

[Cite as *Columbus v. Flowers*, 2010-Ohio-5081.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus,	:	
	:	
Plaintiff-Appellee,	:	
	:	No. 10AP-32
v.	:	(M.C. No. 09-202435)
	:	
Lawrence L. Flowers,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellant.	:	

D E C I S I O N

Rendered on October 19, 2010

Richard C. Pfeiffer, Jr., Lara N. Baker, Melanie R. Tobias, and Orly Ahroni, for appellee.

Lawrence L. Flowers, pro se.

APPEAL from the Franklin County Municipal Court.

BROWN, J.

{¶1} This is an appeal by defendant-appellant, Lawrence L. Flowers, from a judgment of the Franklin County Municipal Court finding appellant guilty of violating Columbus City Code ("C.C.") 2131.18.

{¶2} On October 24, 2009, appellant was involved in a two-car collision at the intersection of Lockbourne Road and East Kossuth Street, Columbus. Appellant was cited for failing to yield at a stop sign, in violation of C.C. 2131.18(a). On December 15, 2009, the trial court conducted a bench trial. At trial, Columbus Police Officer Gregory

Parini testified that he was dispatched to the scene of a car accident on Lockbourne Road on October 24, 2009. After speaking with individuals at the scene, Officer Parini cited appellant with failure to yield the right of way at a stop sign.

{¶3} Michael Sharpe, the driver of the other vehicle, testified that he was driving north on Lockbourne Road on October 24, 2009. As he approached the intersection of Lockbourne Road and East Kossuth Street, appellant "didn't stop at the stop sign, he just rolled right through the stop." (Tr. Dec. 15, 2009 at 29.) Sharpe stepped on his brake and "tried to swerve to avoid him," but appellant's vehicle hit Sharpe's vehicle "dead center in the middle of the car." (Tr. Dec. 15, 2009 at 29.) Sharpe denied waving appellant into the intersection.

{¶4} At the close of the state's case-in-chief, appellant stated he would not be presenting any testimony. The trial court found appellant guilty of violating C.C. 2131.18(a). By entry filed December 15, 2009, the court imposed a fine of \$75, plus court costs.

{¶5} On appeal, appellant sets forth the following assignment of error for this court's review:

COLUMBUS OHIO FRANKLIN COUNTY MUNICIPAL
COURT JUDGE SCOTT D. VANDERKARR COURTROOM
12D ERRED IN TRAFFIC CASE TRD 2009 202435 BY
OVERRULING THE "MOTION TO DISMISS TRAFFIC
TICKET NO. 1235661 – AS A MATTER OF LAW" FILED BY
DEFENDANT/APPELLAN[T]; THEN DENYING HIM DUE
PROCESS AND EQUAL PROTECTION OF HIS RIGHTS
AND IMMUNITIES AS REQUIRED BY THE PROVISIONS
OF AMENDMENT XIV OF THE CONSTITUTION OF THE
UNITED STATES.

{¶6} We initially note that, although appellant's pro se brief contains a statement of issues for review, a number of those issues are not separately argued. In this respect,

an appellate court is only required to address issues that are both assigned as error and briefed, and "App.R. 12(A)(2) permits a court of appeals to disregard any issue that is assigned, but not separately argued." *Catalano v. Pisani* (1999), 134 Ohio App.3d 549, 552.

{¶7} Appellant first disputes the testimony presented at trial; specifically, appellant contends he was "waived out" into the intersection by the other driver. We construe appellant's argument as a challenge to his conviction on manifest weight grounds.

{¶8} In considering whether a conviction is against the manifest weight of the evidence, an appellate court "must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trial court clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Columbus v. Shirkey*, 10th Dist. No. 08AP-752, 2009-Ohio-1329, ¶21, citing *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52; *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Further, "[t]he determination of witness credibility and the weight to be afforded to that testimony is solely within the province of the trier of fact who observed the witnesses in person." *Shirkey* at ¶21, citing *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus.

{¶9} C.C. 2131.18(a) states as follows:

Except when directed to proceed by a law enforcement officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, but if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting

roadway before entering it. After having stopped, the driver shall yield the right-of-way to any vehicle or pedestrian in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection or junction of roadways.

{¶10} As noted above, the driver of the other vehicle, Sharpe, testified that appellant did not stop at the stop sign, but rather "just rolled right through the stop." Sharpe attempted to brake, but appellant's car hit Sharpe's vehicle "dead center in the middle of the car." Sharpe further testified that he did not waive appellant into the intersection. Officer Parini testified that he interviewed appellant and the other driver at the scene and, based upon his investigation, determined that appellant was at fault "due to the fact that he had a stop sign," while the other driver "did not have any stop sign or traffic light" and "had the right of way." (Tr. Dec. 15, 2009 at 10.)

{¶11} While appellant argues on appeal that he was "waived out" by the other driver, appellant called no witnesses at trial, nor did he offer any documents into evidence. In reaching its verdict, the trial court obviously found the evidence presented by Sharpe and Officer Parini to be credible. The evaluation of evidence and the credibility of witnesses are matters for the trier of fact, and an appellate court is "bound to accept those facts as true if they are supported by competent, credible evidence." *State v. Oliver*, 112 Ohio St.3d 447, 2007-Ohio-372, ¶1. After reviewing the transcript, we cannot conclude that the trial court clearly lost its way and created a manifest miscarriage of justice in accepting the testimony of these witnesses in convicting appellant of failure to yield.

{¶12} Appellant also contends he was denied due process because he was not provided certain information to prepare for trial, including the name of the owner, the

vehicle identification number, and the insurer of the other vehicle. By way of background, the case was initially set for trial on November 16, 2009. Appellant, however, failed to appear, and the trial court set another trial date for December 2, 2009. On that date, appellant requested a continuance "so I can have some witnesses." (Tr. Dec. 2, 2009 at 2-3.) Appellant also argued that he was "denied valuable evidence at the crash site, like the VIN number of the other car, the name of the insurer, or the name of the owner of the other car." (Tr. Dec. 2, 2009 at 4.) Appellant acknowledged he had not filed any requests for discovery.

{¶13} The assistant city prosecutor noted that the name of the other driver was "Michael Sharpe." (Tr. Dec. 2, 2009 at 7.) The assistant prosecutor also indicated that appellant had requested to see a copy of the accident report that morning, and that "I let him look at my paperwork." (Tr. Dec. 2, 2009 at 11.) The trial court then requested that the prosecutor make copies of that information to be provided to appellant.

{¶14} The court also indicated that it would "go through it with [appellant] on the record and have him show me where there's something that he needs to get discovery on * * * before I would give a continuance." (Tr. Dec. 2, 2009 at 11.) Officer Parini was present at the December 2, 2009 proceedings, and the trial court questioned the officer as to whether, in addition to the information in the traffic crash report, there were "any other names of any witnesses, addresses, telephone numbers that you can provide to the Court or to the defendant to subpoena to have here to testify about this accident?" (Tr. Dec. 2, 2009 at 12.) The officer responded, "[n]o, sir." (Tr. Dec. 2, 2009 at 12.)

{¶15} The trial court then agreed to grant appellant a two-week continuance, rescheduling the trial for December 15, 2009. The court further noted on the record:

"Now, to make it clear, the defendant has verbally asked for discovery and the defendant has been given physically all of the reports that the State has, every single piece of paper. So all discovery from the State has been given." (Tr. Dec. 2, 2009 at 18.)

{¶16} Thus, the transcript of proceedings indicates that appellant was provided all available information by the prosecutor without having filed a motion for discovery, and that the trial court granted him a two-week continuance to locate any other witnesses and to prepare for trial. Here, the manner in which the trial court handled appellant's discovery requests did not result in a violation of his due process rights.

{¶17} Appellant further questions whether a form provided by Officer Parirni for exchange of information was in compliance with Columbus Police Division Directive 3.31. At trial, Officer Parini testified that this directive referred to a paper to be filled out by the parties, and that he provided Sharpe and appellant with this paper. The officer's testimony was uncontroverted, and, thus, there is no basis in the record to find that the exchange was not in compliance; nor would the mere failure of an officer to follow a directive constitute a per se violation of due process.

{¶18} Based upon the foregoing, appellant's single assignment of error is without merit and is overruled, and the judgment of the Franklin County Municipal Court is hereby affirmed.

Judgment affirmed.

TYACK, P.J., and CONNOR, J., concur.
