

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

CITY OF CUYAHOGA FALLS

Appellee

v.

CHRISTOPHER J. IVANOV

Appellant

C. A. No. 24202

APPEAL FROM JUDGMENT
ENTERED IN THE
CUYAHOGA FALLS MUNICIPAL
COURT
COUNTY OF SUMMIT, OHIO
CASE No. 2007 TRD 13896

DECISION AND JOURNAL ENTRY

Dated: June 24, 2009

MOORE, Presiding Judge

{¶1} Appellant, Christopher Ivanov, appeals from the judgment of the Cuyahoga Falls Municipal Court. This Court affirms.

I.

{¶2} On August 25, 2007, Saunhawa Baik was driving her vehicle westbound on Portage Trail in the City of Cuyahoga Falls. As she was proceeding downhill on Portage Trail towards Akron-Peninsula Road, she passed the CVS Pharmacy. Heading west, Baik changed into the southern-most lane of traffic. As she passed CVS, Appellant, Christopher Ivanov, was exiting the business, turning left onto Portage Trail to travel west. The two vehicles collided.

{¶3} Officer John Neforos of the Cuyahoga Falls Police Department responded to the area and, after talking with both drivers, cited Ivanov for one count of “Driving onto Roadway from Place other than Roadway; Duty to Yield”, in violation of Cuyahoga Falls Codified Ordinance 331.22. On August 29, 2007, Ivanov pled not guilty to the charge. Ivanov’s case

proceeded to a hearing before a magistrate. The magistrate found Ivanov guilty of the sole charge and assessed a fine of \$75.00 plus court costs. On September 19, 2007, Ivanov filed objections to the magistrate's decision along with a motion to set aside the decision of the magistrate. Ivanov also filed a motion for findings of fact and conclusions of law. On April 30, 2008, the trial court issued an order overruling the objections and adopting and approving the magistrate's decision. Ivanov timely appealed the trial court's order. He has raised two assignments of error for our review. We have rearranged Ivanov's assignments of error to facilitate our review.

II.

ASSIGNMENT OF ERROR II

“[CUYAHOGA FALLS] FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT [IVANOV] VIOLATED CODIFIED CITY ORDINANCE 331.22.”

{¶4} In his second assignment of error, Ivanov essentially challenges the sufficiency of the evidence presented at the hearing. We disagree with his assertions.

{¶5} This appeal arises from the trial court's affirmance of the magistrate's decision. Such a decision to modify, affirm, or reverse a magistrate's decision lies within the discretion of the trial court and should not be reversed on appeal absent an abuse of discretion. *Kalail v. Dave Walter, Inc.*, 9th Dist. No. 22817, 2006-Ohio-157, at ¶5, citing *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219. An abuse of discretion is more than a mere error of judgment, but instead demonstrates “perversity of will, passion, prejudice, partiality, or moral delinquency.” *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 621.

{¶6} Ivanov argues that the State did not meet its burden at trial. When considering a challenge to the sufficiency of the evidence, the court must determine whether the prosecution

has met its burden of production, while a manifest weight challenge requires the court to examine whether the prosecution has met its burden of persuasion. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 390 (Cook, J., concurring). To determine whether the evidence in a criminal case was sufficient to sustain a conviction, an appellate court must view that evidence in a light most favorable to the prosecution:

“An appellate court’s function when 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. 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 crime proven beyond a reasonable doubt.” *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶7} Ivanov was convicted of violating Cuyahoga Falls Ordinance 331.22¹, which provides:

“Subject to compliance with any traffic control device, the operator of a vehicle about to enter or cross a highway from an alley or from any place other than another roadway shall yield the right of way to all traffic approaching on the roadway to be entered or crossed.”

R.C. 4511.01(UU) defines “right of way” as:

“the right of a vehicle *** to proceed uninterruptedly in a lawful manner in the direction in which it [] [] is moving in preference to another vehicle *** approaching from a different direction into its *** path.”

{¶8} The Third District Court of Appeals, in *In re Neill*, 160 Ohio App.3d 439, interpreted these statutes and explained:

“[A] driver with the right of way has an absolute right to proceed uninterruptedly in a lawful manner, and other drivers must yield to him. Conversely, the driver with the right of way forfeits this preferential status over other drivers if he or she fails to proceed in a lawful manner. However, because the law presumes that a vehicle that ostensibly has the right of way is proceeding lawfully, the state is not

¹ Cuyahoga Falls Ordinance 331.22 mirrors R.C. 4511.44.

required to prove lawful operation as an element of proving a violation of 4511.44(A), failure to yield. Rather, a defendant who asserts that an opposing driver's right of way has been forfeited is required to present evidence rebutting the presumption of lawful operation. A driver proceeds in a lawful manner by complying with Ohio traffic laws." (Internal citations and quotations omitted.) *Neill*, 160 Ohio App.3d at 443.

{¶9} Ivanov contends that Baik's right of way had been forfeited. He cites her testimony that the accident occurred at the first entrance to the CVS and reasons that, given her direction of travel, she must have illegally changed lanes across double yellow lines. He concludes that she must not, therefore, have been travelling legally.

{¶10} While the record reflects that Baik expressed some confusion about the precise location of the accident, she explained at the hearing that she was not proficient in the English language. Specifically, she stated, "I cannot speak very good English." From the record one may infer that her confusion was likely the result of her difficulty in understanding the questions presented to her. It does not appear that the court provided a translator for her. However, Officer Neforos testified without objection regarding his conversation with Baik at the scene of the accident. He explained that Baik's son was also at the scene and was helping translate for her. Officer Neforos testified that Baik told him she had fully entered the southern-most lane of travel before the accident occurred. This testimony coincides with Baik's testimony at the hearing that she had already legally entered the far left, westbound lane of travel prior to the accident. Officer Neforos stated that Ivanov told him that he did not see Baik's vehicle before the accident occurred. He further testified that the damage to the vehicles was consistent with Baik's recitation of the events. Lastly, Officer Neforos testified that there was no evidence indicating that Baik changed lanes improperly or committed a traffic offense prior to the accident.

{¶11} Viewing the evidence in the light most favorable to the State, we conclude that the State submitted sufficient evidence that Baik was traveling in a lawful manner and took no action that would have forfeited her legal right to proceed into the left turn lane. *Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. Ivanov failed to overcome the presumption of her lawful travel merely by pointing to her confusion about the precise location of the accident and by disputing the events that led to the accident. Therefore, any rational trier of fact could have found beyond a reasonable doubt that Ivanov failed to yield the right of way to traffic. Because the State set forth sufficient evidence to establish Ivanov’s violation of Cuyahoga Falls Ordinance 331.22, the trial court did not abuse its discretion in adopting the magistrate’s decision. Ivanov’s second assignment of error is overruled.

ASSIGNMENT OF ERROR I

“THE TRIAL COURT ERRED WHEN IT FOUND [IVANOV] GUILTY AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.”

{¶12} In Ivanov’s first assignment of error, he argues that his conviction was against the manifest weight of the evidence. We disagree.

{¶13} “While the test for sufficiency requires a determination of whether the state has met its burden of production at trial, a manifest weight challenge questions whether the state has met its burden of persuasion.” *State v. Gulley* (Mar. 15, 2000), 9th Dist. No. 19600, at *1, citing *Thompkins*, 78 Ohio St.3d at 390.

{¶14} A determination of whether a conviction is against the manifest weight of the evidence does not permit this court to view the evidence in the light most favorable to the State to determine whether the State has met its burden of persuasion. *State v. Love*, 9th Dist. No. 21654, 2004-Ohio-1422, at ¶11. Rather,

“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.

{¶15} Baik testified that she was obeying the speed limit, that she legally entered the lane of travel, that she used her turn signal in entering the lane of travel and that she was completely within the lane of travel prior to the accident.

{¶16} Officer Neforos testified that Baik told him she had fully entered the southernmost lane of travel before the accident occurred. He also testified that the damage to Baik’s vehicle was located on the rear of the driver’s side while damage to Ivanov’s vehicle was located on the front corner of the passenger side. Officer Neforos testified that the damage to the vehicles was consistent with Baik’s recitation of the events.

{¶17} Officer Neforos also testified that Ivanov told him that he did not see Baik’s vehicle before the accident occurred. Further, Officer Neforos stated that there was no evidence indicating that Baik changed lanes improperly or committed a traffic offense prior to the accident.

{¶18} Ivanov testified at trial that the accident occurred as follows:

“As I was beginning my turn, she was in the single lane. It hadn’t yet branched off into two lanes. And she had no turn signal on. And when I came to turn out, she must have been traveling here, and as I was making the turn, she came into my lane and kept driving forward. And after that I had straightened up into this lane, and changed lanes over here, and [I] rolled down my window and asked if she was all right, because of the impact and all.”

{¶19} Contrary to his report to Officer Neforos immediately after the accident, at trial, Ivanov testified that he recalled seeing Baik’s vehicle traveling westbound on Portage Path prior

to the accident. He also testified that he looked both ways before exiting and that he did not see any oncoming traffic. Ivanov testified that he exited from the second entrance to the CVS.

{¶20} Ivanov also testified that he planned to turn right onto Akron-Peninsula Road from Portage Path, yet he testified that he had turned into the left lane: “As I saw her coming down the hill, when I turned, I was going to wait for her to pass, if she had not done so already, and then switch lanes to the right to turn.”

{¶21} The trial court was clearly presented with conflicting versions of the accident. Baik testified that she was obeying the speed limit, used her turn signal and legally entered the lane of travel prior to the accident. Officer Neforos testified that the damage to the vehicles was consistent with Baik’s version of the accident and that there was no evidence to indicate that she was operating her vehicle unlawfully. Ivanov testified that Baik was not in his lane of travel when he began his turn and that she had not operated her turn signal. He stated that she entered his lane and struck him.

{¶22} Here, the trial court found the evidence presented by Baik and Officer Neforos more credible than the evidence presented by Ivanov. After reviewing the entire record and considering the credibility of the witnesses, we cannot conclude that the trial court clearly lost its way and created a manifest miscarriage of justice when it believed Baik and Officer Neforos’ testimony over Ivanov and convicted Ivanov of failure to yield. See *Otten*, 33 Ohio App.3d at 340. Accordingly, the trial court did not abuse its discretion in adopting the magistrate’s decision. Ivanov’s first assignment of error is overruled.

III.

{¶23} Ivanov’s assignments of error are overruled. The judgment of the Cuyahoga Falls Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Stow Municipal Court, 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 Appellant.

CARLA MOORE
FOR THE COURT

CARR, J.
BELFANCE, J.
CONCUR

APPEARANCES:

ALEXANDER R. FOLK, Attorney at Law, for Appellant.

GREGORY M. WARD, Prosecuting Attorney, for Appellee.