[Cite as *State v. Zaleski*, 2010-Ohio-5557.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 10AP-101
v.	:	(M.C. No. 2009 CRB 11560)
Voytek Zaleski,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 16, 2010

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

Robert D. Essex, for appellant.

APPEAL from the Franklin County Municipal Court.

FRENCH, J.

{¶1} Defendant-appellant, Voytek Zaleski ("appellant"), appeals the judgment of the Franklin County Municipal Court convicting him of misconduct at an emergency. For the following reasons, we affirm.

{¶2} Appellant was charged with inducing panic, criminal damaging, misconduct at an emergency, and disorderly conduct for shutting off the power to an

apartment complex after firefighters were dispatched there. Appellant pleaded not guilty and waived his right to a jury trial. Before the bench trial, the prosecution moved to dismiss the charge of inducing panic, and the trial court granted the motion.

{¶3} At trial, Chad Story, one of the firefighters dispatched to the apartment complex, testified as follows. When he and the other firefighters arrived at the apartment complex, the fire alarm was ringing. They discovered that there was no fire, but that the alarm was set off by smoke from some food burned by a resident while cooking. Although the firefighters removed the smoke from the building, the alarm continued to ring. They were not sure why the alarm was still ringing, and they looked for the electric panel that would allow them to turn off and reset it. They broke down the door of one room where they thought the electric panel would be, but the panel was not there. At that time, appellant appeared and asked them what they were doing. They told him that they were trying to find the electric panel in order to shut the alarm off, and they asked him to leave, at which time appellant complied. The firefighters next found appellant trying to disconnect the electric meters in order to shut off the electricity. Story told him that his assistance was not needed and ordered him to stop because he could injure himself by tampering with the meters. Appellant left, and the firefighters continued to look for the electric panel.

{¶4} Meanwhile, the firefighters were informed that someone was injured in a fight nearby. Story, who is also a paramedic, and his assistants went to help the injured person, but other firefighters remained at the apartment complex. When Story returned 15 minutes later, he saw the lights go off inside the complex. It was "completely black"

inside the building, and Story was concerned that something happened to the firefighters. (Tr. 21.) Appellant approached, however, and said he had shut off the electricity. Story called the sheriff's department, and a deputy came to file charges against appellant for interfering at the scene. Additionally, an electric company employee came, at the request of the firefighters, and restored the electricity to the apartment complex after discovering that appellant shut off the power by tampering with the electric meters.

{¶5} Next, the parties stipulated that the apartment complex residents would testify that the fire alarm stopped ringing when appellant shut off the power. The prosecution rested its case, and appellant raised a Crim.R. 29(A) motion for acquittal, which the trial court denied.

{¶6} Appellant testified as follows on his own behalf. He has experience in electronics, and, to assist the firefighters, he silenced the fire alarm when he shut off the power to the common areas of the apartment complex by disconnecting an electric meter. He knew that firefighters were in the apartment complex when he shut off the power. He also admitted that someone admonished him not to tamper with the electric meters, but he did not know who it was because he was not looking up from the meters.

{¶7} Appellant rested his case and renewed his Crim.R. 29(A) motion for acquittal. The trial court granted the motion as it pertained to the criminal damaging and disorderly conduct charges. The court denied the motion as it pertained to the misconduct at an emergency charge, however, and it found appellant guilty of that offense.

{¶8} Appellant appeals, raising the following assignments of error:

> First Assignment of Error: The evidence was legally insufficient to support appellant's conviction for Misconduct at Emergency in that the facts presented did not constitute an emergency.
>
> Second Assignment of Error: The Court erroneously overruled appellant's motion for acquittal pursuant to Criminal Rule 29.
>
> Third Assignment of Error: Appellant's conviction was against the manifest weight of the evidence.

{¶9} We address appellant's first and second assignments of error together, where he argues that his conviction for misconduct at an emergency is based on insufficient evidence and that the trial court erred by denying his original and renewed Crim.R. 29(A) motion for an acquittal on that offense. We disagree.

{¶10} A motion for acquittal under Crim.R. 29(A) is governed by the same standard as the one for determining whether a verdict is supported by sufficient evidence. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶37. That standard tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. We examine the evidence in the light most favorable to the state and conclude whether any rational trier of fact could have found that the state proved beyond a reasonable doubt the essential elements of the crime. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough,* 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Jenks* at 273. In determining whether a

conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. See *Jenks,* paragraph two of the syllabus; *Yarbrough* at ¶79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶11} Appellant was convicted of misconduct at an emergency, in violation of R.C. 2917.13(A)(1), for knowingly hampering the lawful operations of firefighters at the scene of an "emergency of any kind." Appellant does not dispute that sufficient evidence established he interfered with the firefighters' duties when he shut the power off at the apartment complex. Instead, he claims there was no emergency at that time.

{¶12} In *State v. Blocker*, 10th Dist. No. 06AP-313, 2007-Ohio-144, ¶51, this court held that, because the term "emergency" in R.C. 2917.13(A)(1) is undefined by statute, the term is given its common, everyday meaning. The common dictionary definition of "emergency" is " ' "an unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate attention." ' " *Blocker* at ¶51, quoting *Wolf v. East Liverpool City School Dist. Bd. of Edn.*, 7th Dist. No. 03 CO-5, 2004-Ohio-2479, ¶40, quoting American Heritage Dictionary (2d College ed.1922).

{¶13} Appellant argues that there was no emergency when he shut off the power to the apartment complex because the firefighters had determined that smoke in the building came from a resident burning food, not from a fire, and the firefighters removed the smoke from the building. But the fire alarm was still ringing after the firefighters removed the smoke from the building. The firefighters needed to turn off and reset the

fire alarm to make sure it was working properly and to keep residents from panicking. To be sure, some of the firefighters left the apartment complex briefly to assist an injured person in a nearby fight, but the crisis with the fire alarm continued while they were gone. In fact, other firefighters remained on the scene trying to gain control of the situation so that they could secure the building.

{¶14} Thus, the record establishes that the malfunctioning fire alarm created a serious and urgent problem demanding the firefighters' immediate attention, and, therefore, that problem constituted an emergency pursuant to R.C. 2917.13(A)(1). Because an emergency existed when appellant interfered with the firefighters' duties by shutting off power to the apartment complex, sufficient evidence supports his conviction for misconduct at an emergency, and the trial court did not err by denying his original and renewed Crim.R. 29(A) motion for acquittal. Consequently, we overrule his first and second assignments of error.

{¶15} In his third assignment of error, appellant argues that his conviction is against the manifest weight of the evidence. We disagree.

{¶16} In determining whether a verdict is against the manifest weight of the evidence, we sit as a " 'thirteenth juror.' " *Thompkins* at 387. Thus, we review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses. Id. Additionally, we 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 the conviction must be reversed and a new trial ordered." Id., quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. We reverse a conviction on manifest

weight grounds for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact * * * unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶10, quoting *State v. Long* (Feb. 6, 1997), 10th Dist. No. 96APA04-511.

{¶17} Appellant points to no facts in the record to support his argument that his conviction is against the manifest weight of the evidence. It is not the duty of this court "to search the record for evidence to support an appellant's argument as to any alleged error." *Franklin Cty. Dist. Bd. of Health v. Sturgill* (Dec. 14, 1999), 10th Dist. No. 99AP-362. In any event, we consider appellant's argument in the interest of justice.

{¶18} Although appellant testified that he shut off the power to the apartment complex in order to assist the firefighters in silencing the fire alarm, the trial court reasonably concluded that his conduct rose to the level of interfering with the firefighters' handling of the emergency from the malfunctioning alarm. He ignored a specific request by Story to leave the electric meters alone and let the firefighters do their job in professionally stopping and resetting the fire alarm. He also risked injury by tampering with the meters, and he unnecessarily shut off the lights in the apartment complex even though the firefighters were only trying to silence the fire alarm. Moreover, the darkened building hampered the firefighters' efforts in finding the electric

panel to solve the problem with the fire alarm, and they were stalled in handling the emergency when they had to call the electric company to their aid.

{¶19} Appellant's conviction for misconduct at an emergency is not against the manifest weight of the evidence. Therefore, we overrule appellant's third assignment of error.

{¶20} To conclude, we overrule appellant's three assignments of error. Thus, we affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

BROWN and CONNOR, JJ., concur.