[Cite as *State v. Hall*, 2009-Ohio-5695.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92625

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CLAYTON HALL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-514995

BEFORE: Boyle, J., Kilbane, P.J., and Celebrezze, J.

RELEASED: October 29, 2009

JOURNALIZED:

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MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Clayton Hall, appeals from an order convicting him of receiving stolen property and failing to comply with an order of a police officer. Finding no merit to the appeal, we affirm.

{¶ 2} The grand jury indicted Hall on eight counts: one count of aggravated burglary in violation of R.C. 2911.11(A)(2); two counts of aggravated robbery in violation of R.C. 2911.01(A)(1); two counts of kidnapping in violation of R.C. 2905.01(A)(2) and/or (A)(3); one count of receiving stolen property (i.e., motor vehicle) in violation of R.C. 2913.51(A); one count of having weapons while under disability in violation of R.C. 2923.13(A)(3); and failure to comply with order or signal of police officer in violation of R.C. 2921.331(B), with a furthermore clause alleging that Hall operated a vehicle in a manner that caused a substantial risk of serious harm. All counts had one- and three-year firearm specifications attached.

{¶ 3} After a bench trial and upon Hall's Crim.R. 29 motion, Hall was acquitted of all charges except for receiving stolen property and failure to comply with a police officer's signal with the furthermore clause. The trial court sentenced him to a total of 18 months in prison.

{¶ 4} Hall appeals his conviction, raising two assignments of error:

{¶ 5} "[I.] The evidence was insufficient to sustain a finding of guilty because the state failed to present evidence to establish beyond a reasonable doubt the elements necessary to support the convictions.

{¶ 6} "[II.] The verdict was against the manifest weight of the evidence."

{¶ 7} Although the state presented nine witnesses at trial, we focus solely on the testimony related to Hall's convictions and need not address the testimony pertaining to the other indicted offenses. We glean the following relevant facts from Hall's bench trial:

{¶ 8} On February 28, 2008, around 1:00 a.m., while parked at East 40th Street and Woodland Avenue in a black and white police cruiser, Cleveland police officers Joseph Hageman and Bryan Moore spotted a white PT Cruiser matching the description of a vehicle involved in a reported robbery and police chase. The officers proceeded to follow the vehicle and ran the license plate. After radio advised them that the vehicle was stolen, the officers requested additional back-up and continued to follow the car. The officers observed two occupants in the car.

{¶ 9} Officer Hageman testified that once they reached the 7900 block of Quincy Avenue, the PT Cruiser "started running red lights." The officers then activated their overhead lights and turned on their siren, signaling the PT Cruiser to pull over. Officer Hageman further testified that the PT Cruiser was traveling fast given the snow and ice on the streets. The pursuit

lasted approximately one and one-half to two minutes, ending at East 103rd Street when the driver, later identified as Hall, jumped out of the vehicle and attempted to flee while the vehicle was still moving.

{¶ 10} Upon exiting the vehicle, Hall slipped, fell, and "the car rolled into him." Hall got up and then fled on foot. Officer Hageman and Officer Edward Lentz apprehended him after a 30-second chase. Because Hall was complaining of pain, the police took him to St. Vincent Charity Hospital prior to taking him to the station.

{¶ 11} On cross-examination, Officer Hageman testified that, during the pursuit of Hall, the pedestrian and street traffic was "light." He further confirmed that the PT Cruiser did not collide with his police vehicle or any other vehicles.

{¶ 12} Officer Moore, who was driving the police cruiser following Hall, corroborated Officer Hageman's testimony. He also stated that, although he did not know the exact number of red lights that Hall ran, he believed that there were at least three or four. Officer Moore further testified that, after Hall went through the first red light, he "took off at a high rate of speed, * * * kept on picking up more speed, * * * [w]eaving in and out of cars." According to Moore, although the main streets were plowed, East 103rd Street, which is a residential street, "was absolutely horrible." He explained: "We were fishtailing. Couldn't get control of the car. Sometimes we were all over the

road." He further stated that although the PT Cruiser did not collide with any parked vehicles, it came close while traveling on East 103rd St. Officer Moore further estimated that the PT Cruiser was traveling at five or ten m.p.h. when Hall opened the driver-side door and jumped out.

{¶ 13} The state also presented the testimony of Lolita Moon (the owner of the PT Cruiser) and Moon's niece, Clarenceana Montgomery (the primary driver of the vehicle). Both testified that they neither knew Hall nor gave him permission to drive the vehicle. The vehicle had been stolen on February 26, 2008 around 10:30 a.m. from Montgomery's residence. Montgomery testified that she left the car running while she ran inside her house for less than a minute to get her daughter. When she returned, the vehicle was gone, and she reported it stolen.

Sufficiency of the Evidence

{¶ 14} In his first assignment of error, Hall argues that the state failed to present sufficient evidence to support his convictions.

{¶ 15} An appellate court's function in reviewing the sufficiency of the evidence to support a criminal conviction is to 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. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to

sustain a verdict is a question of law." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. 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. *Jenks* at 273.

Furthermore Clause: Substantial Risk to Persons or Property

{¶ 16} Hall was convicted of one count of failing to comply with an order or signal of a police officer under R.C. 2921.331(B), which provides: "No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop." The count carried a furthermore clause, alleging that Hall's operation of the motor vehicle "caused a substantial risk of serious physical harm to persons or property." The furthermore clause elevates the offense from a first degree misdemeanor to a third degree felony. See R.C. 2921.331(C)(5)(a).

{¶ 17} Although Hall does not dispute that there was sufficient evidence to sustain the underlying failure to comply offense, he claims that the state failed to prove the furthermore clause. He argues that he should have only been convicted of a first degree misdemeanor because the state failed to prove that he created a "substantial risk of serious physical harm to persons or

property." He contends that because there were no collisions, no pedestrian traffic, and few cars on the road, his conviction cannot stand. We disagree.

{¶ 18} The evidence at trial reveals that Hall drove through three to four red lights while speeding during severe weather conditions and that he nearly collided with parked cars on a residential street. Officer Moore testified that at one point, "he couldn't get control of [his] car" due to the conditions on the road and trying to keep up with Hall. The record further demonstrates that Hall, who was driving the vehicle, jumped from the vehicle while it was still moving and not in park. Aside from the risk of harm created to the front-seat passenger by his jumping from the car, Hall was nearly run over by the vehicle himself when he slipped in front of it. These facts constitute sufficient evidence that Hall created a substantial risk of serious physical harm to persons or property. See, e.g., *State v. Scott*, 12th Dist. No. CA2008-10-025; *State v. Tillman*, 2d Dist. No. 06CA0118, 2008-Ohio-2060; *State v. Little*, 8th Dist. No. 84611, 2005-Ohio-400 (recognizing that a defendant's total disregard of traffic laws in residential area wherein defendant nearly collides with another vehicle is sufficient evidence that defendant created a substantial risk).

{¶ 19} We further note that the mere fact that Hall did not cause an actual collision or serious harm is irrelevant. Here, Hall was convicted under R.C. 2921.331(C)(5)(a)(ii), which deals with a "substantial risk."

Based on the circumstances described above, the trier of fact could reasonably conclude that a substantial risk of serious physical harm to persons or property existed as a result of Hall's reckless driving. Indeed, "'a jury could reasonably find that the failure of a defendant to engage in a "near collision" speaks to nothing more than the defendant's good luck * * *; such an assertion is irrelevant to our analysis because it fails to speak to the level of risk that the defendant's reckless driving created.'" *State v. Garrard*, 170 Ohio App.3d 487, 2007-Ohio-1244, ¶45, quoting *State v. Love*, 9th Dist. No. 21654, 2004-Ohio-1422, ¶19; see, also, *State v. Semenchuk* (1997), 122 Ohio App.3d 30, 47 (defendant's failure to actually cause harm is of no consequence — "[i]t is only the strong possibility that harm could occur that creates culpability" under the statute).

{¶ 20} Accordingly, we find that the trial court did not err in denying Hall's motion for acquittal; sufficient evidence exists to support the penalty enhancement.

Receiving Stolen Property

{¶ 21} Hall was also convicted of receiving stolen property as defined in R.C. 2913.51(A), which provides that "[n]o person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense."

Hall argues that the state failed to prove that he knew that the PT Cruiser was stolen. We find his argument to lack merit.

{¶ 22} R.C. 2901.22(B) addresses the culpable mental state of knowledge and provides:

{¶ 23} "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist."

{¶ 24} Here, the state presented evidence that Hall was driving a stolen vehicle, which he did not have permission to drive. And notably, the state demonstrated that Hall fled from the police while driving the stolen vehicle. See *State v. Eaton* (1969), 19 Ohio St.2d 145, paragraph six of the syllabus, vacated in part on other grounds; *Eaton v. Ohio* (1972), 408 U.S. 935 ("Flight from justice, and its analogous conduct, may be indicative of a consciousness of guilt"). Hall's possession of the vehicle coupled with his flight from the police is sufficient evidence for a reasonable trier of fact to conclude that Hall knew the vehicle was stolen. See *State v. West* (Nov. 10, 1999), 8th Dist. No. 75094 (recognizing that it is reasonable for the jury to have found that the defendant knew that the car was stolen due to his abandonment of it).

{¶ 25} Accordingly, the first assignment of error is overruled.

Second Assignment of Error

{¶ 26} Although Hall broadly asserts that his conviction is against the manifest weight of the evidence in his second assignment of error, his challenge is based solely on "insufficient evidence." He offers no argument as to why his conviction is against the weight of the evidence other than saying that the trier of fact "lost its way" for the same reasons outlined in his sufficiency challenge. Having already found that the state presented sufficient evidence to support the conviction, we find no merit to Hall's second assignment of error and overrule it.

Judgment affirmed.

It is ordered that appellee recover of appellant 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 common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

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MARY J. BOYLE, JUDGE

MARY EILEEN KILBANE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR