

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus,	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	No. 09AP-935
	:	(M.C. No. 2009 TR D 159304)
Stephanie L. Thomas,	:	
	:	
Defendant-Appellant.	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on May 6, 2010

Richard C. Pfeiffer, Jr., City Attorney, *Lara Baker*, City Prosecutor, *Melanie Tobias* and *Michael C. Allbritain*, for appellee.

R. William Meeks Co., L.P.A., and *David H. Thomas*, for appellant.

APPEAL from the Franklin County Municipal Court

TYACK, P.J.

{¶1} Stephanie L. Thomas is appealing from her conviction on a charge of reckless operation of a motor vehicle in violation of Columbus City Code 2133.02(b). She assigns a single error for our consideration:

The Trial Court violated Appellant's right to Due Process as Guaranteed by the Fourteenth Amendment to the United

States Constitution and Article I, Section 10 of the Ohio Constitution by entering verdicts of Guilty, as the jury's verdict was against the manifest weight of the evidence.

{¶2} Columbus City Code 2133.02(b) reads:

No person shall operate a vehicle on any street, highway, or on any public or private property other than streets or highways, in willful or wanton disregard of the safety of persons or property.

{¶3} In convicting Thomas of the charge, the jury relied upon the testimony of Christopher Bailey, a detective with the Columbus Division of Police, and did not accept Thomas' own testimony about her driving as being completely accurate. The jury clearly did not lose its way when it evaluated the testimony presented to it.

{¶4} Detective Bailey testified that he had been a police officer for about 12 years and that he was currently serving as a technical crash investigator with the accident investigation unit. As he was returning from the police property room to police headquarters, he encountered Thomas as they were both driving westbound on Interstate 70 near where it intersects with Interstate 71. Detective Bailey was intending to stay in the right-hand lane of traffic and bend around onto the exit ramp to East Broad Street. He observed a maroon SUV weaving in and out of traffic, going from the right-hand lane to the left lane. The maroon SUV, driven by Thomas, next attempted to get into the berm area several times. That lane is not used for through traffic, but is used as a place for vehicles to stop when encountering mechanical difficulties. The maroon SUV tried to pass other vehicles using the berm area and Thomas was honking its horn. Thomas was also making gestures at the drivers of other vehicles.

{¶5} As Thomas came around the curve toward Broad Street, she came up directly behind Detective Bailey and then tried to pass the detective's vehicle by going to the right of it. In the process, her tires made contact with a concrete wall on the right side of the freeway. Thomas then attempted to pass on the left, but was prevented from doing so by the presence of a Ford F-150 truck.

{¶6} When the truck proceeded up the freeway, Thomas attempted to pass on the left by going through a marked median area outside of the lanes intended for travel. Detective Bailey felt that Thomas then attempted to hit his vehicle in order to get it out of the way, but was unsuccessful because Detective Bailey accelerated.

{¶7} Thomas continuously honked her horn and on at least one occasion, made a hand gesture involving her middle finger.

{¶8} Detective Bailey stopped for a red light at the top of the Broad Street exit ramp, got out of his car and introduced himself to Ms. Thomas. He testified that Thomas responded with "You know, I don't care who the [...] you are, cop. I'll kill you." (Tr. 111.)

{¶9} Detective Bailey got Thomas out of the maroon SUV, handcuffed her and escorted her back toward his vehicle. A marked cruiser had arrived by the time they got to his vehicle, so she was placed in the marked cruiser.

{¶10} Thomas testified that she was somewhat in a hurry that afternoon, but "not too much." (Tr. 171.) She acknowledged driving on the berm to get around cars which were stopped in traffic. She also acknowledged honking her horn at vehicles in front of her, including the white truck and Detective Bailey's vehicle. She described Detective Bailey as the person driving aggressively. She admitted swearing when Detective Bailey

asked to see her operator's license and she acknowledged calling him a "[p]ervert." (Tr. 179.)

{¶11} Sufficiency of the evidence is the legal standard applied to determine whether the case should have gone to the jury. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. In other words, sufficiency tests the adequacy of the evidence and asks whether the evidence introduced at trial is legally sufficient as a matter of law to support a verdict. *Id.* "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* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781. The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier of fact. *Jenks* at 273. If the court determines that the evidence is insufficient as a matter of law, a judgment of acquittal must be entered for the defendant. See *Thompkins* at 387.

{¶12} Even though supported by sufficient evidence, a conviction may still be reversed as being against the manifest weight of the evidence. *Thompkins* at 387. In so doing, the court of appeals, sits as a " 'thirteenth juror' " and, after " '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 a new trial ordered.' " *Id.* (quoting *State v. Martin* [1983], 20 Ohio App.3d 172, 175); see also *Columbus v. Henry* (1995), 105 Ohio App.3d 545, 547-48. Reversing

a conviction as being against the manifest weight of the evidence should be reserved for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387.

{¶13} As this court has previously stated, "[w]hile the jury may take note of the inconsistencies and resolve or discount them accordingly, see [*State v.*] *DeHass* [(1967), 10 Ohio St.2d 230], such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Nivens* (May 28, 1996), 10th Dist. No. 95APA09-1236. It was within the province of the jury to make the credibility decisions in this case. See *State v. Lakes* (1964), 120 Ohio App. 213, 217 ("It is the province of the jury to determine where the truth probably lies from conflicting statements, not only of different witnesses but by the same witness.").

{¶14} See *State v. Harris* (1991), 73 Ohio App.3d 57, 63 (even though there was reason to doubt the credibility of the prosecution's chief witness, he was not so unbelievable as to render verdict against the manifest weight).

{¶15} Applying these legal standards to the testimony given in the trial court, the conviction for reckless operation of a motor vehicle was not against the manifest weight of the evidence. The sole assignment of error is overruled. The judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

BRYANT and FRENCH, JJ., concur.
