[Cite as *State v. Matthews*, 2002-Ohio-2206.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. RAY A. MATTHEWS Appellant	C.A. No. 20749 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 00 12 2804

DECISION AND JOURNAL ENTRY

Dated: May 8, 2002

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

SLABY, Presiding Judge.

{¶1} Defendant, Ray A. Matthews, appeals from his conviction for resisting arrest in the Summit County Court of Common Pleas. We reverse.

{¶2} On December 8, 2000, the Summit County Grand Jury indicted Defendant on three separate counts: (1) assault, in violation of R.C. 2903.13(A); (2) resisting arrest, in violation of R.C. 2921.33(A); and (3) possession of marijuana, in violation of 2925.11(A). A jury trial followed. On August 9, 2001,

the jury found Defendant guilty of resisting arrest and not guilty of assault and possession of marijuana. The trial court sentenced him accordingly. Defendant timely appeals raising one assignment of error for review.

{¶3} ASSIGNMENT OF ERROR

> **{¶4}** [Defendant's] conviction for resisting arrest was based on insufficient evidence and was against the manifest weight of the evidence as the arrest was not lawful.

{¶5} In his sole assignment of error, Defendant challenges the adequacy of the evidence presented at trial. Specifically, Defendant avers that his arrest was not lawful; therefore, his conviction for resisting arrest was based on insufficient evidence and against the manifest weight of the evidence. Defendant's assignment of error is well taken.

{¶6} Initially, we note that the record indicates that Defendant failed to move the trial court for an acquittal in accordance with Crim.R. 29. Therefore, Defendant cannot challenge the sufficiency of the evidence underlying his conviction on appeal. See *State v. Roe* (1989), 41 Ohio St.3d 18, 25; *State v. Hall* (Mar. 3, 1999), 9th Dist. No. 2770-M, at 3.

{¶7} When a defendant asserts that his conviction is against the manifest weight of the evidence,

> **{¶8}** an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.

State v. Otten (1986), 33 Ohio App.3d 339, 340. This discretionary power should be invoked only in extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant. Id.

{¶9} Defendant was found guilty of resisting arrest, in violation of R.C. 2921.33(A), which states that "[n]o person, recklessly or by force, shall resist or interfere with a lawful arrest of the person or another." One "acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist." R.C. 2901.22(C).

{¶10} The crux of Defendant's assignment of error rests upon his contention that he was not lawfully arrested; thus, his conviction for resisting arrest was improper. We find that the evidence presented at trial demonstrates that Defendant was not lawfully arrested.

{¶11} At trial, Officer Joseph Stella testified that he was patrolling the Kenmore area with his partner, Officer Michael Williams, on November 29, 2000. He further testified that he conducted a random license verification check on a minivan. The check revealed that the owner of the minivan had a suspended driver's license. Officer Stella stated that the owner of the minivan was Carla Matthews. He explained that he and Officer Williams proceeded to stop the

minivan as a result of the license verification check. Officer Stella asserted that Defendant "jumped" out of the minivan and approached the police car. Officer Stella testified that he instructed Defendant to get back into the minivan, and Defendant complied. He stated that he asked Defendant for his driver's license, but Defendant did not have his license. Officer Stella then stated that Defendant gave him his name, birth date, and social security number. He explained that as he approached the police car to verify the information provided by Defendant, Officer Williams informed him that Defendant reached into his waistband. Officer Stella stated that he went back to the minivan and told Defendant to get out of the minivan; however, Defendant responded to his request by "clench[ing] his fists around the steering wheel[.]" He further stated that Defendant continually moved around in the seat and told the officers that they "would have to kill him to get him out of the [minivan]." Officer Stella said that he informed Defendant that he was under arrest for driving without a driver's license, in violation of Akron City Code 71.01(A).

{¶12} Akron City Code 71.01(A)(1) states "[n]o person *** shall operate any motor vehicle on a street *** used by the public for purposes of vehicular travel or parking in this city unless such person has a valid driver's license[.]" The requirement to display one's driver's license is governed by Akron City Code 71.03, which provides in pertinent part:

> **{¶13}** The operator of a motor vehicle shall display his license, *or furnish satisfactory proof that he has such license*, on

> demand of any peace officer[.] *** *Failure to furnish satisfactory evidence that such person is licensed* *** when such person does not have his license on or about his person, *shall be prima-facie evidence of his not having obtained such license*.

(Emphasis added.) In determining what type of proof is satisfactory, the courts must apply a standard of objective reasonableness. *State v. DiGiorgio* (1996), 117 Ohio App.3d 67, 69 (finding that the information provided by the defendant, specifically, his name, address, and social security number, was satisfactory proof that the defendant had a driver's license).

{¶14} In this case, Officer Stella did not take the necessary step to determine whether the information provided by Defendant was satisfactory proof that he had a license. Rather, Officer Stella predicated his arrest of Defendant on the fact that he did not have the actual driver's license on his person. However, Akron City Code 71.03 requires an individual to provide his driver's license or satisfactory proof the he has such a license. As such, Officer Stella was required to determine whether the information Defendant provided was satisfactory. Due to his failure to make this determination, he lacked prima facie evidence that Defendant was not licensed. See Akron City Code 71.03. Accordingly, as Defendant was not lawfully arrested, he could not properly be convicted of resisting such an arrest. See *State v. Johnson* (1982), 6 Ohio App.3d 56, 58; *State v. Miller* (1990), 70 Ohio App.3d 727, 730. Defendant's conviction was against the manifest weight of the evidence and, therefore, his assignment of error is sustained.

{¶15} Defendant's sole assignment of error is sustained. The conviction of the Summit County Court of Common Pleas is reversed.

Judgment reversed
and remanded.

The Court finds that there were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

Exceptions.

LYNN C. SLABY
FOR THE COURT

WHITMORE, J.
BATCHELDER, J.
CONCUR

APPEARANCES:

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