

[Cite as *State v. Howard*, 2011-Ohio-207.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94528**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**RAYDON HOWARD**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-509083

**BEFORE:** Boyle, J., Stewart, P.J., and Gallagher, J.

**RELEASED AND JOURNALIZED:** January 20, 2011  
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MARY J. BOYLE, J.:

{¶ 1} Defendant-appellant, Raydon Howard, appeals his conviction for failure to comply. He raises two assignments of error for our review:

{¶ 2} “[1.] The trial court erred in denying Appellant’s motion for acquittal as to the charges when the state failed to present sufficient evidence to sustain a conviction.

{¶ 3} “[2.] Appellant’s convictions are against the manifest weight of the evidence.”

{¶ 4} Finding no merit to his appeal, we affirm.

#### Procedural History

{¶ 5} In April 2008, the grand jury indicted Howard on four counts: one count of failure to comply with order or signal of police officer, in violation of R.C. 2921.331(B), with a furthermore clause that he operated a motor vehicle such that he caused a substantial risk of serious physical harm to persons or property; one count of burglary, in violation of R.C. 2911.12(A)(4); one count of drug trafficking, in violation of R.C. 2925.03(A)(2); and one count of drug possession, in violation of R.C. 2925.11(A). He pleaded not guilty to the charges, and the case proceeded to a jury trial.

{¶ 6} At the close of the state’s case, the trial court granted Howard’s Crim.R. 29 acquittal relating to the burglary count. The jury found Howard guilty of failure to comply with the furthermore clause, but not guilty of drug trafficking and drug possession.

{¶ 7} The trial court sentenced Howard to two years in prison and ordered that his sentence be served consecutive to a two-year sentence he received in

another case (Case No. CR-509660), for a total of four years in prison. Three years of discretionary postrelease control was also part of his sentence.

### Jury Trial

{¶ 8} Detective Todd Staimpel testified that on March 31, 2008, he was driving a black Ford Crown Victoria patrolling the area of West 98th Street and Madison Avenue. He explained that his vehicle did not have any police markings on it, but it was equipped with a siren, a loud speaker, and a blue light that could either be put on the dashboard or on the roof of the car. He further explained that the headlights of the vehicle alternate when the bright lights are turned on.

{¶ 9} Detective Staimpel testified that Marion Seltzer Elementary School, which is on the corner of West 98th Street and Madison Avenue, had just let out at 4:20 p.m. There were crossing guards on the corners, a lot of pedestrian traffic, and children were crossing the street. Detective Staimpel noticed a car, travelling west on Madison Avenue, driving recklessly; it was travelling “too fast and erratically” through the school zone. He began to follow it. He pulled up behind the vehicle at the light and ran the temporary license plate, but nothing came back on it.

{¶ 10} Detective Staimpel then observed the vehicle turn left, “southbound on 98th, without using a turn signal.” At that point, Detective Staimpel said that he decided to stop the vehicle. He followed the vehicle “the next street up, or a couple streets up,” and “activated [his] lights and sirens.” He placed the “blue

bubble light” in the middle of his dashboard, put on his “front headlight flash,” and activated his siren. As soon as he put his siren on, the driver, who was already going fast for the posted speed limit, “accelerated.” The driver was travelling at a speed of 45 to 50 m.p.h. in a 25 m.p.h. zone on West 98th Street. At this time, there were children “everywhere,” parents were picking their children up from school, “walking them down the sidewalks,” and “crossing the same streets that we’re going through — the intersections — at a high rate of speed very recklessly.” The driver continued southbound on West 98th Street and then turned right onto Macon Street, about five blocks down from Madison. Detective Staimpel said that the driver “continued to accelerate at a high rate of speed ignoring my signal and my siren.”

{¶ 11} Detective Staimpel then explained that he saw the vehicle pull into a driveway and “smash into the garage of the house.” While the car was accelerating into the garage, “the two males were attempting to jump out of the vehicle to flee.” Detective Staimpel testified that the two men did jump out of the vehicle before it hit the garage. The garage was left with a “big dent” and the vehicle “had front-end damage from the collision.”

{¶ 12} Detective Staimpel said the two men took off running. He called for backup and continued to follow them in his vehicle. He and other officers who arrived on the scene finally apprehended the driver, who was identified to be Howard, and the passenger.

{¶ 13} On cross-examination, Detective Staimpel agreed that Howard did not hit any people or vehicles while he was speeding down West 98th Street, but stated that “[t]here were people in just about every intersection and on the sidewalks as we went up 98th[.]” Detective Staimpel further stated that from the time he activated his lights until the time the car hit the garage, it was approximately one minute. He also stated that in order to make the turn into the driveway on Macon, the vehicle had “slowed down considerably.”

{¶ 14} On redirect-examination, Detective Staimpel further testified that after he activated his lights and siren, Howard “was flying down 98th” Street, which was a narrow street, “driving very recklessly with children within 10 feet of him.”

#### Sufficiency and Manifest Weight of the Evidence

{¶ 15} In his first assignment of error, challenging the sufficiency of the evidence, and in his second assignment of error, challenging the manifest weight of the evidence, Howard does not claim that the state did not establish that he failed to comply with an order or signal of a police officer. He only contends that the state failed to prove the furthermore specification, that he operated a motor vehicle such that he caused a substantial risk of serious physical harm to persons or property. He therefore maintains that since the state failed to prove the furthermore clause, then the jury also “lost its way” in finding that he did operate his vehicle in such a way. We disagree.

{¶ 16} When an appellate court reviews a record upon a sufficiency challenge, “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. Leonard*, 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶77, quoting *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 17} In reviewing a claim challenging the manifest weight of the evidence, “[t]he question to be answered is whether there is *substantial* evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt. In conducting this review, we must examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” (Internal quotes and citations omitted.) *Leonard*, 104 Ohio St.3d at ¶81.

{¶ 18} R.C. 2921.331(B) provides that “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.” This offense is a misdemeanor of the first degree unless the trier of fact finds \*\*\*

“[t]he operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.” R.C. 2921.331(C)(5)(a)(ii).

{¶ 19} After reviewing the evidence, viewed in a light most favorable to the state, we find that it was sufficient to establish that Howard operated a motor vehicle such that he caused a substantial risk of serious harm to persons or property. Detective Staimpel testified that after he activated his lights and siren, Howard accelerated his vehicle, travelling 45 to 50 m.p.h. in a 25 m.p.h. speed zone, on a narrow street, with people and children on every intersection. Indeed, he testified that children were less than ten feet away from Howard when he was fleeing from Detective Staimpel — at speeds nearly double the speed limit — on West 98th Street. Despite the chase only lasting approximately one minute, we find Howard’s actions caused a substantial risk of serious harm to persons or property.

{¶ 20} Howard argues that the evidence presented on the damage to the garage was not sufficient. Even if there had not been any damage to the garage, however, the evidence was sufficient to support a substantial risk of serious harm to persons.

{¶ 21} We further conclude that this case is not the exceptional case where the jury clearly lost its way in finding that the state proved the furthermore clause beyond a reasonable doubt.

{¶ 22} Howard’s first and second assignments of error are overruled.



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

MELODY J. STEWART, P.J., and  
SEAN C. GALLAGHER, J., CONCUR