

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio

Court of Appeals Nos. OT-10-007
OT-10-008

Appellee

Trial Court Nos. CRB 0801661 A
TRC 0803741 A

v.

Donna K. Mignard
and Michael E. Patterson

DECISION AND JUDGMENT

Appellants

Decided: October 22, 2010

* * * * *

Mark Mulligan, Ottawa County Prosecuting Attorney, and
David R. Boldt, Assistant Prosecuting Attorney, for appellee.

Howard C. Whitcomb, III, for appellants.

* * * * *

HANDWORK, J.

{¶ 1} Appellants, Michael E. Patterson and Donna K. Mignard, appeal judgments of conviction and sentence entered against them in the Ottawa County Municipal Court on February 18, 2010. The criminal charges against both were consolidated for trial and

tried to a court magistrate on August 25, 2009. The municipal court adopted the decisions of the magistrate in the judgments filed on February 18, 2010.

{¶ 2} Patterson was convicted of operating a vehicle while under the influence of alcohol, a violation of R.C. 4511.19(A)(1)(a). The trial court sentenced Patterson to serve a prison term of 365 days with 285 days suspended on conditions and to pay a fine of \$850. In addition, the trial court also suspended Patterson's operator's license for three years.

{¶ 3} Mignard was convicted of obstructing official business in violation of R.C. 2921.31, a second degree misdemeanor. The trial court sentenced Mignard to serve 30 days imprisonment with 20 days suspended on conditions and to pay a \$200 fine.

{¶ 4} Appellants assert one assignment of error on appeal:

{¶ 5} "I. The trial court erred in finding both defendant-appellants guilty of the charged offenses as the convictions were against the sufficiency and/or the manifest weight of the evidence adduced at trial."

{¶ 6} The criminal charges against appellants arise out of a non-injury motor vehicle collision that occurred on October 8, 2008, in the parking lot of the Nugent's Canal Yacht Club in Ottawa County, Ohio. Many area residents attended a neighborhood association meeting at the Yacht Club that night and were present in the parking lot when the collision occurred. Patterson and Mignard are married and resided in the neighborhood. They were association members.

{¶ 7} Sergeant Kent Davis of the Ottawa County Sheriff's Department was dispatched to investigate the accident. When he arrived, he found Patterson's pickup truck's rear bumper over the front bumper of an automobile that was parked in the Yacht Club parking lot. There was minor damage to the vehicles from the collision. The car owner told Sergeant Davis that she had not witnessed the collision and was inside the Yacht Club when it occurred.

{¶ 8} Sergeant Davis located Patterson nearby from a description of the driver and questioned him. Davis testified that Patterson appeared highly intoxicated and denied any responsibility for the collision and also denied driving the pickup.

{¶ 9} When questioned, Davis informed Mignard that he was preparing to conduct field sobriety tests of her husband because of the collision and his apparent intoxication. Davis explained: "Well, everybody is telling me that Michael was driving." In response, Mignard "vehemently" insisted that she, not Patterson, was the driver. Based on Mignard's assurances that she was the driver, Davis advised Patterson that he was free to go.

{¶ 10} Sergeant Davis then conducted field sobriety tests on Mignard. She failed each. Davis placed Mignard under arrest, handcuffed her, and seated her in the back seat of his cruiser. He read her her rights.

{¶ 11} After he did so, Davis was approached by others in the parking lot who, according to Davis "all then became very agitated and very insistent that Mr. Patterson was the driver of the vehicle, not Ms. Mignard." Davis advised Mignard she was no

longer under arrest for operating a vehicle while intoxicated but told her she was under arrest for obstruction. Davis then performed field sobriety tests on Patterson which Patterson failed. Davis also requested Patterson to take a portable breath test on available equipment. Patterson refused.

{¶ 12} In their assignment of error, appellants claim that reliable evidence was lacking to establish beyond a reasonable doubt that Patterson was the operator of the pickup truck at the time of the collision. They claim that the trial court, in determining the identity of the driver, relied on the testimony of witnesses at trial who were discredited by inconsistencies between their written statements to Sergeant Davis and their trial testimony. Appellants claim that trial witness testimony was also inconsistent. Two witnesses testified that Patterson appeared unstable as he walked, staggering. Others noticed nothing unusual as to his gait. Appellants also claim that trial witnesses were biased against them due to disputes over neighborhood issues considered at association meetings.

Sufficiency of the Evidence

{¶ 13} The focus of both Patterson's and Mignard's arguments in this appeal with respect to sufficiency of the evidence to support their convictions concerns proof of who was the driver of the pickup at the time of the collision. Patterson and Mignard both dispute the sufficiency of evidence to establish beyond a reasonable doubt that Patterson was the operator of the pickup truck at the time of the collision.

{¶ 14} An appeal challenging the sufficiency of the evidence to support a conviction presents a question of law on the issue of whether the evidence at trial is legally adequate to support a verdict. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. The Ohio Supreme Court in *State v. Jenks* (1991), 61 Ohio St.3d 259 summarized the role of appellate courts in considering appeals based upon the sufficiency of evidence:

{¶ 15} "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. (*Jackson v. Virginia* [1979], 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, followed.)" *State v. Jenks*, paragraph two of the syllabus.

{¶ 16} Patterson was convicted of operation of a vehicle under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a). The elements of the offense are set forth in the statute:

{¶ 17} "R.C. 4511.19

{¶ 18} "(A)(1) No person shall operate any vehicle * * * within this state, if, at the time of the operation, any of the following apply:

{¶ 19} "(a) The person is under the influence of alcohol * * *."

{¶ 20} Patterson challenges the sufficiency of the evidence to support a conviction of operating a vehicle under the influence of alcohol based upon a claim that evidence was lacking to establish beyond a reasonable doubt the element that he operated the pickup truck.

{¶ 21} Mignard was convicted of obstructing official business in violation of R.C. 2921.31.

{¶ 22} "Three elements are necessary before one can be convicted of obstructing official business: (1) the state must prove that the accused engaged in an unprivileged affirmative act; (2) the state must show that the act was done with a purpose or intent to hamper or impede the performance of any public official; and (3) the state must provide sufficient evidence to prove that the affirmative act did, in fact, substantially hamper or impede the official in the performance of his or her duties. *In Re Pribanic*, (Jan. 18, 1991) Erie App. No. E-90-20, unreported." *State v. Wagner* (June 1, 2001), 6th Dist. Nos. OT-00-037 and OT-00-038.

{¶ 23} The determination of the identity of the driver of the pickup was also an element of proof necessary to establish obstruction of official business by Mignard. The obstruction charge against Mignard is predicated on a contention that she misdirected the investigation of the motor vehicle accident by falsely claiming that she, rather than her husband, was the driver of the pickup truck. Sergeant Davis testified that Mignard's statements initially resulted in his telling Patterson that he was free to go and resulted in

an impairment of the investigation of Patterson by forestalling the taking of field sobriety tests of Patterson at that time.

{¶ 24} In our view, a rational finder of fact could find that the evidence at trial, if believed, and considered in a light most favorable to the prosecution was sufficient to find the essential elements of both the OVI charge against Patterson and the obstruction charge against Mignard proved beyond a reasonable doubt. A rational fact finder could find that Patterson, not Mignard, was the driver of the pickup at the time of the accident. Accordingly, both Patterson's and Mignard's arguments based upon the sufficiency of the evidence to support their convictions are found to be without merit.

Manifest Weight of the Evidence

{¶ 25} Appellants also contend that the verdicts against them are against the manifest weight of the evidence. In a criminal appeal where it is claimed that a verdict is against the manifest weight of the evidence, an appellate court acts as a "thirteenth juror," reweighs the evidence, and may disagree with a factfinder's conclusions on conflicting testimony. *State v. Thompkins*, 78 Ohio St.3d at 387; *State v. Lee*, 6th Dist. No. L-06-1384, 2008-Ohio-253, ¶ 12. "The court, reviewing 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 jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and new trial ordered." *State v. Thompkins*, 78 Ohio St.3d at 387, quoting with approval, *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 26} Reversals on this ground are granted "only in the exceptional case in which the evidence weighs heavily against conviction." Id. A verdict may be supported by sufficient evidence, but nevertheless be determined to be against the weight of the evidence. *Thompkins*, 78 Ohio St.3d at 387.

{¶ 27} Four individuals from the neighborhood association testified against Patterson and Mignard at trial indicating directly or indirectly that Patterson was the driver of the pickup truck at the time of the collision. Each clearly knew Patterson and Mignard. All four witnesses identified Patterson as the person who exited the driver's side door of the pickup after it collided with the automobile. Both Richard Buchman and Susan Buchman testified that they saw the collision and that Patterson was the driver of the pickup. Randy Herzig testified that he saw Patterson get out of the pickup after the collision, walk to the car that had been struck, state, "They know where I am at," and walk away.

{¶ 28} Michael Schulte gave a brief written statement to Sergeant Davis on October 8, 2008. He warned another person to get out of the way of the truck and yelled for the truck to stop before the accident. He indicated in the statement that he "[d]id not see person good in the dark."

{¶ 29} At trial, when questioned whether he had a good look at the driver, he testified:

{¶ 30} "A. I didn't get a look – he was walking away from me and it was dark. I didn't get a look at his face, but it was a person that had a light colored, like a cowboy hat on, and a beard."

{¶ 31} Schulte also testified that he saw the man get out from behind the steering wheel and exit the pickup by the driver's side of the vehicle after the collision.

{¶ 32} Richard Buchman's written statement on October 9, 2008, provided:

{¶ 33} "I did not see the crash but I was standing about 20 feet from the crash and heard the bang, and heard Charlie Wamus shout you hit that car. The driver I know. It was Mike Paterson. he was in such bad shape drunk. he did not even move his truck of (sic) the car he hit."

{¶ 34} At trial Richard Buchman testified in detail how the collision occurred, despite his prior statement that he did not see the crash. Buchman identified Patterson at trial as the driver. As to Patterson's condition, he testified: "He was really unstable." Buchman explained: "He was wobbly. He was drunk. Everybody there could see it."

{¶ 35} Mrs. Buchman testified at trial but made no statement to Sergeant Davis or other police authority after the accident. She testified that she saw the collision. A pickup pulled into the parking lot and backed into another car. She saw Patterson get out of the driver's side of the pickup. She testified that both she and Patterson were members of the Yacht Club and she knew who he was.

{¶ 36} Mrs. Buchman testified that afterwards Patterson walked back to look at the car and then walked into the Yacht Club. When he walked, according to Mrs. Buchman,

he "staggered back and forth." Mrs. Buchman was seated in a golf cart near the walkway to the Yacht Club entrance at the time. She testified, "I honestly thought he was going to fall into the golf cart as he made his way on to the sidewalk."

{¶ 37} Randy Herzig gave a statement on the night of the accident that, "I saw a man back his truck into a car parked at Nugent Canal Yacht Club. (Mike Patterson)" He testified at trial, that Patterson was the driver of the truck and that he saw Patterson get out of the truck after the accident and walk to the other vehicle. According to Herzig, Patterson looked at the car, stated "They know where I am at," and then walked into the Yacht Club.

{¶ 38} The magistrate stated findings of fact on the record after the trial concluded. The magistrate found Mrs. Buchman's testimony the "most consistent and certainly the most persuasive of all of the four individuals at the scene." The magistrate acknowledged the existence of certain inconsistencies in the testimony of Mr. Schulte, Mr. Buchman, and Mr. Herzig but did not find any evidence to indicate that Mignard was the driver of the pickup. As to Mignard, the magistrate also found:

{¶ 39} "I find her behavior and actions on the night in question to be clearly an attempt to prevent, obstruct or delay Sergeant Davis in the performance of his duties."

{¶ 40} We have reviewed the evidence and find no manifest injustice in the trial court's resolution of conflicting testimony in this case. Despite the inconsistencies between written statements to Sergeant Davis after the accident and aspects of certain eyewitness testimony at trial, there was substantial, credible evidence supporting the

determination that Patterson was in fact the driver of the pickup and that Mignard acted with intent to prevent, obstruct or delay Sergeant Davis in his investigation of potential OVI charges against Patterson arising from his operation of the pickup at the time of the collision. All eyewitnesses who testified at trial identified the driver of the pickup as a man. We agree with the trial court that the trial testimony of Mrs. Buchman strongly supported the convictions.

{¶ 41} Appellants' assignment of error is not well-taken.

{¶ 42} Accordingly, we affirm the trial court's judgments. Appellants are ordered to pay costs pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

JUDGE

Mark L. Pietrykowski, J.

JUDGE

Thomas J. Osowik, P.J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.