

[Cite as *State v. Campbell*, 2011-Ohio-1246.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

---

JOURNAL ENTRY AND OPINION  
**No. 95248**

---

**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**TERRENCE CAMPBELL**

DEFENDANT-APPELLANT

---

**JUDGMENT:  
AFFIRMED**

---

Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-530933

**BEFORE:** Jones, J., Blackmon, P.J., and Keough, J.

**RELEASED AND JOURNALIZED:** March 17, 2011

## **ATTORNEY FOR APPELLANT**

Thomas A. Rein  
Leader Building, Suite 940  
526 Superior Avenue  
Cleveland, Ohio 44114

## **ATTORNEYS FOR APPELLEE**

William D. Mason  
Cuyahoga County Prosecutor

BY: Margaret A. Toia  
Assistant Prosecuting Attorney  
The Justice Center, 8<sup>th</sup> Floor  
1200 Ontario Street  
Cleveland, Ohio 44113

## **LARRY A. JONES, J.:**

{¶ 1} Defendant-appellant, Terrence Campbell (“Campbell”), appeals his conviction for failure to comply with the order or signal of police officer. Finding no merit to the appeal, we affirm.

{¶ 2} In 2009, Campbell was charged with failure to comply with the order or signal of police officer with a furthermore clause that he operated a motor vehicle such that he caused a substantial risk of serious physical harm to persons or property and with a one-year firearm specification; receiving stolen property; carrying a concealed weapon; and having

weapons while under disability. Prior to trial, the state dismissed the weapons while under disability charge.

{¶ 3} In April 2010, Campbell waived his right to a jury trial and a bench trial commenced for Campbell and his co-defendant, Ulysses Gamble. The trial court convicted Campbell of failure to comply but acquitted him of the accompanying firearm specification and all other charges. The court acquitted Gamble of all charges.

{¶ 4} The following evidence pertinent to Campbell's conviction for failure to comply was adduced at trial.

{¶ 5} Dyonne Powell ("Powell") testified that her Kia Optima was stolen from her house in October 2009. In early November, the East Cleveland police informed Powell that her car had been involved in a police chase and recovered, and she testified that the car sustained \$3,000 of damage to its front end.

{¶ 6} On November 5, 2009, East Cleveland police officer Antonio Malone was working with his partner, driving an unmarked police car. The officers observed a known drug addict flag down a tan Kia Optima on Euclid Avenue. Officer Malone radioed in the license plate of the Kia and dispatch advised him that the car was stolen. Officer Malone turned on his lights and sirens and attempted to effectuate a traffic stop. The Kia, driven by Campbell, began proceeding eastbound on Euclid and then turned south onto Allandale, a residential street. Immediately after he turned the corner onto Allandale, Campbell passed within five feet of two Cuyahoga County Sheriff deputies who were standing outside their

cruiser; Officer Malone estimated Campbell was traveling 40-50 m.p.h. down that street. Campbell then turned eastbound onto Terrace Road, another residential street, traveling about 35-40 m.p.h. Campbell next turned northbound onto Burnette and made a quick turn into the driveway of a residence. Campbell drove down the long driveway, across the backyard, and crashed into a metal fence, knocking it down. Campbell jumped out of the car and fled. Officer Malone caught him after a short foot chase. Officer Malone testified that the entire pursuit lasted approximately ten minutes.

{¶ 7} Campbell testified that he borrowed the Kia from a man named “Slim” so he could visit the mother of his soon-to-be-born child. Campbell picked up Gamble at a car wash. Campbell testified that he was driving on Euclid Avenue when he was flagged down by a man. He admitted he saw the police behind him and decided to drive off, turning on the first side street. He testified that the police car did not activate its lights until he was on Allandale. He remembered passing another police car and admitted driving close to the cruiser, but testified that he was not driving fast at that time. Campbell testified that he thought he was driving “a little bit” over the 25 m.p.h. speed limit, maybe 35-40 m.p.h. at the most. Campbell admitted he knew the police were trying to pull him over, but did not stop because he did not want to be arrested for his warrants and miss the birth of his son.

{¶ 8} After finding Campbell guilty of failure to comply with the order or signal of police officer with the furthermore specification, the trial court sentenced him to one year in prison.

{¶ 9} Campbell now appeals, raising the following two assignments of error, which will be combined for our review:

“I. The trial court erred in denying appellant’s motion for acquittal as to the charge when the state failed to present sufficient evidence to sustain a conviction.

“II. Appellant’s conviction is against the manifest weight of the evidence.”

{¶ 10} An appellate court’s function in 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. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 11} While the test for sufficiency of the evidence requires a determination of whether the prosecution has met its burden of production at trial, a manifest weight challenge questions whether the prosecution has met its burden of persuasion. *State v. Thompkins*, 78 Ohio St.3d 380, 390, 1997-Ohio-52, 678 N.E.2d 541. When considering a manifest weight claim, a reviewing court must examine the entire record, weigh the evidence, and consider the credibility of witnesses. *State v. Thomas* (1982), 70 Ohio St.2d 79, 80, 434 N.E.2d 1356. The court may reverse the judgment of conviction if it appears that the fact finder “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, 485 N.E.2d 717. A judgment should be reversed as against the manifest weight of the evidence “only in the exceptional case in which the evidence weighs heavily against the conviction.” *Thompkins* at 387. A finding that a conviction was supported by the manifest weight of the evidence necessarily includes a finding of sufficiency. *Id.* at 388.

{¶ 12} R.C. 2921.331(B) provides that “[n]o person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person’s motor vehicle to a stop.” This offense is a misdemeanor of the first degree unless the trier of fact finds that “[t]he operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.” R.C. 2921.331(C)(5)(a)(ii). Such a finding elevates a violation of R.C. 2921.331 from a misdemeanor of the first degree to a felony of the fourth degree.

{¶ 13} On appeal, Campbell does not claim that the state failed to provide sufficient evidence that he failed to comply with an order or signal of police officer; instead, Campbell argues that the state failed to prove the furthermore specification, that he operated a motor vehicle such that he caused a substantial risk of serious physical harm to persons or property. He maintains that since the state failed to prove the furthermore clause, then the trial court also “lost its way” in finding that he operated the vehicle so as to cause a substantial risk of serious physical harm to persons or property.

**{¶ 14}** R.C. 2901.01(A)(8) defines “substantial risk” as “a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.” R.C. 2901.01(A)(5) defines “serious physical harm to persons” as any of the following:

“(a) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;

“(b) Any physical harm that carries a substantial risk of death;

“(c) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;

“(d) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;

“(e) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.”

**{¶ 15}** Finally, R.C. 2901.01(A)(6) defines “serious physical harm to property” as any physical harm to property that does either of the following:

“(a) Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace;

“(b) Temporarily prevents the use or enjoyment of the property or substantially interferes with its use or enjoyment for an extended period of time.”

**{¶ 16}** After reviewing the evidence viewed in a light most favorable to the state, we find the evidence the state presented sufficient to establish that Campbell operated the car in a manner such that he caused a substantial risk of serious harm to persons and property.

Officer Malone testified that after he activated the lights and siren on his unmarked police car, Campbell drove off through residential streets, at times traveling 45 to 50 m.p.h. in 25 m.p.h. speed zones. Campbell drove down three residential streets, speeding by a police cruiser and coming within five to six feet from the sheriff deputies standing outside their cruiser. He turned into the driveway of an occupied house, drove down the long driveway and through the backyard before he crashed into and knocked down a metal fence. Powell testified that there was \$3,000 damage to her car. By leading police on a chase, Campbell caused a substantial risk of harm not only to the police chasing him, but also to the sheriff deputies standing outside their cruiser, his passenger, and himself. He also caused harm to property, that being the fence he crashed into and knocked down and the car he damaged. Accordingly, we find sufficient evidence to support Campbell's conviction.

**{¶ 17}** We further conclude that this case is not the exceptional case where the trier of fact clearly lost its way in finding that the state proved the charge beyond a reasonable doubt. In addition to the evidence presented by the state, during Campbell's testimony, he admitted that he was going over the speed limit, saw the lights on the police car, and knew the police were trying to pull him over. His admission that he did not stop because he did not want to be arrested does not mitigate the substantial risk of danger he put himself and others in through his actions in failing to comply with the police.

**{¶ 18}** The first and second assignments of error are overruled.

Accordingly, judgment is affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

---

LARRY A. JONES, JUDGE

PATRICIA A. BLACKMON, P.J., and  
KATHLEEN ANN KEOUGH, J., CONCUR