[Cite as *State v. Tranovich*, 2009-Ohio-2338.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2008-09-242
	:	O P I N I O N
- vs -		5/18/2009
	:	
JOHN R. TRANOVICH,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY AREA III COURT
Case No. TRD-0804758

Robin N. Piper, Butler County Prosecuting Attorney, Daniel J. Phillips, Daniel G. Eichel, Government Services Center, 315 High Street, 11th Floor, Hamilton, OH 45011-6057, for plaintiff-appellee

Jonathan N. Fox, 8310 Princeton-Glendale Road, West Chester, OH 45069, for defendant-appellant

YOUNG, J.

{¶1} Defendant-appellant, John R. Tranovich, appeals his conviction in the Butler County Area III Court for wrongful entrustment.

{¶2} On June 21, 2008, a West Chester Township police officer arrested Mark Tranovich for driving under suspension. The vehicle driven by Mark, a Jeep, was registered to appellant. Mark is appellant's 20-year-old son; at the time of the offense, Mark resided

with his parents and two other adult siblings. Appellant was charged with wrongful entrustment in violation of R.C. 4511.203. Following a bench trial during which the officer and appellant both testified, the trial court found appellant guilty of wrongful entrustment in violation of R.C. 4511.203, sentenced him to 180 days in jail with the time suspended, and ordered him to pay a $500 fine plus court costs.

{¶3} Appellant appeals, raising two assignments of error.

{¶4} Assignment of Error No. 1:

{¶5} "THE TRIAL COURT ERRED IN FINDING THE DEFENDANT/APPELLANT GUILTY OF VIOLATING [R.C.] 4511.203 WHEN THE STATE FAILED TO PROVE ESSENTIAL ELEMENTS REQUIRED TO SUSTAIN A CONVICTION."

{¶6} Appellant argues that the trial court erred by convicting him of wrongful entrustment in violation of R.C. 4511.203. Appellant asserts the state failed to show beyond a reasonable doubt that he permitted his son Mark to drive the Jeep with actual knowledge or reasonable cause to believe Mark had no legal right to drive. We construe appellant's assignment of error as challenging his conviction on manifest weight grounds.

{¶7} When considering whether a judgment is against the manifest weight of the evidence in a bench trial, an appellate court will not reverse a conviction where the trial court could reasonably conclude from substantial evidence that the state has proved the offense beyond a reasonable doubt. *State v. Eskridge* (1988), 38 Ohio St.3d 56, 59; *State v. Godby*, Butler App. No. CA2005-03-056, 2006-Ohio-205.

{¶8} The appellate court reviews 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 trial court "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52. An appellate court should

vacate a conviction only when the evidence weighs strongly against the conviction. See *State v. Martin* (1983), 20 Ohio App.3d 172.

{¶9} R.C. 4511.203(A) provides in relevant part that "[n]o person shall permit a motor vehicle owned by the person or under the person's control to be driven by another if (1) the offender knows or has reasonable cause to believe that the other person does not have a valid driver's license; [or] (2) the offender knows or has reasonable cause to believe that the other person's driver's license ha[s] been suspended or canceled under Chapter 4510 or any other provision of the Revised Code." R.C. 4511.203(B) makes the fact that the offender lives with the driver prima-facie evidence of the required knowledge under R.C. 4511.203(A)(1) and (2). See R.C. 4511.203(B)(1) and (2); *State v. Gover*, 127 Ohio Misc.2d 82, 2004-Ohio-1343, fn. 10.

{¶10} To prove a violation of R.C. 4511.203, the state was required to establish that at the time of the entrustment of the Jeep to Mark (1) appellant owned or controlled the Jeep, (2) allowed Mark to drive the Jeep, (3) with actual knowledge or reasonable cause to believe, (4) that Mark had no legal right to drive. Appellant does not dispute that on June 21, 2008, the day of entrustment, he owned the Jeep and allowed Mark to drive it, and that Mark resided with him.

{¶11} At trial, the officer testified as to the following: Mark knew he was under suspension when he was arrested by the officer on June 21, 2008. Later that day, the officer talked to appellant on the phone about Mark's citation. During their conversation, appellant asked why Mark was cited, and asked for specific information about the type of suspension his son was under. According to the officer, appellant felt the wrongful entrustment charge "was a revolving door" and was unreasonable. The officer admitted appellant never told him he knew Mark was driving under suspension on June 21, 2008.

{¶12} Following the denial of his Crim.R. 29 motion, appellant testified on his behalf.

Appellant testified he asked the officer why Mark was cited and why the Jeep was impounded. Appellant "was surprised" to learn that Mark was driving under suspension on June 21, 2008, and told the officer he did not know Mark was at the time under suspension. Appellant testified he knew Mark had previously been under suspension for a year but believed they had "cleared up the previous suspension." As appellant stated, "we had previously gone through a year suspension with him where we knew he wasn't driving and he had no citations and we made sure he wasn't driving. [W]e also had insurance for him. And I know it was in force[.]" The insurance was an SR22 insurance bond.

{¶13} Appellant further testified that (1) before June 21, 2008, he never received a notice from the BMV regarding Mark's current suspension; (2) no one, including Mark, informed him of Mark's current suspension; (3) upon talking to the officer, appellant specifically asked Mark if he was under suspension; Mark told him he was not; however, appellant later found out he was; and (4) he and his wife try to find out everything about their children; however, he does not open mail addressed to others.

{¶14} Because knowledge is "a constituent part of the crime under [R.C. 4511.203], it must be alleged and proved. [W]hile it might be prudent, there is no affirmative duty under R.C. 4511.203 for the owner of a vehicle to ascertain the status of the driver's operating rights before lending his vehicle to be driven by another." *Cleveland v. Elkins*, Cuyahoga App. No. 91378, 2008-Ohio-6288, ¶30.

{¶15} The record clearly indicates that appellant knew about Mark's previous suspension. However, given appellant's testimony and the officer's admission that appellant never told him he knew about Mark's current suspension, we find the state failed to prove beyond a reasonable doubt that on June 21, 2008, the day of the entrustment of the Jeep to Mark, appellant knew or had reasonable cause to believe Mark had no legal right to drive. Given the evidence presented, the trial court could not reasonably find that the state proved

the offense of wrongful entrustment under R.C. 4511.203 beyond a reasonable doubt.

{¶16} We therefore find the trial court's judgment contrary to the manifest weight of the evidence. Appellant's first assignment of error is accordingly sustained. We hereby order appellant's conviction reversed and appellant discharged. See *Mason v. Reid* (Dec. 27, 1993), Warren App. No. CA92-12-105 (reversing a bench trial conviction on manifest weight grounds).

{¶17} Assignment of Error No. 2:

{¶18} "THE PRIMA FACIE STANDARD MANDATED BY [R.C.] 4511.203(B) VIOLATES DUE PROCESS BY FORCING THE DEFENDANT TO TESTIFY AND SHIFTS THE BURDEN OF PROOF TO THE DEFENDANT."

{¶19} Appellant argues that the prima facie standard under R.C. 4511.203(B) violates due process by unconstitutionally shifting the burden of proof to the defendant and by forcing the defendant to testify.

{¶20} This assignment of error is moot given our resolution of appellant's first assignment of error. Further, "Failure to raise at the trial court level the issue of the constitutionality of a statute or its application, which issue is apparent at the time of trial, constitutes a waiver of such issue and a deviation from this state's orderly procedure, and therefore need not be heard for the first time on appeal." *State v. Awan* (1986), 22 Ohio St.3d 120, syllabus.

{¶21} Judgment reversed and appellant discharged.

BRESSLER, P.J., and RINGLAND, J., concur.

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