

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

State of Ohio

Court of Appeals Nos. WD-15-058
WD-15-059

Appellee

Trial Court Nos. 15CRB00949-A
15TRD02596-A

v.

Timothy W. Gangwer

DECISION AND JUDGMENT

Appellant

Decided: March 31, 2017

* * * * *

Corey J. Speweik, for appellee.

Jeffrey P. Nunnari, for appellant.

* * * * *

JENSEN, P.J.

{¶ 1} Appellant, Timothy Gangwer, appeals his conviction from the Bowling Green Municipal Court for failure to comply with an order or signal of a police officer. Because there was sufficient evidence of his failure to comply with a police officer's lawful order, we affirm.

{¶ 2} Two complaints were filed against Gangwer in the Bowling Green Municipal Court. In trial court case No. 15CRB00949-A, Gangwer was charged with resisting arrest in violation of R.C. 2921.33(A), failure to comply with order or signal of police officer in violation of R.C. 2921.331, and disorderly conduct in violation of R.C. 2917.11. In trial court case No. 15TRD02596-A, Gangwer was charged with driving with no license plate light in violation of R.C. 4513.05.

{¶ 3} On September 1, 2015, the resisting arrest and failure to comply charges were tried to a jury. The following evidence was adduced at trial.

{¶ 4} In the evening hours of May 1, 2015, Risingsun Police Officer Kevin Osborne observed appellant Timothy Gangwer operating a motor vehicle without a license plate light. Officer Osborne testified that Gangwer continued driving his vehicle for approximately 22 seconds after he activated his cruiser's overhead lights. Instead of pulling over, Gangwer pulled into a driveway, exited the motor vehicle, and walked towards the house.

{¶ 5} Officer Osborne's dash-mounted camera was not working, but his body-mounted camera captured portions of the stop. Video footage from the body-mounted camera shows that as soon as Officer Osborne pulled his cruiser into Gangwer's drive, he stepped out of the cruiser and abruptly ordered Gangwer to get back in his vehicle. Officer Osborne issued the order because he feared for his safety. The following dialog occurred between Officer Osborne and the appellant during the relevant portion of the stop:

OFFICER: Get back in the truck. Get back in the truck.

APPELLANT: No. I'm on my property. Leave.

OFFICER: Get back in the truck. You know what, come here, you are going to jail tonight. No. No. No.

APPELLANT: Get off of me.

OFFICER: Come here. You are going to jail tonight buddy. Come on. Get

APPELLANT: Don't even.

OFFICER: I'm telling you now, sir, get out of the truck.

Appellant: You just told me to get in it.

Officer: You've got one choice, get out of the truck.

Appellant: No.

{¶ 6} At the close of the state's case, appellant made a Crim.R. 29 motion for acquittal. The trial court denied the motion. Appellant testified on his own behalf. He indicated that he saw Officer Osborne's cruiser when he drove past the post office. Moments later another car pulled up behind appellant at a stop sign. He noticed the cruiser's lights, but he assumed the officer was pulling over the car that had pulled behind him. Appellant continued to drive the short distance up to and into his own driveway. After he got out of his vehicle, appellant noticed that Officer Osborne had pulled into his driveway with his lights flashing.

{¶ 7} Appellant indicated that Officer Osborne “demanded” that he get back into his vehicle. Appellant told the officer that he owned the property and that he simply wanted to check on the house. Appellant did not know why the officer was there and felt the officer had no right to be on his property. Officer Osborne again demanded that appellant get back into his vehicle. Appellant complied. At that time, appellant felt threatened by the officer and instructed his 15-year-old son—the sole passenger in the vehicle—to call the sheriff. While his son was on the phone with the sheriff, Officer Osborne demanded Gangwer get out of his vehicle and informed him that he was “going to jail.” Gangwer refused to get out of the vehicle. Officer Osborne threatened to hit Gangwer with his taser if he did not comply. Gangwer explained that he did not get out of the vehicle because he felt threatened and confused. Up to that point, Officer Osborne never explained to Gangwer why he was there.

{¶ 8} Following his testimony and the close of all the evidence, appellant failed to renew his Crim.R. 29 motion. The jury found appellant guilty of failure to comply with an order or signal of a police officer. Gangwer was acquitted of the resisting arrest charge.

{¶ 9} Appellant was sentenced to 180 days in jail, with 175 days suspended. He was placed on probation for a period of two years. Appellant received a six-month suspension of his operator’s license. Gangwer has filed an appeal setting forth two assignments of error for our review:

1. THE TRIAL COURT ERRED TO APPELLANT’S PREJUDICE
BY FAILING TO GRANT HIS MOTION FOR JUDGMENT OF
ACQUITTAL, AS THERE WAS INSUFFICIENT EVIDENCE AS A
MATTER OF LAW TO PERMIT THE CHARGE OF FAILING TO
COMPLY WITH A LAWFUL ORDER OF A POLICE OFFICER TO GO
TO THE JURY.

2. THE JURY’S VERDICT OF GUILTY ON THE CHARGE OF
FAILING TO COMPLY WITH A LAWFUL ORDER OF A POLICE
OFFICER IS NOT SUPPORTED BY SUFFICIENT EVIDENCE AS A
MATTER OF LAW.

{¶ 10} We address appellant’s second assignment of error first because we find that it is dispositive of this appeal. Appellant contends that his conviction for failing to comply with Osborne’s commands to return to his vehicle are not supported by sufficient evidence.

{¶ 11} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally adequate to support a jury verdict as to all elements of the crime. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). The proper analysis under a sufficiency of the evidence standard 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. Williams, 74 Ohio St.3d 569, 576, 660 N.E.2d 724 (1996), quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 12} R.C. 2921.331(A) provides that “No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control or regulate traffic.” Here, there is no dispute that Officer Osborne is a police officer invested with authority to direct, control, or regulate traffic. Thus, the question before the court is whether there was sufficient evidence to support the finding that (1) Gangwer failed to comply with Officer Osborne’s order, and (2) Officer Osborne’s order was lawful.

{¶ 13} Officer Osborne testified that he initiated the traffic stop because Gangwer’s rear license plate was not illuminated. After Officer Osborne turned on his overhead lights, Gangwer accelerated and pulled into a private driveway. Upon pulling into the drive, Gangwer immediately exited his vehicle and started walking towards the house. At that point, Officer Osborne was concerned for his own safety. Thus, he ordered Gangwer to get back into his vehicle. Initially, Gangwer refused to return to the vehicle and instead demanded that Officer Osborne get off of his property. Although Gangwer eventually returned to his vehicle, Officer Osborne decided that “arresting [Gangwer] would make [Gangwer] calmer.” Thus, Officer Osborne informed Gangwer that he was “going to jail.” The officer instructed Gangwer to get out of the vehicle. Gangwer refused.

{¶ 14} Various courts have held that “during a traffic stop, an officer may require that a motorist remain inside the vehicle while the officer obtains information.” *City of Broadview Heights v. Stovall*, 8th Dist. Cuyahoga No. 93322, 2010-Ohio-3867, ¶ 21, citing *State v. Edwards*, Stark App. No. 2006-CA-00107, 2007-Ohio-705, ¶ 44. *See also State v. Scimemi*, 2d Dist. Clark No. 94-CA-58, 1995 Ohio App. LEXIS 2244, *11 (June 2, 1995) (explaining that an officer may lawfully request that the driver and any passengers remain in a vehicle during a traffic stop “if the officer determines that remaining in the vehicle is necessary for safety reasons.”).

{¶ 15} What should have been a simple traffic stop rapidly and unnecessarily escalated out of control due to the collective actions of both Officer Osborne and Timothy Gangwer. Nonetheless, viewing the evidence in a light most favorable to the prosecution, we find that a rational trier of fact could have concluded beyond a reasonable doubt that Gangwer failed to comply with Officer Osborne’s orders to return to and then remove himself from the vehicle, and that Officer Osborne’s orders, while callous and overly cautious, were not unlawful. Thus, appellant’s second assignment of error is not well-taken.

{¶ 16} Given our holding that sufficient evidence was introduced at trial to support a jury verdict as to all elements of the crime, appellant’s first assignment of error is moot.

{¶ 17} We, therefore, affirm the judgment of the trial court. 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.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

James D. Jensen, P.J.
CONCUR.

JUDGE