

[Cite as *Columbus v. Shaffer*, 2012-Ohio-1708.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

City of Columbus,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-535 (M.C. No. 2011 TRD 134157)
William Shaffer,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on April 17, 2012

Richard C. Pfeiffer, Jr., City Attorney; *Lara N. Baker*, City Prosecutor, and *Orly Ahroni*, for appellee.

William Shaffer, pro se.

APPEAL from the Franklin County Municipal Court

KLATT, J.

{¶ 1} Defendant-appellant, William Shaffer, appeals from a judgment of conviction and sentence entered by the Franklin County Municipal Court. For the following reasons, we reverse that judgment, vacate his conviction, and enter a judgment of acquittal.

Factual and Procedural Background

{¶ 2} On the afternoon of May 18, 2011, appellant decided to walk to a local hardware store. To get to that store from his apartment, appellant had to walk south across East Broad Street. Appellant attempted to cross that street at a traffic light at the intersection of East Broad Street and Cedar Cliff. Appellant pushed the button for the pedestrian signal to cross Broad Street and when the vehicular traffic on Broad Street stopped at the red light, he began to cross the street in the crosswalk.

{¶ 3} At that time, Jason Rusnak was stopped in his car at the same intersection waiting to turn right onto Broad Street from Cedar Cliff. Rusnak saw appellant on the northeast side of the intersection. When the traffic light for vehicles on Cedar Cliff turned green, he looked left on Broad Street and saw no oncoming traffic. He then turned right onto Broad Street when his car hit appellant, who was still crossing the street in the crosswalk.

{¶ 4} As a result of the accident, police officers cited appellant with one count of failing to obey a pedestrian control signal in violation of Columbus City Code 2113.05(B). Appellant entered a not guilty plea to the charge and proceeded to a bench trial. At that trial, Rusnak testified to the above version of events. Appellant's testimony was consistent with that version of events, although appellant could not say if the pedestrian signal indicated "Walk" or "Don't Walk" when he crossed the street. Shaun Dillon, one of the police officers that arrived at the scene of the accident, also testified. He testified that appellant told him that he was running across the crosswalk and that he did not know whether he had a "go" or "don't go" signal. Dillon testified that the pedestrian control signal was operational that day and that in his experience, when a driver has a green light, the corresponding pedestrian control signal indicates "Don't Walk."

{¶ 5} The trial court concluded that the city proved that appellant was not properly crossing the street. Accordingly, the court found him guilty as charged and sentenced him accordingly. Appellant appeals from his conviction and sentence. Although appellant does not specifically assign any errors as required by the appellate rules, it is clear that his appeal challenges the evidentiary support for his conviction. In the interest of justice, we will address that concern.

Sufficiency and Manifest Weight of the Evidence

{¶ 6} An appellate court may review the evidence that supports a criminal conviction under two separate standards of review: the sufficiency and/or the manifest weight of the evidence. Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally adequate to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Whether the evidence is legally sufficient to support a verdict is a question of law. *Id.*

{¶ 7} In determining whether the evidence is legally sufficient to support a conviction, "[t]he 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. Robinson*, 124 Ohio St.3d 76, 2009-Ohio-5937, ¶ 34, quoting *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus. A verdict will not be disturbed unless, after viewing the evidence in the light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶ 8} On the other hand, the weight of the evidence concerns the inclination of the greater amount of credible evidence offered to support one side of the issue rather than the other. *Thompkins* at 387. Although there may be sufficient evidence to support a judgment, a court may nevertheless conclude that a judgment is against the manifest weight of the evidence. *Id.*

{¶ 9} When presented with a challenge to the manifest weight of the evidence, an appellate court may not merely substitute its view for that of the trier of fact, but 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 the conviction must be reversed and a new trial ordered. *Id.* at 387. An appellate court should reserve reversal of a conviction as being against the manifest weight of the evidence for only the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Id.*, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983); *State v. Strider-Williams*, 10th Dist. No. 10AP-334, 2010-Ohio-6179, ¶ 12.

{¶ 10} In addressing a manifest weight of the evidence argument, we are able to consider the credibility of the witnesses. *State v. Cattledge*, 10th Dist. No. 10AP-105, 2010-Ohio-4953, ¶ 6. However, in conducting our review, we are guided by the presumption that the jury, or the trial court in a bench trial, " 'is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony.' " *Id.*, quoting *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). Accordingly, we afford great

deference to the jury's determination of witness credibility. *State v. Redman*, 10th Dist. No. 10AP-654, 2011-Ohio-1894, ¶ 26, citing *State v. Jennings*, 10th Dist. No. 09AP-70, 2009-Ohio-6840, ¶ 55. *See also State v. DeHass*, 10 Ohio St.2d 230 (1967), paragraph one of the syllabus (credibility determinations are primarily for the trier of fact). With these standards in mind, we consider the evidence in this case.

{¶ 11} The trial court found appellant guilty of violating Columbus City Code 2113.05(B) (which is itself a violation of Columbus City Code 2113.01) for failing to obey a pedestrian control signal. That section prohibits any pedestrian from starting to cross the roadway in the direction of a signal when the signal displays a "Don't Walk" or upraised palm. Thus, the city had to prove beyond a reasonable doubt that appellant disobeyed a pedestrian signal when he crossed the roadway.

{¶ 12} The city contends that appellant disobeyed a "Don't Walk" pedestrian signal when he crossed Broad Street. To prove that fact, the city first presented Rusnak's testimony, which indicated that his traffic had a green light to proceed through the intersection. Officer Dillon then testified that in his experience, when a driver such as Rusnak has a green light, the corresponding pedestrian control signal would say "Don't Walk."

{¶ 13} The city did not present any direct evidence to prove that appellant started to cross the roadway in the direction of a "Don't Walk" signal. The closest the city came to proving this fact was testimony from Officer Dillon, who testified that the pedestrian control signal was operational that day and that in his experience, when a driver has a green light, the pedestrian control signal for pedestrians crossing in a parallel direction indicates "Don't Walk." However, this testimony is insufficient to prove that appellant had a "Don't Walk" signal, because it does not address the effect of a pedestrian who pushes the button to cross the intersection. As the trial court noted, there are different types of pedestrian control signals. For example, some signals automatically and immediately display a "Walk" signal when the corresponding traffic light turns green. Other signals display the "Walk" signal at some point during the light cycle only when a button is pushed before the traffic light turns green. Appellant testified that he pushed that button before he started to cross Broad Street. There is no evidence in the record that contradicts appellant's testimony. In fact, Officer Dillon's testimony does not address the

impact of the crossing button at all. Given the absence of specific evidence about the operation of this pedestrian control signal (or eyewitness testimony indicating what signal was displayed when appellant crossed the road), the city failed to prove that appellant crossed a roadway in the direction of a signal when the signal displays a "Don't Walk" or upraised palm.

{¶ 14} Because the city presented insufficient evidence to find appellant guilty, we reverse and vacate the judgment of conviction entered by the Franklin County Municipal Court and enter a judgment of acquittal. *State v. Hernandez*, 10th Dist No. 09AP-765, 2010-Ohio-2066, ¶ 21 (remedy for insufficient evidence is to vacate conviction and enter judgment of acquittal).

Judgment reversed; judgment of acquittal entered.

FRENCH and TYACK, JJ., concur.
