifest miscarriage of justice in concluding that Officer Rose had correctly identified Wheeler as the driver of the car, and therefore Wheeler's conviction was not against the manifest weight of the evidence. Because the conviction was not against the manifest weight of the evidence, it was necessarily based on legally sufficient evidence.

**{¶ 24}** Wheeler also claims that it was not clear from the court's verdict whether it found him guilty under R.C. 2912.331(A) or (B), which are defined differently. This assertion is incorrect. At the end of the trial, the court found Wheeler guilty and stated that it was sentencing him under R.C. 2921.331(B); the final entry and order also indicated that he was convicted under R.C. 2921.331(B).

**{¶ 25}** The second assignment of error is overruled.

**IV. Conclusion**

**{¶ 26}** The judgment of the trial court will be affirmed.

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DONOVAN, J. and WELBAUM, J., concur.

Copies mailed to:

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Hon. Daniel G. Gehres