

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

SAM WILLIAMS,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY **Case No. 21 MA 0097**

Criminal Appeal from the
Mahoning County Court #4 of Mahoning County, Ohio
Case No. 21 TRD 02133

BEFORE:

David A. D'Apolito, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Affirmed.

Atty. Paul J. Gains, Mahoning County Prosecutor, and *Atty. Edward A. Czopur*, Assistant Prosecuting Attorney, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee and

Atty. David J. Betras, and *Atty. Patrick G. Kiraly*, Betras, Kopp & Harshman, LLC, 6630 Seville Drive, Canfield, Ohio 44406, for Defendant-Appellant.

Dated: September 13, 2022

D’Apolito, J.

{¶1} Appellant, Sam Williams, appeals his conviction for one count of failure to stop for a school bus in violation of R.C. 4511.75(A), a minor misdemeanor, following a trial to the bench in Mahoning County Court #4. In his sole assignment of error, Appellant contends that the trial court’s verdict is against the manifest weight of the evidence. For the following reasons, Appellant’s conviction is affirmed.

FACTS

{¶2} Four witnesses testified at trial, three on behalf of the state, and Appellant, who took the stand in his own defense. Christy Allen, a bus driver employed by Jackson Milton Local School District testified that the offense occurred while she was off-loading students from her school bus on May 11, 2021 at roughly 2:30 p.m. on State Route 45, a two-lane highway in Jackson Township, Ohio, near the intersection of S.R. 45 and Mahoning Avenue. There is no dispute that the stop sign attached to the bus and the red blinking lights were automatically engaged when Allen activated the parking brake and opened the door of the bus.

{¶3} According to her testimony, Allen watched a “white construction truck come to the light at Mahoning Avenue, proceed to turn right, and then proceed to move forward and go through [her] red stop – [her] stop sign as it was out. It didn’t stop at all or anything, just proceeded onward.” (Trial Tr., p. 11.)

{¶4} Allen further testified that “[i]t was a construction vehicle and [sic] with its construction lights going on.” (*Id.*) She added that the white truck had “like white flashing [construction lights]” and was operated by a “white male.” (*Id.*)

{¶5} Pursuant to her training, Allen recorded the license plate number of the offending vehicle on a notepad. At the conclusion of her route, she returned the bus, notified her supervisor of the offense, and completed a violation document form, which included a description of the vehicle at issue, a “white Dodge RAM truck,” and the license plate number. (*Id.*, p. 13-14.) The violation document form, which was not offered into evidence, but was read into the record during Allen’s testimony, reads, in pertinent part, “[s]topped to drop student off. Had my reds on Driver proceeded to turn right at the light

and drive straight through my red stop sign while I was letting a student off [sic]. Had his construction lights on.” (*Id.*, p. 14.)

{¶6} On cross-examination, Allen testified that she included all pertinent information in the violation document form. She conceded that the form does not include a description of any contents in the bed of the truck. Further, defense counsel inquired, “[y]ou said my client had construction lights on. And so that was a bar on top of the white truck; is that correct?” Allen responded, “Yes.” (*Id.*, p. 17.)

{¶7} William Sosnosky, the resource officer assigned to Jackson Milton Local School District, testified that he was tasked with the investigation of Allen’s report. His investigation revealed that the license plate identified by Allen was associated with a white 2020 Dodge RAM truck owned by the Youngstown Bridge Company.

{¶8} Sosnosky contacted the company and spoke to an employee, Sylvia Dye. Dye informed Sosnosky that the vehicle in question was assigned to Appellant on the day in question. As a consequence, Sosnosky issued a citation to Appellant and sent it by U.S. Mail to Appellant’s home address, which was provided by Dye.

{¶9} Sosnosky conceded on cross-examination that he did not conduct a physical examination of the suspect vehicle. Sosnosky testified that he “did not feel like [a physical examination of the vehicle] was necessary.” (*Id.*, p. 26.)

{¶10} Dye testified that she received a telephone call from Sosnosky and that the license plate that was the subject of his inquiry was associated with a white 2020 RAM pickup truck assigned to Appellant, who was working on the night shift on May 11, 2021. Dye further testified that, although some of the vehicles at Youngstown Bridge Company have light bars installed, the vehicle assigned to Appellant on May 11, 2021 did not. When asked if the light bars were assigned to all of the pickup trucks at Youngstown Bridge Company, Dye responded, “I said they are assigned to them. Not all of the trucks have them. * * * That depends on if the owner wants to [sic]. That one does not have one.” (*Id.*, p. 31.) Finally, Dye testified that Appellant is a welder for Youngstown Bridge Company and that there is welding equipment in the bed of his truck.

{¶11} Appellant testified that the vehicle he drives is “a custom-made flatbed truck with two welders, big welders,” and that “one is approximately six feet long, two feet wide and sticks up over the cab.” (*Id.*, p. 36.) Appellant confirmed that the welders are “very

noticeable,” regardless of whether the truck is viewed from the front or the back. Appellant further testified that his truck does not have a light bar. (*Id.*)

{¶12} Appellant denied having been on State Route 45 at 2:30 p.m. on May 11, 2021, and as a consequence, denied failing to stop for Allen’s school bus. Appellant testified that he was at his residence at that time.

{¶13} Appellant offered into evidence seventeen photographs taken by a neighbor’s surveillance camera, which depict the front end of a white pickup truck parked in Appellant’s driveway. The vantage point is from the driver’s side at a roughly 350-degree angle measured from the front of the truck to the driver’s side.

{¶14} Significantly, the license plate on the vehicle is illegible, and neither the bed of the truck nor its contents are depicted. Only the cab is depicted, and the photographs do not depict a welder “stick[ing] up over the cab.” However, the photographs confirm that there is no light bar on the vehicle.

{¶15} The series of photographs are time-stamped between 12:26 p.m. and 3:07 p.m. An eighteenth photograph from the same camera and vantage point with the time-stamp of 3:17 p.m. reveals that the truck is no longer parked in the driveway.

{¶16} Appellant testified to the accuracy of the time-stamp on his neighbor’s camera, although he conceded on cross-examination that he believed, but was not certain, that the camera automatically adjusted to daylight savings time. Appellant reported for work at 6 p.m. on May 11, 2021.

ASSIGNMENT OF ERROR

THE TRIAL COURT ERRED WHEN IT FOUND APPELLANT GUILTY BEYOND A REASONABLE DOUBT.

{¶17} In determining whether a verdict is against the manifest weight of the evidence, we must review the entire record, weigh the evidence and all reasonable inferences 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. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). “Weight of the evidence concerns ‘the inclination of the greater

amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.’ ” *Id.* (Emphasis sic.).

{¶18} In making this determination, we are not required to view the evidence in a light most favorable to the prosecution but may consider and weigh all of the evidence produced at trial. *Id.* at 390. However, “the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts.” *State v. Hunter*, 131 Ohio St.3d 67, 2011-Ohio-6524, 960 N.E.2d 955, ¶ 118, quoting *State v. DeHass*, 10 Ohio St.2d 230, 227 N.E.2d 212 (1967), paragraph one of the syllabus; see also *Seasons Coal Co., Inc. v. City of Cleveland*, 10 Ohio St.3d 77, 461 N.E.2d 1273 (1984) at 80 (the trier of fact occupies the best position from which to weigh the evidence and judge the witnesses’ credibility by observing their gestures, voice inflections, and demeanor).

{¶19} Last year, in *State v. Wiggins*, 7th Dist. Mahoning No. 20 MA 0125, 2021-Ohio-4554, we acknowledged that the standard of review articulated in *Thompkins* is equally applicable when reviewing a manifest weight challenge from a bench trial. *Id.* at ¶ 12, citing *State v. Layne*, 7th Dist. Mahoning No. 97 CA 172, 2000 WL 246589, at *5 (Mar. 1, 2000). A reviewing court shall not reverse a judgment as being against the manifest weight of the evidence in a bench trial where the trial court could reasonably conclude from substantial evidence that the state has proved the offense beyond a reasonable doubt. *Wiggins* at ¶ 12, citing *State v. Hill*, 7th Dist. Mahoning No. 09-MA-202, 2011-Ohio-6217, ¶ 49.

{¶20} Where a case is tried by a jury, only a unanimous appellate court can reverse on manifest weight of the evidence grounds. *Thompkins*, 78 Ohio St.3d at 389, citing Ohio Constitution, Article IV, Section 3(B)(3). Because this case was tried to the bench, a simple majority of the judges on the panel can reverse the conviction as being against the manifest weight of the evidence. *Struthers v. Williams*, 7th Dist. Mahoning No. 07 MA 55, 2008-Ohio-6637, ¶ 10.

{¶21} In this appeal, Appellant contends that the trial court’s verdict is not supported by any rational view of the evidence. He predicates his argument on the uncontroverted testimony from himself and Dye that the truck assigned to Appellant on the day in question had no light bar, and the photographs establish that a white pickup

truck with no light bar, which Appellant identified as his truck, was parked in Appellant's driveway at the time when the offense occurred.

{¶22} As previously stated, the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of the facts. *Hunter, supra*. Moreover, a trier of fact is free to believe some, all, or none of each witness' testimony and they may separate the credible parts of the testimony from the incredible parts. *State v. Barnhart*, 7th Dist. Jefferson No. 09 JE 15, 2010-Ohio-3282, ¶ 42, citing *State v. Mastel*, 26 Ohio St.2d 170, 176, 270 N.E.2d 650 (1971).

{¶23} Here, the trial court acted within its discretion when it discounted Allen's testimony that the offending vehicle had an illuminated light bar, based on the fact that the license number that she recorded was associated with a white Dodge RAM truck. The trial court similarly acted within its discretion when it disbelieved that the white pickup truck depicted in the photographs was, in fact, the offending vehicle insofar as the license plate was not legible and there does not appear to be a welder sticking up over the cab.

{¶24} For the foregoing reasons, we find that the trial court did not clearly lose its way and create such a manifest miscarriage of justice, and that Appellant's sole assignment of error has no merit. Accordingly, Appellant's conviction is affirmed.

Waite, J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the assignment of error is overruled and it is the final judgment and order of this Court that the judgment of the Mahoning County Court #4 of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.