

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

CITY OF SPRINGBORO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2011-02-010
- vs -	:	<u>OPINION</u>
	:	8/15/2011
STEVEN C. HOWARD,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM WARREN COUNTY COURT
Case No. 2010TRD03358

Timothy N. Tepe, 301 East Silver Street, Lebanon, Ohio 45036, for plaintiff-appellee
Steven C. Howard, 25 Eleanor Drive, Springboro, Ohio 45066, defendant-appellant, pro se

RINGLAND, J.

{¶1} Defendant-appellant, Steven C. Howard, appeals pro se from his conviction in the Warren County Court for crossing a roadway outside of the crosswalk. For reasons outlined below, we affirm.

{¶2} On November 7, 2010, appellant was issued a ticket for violating City of Springboro Codified Ordinance 416.03(a) entitled "Crossing Roadway Outside Crosswalk," a minor misdemeanor, after he was seen running through traffic across State Route 741 located in Springboro, Warren County, Ohio. Following a bench trial to the Warren County

Court, appellant was found guilty and ordered to pay a fine of \$25.

{¶3} Appellant now appeals from his conviction, raising two assignments of error for review. For ease of discussion, appellant's two assignments of error will be addressed together.

{¶4} Assignment of Error No. 1:

{¶5} "DID THE MUNICIPAL COURT ERROR [sic] IN FINDING [APPELLANT] GUILTY AFTER SGT. ZIMMARO TESTIFIED [APPELLANT] CROSSED AT THE STREET CORNER OF AN UNMARKED CROSSWALK?"

{¶6} Assignment of Error No. 2:

{¶7} "DID THE PROSECUTION PROVE BEYOND A REASONABLE DOUBT THAT TRAFFIC WAS IMPEADED BY [APPELLANT]?"

{¶8} In his two assignments of error, although not explicit, appellant argues that the city provided insufficient evidence to support his conviction and that his conviction was against the manifest weight of the evidence. We disagree.

{¶9} As this court has previously stated, "a finding that a conviction is supported by the weight of the evidence must necessarily include a finding of sufficiency." *State v. Wilson*, Warren App. No. CA2006-01-007, 2007-Ohio-2298, ¶35; *State v. Urbin*, 148 Ohio App.3d 293, 2002-Ohio-3410, ¶31. In turn, while a review of the sufficiency of the evidence and a review of the manifest weight of the evidence are separate and legally distinct concepts, this court's determination that appellant's conviction was supported by the manifest weight of the evidence will be dispositive of the issue of sufficiency. *State v. Rigdon*, Warren App. No. CA2006-05-064, 2007-Ohio-2843, ¶30, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52; see, e.g., *State v. Rodriguez*, Butler App. No. CA2008-07-162, 2009-Ohio-4460, ¶62.

{¶10} A manifest weight challenge concerns the inclination of the greater amount of

credible evidence, offered in a trial, to support one side of the issue rather than the other. *State v. Clements*, Butler App. No. CA2009-11-277, 2010-Ohio-4801, ¶19. A court considering whether a conviction is against the manifest weight of the evidence must review the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of the witnesses. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶39; *State v. Lester*, Butler App. No. CA2003-09-244, 2004-Ohio-2909, ¶33; *State v. James*, Brown App. No. CA2003-05-009, 2004-Ohio-1861, ¶9. However, while appellate review includes the responsibility to consider the credibility of witnesses and weight given to the evidence, these issues are primarily matters for the trier of fact to decide since it is in the best position to judge the credibility of the witnesses and the weight to be given to the evidence. *State v. Gesell*, Butler App. No. CA2005-08-367, 2006-Ohio-3621, ¶34; *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Therefore, the question upon review is 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. *State v. Good*, Butler App. No. CA2007-03-082, 2008-Ohio-4502, ¶25; *State v. Blanton*, Madison App. No. CA2005-04-016, 2006-Ohio-1785, ¶7.

{¶11} Appellant was charged with violating Springboro Codified Ordinance 416.03(a), a minor misdemeanor, which provides the following:

{¶12} "Every pedestrian crossing a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right of way to all vehicles upon the roadway."

{¶13} In other words, "[i]f a pedestrian crosses a roadway 'at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection,' he or she must 'yield the right of way to all vehicles upon the roadway.'" *Zieger v. Burchwell*, Clermont App. No. CA2009-11-077, 2010-Ohio-2174, ¶16 (discussing the analogous R.C. 4511.48[A])

found in the Ohio Revised Code).

{¶14} In this case, Sergeant Aaron Zimmero, a 12-year veteran with the Springboro Police Department, testified that he issued appellant a ticket for violating Springboro Codified Ordinance 416.03(a) after he saw him "running through traffic" across State Route 741. In further describing the incident, Sergeant Zimmero, who later drew a diagram for the trial court highlighting the area where he saw appellant crossing the street, testified that appellant crossed "just south" of the "intersection of North and South Eleanor" causing oncoming traffic to "visibly slow down to let him get across the rest of the street." Sergeant Zimmero also testified that upon making contact with appellant, appellant told him that "[he] was jaywalking" and asked him to "just write [him] the ticket."

{¶15} In his defense, appellant, who admittedly had "been [to court] four times for walking across the street," testified that upon leaving work at a nearby restaurant he "walked to the intersection," looked both directions, and "physically said out loud to [himself], you know what, I think I can make this one," before walking across the street "at a normal rate." According to appellant, he is simply "being harassed by the City of Springboro and their police department."

{¶16} As in most cases, the outcome of this matter hinged upon the credibility of the witnesses and the weight given to their conflicting testimony at trial. See *State v. Ritchie*, Butler App. No. CA2008-12-304, 2009-Ohio-5280; *State v. Ayers*, Montgomery App. No. 24060, 2011-Ohio-3500, ¶14. These issues, however, are primarily matters for the trier of fact to decide. *State v. Curtis*, Brown App. No. CA2009-10-037, 2010-Ohio-4945, ¶19. In turn, while appellant places great weight on Sergeant Zimmero's testimony during cross-examination that appellant "could have actually crossed at the intersection," the trial court, as the trier of fact, clearly did not. As this court has said previously, the trial court was certainly entitled to give as little or as much weight to this testimony as it deemed appropriate. See

State v. Gaefe, Clinton App. No. CA2001-11-043, 2002-Ohio-4995, ¶19 (trial court in best position to "determine the appropriate weight to be given the evidence"); see, also, *State v. Hall*, Butler App. Nos. CA2005-08-217, CA2005-08-358, 2006-Ohio-4206, ¶76 (trial court "entitled to believe all, part, or none of the testimony of any witness").

{¶17} As the state's evidence indicates, appellant was seen running across State Route 741 just south of the Eleanor Drive intersection causing oncoming traffic to slow down in order for him to cross safely. Although appellant may disagree, based upon this evidence, we simply cannot say the trial court clearly lost its way so as to create a manifest miscarriage of justice requiring his conviction for crossing the roadway outside the crosswalk be reversed. See *State v. Siney*, Warren App. No. CA2004-04-044, 2005-Ohio-1081, ¶60 ("[a] conviction is not against the manifest weight of the evidence merely because the trier of fact believes the testimony of a witness for the state"); see, also, *State v. Sias*, Madison App. Nos. CA2010-01-001, CA2010-02-003, 2010-Ohio-3566, ¶8 ("appellate court will overturn a conviction due to the manifest weight of the evidence only in extraordinary circumstances in which the evidence presented at trial weighs heavily in favor of acquittal"). Therefore, having found no reason to disturb the trial court's finding of guilt, appellant's two assignments of error are overruled.

{¶18} Judgment affirmed.

POWELL, P.J., and PIPER, J., concur.