

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
WASHINGTON COUNTY

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| STATE OF OHIO, | : | |
| | : | Case No. 24CA18 |
| Plaintiff-Appellee, | : | |
| | : | <u>DECISION AND JUDGMENT</u> |
| | : | <u>ENTRY</u> |
| KEVIN J. TUCKER, | : | |
| | : | |
| Defendant-Appellant. | : | RELEASED: 01/22/2026 |

APPEARANCES:

Steven H. Eckstein, Washington Courthouse, Ohio, for appellant.

Nicole Tipton Coil, Washington County Prosecuting Attorney, Marietta, Ohio, for appellee.

Wilkin, J.

{¶1} This is an appeal of the Washington County Court of Common Pleas judgment entry in which Kevin J. Tucker (“Tucker”) was convicted of one count of failing to comply with the order or signal of a police officer.

{¶2} In his sole assignment of error, Tucker asserts that his conviction is against the manifest weight of the evidence. Because we have determined that there is some evidence upon which a jury could have found Tucker guilty of failing to comply with an order or signal of a police officer in violation of R.C. 2921.331(B) and (C)(5)(a)(ii), we find that his conviction is not against the weight of the evidence. Therefore, we overrule his assignment of error and affirm his conviction.

BACKGROUND

{¶3} On December 14, 2023, the State charged Tucker with a violation of R.C. 2921.331(B), which prohibits a person from “operat[ing] 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[,]” and under R.C. 2921.331(C)(5)(a)(ii), which enhances the offense to a third-degree felony if the offender “caused a substantial risk of serious physical harm to persons or property.”

{¶4} The case proceeded to trial, and the State’s first witness was Deputy Matt Stillson from the Washington County Sheriff’s Office. Deputy Stillson testified that on October 29, 2023, he was called as a backup to Deputy Mark Gainer, who was pursuing Tucker’s vehicle due to Tucker’s alleged involvement in a domestic violence incident. He asserted that others involved in the pursuit of Tucker’s vehicle were Deputy Ashley Wallace and the Belpre Police Department. The Ohio State Patrol and the Wood County Sheriff’s Office from West Virginia were also notified. Deputy Stillson testified that it was a very rainy night during the pursuit, and the roads were wet.

{¶5} In responding to the pursuit, Deputy Stillson communicated to the other deputies that there was an area on Rt. 7 that was prone to flooding. He stated that during his response, he was travelling approximately 100 mph or more at times.

{¶6} Deputy Stillson testified that he reached the intersection of Rt.7 and Fason Rd., when Deputy Gainer was executing the stop of Tucker’s vehicle.

Deputy Stillson stated that he drew his firearm and put his patrol car in park. However, Tucker's vehicle started moving again, prompting Deputy Stillson to re-holster his firearm to resume the pursuit. Deputy Wallace then moved her patrol vehicle directly in front of Tucker's vehicle, preventing it from moving. Deputy Stillson then approached the driver's side of Tucker's vehicle, exited his own vehicle with his firearm drawn, and, along with other law enforcement officers, ordered Tucker to exit his vehicle. Footage from Deputy Stillson's body cam appeared to show him inspecting Tucker's vehicle, while other law enforcement officers had Tucker on the ground, handcuffing him.

{¶7} The State's next witness was Deputy Ashley Wallace also from the Washington County Sheriff's Office. Deputy Wallace testified that she was initially responding to the residence where Tucker had been allegedly involved in committing domestic violence. However, when she was informed Tucker had left in a vehicle she joined the pursuit. She testified that "it was basically a monsoon" that night and that Rt. 7 was prone to flooding. Deputy Wallace described her speed in catching up with the pursuit as "fast" but did not offer an approximate speed. She claimed that when she arrived at the scene, Tucker's vehicle "was still continuing to move." Therefore, Deputy Wallace testified that she maneuvered her patrol vehicle around Tucker's vehicle until she was directly in front of it, causing Tucker to stop his vehicle. Deputy Wallace's body cam video confirms that she pulled her patrol vehicle directly in front of Tucker's vehicle. She then exited her patrol car with her firearm drawn. She testified that responding to a domestic violence call is a "high risk situation."

{¶8} The State's next witness was Deputy Mark Gainer from the Washington County Sheriff's Office. Deputy Gainer testified that during the night shift on October 29, 2023, he was dispatched to investigate a domestic violence report. On his way to the location, Deputy Gainer stated that he was informed that the accused, Tucker, had left the premises. He acquired a description of the vehicle Tucker was driving. Deputy Gainer noticed an SUV that matched the description of Tucker's vehicle was headed toward Rt.7. Deputy Gainer confirmed the vehicle was Tucker's, and he activated his emergency lights to conduct a stop. However, Tucker did not stop, so the deputy activated his siren. Tucker still did not stop, and Deputy Gainer informed dispatch. Tucker then entered the on ramp to Rt.7 toward Belpre, Ohio pursuing Tucker's vehicle. Deputy Gainer estimated that he traveled approximately eight to nine miles, despite passing numerous locations where Tucker could have safely pulled over. He estimated they were travelling 35 to 45 miles per hour. This is confirmed by video footage from Deputy Gainer's body cam as he can be heard saying, "speeds are about 41, 42 miles per hour." Deputy Gainer testified that as they reached the intersection of Rt.7 and Farson Road, Tucker turned right onto Farson Road and stopped. Deputy Gainer also stopped his vehicle. However, Deputy Gainer stated that Tucker's vehicle started moving forward again, prompting him to prepare to continue the pursuit until Deputy Wallace pulled her patrol vehicle directly in front of Tucker's vehicle, causing it to stop. Deputy Gainer then exited his patrol vehicle with his firearm drawn because it was a "high risk call" and for officer safety. The deputies then handcuffed Tucker.

{¶9} The State then rested, and the defense moved for a Crim.R. 29(A) motion for acquittal. Defense counsel argued that there was insufficient evidence to show that Tucker's failure to comply with the officer's signal caused a substantial risk of serious physical harm to persons or property, which was required as charged in the indictment. He argued that Tucker was traveling under the speed limit, there was light rain and light traffic, and there was no direct evidence of any accident or close call.

{¶10} The State argued that the issue of whether or not Tucker's actions caused a substantial risk of serious physical harm to persons or property was for the jury to decide. The State claimed that speed is not the only factor in determining this issue. It was raining, and Tucker travelled miles before pulling over. Further, other officers were speeding to the location to provide back-up. Finally, the State asserted that even after Tucker initially stopped, he started driving off until Deputy Wallace pulled her patrol vehicle directly into the path of Tucker's vehicle.

{¶11} The trial court orally denied Tucker's Rule 29 motion for acquittal. The court also issued an order denying Tucker's motion finding that the question of whether Tucker's actions caused a substantial risk of serious physical harm to persons or property was for a jury to decide.

{¶12} The defense presented one witness, Milinda Sprouse. She testified that she and Tucker were together for 12 years, including when he was arrested herein. She testified that Tucker had "Toupet fundoplication surgery[,] and a hiatal hernia repair on October 16, 2023. She stated that on October 29, she

observed Tucker having health issues, including labored breathing, chest pains, and he was making this “crazy noise.” She claimed he would gasp and clench his chest repeatedly, multiple times a day. She stated that when he went to his four-week follow-up for the surgery, his doctor sent him to the emergency room. Sprouse testified that Tucker never drank or used drugs.

{¶13} A jury found Tucker guilty of failing to comply with the order of a police officer in violation of R.C. 2921.331(B), and, in doing so, he operated his vehicle in a manner that caused a substantial risk of serious physical harm to persons or property making the offense a third-degree felony. On October 16, 2024, the trial court issued an amended sentencing entry. The court sentenced Tucker to 90 days in jail, 3 years of community control, a \$1,000 fine, and suspended his driver’s license for “four (4) years upon release.”¹ It is this judgment that Tucker appeals.

ASSIGNMENT OF ERROR

THE JURY FINDING THAT THE DEFENDANT-APPELLANT’S VEHICLE CAUSED A SUBSTANTIAL RISK OF HARM TO PEOPLE AND PROPERTY IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE

{¶14} Tucker maintains that under R.C. 2921.331(B), the State must prove beyond a reasonable doubt that a defendant willfully eluded or fled a police officer after receiving a visible or audible signal from the officer for the person to stop. However, if the defendant is also charged under (C)(5)(d)(ii), which states

¹ Originally, on September 13, 2024, the trial court sentenced Tucker for failing to comply with a police officer’s signal or order and for *tampering with evidence*. [Bound Court Documents, doc. 45 sentencing entry] However, the State did not charge Tucker with tampering with evidence. Consequently, the trial court issued an amended sentencing entry on October 16, 2024, to correct the mistake and sentenced Tucker to comply with a signal or order of a police officer only.

that failing to follow an officer's order or signal "resulted in a substantial risk of serious physical harm to person or property," then the offense is enhanced to a third-degree felony. It has no mental state to be proven. Rather, it "is purely a question of fact concerning consequences flowing from the defendant's failure to comply."

{¶15} Tucker claims that the jury lost its way in finding that after failing to comply with Deputy Grainer's order to stop his vehicle, Tucker's operation of his vehicle caused a substantial risk of serious physical harm to persons or property. R.C. 2901.01(A)(8) states that "'[s]ubstantial risk' means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist."

{¶16} Tucker claims that there is no specific testimony indicating that he nearly caused an accident, and there is no direct evidence that his driving caused a substantial risk of serious harm.

{¶17} Tucker claims that in considering whether a defendant's operation of a motor vehicle "caused a substantial risk of serious physical harm to persons or property" under 2921.331(C)(5)(a)(ii), all of the following must be considered: the duration of the pursuit, distance of the pursuit, speed of the pursuit, whether offender ran red lights or stop signs, and, if so, the number of lights or stop signs run, and whether the offender did not use lights at a time when lights should have been used.

{¶18} Tucker argues that the evidence shows that he did not break any traffic laws. He did not run any stop signs or red lights, and he did not speed. In

sum, there is no evidence indicating that his driving caused a substantial risk of serious physical harm to any persons or property.

{¶19} Tucker contends that Deputy Stillson's testimony about exceeding 100 mph to assist Deputy Grainer was due to the sheriff's office policy, not Tucker's actions. And the policy does not endorse or create a substantial risk to deputies responding as a back-up.

{¶20} Thus, Tucker claims that his conviction for failing to comply with a signal by a police officer under R.C. 2921.331(B) and (C)(5)(a)(ii) was against the manifest weight of the evidence because there is no evidence that his driving caused a substantial risk of serious physical harm to persons or property. Therefore, his conviction should be reversed.

{¶21} In response, the State acknowledges that it was a low-speed pursuit. However, the State maintains Tucker travelled 8 to 9 miles before he pulled over. The roads were wet, and, at minimum, Deputy Stillson was travelling at speeds in excess of 100 mph to assist Deputy Grainer in stopping Tucker's vehicle.

{¶22} Notably, the State also points out that after Tucker initially pulled over, his vehicle began to move again, requiring Deputy Wallace to position her patrol vehicle directly in front of Tucker's vehicle to prevent him from departing the scene.

{¶23} Thus, the State maintains that it presented substantial evidence to the jury to show that Tucker operated his vehicle in a manner that caused

substantial risk of serious physical harm to persons or property. Therefore, the State moves this court to overrule Tucker's assignment of error.

Law

Manifest Weight of the Evidence

{¶24} “A manifest-weight challenge involves an inquiry into the persuasiveness of the evidence.” *State v. Hall*, 2025-Ohio-3199, ¶ 195 (4th Dist.), citing *State v. Martin*, 2022-Ohio-4175, ¶ 26. “[W]hen an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court must dutifully examine the entire record, weigh the evidence and all reasonable inferences, and consider the witness credibility.” *State v. Sheets*, 2025-Ohio-5158, ¶16 (4th Dist.), citing *State v. Dean*, 2015-Ohio-4347, ¶ 151.

{¶25} “In conducting this review, ‘the appellate court sits as a ‘thirteenth juror’ and may disagree with the jury's resolution of the conflicting testimony.’ *Hall* at ¶195 (4th Dist.), quoting *Tibbs v. Florida*, 457 U.S. 31, 42 (1982). “A reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve.” *Sheets* at ¶16 (4th Dist.), citing *State v. Issa*, 93 Ohio St.3d 49, 67 (2001). “‘Because the trier of fact sees and hears the witnesses and is particularly competent to decide “whether, and to what extent, to credit the testimony of particular witnesses,” we must afford substantial deference to its determinations of credibility.’” *Barberton v. Jenney*, 2010-Ohio-2420, ¶ 20, quoting *State v. Konya*, 2006-Ohio-6312, ¶ 6 (2d Dist.), quoting *State v. Lawson*, 1997 WL 476684 (2d Dist. Aug. 22, 1997).

{¶26} “Once the reviewing court finishes its examination, the court may reverse the judgment of conviction only if it appears that the fact-finder, when resolving the conflicts in evidence, ‘clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.’” *Sheets* at ¶19, (4th Dist.), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983). However, “[i]f the prosecution presented substantial credible evidence upon which the trier of fact reasonably could conclude, beyond a reasonable doubt, that the essential elements of the offense had been established, the judgment of conviction is not against the manifest weight of the evidence.” *Id.*, citing *State v. Eley*, 56 Ohio St.2d 169 (1978), syllabus, superseded by state constitutional amendment on other grounds in *State v. Smith*, 80 Ohio St.3d 89 (1997). “[A] reviewing court should find a conviction against the manifest weight of the evidence only in the ‘ ‘ ‘exceptional case in which the evidence weighs heavily against the conviction.’ ” ” ” *Id.*, quoting *State v. Lindsey*, 87 Ohio St.3d 479, 483 (2000), quoting *State v. Thompkins*, 78 Ohio St.3d 380, 387, (1997), quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983).

Analysis

{¶27} Tucker was convicted of failing to comply with an order or signal of a police officer in violation of R.C. 2921.331(B) and (C)(5)(a)(ii):

(B): 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.
(C)(1) Whoever violates this section is guilty of failure to comply with an order or signal of a police officer

...

(5)(a) A violation of division (B) of this section is a felony of the third degree if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt:

...
(ii) The *operation of the motor vehicle* by the offender *caused a substantial risk of serious physical harm to persons or property*.

(Emphasis added.).

{¶28} Tucker challenges only the element of whether his driving “caused a substantial risk of serious physical harm to persons or property” under R.C. 2921.331(C)(5)(a)(ii).

{¶29} The evidence shows the “pursuit” occurred in the dark and it was raining. After confirming that the vehicle belonged to Tucker, Deputy Gainer testified that he activated his emergency lights, but Tucker did not pull over. Deputy Gainer then activated his siren, but Tucker still failed to stop. The testimony indicated that the speed of Tucker’s vehicle during the pursuit was between 35 and 45 miles per hour, and it continued for 8 to 9 miles. There was no testimony indicating that any vehicle lost control or that there was nearly an accident.

{¶30} However, Deputy Stillson, who was responding to provide back-up for Deputy Gainer, testified his speed was “into the triple digits.” When asked why he was driving so fast, he testified it was due to the “nature of the original call,” which was domestic violence. Deputy Stillson also testified that in responding to provide back-up for Deputy Gainer, she was travelling “fast.” Driving at high speed, especially at night on a wet road, is not only a danger to any motorists who might be in the area, but also to the deputies.

{¶31} Tucker maintains that the proximate cause of Deputy Stillson driving fast that night was due to the “policy of the sheriff’s office.” We disagree. If there was a policy or training requiring deputies to expedite their response as backup, we find it was not the reason for Deputy Stillson’s expedited response. Instead, the policy was only enacted due to Tucker’s decision to flee after allegedly committing domestic violence. Deputies Stillson and Wallace would not have needed to support Deputy Gainer if not for Tucker’s alleged act and subsequent flight. Therefore, we conclude that Tucker was the cause of the deputies’ high-speed, high-risk response.

{¶32} Additionally, all three deputies testified that as soon as Tucker stopped his vehicle, he immediately tried to drive away. Video from Deputy Stillson and Deputy Wallace’s body cams appear to corroborate their testimony, showing both deputies stopping their patrol vehicles briefly before abruptly starting to drive again. This prompted Deputy Wallace to place herself in danger by maneuvering her patrol vehicle at a perpendicular angle to, and directly in the front of Tucker’s vehicle preventing his escape.

{¶33} We find that the deputies’ high-speed response to back-up Deputy Gainer, Deputy Wallace’s action of placing her vehicle and herself in danger to prevent Tucker’s escape, or both, are some evidence upon which a jury could have determined beyond a reasonable doubt that Tucker’s actions “caused a substantial risk of serious physical harm to persons or property.” In other words, we find that the jury did not lose its way in finding that Tucker willfully fled after receiving a signal to stop in violation of R.C. 2921.331(B), and that his operation

of the vehicle caused a substantial risk of serious physical harm, thereby supporting the third-degree felony enhancement under R.C. 2921.331(C)(5)(a)(ii). This is not the exceptional case where the evidence weighs heavily against the conviction.

CONCLUSION

{¶34} Therefore, we overrule Tucker's sole assignment of error and affirm the trial court's judgment of conviction.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Washington County Court of Common Pleas to carry this judgment into execution.

IF A STAY OF EXECUTION OF SENTENCE AND RELEASE UPON BAIL HAS BEEN PREVIOUSLY GRANTED BY THE TRIAL COURT OR THIS COURT, it is temporarily continued for a period not to exceed 60 days upon the bail previously posted. The purpose of a continued stay is to allow Appellant to file with the Supreme Court of Ohio an application for a stay during the pendency of proceedings in that court. If a stay is continued by this entry, it will terminate at the earlier of the expiration of the 60-day period, or the failure of the Appellant to file a notice of appeal with the Supreme Court of Ohio in the 45-day appeal period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Supreme Court of Ohio. Additionally, if the Supreme Court of Ohio dismisses the appeal prior to expiration of 60 days, the stay will terminate as of the date of such dismissal.

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

Smith, P.J. and Abele, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Kristy S. Wilkin, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.