[Cite as *Toledo v. Dandridge*, 2013-Ohio-317.]

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

City of Toledo — Court of Appeals No. L-10-1333

Appellee — Trial Court Nos. CBR-10-10207, TRD-10-12906

v.

Keith D. Dandridge — **DECISION AND JUDGMENT**

Appellant — Decided: February 1, 2013

* * * * *

David Toska, City of Toledo Chief Prosecuting Attorney, and
J. Scott Kunzler, Assistant Prosecuting Attorney, for appellee.

Daniel H. Grna, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Toledo Municipal Court in two cases that were consolidated for trial below. Following a trial to the bench, defendant-appellant, Keith D. Dandridge was found guilty of driving on an expired license, obstructing official business and resisting arrest. The court then sentenced appellant to a $50 fine for driving on an expired license, 45 days in jail for obstructing official business,

suspended on the condition that he perform 45 hours of community service work, and 60 days in jail for resisting arrest, also suspended on the condition that he perform an additional 45 hours of community service work. Appellant now challenges that judgment through the following assignments of error.

Argument One

The trial court violated the appellant's constitutional rights to confront the witnesses against him, to present a defense, to have a fair trial and to due process of law.

Argument Two

The appellant's conviction for obstructing official business was against the manifest weight of the evidence.

Argument Three

The trial court committed error when it failed to grant the appellant's motion for acquittal on the charge of obstructing official business.

Argument Four

The trial court committed prejudicial error when it failed to grant the appellant's motion to dismiss for failure to obtain service of the criminal and traffic charges against him or in the alternative denied him his constitutional right to due process of law by failing to grant him an evidentiary hearing on his motion.

{¶ 2} The facts of this case, as testified to at the trial below, are as follows. On June 24, 2010, at approximately 7:00 p.m., Officer Jon Mugler of the Toledo Police Department initiated a traffic stop of appellant's vehicle near the intersection of Nebraska and Marmion Streets in Toledo, Ohio, because no license plate was visible on the vehicle. Mugler then approached appellant and asked him where his license plate was. Appellant exited the vehicle and showed him the plate, which was in the back seat of the car. Mugler then asked appellant for his driver's license, to which appellant responded "I don't have to give it to you." Appellant eventually revealed that the car was registered to him and that his name was Keith. Mugler then ran the license plate number and learned that the car was registered to a woman whose last name was Dandridge. He then ran the name "Keith Dandridge." While the name came back as a hit, the physical description did not match appellant. Mugler also learned that the driver's license of Keith Dandridge had expired. At that point, appellant was back in the car in the driver's seat and Officer Brian Mitchell had arrived to assist Mugler. Mugler again asked appellant for his driver's license and appellant refused. Mugler then opened appellant's car door and told him he was under arrest. When appellant would not exit the car, Mitchell and Mugler physically attempted to remove appellant from the car at which time appellant wrapped his arms around the back of the seat and hooked his knees under the steering wheel to prevent his removal. With that, the officers sprayed mace in appellant's face and removed him from the car.

{¶ 3} After appellant was arrested, the officers searched his car and found his expired driver's license in the console and determined that he was in fact Keith Dandridge.

{¶ 4} Appellant was charged with driving on an expired license in violation of Toledo Municipal Code 335.01, resisting arrest in violation of Toledo Municipal Code 525.09, obstructing official business in violation of Toledo Municipal Code 525.07, and failure to wear a seat belt. After a bench trial, at which appellant represented himself, appellant was found guilty of driving on an expired license, obstructing official business and resisting arrest and was sentenced accordingly. On appellant's motion for an acquittal, the court dismissed the charge of failure to wear a seat belt.

{¶ 5} In his first assignment of error, appellant cites numerous errors allegedly committed by the trial court which he asserts operated to deny him various constitutional rights.

{¶ 6} Several of these alleged errors address the trial court's rulings regarding a piece of videotape evidence. During his encounter with the officers, appellant pulled out his cell phone and videotaped the encounter. The phone then was collected by the officers and booked into the police property room. Prior to trial, appellant never sought discovery of the recording pursuant to Crim.R. 16. During trial, the state never introduced the video as evidence. Nevertheless, appellant asked to view the video, believing that it would exonerate him. The court told him that because the state was not introducing it into evidence, he would have to wait until the state had rested its case, at

which time appellant could view the tape and decide if he wanted to introduce it into evidence. At the close of the state's case, appellant viewed the video directly from the phone. He then informed the court that he was not going to introduce the video into evidence.

{¶ 7} Appellant now contends on appeal that the lower court violated his right of confrontation because it denied his request to view the video during the state's case in chief, at which time, he asserts, he would have been able to use it to test the veracity of the state's witnesses. He further contends that he was denied his right of confrontation when the lower court denied his request to recall the state's witnesses during his case in chief, when the court refused to allow him to use his notes during his cross-examination of Officer Mugler, when the court refused to allow him to finish his cross-examination of Officer Mugler, and when the court limited his cross-examination of the state's witnesses by preventing him from referring to the video. Appellant's arguments are without merit.

{¶ 8} In all criminal prosecutions, the defendant has a constitutional right to confront the witnesses against him. *Lilly v. Virginia*, 527 U.S. 116, 123, 119 S.Ct. 1887, 144 L.Ed.2d 117 (1999). "'The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.'" *Id.* at 123-124, quoting *Maryland v. Craig*, 497 U.S. 836, 845, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990). In addition, while a defendant has a right to cross-examine the witnesses against him, the "'extent of cross-examination with respect to an appropriate subject of inquiry is within

the sound discretion of the trial court.'" *State v. Green*, 66 Ohio St.3d 141, 147, 609 N.E.2d 1253 (1993), quoting *Alford v. United States*, 282 U.S. 687, 691, 694, 51 S.Ct. 218, 75 L.Ed. 624 (1931).

{¶ 9} In the proceedings below, the state never introduced the video as evidence or used it in any manner. If appellant believed that the recording was exculpatory, he should have introduced it when presenting his own case. The court clearly gave appellant that opportunity. Moreover, because appellant created the recording himself, and was therefore aware of its existence prior to trial, had he believed it could be useful at trial, he should have filed a Crim.R. 16 demand for discovery of it. Crim.R. 16(M) states that such demands are to be filed prior to trial. Accordingly, the lower court did not abuse its discretion or violate appellant's right of confrontation by its treatment of the video at the trial below.

{¶ 10} Appellant next asserts that the lower court prevented him from effectively cross-examining Officer Mugler by refusing to allow him to use his own notes and by denying him the opportunity to complete his cross-examination of him. The record reveals that during his cross-examination of Mugler, appellant started to read from his own notes the following statement: "And so are you aware that traveling in an automobile on a public road when it's not a threat to the public safety or health and constitutes no hazard to the public and will constitute no --." The state objected on the grounds of relevance and that the state did not know what appellant was reading from. The court sustained the objection, told appellant that he was testifying and told him to ask

a question. The court also told appellant that when it was his turn to testify, he could read from his notes. Having reviewed Officer Mugler's direct testimony and his testimony on cross-examination that immediately preceded the quoted question, we can find no error in the trial court's ruling. The objectionable question was completely irrelevant and unrelated to Mugler's direct testimony. We further note that the lower court bent over backwards to steer appellant as to the proper way to ask questions, but appellant would not listen. Despite appellant's insistence on representing himself, the court assigned an attorney to sit with him and answer any questions he may have about proper procedure. Appellant refused the assistance. Appellant cannot now complain that his rights were violated by the court's following proper procedure.

{¶ 11} The first assignment of error is not well-taken.

{¶ 12} Appellant's second and third assignments of error are related and, together, challenge his conviction on obstructing official business. Appellant contends that that conviction was not supported by sufficient evidence and was against the manifest weight of the evidence and that the lower court should, therefore, have granted his motion for acquittal.

{¶ 13} The phrase "sufficiency of the evidence" raises a question of law as to whether the evidence is legally adequate to support a verdict as to all the elements of a crime. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). Under this standard of adequacy, an appellate court must examine "the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the

defendant's guilt beyond a reasonable doubt. 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, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 14} Under a manifest weight standard, the appellate court must sit as the "thirteenth juror" analyzing the entire record to deduce the relative weight of credible evidence. *Thompkins* at 387. However, "the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts." *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus. The conviction should be reversed, and a new trial ordered, only in those "'exceptional case[s] in which the evidence weighs heavily against the conviction.'" *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). Thus, a conviction will only be overturned under the manifest weight standard when the trier of fact "'clearly lost its way and created * * * a manifest miscarriage of justice.'" *Id.*, quoting *Martin* at 175.

{¶ 15} Appellant was convicted of obstructing official business in violation of Toledo Municipal Code 525.07, which reads in relevant part:

> (a) 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.

{¶ 16} That provision is identical in all relevant respects to R.C. 2921.31. To support a conviction for obstructing official business, the state must prove that the accused engaged in an unprivileged affirmative act, that the act was done with a purpose or intent to hamper or impede the performance of a public official's duties, and that the act did, in fact, substantially hamper or impede the public official in the performance of his or her duties. *State v. Mignard*, 6th Dist. No. OT-10-007, 2010-Ohio-5177, ¶ 22, citing *In re Pribanic*, 6th Dist. No. E-90-20, 1991 WL 3818 (Jan. 18, 1991). The complaint charging appellant with obstructing official business alleged that he refused to give Officer Mugler his driver's license or name when he was stopped on a traffic violation, and that he was then arrested after a brief struggle.

{¶ 17} At the trial below, the evidence revealed that after stopping appellant for a minor traffic violation, Officer Mugler asked appellant for his driver's license. Appellant refused to provide it, or to provide his name, other than saying it was "Keith." Officer Mugler testified that after repeatedly and unsuccessfully asking appellant for identifying information, he charged appellant with obstructing official business for not producing his driver's license and for not getting out of the car when ordered to by the officer.

{¶ 18} It is well-settled that "a defendant's refusal to provide his drivers' license to an officer upon request [does] not constitute obstructing official business." *Middletown v. Hollon*, 156 Ohio App.3d 565, 2004-Ohio-1502, 807 N.E.2d 945, ¶ 32 (12th Dist.), citing *State v. McCrone*, 63 Ohio App.3d 831, 835, 580 N.E.2d 468 (9th Dist.1989). Similarly, the mere refusal to answer a police officer's questions regarding

one's identity cannot support a conviction for obstructing official business. *Cleveland Hts. v. Lewis*, 187 Ohio App.3d 786, 2010-Ohio-2208, 933 N.E.2d 1146, ¶ 37 (8th Dist.). However, "when one takes overt acts to impede or obstruct the officer's investigation or business, one may be found guilty of obstructing official business." *State v. Merz*, 12th Dist. No. CA97-05-108, 2000 WL 1051837 (July 31, 2000), citing *State v. Collins*, 88 Ohio App.3d 291, 293-294, 623 N.E.2d 1269 (2d Dist.1993).

{¶ 19} The state contends that appellant's affirmative act in placing his arms around the seat and locking his knees under the steering wheel constituted affirmative acts which hampered and impeded the officer's duty to arrest him and, therefore, supported the conviction of obstructing official business. At the trial below, however, Officer Mugler testified that he charged appellant with obstructing official business based on appellant's repeated refusals to provide a driver's license or identify himself. It was only after the officer began to arrest appellant on that charge that appellant engaged in the affirmative acts to prevent his arrest and the struggle ensued. Officer Mugler further opined on cross-examination that "not doing anything an officer asks you to do" constitutes obstructing official business.

{¶ 20} In our view, this evidence was insufficient to support a conviction for obstructing official business. The charge was clearly based on appellant's refusal to provide officers with his driver's license or reveal his identity. The evasive actions taken by appellant occurred only after the officers decided to arrest him for obstructing official business. While those actions supported the conviction for resisting arrest, they could not

support a conviction for obstructing. Accordingly, the conviction for obstructing official business was not supported by sufficient evidence and the second and third assignments of error are well-taken.

{¶ 21} Finally, in his fourth assignment of error, appellant asserts that the trial court erred in denying his motion to dismiss. Appellant contends he never received proper service of process of the traffic and criminal charges against him, that he filed a motion to dismiss for failure to obtain service and that the lower court committed prejudicial error by denying the motion. He further asserts that in the alternative, the court denied him his right to due process by failing to hold a hearing on the motion to dismiss.

{¶ 22} In the proceedings below, appellant was arrested and charged with four offenses on June 24, 2010. The journals from each of those cases all include entries dated June 24, 2010, which read: "Affidavit filed 06/24/2010 22:22. Warrant returned, service made. Defendant arrested and booked into Lucas County Corrections Center on 06/24/2010 at 19:00 * * *." The records all include affidavits signed by Officer Mugler attesting to the fact of service. The next day, appellant filed a rambling pro se document titled "Petitioner's Affidavit of Fact, Evidence, and Information," in which he asserted that the court had no jurisdiction over him for numerous reasons. He also handwrote on the front page of this filing, "citation never provided to petitioner." Subsequently, appellant filed pro se a "demand for dismissal for: want of jurisdiction." This is again a rambling motion which cites appellant's status as a "Moorish American National," the

1787 Treaty of Peace and Friendship, the United Nations Declaration on the Rights of Indigenous Peoples, and "Shari'ah" law, as among the numerous reasons for the lower court's lack of jurisdiction over him.

{¶ 23} On August 26, 2010, the court held a hearing on appellant's pending motions. The court explained that it had jurisdiction over the offenses allegedly committed by appellant and over appellant personally. Appellant continued to object. The court overruled the objections, denied his motions and set the matter for trial.

{¶ 24} Crim.R. 4(E)(2) provides:

> Where a person is arrested without a warrant the arresting officer shall, except as provided in division (F), bring the arrested person without unnecessary delay before a court having jurisdiction of the offense, and shall file or cause to be filed a complaint describing the offense for which the person was arrested. Thereafter the court shall proceed in accordance with Crim.R. 5.

{¶ 25} Crim.R. 4(F) reads:

> In misdemeanor cases where a person has been arrested with or without a warrant, the arresting officer, the officer in charge of the detention facility to which the person is brought or the superior of either officer, without unnecessary delay, may release the arrested person by issuing a summons when issuance of a summons appears reasonably calculated to assure the person's appearance. The officer issuing such

> summons shall note on the summons the time and place the person must appear and, if the person was arrested without a warrant, shall file or cause to be filed a complaint describing the offense. No warrant or alias warrant shall be issued unless the person fails to appear in response to the summons.

{¶ 26} The record supports a finding that appellant was properly served with copies of the complaints against him and supports the trial court's determination that it had jurisdiction over appellant in all respects. The court held a hearing on appellant's motions in which it gave appellant every reasonable opportunity to argue his case. That appellant chose to make nonsensical arguments and to proceed without counsel was his choice.

{¶ 27} The fourth assignment of error is not well-taken.

{¶ 28} On consideration whereof, the court finds that the judgment of the Toledo Municipal Court is reversed in part and affirmed in part. Appellant's conviction for obstructing official business is vacated. Court costs of this appeal are ordered to be shared equally by the parties pursuant to App.R. 24.

Judgment reversed in part
and affirmed in part.

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, J.
CONCUR. _____
JUDGE