[Cite as *State v. Bell*, 2011-Ohio-969.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio — Court of Appeals No. L-10-1066

Appellee — Trial Court No. CR0200802422

v.

Calvin Bell — **DECISION AND JUDGMENT**

Appellant — Decided: March 4, 2011

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Timothy F. Braun, Assistant Prosecuting Attorney, for appellee.

Douglas A. Wilkins, for appellant.

* * * * *

OSOWIK, P.J.

{¶1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, which found appellant guilty of improper handling of a firearm in a motor vehicle, in violation of R.C. 2923.16(E)(1), a fifth-degree felony. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶2} Appellant, Calvin Bell, sets forth the following two assignments of error:

{¶3} "I. The evidence was insufficient to support Appellant's conviction; The conviction was against the manifest weight of the evidence.

{¶4} "II. At the very least, Bell is guilty of a mistake of fact; he did not possess the knowledge or intent to commit the crime."

{¶5} The following undisputed facts are relevant to the issues raised on appeal. At approximately 2:45 a.m., on May 26, 2008, Trooper Borton of the Ohio State Highway Patrol stopped appellant on Angola Road, west of Holland-Sylvania Road in Springfield Township, Ohio. Borton's radar registered appellant traveling at a rate of speed of 46 m.p.h. in a 35 m.p.h. zone. In conjunction with the speeding stop, Borton also observed that the registration sticker on appellant's rear plate was expired.

{¶6} Upon approaching the vehicle, Borton asked to see appellant's driver's license, registration and proof of insurance. Appellant produced none of these items. Instead, appellant produced "an international identification card" that identified him as Aayan Naim Bey. The card also claimed appellant is a Moorish Aboriginal, a supposed government group that, he asserted, trumped the law of the United States. At no time did appellant accurately identify himself as Calvin Bell.

{¶7} During the course of the stop, while Borton was trying to ascertain the true identity of appellant, several other officers arrived on scene to assist him. Among these were Lucas County Deputy Sheriffs Wilichowski and Sobczak. While these officers performed a visual safety search of the inside of the vehicle with their flashlights, they failed to observe a weapon concealed inside the car. Appellant failed to disclose the presence of a firearm inside his car.

{¶8} Subsequent to the arrival of additional deputies on scene, appellant became further agitated and uncooperative. Appellant's belligerence culminated in appellant locking himself in his car. Appellant rolled up the windows and made a cell phone call. This situation lasted approximately five to ten minutes. Only after officers informed him that, if he did not exit the vehicle, they would break the window and forcibly remove him, did appellant finally relent and exit the vehicle.

{¶9} Upon exiting, Wilichowski asked appellant if he was carrying a firearm. Appellant falsely answered no. Appellant was then placed in a squad car. Only upon realizing that his vehicle was going to be towed did appellant disclose to Wilichowski that there was a firearm underneath the driver's seat, and that he had a concealed carry permit. Being advised by Wilichowski of the presence of a firearm, Sobczak then searched the car.

{¶10} Although Sobczak was now apprised of the location of the firearm, he was still unable to see it until he looked underneath the seat. Only then was the

edge of the firearm visible to the officer. Sobczak removed the firearm, a loaded Glock .45, from the car, and, upon a further search recovered an additional magazine for the firearm with six rounds of ammunition, and a box containing an additional 17 rounds of ammunition in the trunk of the car.

{¶11} Appellant was indicted for improper handling of a firearm in a motor vehicle. Appellant waived his right to a jury trial on this charge, and consented to having the matter tried before the trial court judge.

{¶12} During the trial, appellant admitted that he intended to conceal the weapon so that it could not be seen from outside the car and that it was not in plain view, as admittedly required by law. He also conceded that he did not disclose to the officers that there was a weapon in the vehicle until he was inside of Wilichowsk's squad car.

{¶13} Mathew Luettke, a certified firearms inspector who had conducted five or six carrying concealed weapons classes, testified at trial. In his testimony Luettke identified a booklet furnished to all applicants for a CCW permit. Luettke verified appellant's signature on his application affirming that he had received and read the booklet.

{¶14} Significantly, the booklet recites the provision of R.C. 2923.16(E), stating that a loaded handgun can only lawfully be transported in one of three ways. It must either be: (1) "In a holster on your person in plain sight," (2) "[i]n a

closed, locked glove compartment," or (3) "[i]n a case that is in plain sight and that is locked." Luettke also testified that he makes it clear to all his students that, when stopped by a law enforcement officer, you must identify yourself as a CCW permit holder, and inform the officer that you are armed.

{¶15} At the conclusion of a two-day trial, the trial judge found appellant guilty of improper handling of a firearm in a motor vehicle, a fifth-degree felony. Appellant was sentenced to two years of community control and 120 hours of community service. Appellant now appeals his conviction.

{¶16} We note at the onset that appellant's two assignments of error are rooted in the same legal premise and thus will be addressed simultaneously. Appellant asserts that he committed a mistake in fact which goes to his assertion that the verdict was against the manifest weight of the evidence.

{¶17} In determining whether a verdict is against the manifest weight of the evidence, the appellate court "weighs the evidence and all reasonable inferences, and considers the credibility of witnesses." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. The court then makes a determination as to whether in resolving conflicts in the evidence, the factfinder "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Id.* Under this manifest weight standard, the appellate court sits as a

"thirteenth juror" and may disagree with the factfinder's resolution of the conflicting testimony. *Id.*

{¶18} In the present case, we cannot say that a miscarriage of justice has occurred. The overwhelming weight of the evidence clearly supports appellant's conviction.

{¶19} First, we note our agreement with the state that appellant's "misunderstanding" was not a mistake in fact, but a mistake in law. The facts in this matter are clear and unambiguous. Appellant, by his own admission, was transporting a loaded gun that was neither in plain sight nor locked away, as required by law. Appellant's alleged mistake was in his supposed misunderstanding of what the law required of him. A mistake of law defense is not recognized by this state. *State v. Pinkney* (1988), 36 Ohio St.3d 190, 198. Moreover, appellant acknowledged having received and read the booklet which contained the provisions listed in R.C. 2923.16 for carrying a firearm in a motor vehicle. If appellant really did not know the law, his ignorance was by choice. It is an axiomatic legal principle that ignorance of the law is no excuse. *U.S. v. Internatl. Minerals & Chemical Corp.* (1971), 402 U.S. 558, 563. For the aforementioned reasons, appellant's argument is without merit.

{¶20} Nor is there any other evidence in the court record to suggest that the verdict was against the manifest weight of the evidence. Appellant was carrying a loaded weapon in a holster underneath the driver's seat. He failed to inform police that he was transporting a firearm, or that he had a CCW permit until after he was placed in police custody. Several police officers testified that the gun was not in "plain sight," and Sobczak testified that the gun was only visible by bending over and looking under the seat. R.C. 2923.16(E) provides for only three legally permissible ways for a CCW permit holder to transport a loaded weapon. The facts clearly support the determination that appellant did not comply with any of the three.

{¶21} We find that the record shows that there was no mistake of fact and the verdict was not against the manifest weight of the evidence. Appellant's two assignments of error are not well-taken.

{¶22} On consideration whereof, the judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J. _____
JUDGE

Mark L. Pietrykowski, J. _____
JUDGE

Thomas J. Osowik, P.J. _____
CONCUR.
JUDGE