

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

City of Columbus, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 09AP-1062
 : (M.C. No. 2009 TRD 189432)
 Norman L. Hawkins, III, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on August 31, 2010

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

Norman L. Hawkins, III, pro se.

APPEAL from the Franklin County Municipal Court.

BRYANT, J.

{¶1} Defendant-appellant, Norman L. Hawkins, III, appeals from a judgment of the Franklin County Municipal Court finding him guilty of failing to use a turn signal in violation of Columbus City Code 2131.14 and failure to wear a seatbelt in violation of R.C. 4513.263(B)(1). Although defendant does not specify an assigned error, as best we can discern he contends that the judgment of the trial court is against the manifest weight of

the evidence. Because the trial court's judgment is not against the manifest weight of the evidence, we affirm.

I. Facts and Procedural History

{¶2} On September 11, 2009, Officer Darryl R. Wiedmann, a patrol officer with the Columbus Division of Police, stopped defendant for failing to use a turn signal. On stopping defendant, Officer Wiedmann observed defendant was not wearing a seatbelt and charged defendant with a violation of R.C. 4513.263(B)(1). Defendant entered a not guilty plea and requested a speedy trial. Due to defendant's late arrival for the trial scheduled on October 1, 2009, the trial was reassigned to October 16.

{¶3} The trial court conducted a bench trial where both Officer Wiedmann and defendant testified. At the conclusion of the trial, the trial court found defendant guilty of both offenses and sentenced defendant accordingly.

II. Assignment of Error—Manifest Weight of the Evidence

{¶4} In his single assignment of error, defendant contends the trial court's judgment is against the manifest weight of the evidence. In essence, defendant contends that the evidence, when properly weighed, does not support his convictions.

{¶5} When presented with a manifest weight argument, we engage in a limited weighing of the evidence to determine whether sufficient competent, credible evidence supports the jury's verdict to permit reasonable minds to find guilt beyond a reasonable doubt. *State v. Conley* (Dec. 16, 1993), 10th Dist. No. 93AP-387; *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387 (noting that "[w]hen a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution

of the conflicting testimony"). Determinations of credibility and weight of the testimony remain within the province of the trier of fact. *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. The jury thus may take note of any inconsistencies and resolve them accordingly, "believ[ing] all, part or none of a witness's testimony." *State v. Raver*, 10th Dist. No. 02AP-604, 2003-Ohio-958, at ¶21, citing *State v. Antill* (1964), 176 Ohio St. 61, 67.

{¶6} Columbus City Code 2131.14(A) provides that "[n]o person shall turn a vehicle or move right or left upon a street or highway * * * without giving an appropriate signal in the manner hereinafter provided." According to the section, the "stop or turn signal required by this section shall be given either by means of the hand and arm, or by signal lights that clearly indicate to both approaching and following traffic intention to turn or move right or left." R.C. 4513.263(B)(1) provides that "[n]o person shall * * * [o]perate an automobile on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device."

{¶7} According to the state's evidence, Officer Wiedmann, an officer with the Columbus Division of Police, was on routine patrol on September 11, 2009 during his 6:30 p.m. to 4:30 a.m. shift. Seated in a cruiser with another officer, Wiedmann first saw defendant from the opposite side of the street: as Wiedmann "was facing northbound, [defendant] came southbound on Waverly, made a complete stop at the stop sign, didn't have any turn signal on at all, [and] made an eastbound turn." (Tr. 7.) Wiedmann "initiated a traffic stop for the failure to signal." (Tr. 7.) When the officers pulled defendant over, Wiedmann, as was his practice, kept an eye on any movement defendant might make "to see whether they're taking [the seatbelt] on or off, but I didn't see him put it on or off.

When I came up to the window, he did not have it on." (Tr. 9.) As a result, Wiedmann issued a traffic citation to defendant for both defendant's failure to signal and failure to wear a seatbelt.

{¶8} Contrary to Wiedmann's testimony, defendant testified that damage to the steering column of his vehicle left his turn signal apparatus partially inoperative. Although it worked to signal a right turn, defendant was forced to use a hand signal for a left turn. Defendant testified that on the night he was issued the traffic citation, Wiedmann's cruiser was in the "alley of Main Street." (Tr. 17.) Defendant was "going straight" when "he got behind me." (Tr. 17.) Defendant turned right; the cruiser turned right behind him. The officer then turned on the cruiser's lights and stopped defendant. Defendant stated he was wearing his seatbelt, but normally takes it off to reach for his wallet and "have everything ready so the officers would feel comfortable with grabbing [his] credentials." (Tr. 17.)

{¶9} The parties' evidence could hardly be more divergent. The officer testified defendant, using no signal, turned left as the officer observed him from a northbound lane; defendant testified that, using his car's right turn signal, he turned right with the officer behind him. The officer testified defendant was not wearing a seatbelt; defendant testified he was wearing a seatbelt. The trial court was charged with the responsibility of resolving the disputed evidence by weighing the credibility of the witnesses and determining which testimony, based on its credibility assessment, was more persuasive. The trial court found the officer's testimony more persuasive, and the record presents no basis for our substituting our judgment for that of the trial court in resolving the credibility issue the evidence presented. *DeHass; Raver, supra.*

{¶10} Defendant's single assignment of error is overruled and the judgment of the Franklin County Municipal Court is affirmed. Plaintiff's motion to strike defendant's brief and dismiss the appeal for failure of defendant to comply with the requirements of App.R. 16 is denied as moot.

*Motion denied;
judgment affirmed.*

BROWN and McGRATH, JJ., concur.
