

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 12AP-1004
 : (M.C. No. 12CRB-16278)
 Priscilla E. Wheat, :
 : (REGULAR CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on June 6, 2013

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

Yeura Venters, Public Defender, and *Allen V. Adair*, for appellant.

APPEAL from the Franklin County Municipal Court

TYACK, J.

{¶ 1} Priscilla E. Wheat is appealing from her conviction on a charge of obstructing official business in violation of Columbus City Code 2321.31(A). There is reference in the record to a charge of pedestrian in the roadway but that matter is not before us.

{¶ 2} Wheat assigns three errors for our consideration:

First Assignment of Error: The evidence was legally insufficient to support appellant's conviction as the prosecution failed to prove she acted with a purpose to prevent the officers' performance of their duties.

Second Assignment of Error: The court erroneously overruled appellant's motions for acquittal pursuant to Criminal Rule 29.

Third Assignment of Error: Appellant's conviction was against the manifest weight of the evidence.

{¶ 3} Obstructing official business is defined in Columbus City Code 2321.31(A) and reads as follows:

No person, without privilege to do so and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within his official capacity, shall do any act which hampers or impedes a public official in the performance of his lawful duties.

{¶ 4} The complaint filed against Wheat read:

[O]n or about the 29th day of June, 2012 did: without privilege to do so and with purpose to prevent the performance by a public official, to wit: Greg Hudson #2253 and Elizabeth Shepherd #2575, of an authorized act which was within his and her official capacity, to wit: cite Ms. Wheat with 2171.05(B) ccc pedestrian use of shoulder required, physically hamper the said officials in the performance of their lawful duties, to wit: by pulling away, trying to walk away, and pulling leg arms underneath her to prevent handcuffing.

{¶ 5} The sentencing entry signed by the trial judge assigned to the case indicates that Wheat entered a plea of guilty to the charge, but also indicates that Wheat was advised of her right to appeal. In fact, a jury trial occurred and the jury returned a verdict of guilty to the charge.

{¶ 6} All three assignments of error attack the weight or sufficiency of the evidence.

{¶ 7} Sufficiency of the evidence is the legal standard applied to determine whether the case should have gone to the jury. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). In other words, sufficiency tests the adequacy of the evidence and asks whether the evidence introduced at trial is legally sufficient as a matter of law to support a verdict. *Id.* "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*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307 (1979). The verdict will not be disturbed unless the appellate court finds that reasonable minds could not reach the conclusion reached by the trier of fact. *Jenks* at 273. If the court determines that the evidence is insufficient as a matter of law, a judgment of acquittal must be entered for the defendant. *See Thompkins* at 387.

{¶ 8} Even though supported by sufficient evidence, a conviction may still be reversed as being against the manifest weight of the evidence. *Thompkins* at 387. In so doing, the court of appeals, sits as a "thirteenth juror" and, after "reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury 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*, 20 Ohio App.3d 172, 175 (1st Dist.1983); see also *Columbus v. Henry*, 105 Ohio App.3d 545, 547-48 (10th Dist.1995). Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the most "exceptional case in which the evidence weighs heavily against the conviction." *Thompkins* at 387.

{¶ 9} As this court has previously stated, "[w]hile the jury may take note of the inconsistencies and resolve or discount them accordingly, see [*State v.*] *DeHass* [10 Ohio St.2d 230 (1967)], such inconsistencies do not render defendant's conviction against the manifest weight or sufficiency of the evidence." *State v. Nivens*, 10th Dist. No. 95APA09-1236 (May 28, 1996). It was within the province of the jury to make the credibility decisions in this case. *See State v. Lakes* 120 Ohio App. 213, 217 (4th Dist.1964) ("It is the province of the jury to determine where the truth probably lies from conflicting statements, not only of different witnesses but by the same witness.") *See State v. Harris*, 73 Ohio App.3d 57, 63 (10th Dist.1991) (even though there was reason to doubt the credibility of the prosecution's chief witness, he was not so unbelievable as to render verdict against the manifest weight).

{¶ 10} With this legal background, we must review the evidence actually presented at trial.

{¶ 11} The first witness for the prosecution was Elizabeth Shepherd, an officer with the Columbus Division of Police. On June 28 and 29, 2012, she was working routine patrol when she and fellow officer, Gregory Hudson, were dispatched in police cruisers on a nuisance complaint to Lexington Avenue in the city of Columbus. Officer Hudson arrived first and began interviewing the person who called in the complaint. Wheat was standing "a few doors down by a white car." (Tr. 32.)

{¶ 12} Wheat told Officer Shepherd that she was probably the reason for the call. Wheat seemed upset and apparently resented police involvement in what Wheat viewed as a private disagreement.

{¶ 13} The officers broke off contact with Wheat but stayed with their cruisers parked across the street from Wheat's car.

{¶ 14} Wheat got in and out of her car more than once, got in the trunk of the car, then started walking up the middle of Lexington Avenue. She turned and started walking back to her car. Officer Shepherd viewed this walking pattern as a violation of a Columbus City Code provision against pedestrians walking in the roadway and chose to cite Wheat.

{¶ 15} When told she was going to be cited, Wheat "started to turn away, walk away from us." (Tr. 40.) Officer Hudson then grabbed hold of Wheat's arm, but Wheat pulled away.

{¶ 16} Officer Hudson grabbed Wheat's arm again and Officer Shepherd grabbed Wheat's other arm. All three "actually all fell to the ground" but the officer "got her handcuffed at that point." (Tr. 41.) Wheat had gotten only "[m]aybe a step or two" away after being told she was getting a citation before Officer Hudson grabbed her arm. (Tr. 42.)

{¶ 17} Officer Shepherd testified that after the officers grabbed Wheat's arm, Wheat pulled her (Wheat's) arms close to her body and all three went to the ground. Wheat had her own right arm under her body, which made handcuffing Wheat more difficult.

{¶ 18} Officer Gregory Hudson was the second witness to testify at the trial. Officer Hudson responded to a dispatch resulting from a call by Ron Goff saying Wheat, his ex-girlfriend, had come over to his residence and was "causing problems." (Tr. 58.)

{¶ 19} Officer Hudson approached Wheat and was informed that Wheat did not feel she was doing anything illegal, just standing by her car.

{¶ 20} Officer Hudson then approached Ron Goff to talk to him. By the time that discussion was over, Officer Shepherd was with Wheat. Officer Hudson asked Wheat to leave. Wheat refused to leave.

{¶ 21} Officer Hudson was afraid that the situation would deteriorate if the police left, so he and Officer Shepherd decided to stay for awhile.

{¶ 22} The officers asked Wheat to leave again and Wheat again refused, so Officer Hudson wrote Wheat a parking ticket because he viewed Wheat's car as being illegally parked.

{¶ 23} Officer Hudson tried to give the ticket to Wheat, but she refused to accept it. Officer Hudson then put it on the windshield of Wheat's vehicle.

{¶ 24} Wheat then started taking a video of Officer Hudson with her cell phone and told Officer Hudson she was putting him on facebook.

{¶ 25} Next, Wheat started walking away once Officer Shepherd told her she was going to issue the pedestrian in the roadway citation.

{¶ 26} Officer Hudson grabbed Wheat's arm when she started to walk away. Wheat yanked it away and started to walk away again. He and Officer Shepherd then each grabbed an arm. He testified Wheat then started flailing her arms and kicking.

{¶ 27} Wheat testified in her own defense. She recalled both officers as having arrived at the same time and talking to Ron Goff first. They then approached her. Wheat claimed she was on her cell phone talking to an old friend who happened to be a police detective.

{¶ 28} When informed that she was getting a parking ticket, Wheat just looked at Officer Hudson. So the officer placed it on her windshield.

{¶ 29} Wheat tried to measure the distance of her car from the curb, but had no measuring device. Instead, she took a fishing pole and placed it against her tire. She then took pictures of the pole and tire. She also took pictures of the police cruiser.

{¶ 30} Wheat claimed she did not then walk away up the center of the street but went around the side of the cars. Then she realized she had left the parking ticket on her windshield and started returning to get it.

{¶ 31} She recalled the officers then telling her she was being arrested for jaywalking. She, as a result, threw her hands into the air and asked how she could be arrested for jaywalking. She denied trying to walk away.

{¶ 32} On cross-examination, Wheat indicated that Ron Goff was a boyfriend with whom she once lived.

{¶ 33} The jury heard two very different versions of what occurred and chose not to believe Wheat's version. Under the version from the police officers, Wheat forcefully resisted getting the jaywalking citation and tried to prevent the officers from doing their duty with respect to issuing that citation and serving it on her.

{¶ 34} The evidence was sufficient to sustain a conviction for obstructing official business as that offense is defined in Columbus City Code 2321.31(A) set forth above. The first and second assignments of error are overruled.

{¶ 35} The manifest weight of the evidence corresponds with the jury's verdict. This was not a situation where the jury lost its way. Ron Goff was fearful of what Wheat might do if she remained near his residence. The police wanted her to move on and defuse the situation. Wheat wanted to stay. The police version of the encounter was believable and the jury believed it.

{¶ 36} The third assignment of error is overruled.

{¶ 37} All three assignments of error having been overruled, the judgment of the Franklin County Municipal Court is affirmed.

Judgment affirmed.

KLATT, P.J., and T. BRYANT, J., concur.

THOMAS BRYANT, J., retired, of the Third Appellate District, assigned to active duty under the authority of Ohio Constitution, Article IV, Section 6(C).
