

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
LAWRENCE COUNTY

STATE OF OHIO,	:	Case No. 18CA22
Plaintiff-Appellee,	:	
v.	:	<u>DECISION AND</u>
DAKOTA NEFF,	:	<u>JUDGMENT ENTRY</u>
Defendant-Appellant.	:	RELEASED 9/23/2019

APPEARANCES:

Gene Meadows, Portsmouth, Ohio, for appellant.

Brigham Anderson, Lawrence County Prosecuting Attorney, and C. Michael Gleichauf, Lawrence County Assistant Prosecuting Attorney, Ironton, Ohio, for appellee.

Hess, J.

{¶1} Dakota Neff appeals his conviction for failing to comply with order or signal of a police officer in violation of R.C. 2921.331(B) and (C)(5)(a)(ii), a third-degree felony, for fleeing from the scene of a traffic stop. Neff contends that the conviction was against the manifest weight of the evidence because there was testimony that the person who fled the scene was another individual, not him. Neff also contends that Dr. Eshenaur testified that, in his medical opinion, Neff could not have stayed in the cold flood waters for an extended time period.

{¶2} The state presented testimony from several witnesses who identified Neff as the individual who was driving the vehicle and fled the scene. And the witness who testified at trial that Neff was not the driver had previously informed law enforcement that Neff was the driver. Thus, the jury could reasonably conclude beyond a reasonable doubt

that this evidence established Neff as the driver who fled the scene of the traffic stop. Additionally, Dr. Eshenaur testified that it was his “best guess” that the fleeing driver had been in the water for 28 minutes; however, he did not have knowledge of the actual length of time. Thus Neff’s conviction for failure to comply with the order or signal of a police officer is not against the manifest weight of the evidence.

{¶3} We reject his argument and affirm his conviction.

I. FACTS

{¶4} Neff was indicted on one count of failure to comply with order or signal of a police officer where the operation of his motor vehicle caused a substantial risk of serious physical harm to persons or property in violation of R.C. 2921.331(B) and (C)(5)(a)(ii), a third degree felony. Neff pleaded not guilty and the matter proceeded to trial, which produced the following evidence.

{¶5} Patrolman Brandon Cochrane testified that he was monitoring traffic on February 18, 2018 and witnessed a black SUV run a red light. Patrolman Cochrane initiated a traffic stop and determined that the passenger was Greg Combs, but the driver did not present a driver’s license and gave Patrolman Cochrane incorrect information concerning his identity. After several attempts to confirm the driver’s identity, Patrolman Cochrane told the driver he would retain him until his identity could be determined. The license plates on the vehicle were registered to a Chevy Camaro owned by Brian Humphrey.¹ While Patrolman Cochrane was in his cruiser, the passenger, Greg Combs, exited the SUV with his hands up and the driver sped away.

¹ Brian Humphrey testified that he had been friends with Dakota Neff and had traded a black Chevy Camaro to Neff several months before the incident. Humphrey testified that Neff was supposed to return the Camaro’s license plates to Humphrey after Neff drove the vehicle home, but he never did.

{¶6} Patrolman Cochrane initiated his siren and followed the driver, who reached speeds of approximately 90 -100 m.p.h. Patrolman Cochrane testified that the driver passed several vehicles and nearly hit two others during the pursuit. After approximately two miles, the driver wrecked into a guardrail and fled on foot. Patrolman Cochrane pursued him down an embankment and into the flooded waters of the Ohio River. Patrolman Cochrane testified that he was in the water approximately eight minutes before turning back; he lost sight of the driver and did not see him again that evening. Patrolman Cochrane returned to his patrol car where the wrecked SUV was sitting and saw the passenger Greg Combs in a different vehicle. Patrolman Cochrane spoke to Combs and Combs handed Patrolman Cochrane his phone, which had Neff's mother on the other end of the line. Patrolman Cochrane had a conversation with Neff's mother.

{¶7} Patrolman Cochrane testified that after he learned the driver was allegedly Dakota Neff, he searched the official records and located a photograph of Neff and positively identify him as the driver. The following day at the direction of Police Chief Randy Thompson, Patrolman Cochrane and other law enforcement officers located and apprehended Neff. Patrolman Cochrane testified that as soon as Neff saw Police Chief Thompson he stated, "I know. I'm sorry. I f-ed up. I shouldn't a ran. I shouldn't a ran last night. I shouldn't a ran tonight."

{¶8} Greg Combs testified that he was the passenger in the vehicle that was stopped by law enforcement after running a red light. Combs testified that the driver was a man named "Curtis Runyon" but Combs admitted that in an earlier audiotaped statement to law enforcement he stated that the defendant Dakota Neff was the driver. Combs testified that he gave the officers Dakota Neff's name because "they come in

playing good cop, bad cop, I was all aggravated over it. Probably slipped up and said his name * * * when I should have said the other person[']s name.”

{¶9} Beverly Chapman testified that she knew Dakota Neff well because Chapman’s daughter and Neff had a child together and Neff was living with her. Chapman testified that at the time of the traffic stop incident, Neff drove a black Envoy SUV. Neff left her house in the black Envoy the morning of the traffic stop incident. Chapman testified that later that evening Chapman, her husband, her daughter, Neff’s parents and Neff’s brother all went to the Chesapeake High School because they had been told that Neff had jumped into the Ohio River close to the high school. Ambulances, the fire department and other law enforcement officials were at the school searching for Neff.

{¶10} Randy Thompson, Chief of Police of the Chesapeake Police Department testified that he has known defendant Neff since Neff was a young boy and he also knew Neff’s parents. Chief Thompson testified that after he learned of the situation, he visited Neff’s mother and informed her. Neff’s mother told Chief Thompson “I know, Greg Combs already called me and told me.” Chief Thompson also met and communicated with Greg Combs and then continued to search for Neff. Chief Thompson also went to the Chesapeake High School where he met again with Neff’s mother and other members of Neff’s family, the fire department, and other law enforcement officers.

{¶11} Chief Thompson testified that they had not located Neff that evening. However, the next morning Chief Thompson learned that Neff may be staying at a property in Rome Township so he contacted Patrolman Cochran, who had initiated the original traffic stop the day before, and several other law enforcement officers to assist him in apprehending Neff. As the officers approached the residence, they saw Neff

standing outside the residence. Neff fled but was apprehended. Chief Thompson testified that Neff told him, “I was going to turn myself in tomorrow. I know I fucked up. I shouldn’t have ran last night and I shouldn’t have ran tonight.”

{¶12} Dr. Steven Eshenaur testified in Neff’s defense. He testified about the effects of exposure of cold water and air on the human body. Dr. Eshenaur reviewed the police call records and estimated that the fleeing driver would have been in the water for approximately 28 minutes and that, without medical intervention, he would have died from exposure to the cold. However, Dr. Eshenaur conceded that the 28 minutes estimate was a “best guess” and he did not know how long the fleeing driver had been in the water. Dr. Eshenaur also testified that based on the records he reviewed, Patrolman Cochrane, who was chasing the fleeing driver, was also in the water for 28 minutes and did not die. In contrast, Patrolman Cochrane testified that he estimated that he was in the water eight minutes, received no medical treatment for hypothermia, and warmed himself with an extra jacket provided to him by another officer.

{¶13} At the close of the case, Neff’s attorney moved for an acquittal under Crim.R. 29 on the ground that the state failed to prove that Neff was the driver and that, based on Dr. Eshenaur’s testimony, whoever went into the water that night did not come back out alive. The trial court denied the motion and the jury found Neff guilty of failure to comply with order or signal of a police officer. The trial court sentenced Neff to a total prison term of 36 months.

II. ASSIGNMENT OF ERROR

{¶14} Neff assigns the following error for our review:

1. THE CONVICTION IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE OF

THE FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND SECTIONS 1 AND 16, ARTICLE I OF THE OHIO CONSTITUTION.

III. LAW AND ANALYSIS

A. Manifest Weight of the Evidence

{¶15} In his sole assignment of error Neff asserts that his conviction for failure to comply with order or signal of police officer was against the manifest weight of the evidence because the state failed to establish that he was the fleeing driver. Additionally, he contends that Dr. Eshenaur established that it would have been impossible for a person to have stayed in the cold water for an extended time.

1. Standard of Review

{¶16} In determining whether a criminal conviction is against the manifest weight of the evidence, we 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 trier of fact clearly lost its way and created such a manifest miscarriage of justice that we must reverse the conviction. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997); *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 119. *State v. Phillips*, 4th Dist. Scioto No. 18CA3832, 2018-Ohio-5432, ¶ 23.

{¶17} To satisfy its burden of proof, the state must present enough substantial credible evidence to allow the trier of fact to conclude that the state had proven all the essential elements of the offense beyond a reasonable doubt. See *State v. Adams*, 2016-Ohio-7772, 84 N.E.3d 155, ¶ 22 (4th Dist.) citing *State v. Eley*, 56 Ohio St.2d 169, 383 N.E.2d 132 (1978), syllabus, (superseded by state constitutional amendment on other

grounds in *State v. Smith*, 80 Ohio St.3d 89, 684 N.E.2d 668 (1997)). However, we are reminded that generally, it is the role of the jury to determine the weight and credibility of evidence. See *State v. Kirkland*, 140 Ohio St.3d 73, 2014-Ohio-1966, 15 N.E.3d 818, ¶ 132. “ ‘A jury, sitting as the trier of fact, is free to believe all, part or none of the testimony of any witness who appears before it.’ ” *State v. Reyes-Rosales*, 4th Dist. Adams No. 15CA1010, 2016-Ohio-3338, ¶ 17, quoting *State v. West*, 4th Dist. Scioto No. 12CA3507, 2014-Ohio-1941, ¶ 23. We defer to the trier of fact on these evidentiary weight and credibility issues because it is in the best position to gauge the witnesses' demeanor, gestures, and voice inflections, and to use these observations to weigh their credibility. *Id.*; *State v. Koon*, 4th Dist. Hocking No. 15CA17, 2016-Ohio-416, ¶ 18.

2. Legal Analysis

{¶18} Failure to comply with order or signal of police officer is prohibited under R.C. 2921.331:

* * *

(B) No 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.

(C)(1) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer.

* * *

(5)(a) A violation of division (B) of this section is a felony of the third degree if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt:

* * *

(ii) The operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

{¶19} Neff contends that there was no evidence that he was the fleeing driver.

However, the state presented evidence that Neff's passenger, Greg Combs, identified him as the driver, Combs telephoned Neff's mother when he learned Neff was fleeing,

and that Neff's family and his girlfriend and her family were all at the scene where Neff entered the Ohio River. Additionally, Patrolman Cochrane testified that he initiated the traffic stop and spoke to the driver, pursued the driver on foot and apprehended the driver the following day. Patrolman Cochrane positively identified Neff as the driver of the vehicle. Additionally, Police Chief Thompson testified that he personally knew Neff and his family for years and when Neff was apprehended, he confessed to fleeing from law enforcement. Dr. Eshenaur testified that he was making a "best guess" about the length of time the fleeing driver spent in the water and conceded that, based on his estimate, Patrolman Cochrane would have also been in the water for about 28 minutes and did not die.

{¶20} The jury did not clearly lose its way or create a manifest miscarriage of justice by finding him guilty of failure to comply with order or signal of a police officer. Consequently, his conviction was not against the manifest weight of the evidence.

IV. CONCLUSION

{¶21} We overrule Neff's assignment of error and affirm the judgment of the trial court.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Lawrence County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed sixty days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the sixty day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the forty-five day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of sixty days, the stay will terminate as of the date of such dismissal.

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

Smith, P.J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY: _____
Michael D. Hess, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.