[Cite as *State v. Parks*, 2010-Ohio-2069.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
v.	:	No. 09AP-810 (C.P.C. No. 09CR01-312)
Edward M. Parks,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on August 11, 2010

Ron O'Brien, Prosecuting Attorney, and *Barbara A. Farnbacher*, for appellee.

Kirk A. McVay, for appellant.

APPEAL from the Franklin County Court of Common Pleas

KLATT, J.

{¶1} Defendant-appellant, Edward M. Parks, appeals from a judgment of conviction and sentence entered by the Franklin County Court of Common Pleas. For the following reasons, we affirm that judgment.

{¶2} On January 7, 2009, someone stole Benjamin Hunt's 1994 Toyota Camry. Although Hunt witnessed the theft, he could not identify the driver. He immediately reported the theft to the police. The next evening, police officers in West Columbus spotted Hunt's vehicle traveling on I-270 north at the Georgesville Road exit. After the

driver refused to stop, a high speed chase ensued. The chase ended near West Jefferson, Ohio, when the driver pulled the car off the road and attempted to drive through a cornfield. The officers on the ground learned from an officer following the chase in a police helicopter that the driver had exited the car and was traveling west into a wooded area. Officers made their way to that area and observed a person, later identified as appellant, coming out of the wooded area. The officers did not see any other people in the area. After arresting appellant, the officers found Hunt's 1994 Toyota Camry in a cornfield between 100 and 400 feet away from where they apprehended appellant.

{¶3} As a result, a Franklin County Grand Jury indicted appellant with two counts of failure to comply with an order or signal of a police officer in violation of R.C. 2921.331 and one count of receiving stolen property in violation of R.C. 2913.51. Appellant entered a not guilty plea to the charges and proceeded to a jury trial. The jury found appellant guilty as charged and the trial court sentenced him accordingly.

{¶4} Appellant appeals and assigns the following errors:

> [1.] THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE DEFENDANT AS TO COUNTS ONE, TWO, AND THREE OF THE INDICTMENT WHEN THERE WAS INSUFFICIENT EVIDENCE TO SUSTAIN THOSE CONVICTIONS AND THEY ARE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, IN VIOLATION OF DEFENDANT-APPELLANT'S RIGHTS TO DUE PROCESS OF LAW AND A FAIR TRIAL GUARANTEED BY AMENDMENTS V AND XIV OF THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION.
>
> [2.] THE TRIAL COURT ERRED, IN VIOLATION OF DEFENDANT-APPELLANT'S RIGHTS TO DUE PROCESS OF LAW UNDER THE CONSTITUTIONS OF THE UNITED STATES AND THE STATE OF OHIO, WHEN IT ORDERED BY WAY OF AMENDED JUDGMENT ENTRY OF JUNE 23, 2009 THAT DEFENDANT-APPELLANT PAY COURT

> COSTS IN THIS MATTER, AS THE COURT DID NOT HAVE JURISDICTION TO AMEND DEFENDANT-APPELLANT'S SENTENCE AT THAT TIME.

{¶5} Appellant contends in his first assignment of error that his convictions are not supported by sufficient evidence and are against the manifest weight of the evidence. The legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different. *State v. Thompkins* (1997), 78 Ohio St.3d 380, paragraph two of the syllabus.

{¶6} The Supreme Court of Ohio delineated the role of an appellate court presented with a sufficiency of the evidence argument in *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two 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. * * *

{¶7} Whether the evidence is legally sufficient is a question of law, not fact. *Thompkins* at 386. Indeed, in determining the sufficiency of the evidence, an appellate court must give "full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson v. Virginia* (1979), 443 U.S. 307, 319, 99 S.Ct. 2781, 2789. Consequently, the weight of the evidence and the credibility of the witnesses are issues primarily determined by the trier of fact. *State v. Yarbrough,* 95 Ohio St.3d 227, 2002-Ohio-2126, ¶79; *State v. Thomas* (1982), 70 Ohio St.2d 79, 80. A verdict will not be

disturbed unless, after viewing the evidence in the light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh* (2001), 90 Ohio St.3d 460, 484; *Jenks* at 273.

{¶8} A manifest weight of the evidence claim requires a different review. The weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *State v. Brindley,* 10th Dist. No. 01AP-926, 2002-Ohio-2425, ¶16. When presented with a challenge to the manifest weight of the evidence, an appellate court, 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 [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.' " *Thompkins* at 387 (quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175). An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*

{¶9} A defendant is not entitled to a reversal on manifest weight grounds merely because inconsistent evidence was presented at trial. *State v. Raver,* 10th Dist. No. 02AP-604, 2003-Ohio-958, ¶21. Neither is a conviction against the manifest weight of the evidence because the trier of fact believed the state's version of events over the appellant's version. *State v. Gale,* 10th Dist. No. 05AP-708, 2006-Ohio-1523, ¶19; *State v. Williams,* 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶17. The trier of fact is free to believe or disbelieve all or any of the testimony. *State v. Jackson* (Mar. 19, 2002), 10th Dist. No. 01AP-973; *State v. Sheppard* (Oct. 12, 2001), 1st Dist. No. C-000553. The trier

of fact is in the best position to take into account inconsistencies, along with the witnesses' manner and demeanor, and determine whether the witnesses' testimony is credible. *State v. Williams,* 10th Dist. No. 02AP-35, 2002-Ohio-4503, ¶58; *State v. Clarke* (Sept. 25, 2001), 10th Dist. No. 01AP-194. Consequently, an appellate court must ordinarily give great deference to the fact finder's determination of the witnesses' credibility. *State v. Covington,* 10th Dist. No. 02AP-245, 2002-Ohio-7037, ¶28; *State v. Hairston,* 10th Dist. No. 01AP-1393, 2002-Ohio-4491, ¶74.

{¶10} Although sufficiency and manifest weight are different legal concepts, manifest weight may subsume sufficiency in conducting the analysis; that is, a finding that a conviction is supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *State v. Braxton,* 10th Dist. No. 04AP-725, 2005-Ohio-2198, ¶15 (citing *State v. Roberts* (Sept. 17, 1997), 9th Dist. No. 96CA006462. "[T]hus, a determination that a conviction is supported by the weight of the evidence will also be dispositive of the issue of sufficiency." Id. In that regard, we first examine whether appellant's convictions are supported by the manifest weight of the evidence. *State v. Sowell*, 10th Dist. No. 2008-Ohio-3285, ¶89.

{¶11} Appellant argues the state failed to prove that he was the person driving the Toyota Camry on the night of January 8, 2009. Appellant points out that no witness testified that he was the driver of the Camry or that he was even inside the car. While appellant concedes that the circumstantial evidence presented could prove that he was the driver of the car, he nevertheless claims that it was conceivable that another person could have been the driver of the car and could have fled the area.

{¶12} Appellant is correct that the state's case against him is entirely circumstantial. No one testified that appellant was driving the Camry during the high speed chase on the night in question. In fact, no one saw appellant inside the car. However, it is well-established that circumstantial evidence possesses the same probative value as direct evidence. *Sowell* at ¶92 (citing *Treesh*). Here, police officers chased a stolen car. One officer testified that he was able to look inside the car during the chase and thought it was "pretty clear" that there was only one person in the car. (Tr. at 115.) After the car stopped in a field, the officers on the ground were informed that the driver had exited the car and was traveling through a wooded area. Officers apprehended appellant as he left that wooded area, less than 500 feet away from the car. Officers saw no other people in the area.

{¶13} In light of this circumstantial evidence, we cannot say that the jury clearly lost its way in concluding that appellant was the driver of the car. Accordingly, appellant's convictions are not against the manifest weight of the evidence. This resolution is also dispositive of appellant's claim that his convictions were not supported by sufficient evidence. *Sowell*. Appellant's first assignment of error is overruled.

{¶14} Appellant contends in his second assignment of error that the trial court erred when it modified his sentence in an amended sentencing entry by increasing the severity of his punishment after he began serving his sentence. We disagree.

{¶15} The transcript of appellant's sentencing hearing indicates that the trial court sentenced appellant to a total prison term of 54 months. The trial court also denied appellant's request for a waiver of court costs. The next day, the trial court filed a judgment entry setting forth appellant's sentence. The entry did not include any reference

to court costs. Subsequently, the trial court filed an amended judgment entry in which it ordered appellant to pay court costs in the amount of $1,409. Appellant claims the trial court lacked the authority to amend its previous judgment entry. We disagree.

{¶16} The Double Jeopardy Clauses of the United States and Ohio Constitutions bar a trial court from modifying a sentence by increasing it after execution of that sentence has commenced. *U.S. v. Benz* (1931), 282 U.S. 304, 307, 51 S.Ct. 113, 114; *State v. Parsons* (1997), 122 Ohio App.3d 284, 286. However, these constitutional guarantees against double jeopardy do not preclude a trial court from correcting an erroneous sentencing entry so that it accurately reflects the penalty imposed at the sentencing hearing, regardless of whether the defendant has already begun to serve his sentence. Id.; see also Crim.R. 36 ("[c]lerical mistakes in judgments, orders, or other parts of the record, and errors in the record arising from oversight or omission, may be corrected by the court at any time"); *State v. Kring*, 10th Dist. No. 07AP-610, 2008-Ohio-3290, ¶18 (quoting *State v. Francis* (Jan. 25, 2000), 5th Dist. No. 98CA13) (" '[a] nunc pro tunc entry may be used to correct a sentencing entry to reflect the sentences the trial court actually imposed on a defendant at the sentencing hearing and does not constitute an increase of the sentence.' ").

{¶17} A trial court must assess court costs against a convicted defendant. See *State v. Moody*, 10th Dist. No. 06AP-1034, 2007-Ohio-2938, ¶6 (citing *State v. White*, 103 Ohio St.3d 580, 2004-Ohio-5989) (noting that R.C. 2947.23 requires court to assess costs against all convicted defendants). Therefore, the trial court was required to impose court costs against appellant. However, the trial court failed to include court costs in its original sentencing entry. The trial court had the authority to correct that omission by filing

an amended sentencing entry which accurately reflected the sentence actually imposed on appellant at his sentencing hearing. *Kring* at ¶19. Accordingly, we overrule appellant's second assignment of error.

{¶18} In conclusion, we overrule appellant's two assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and CONNOR, JJ., concur.