

[Cite as *State v. Souders*, 2016-Ohio-5568.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
HIGHLAND COUNTY

STATE OF OHIO, :
 :
Plaintiff-Appellee, : Case No. 16CA10
 :
vs. :
 :
JERRY SOUDERS, : DECISION AND JUDGMENT ENTRY
 :
 :
Defendant-Appellant. :

APPEARANCES:

Adam J. King, Hillsboro, Ohio, for appellant.

Anneka P. Collins, Highland County Prosecuting Attorney, and James Roeder, Highland County Assistant Prosecuting Attorney, Hillsboro, Ohio for appellee.

CRIMINAL APPEAL FROM COMMON PLEAS COURT
DATE JOURNALIZED: 8-15-16
ABELE, J.

{¶ 1} This is an appeal from a Highland County Common Pleas Court judgment of conviction and sentence. A jury found Jerry Souders, defendant below and appellant herein, guilty of failure to comply with the order or signal of a police officer in violation of R.C. 2921.331(B). Appellant assigns the following error for review:

“APPELLANT’S CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AS THE GREATER AMOUNT OF EVIDENCE PRESENTED AT TRIAL TENDED TO ESTABLISH THAT APPELLANT WAS AT THE HOME OF RAYJEAN FREDERICKS DURING THE TIME OF THE ALLEGED INCIDENT AND THAT THE SILVER MONTE CARLO OWNED BY APPELLANT’S SISTER WAS

INOPERABLE AT THE TIME IN QUESTION.”

{¶ 2} On the morning of October 5, 2014, Greenfield Police Department Patrolman James Leeth was on routine patrol near the intersection of South McArthur and Jefferson Street when he observed appellant driving a silver Monte Carlo. Patrolman Leeth knew that appellant lacked a valid license and, after appellant made a left turn onto Jefferson Street, the officer “dropped in right behind him” and activated his lights and siren to indicate that appellant should pull-over. Instead, appellant drove away and the officer lost sight of him.

{¶ 3} On November 3, 2015, the Highland County Grand Jury returned an indictment that charged appellant with the aforementioned offense. At the jury trial, Patrolman Leeth related his account of the events. The vehicle in question belonged to appellant’s sister, Erica Souders, who also testified that the vehicle was not operable at the time Patrolman Leeth allegedly observed her brother driving. Additionally, appellant testified that on the day in question he did not drive the vehicle.

{¶ 4} After hearing the evidence, the jury returned a guilty verdict and the trial court sentenced appellant to serve a twenty-four month term of imprisonment. This appeal followed.

{¶ 5} In his sole assignment of error, appellant asserts that the jury’s verdict is against the manifest weight of the evidence. Although not expressly stated, the underlying subtext of appellant’s argument appears to be that although Patrolman Leeth identified appellant as the driver of the vehicle, the testimony of appellant’s sister and the appellant himself that he did not leave his residence on the day in question (except to help his sister move) outweighed the State’s evidence. Generally, an appellate court will not reverse a conviction as being against the

manifest weight of the evidence unless it determines that the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial must be ordered. See *State v. Beverly*, 143 Ohio St.3d 258, 2015- Ohio-219, 37 N.E.3d 116, ¶17; *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶119). Evidence weight and witness credibility are issues that the trier of fact must determine. See *State v. Dye*, 82 Ohio St.3d 323, 329, 695 N.E.2d 763 (1998); *State v. Williams*, 73 Ohio St.3d 153, 165, 652 N.E.2d 721 (1995). Moreover, a jury, as trier of fact, may opt to believe all, part or none of the testimony of any witness who appears before it. See *State v. Nichols*, 85 Ohio App.3d 65, 76, 619 N.E.2d 80 (4th Dist. 1993); *State v. Caldwell*, 79 Ohio App.3d 667, 679, 607 N.E.2d 1096 (4th Dist. 1992); *State v. Colquitt*, 188 Ohio App.3d 509, 2010-Ohio-2210, 936 N.E.2d 76, at ¶10, fn. 1 (4th Dist.); *State v. Owens*, 4th Dist. Gallia App. No. 14CA9, 2016-Ohio-176, ¶54; *State v. Mockbee*, 4th Dist. Scioto No. 12CA3496, 5 N.E.3d 50, ¶13.

{¶ 6} In the case sub judice, we recognize that appellant's sister testified that her grey Monte Carlo was inoperative on the day in question. Appellant also testified that he did not drive his sister's vehicle on the day in question. However, as we noted above, credibility is an issue that the trier of fact must determine. "[B]ias of a witness is always significant in assessing credibility[.]" *State v. Watson*, 2nd Dist. Montgomery No. 26347, 2015-Ohio-4517, 46 N.E.3d 1090, ¶43. Furthermore, "[r]elationships between a party and a witness are always relevant to a showing of bias, whether the relationship is based on ties of family * * *, enmity or fear." *State v. Braxton*, 102 Ohio App.3d 28, 38, 656 N.E.2d 970 (8th Dist.).

{¶ 7} Here, Patrolman Leeth testified that he knew appellant and his family well, and he affirmed that he was "100% positive" that he observed appellant drive the "silver Monte Carlo"

on October 5, 2015. Although appellant and his sister testified that Patrolman Leeth's version of the events was impossible, the jury obviously found Leeth's testimony to be more credible than the testimony of appellant and his sister. The jury may well have found appellant's testimony not credible as too self-serving, and the testimony of his sister biased in favor of a brother for whom she readily admitted she "loved," while Patrolman Leeth's testimony may have been viewed as unbiased and impartial. In these situations, we should not simply second-guess the trier of fact's conclusions.

{¶ 8} Accordingly, based upon the foregoing reasons we hereby overrule appellant's assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed. Appellee to recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Highland County Court of Common Pleas to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of sixty days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the sixty day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the forty-five day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said sixty days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

McFarland, J. & Hoover, J.: Concur in Judgment & Opinion

For the Court

BY: _____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.