

[Cite as *State v. Thomas*, 2009-Ohio-2652.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	CASE NO. 08 MA 89
PLAINTIFF-APPELLEE,	)	
	)	
- VS -	)	OPINION
	)	
DAJUAN THOMAS,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS:	Criminal Appeal from Youngstown Municipal Court, Case No. 07 TRD 8088.
---------------------------	--

JUDGMENT:	Affirmed.
-----------	-----------

APPEARANCES:

For Plaintiff-Appellee:	Attorney Joseph Macejko City Prosecutor Attorney John H. Marsh, Jr. Assistant City Prosecutor 26 S. Phelps Street Youngstown, OH 44503
For Defendant-Appellant:	Attorney Robert Rohrbaugh, II 4800 Market Street, Suite A Youngstown, OH 44512

JUDGES:  
Hon. Mary DeGenaro  
Hon. Gene Donofrio  
Hon. Cheryl L. Waite

Dated: June 4, 2009

[Cite as *State v. Thomas*, 2009-Ohio-2652.]  
DeGenaro, J.

{¶1} This timely appeal comes for consideration upon the record in the trial court, and the parties' briefs. Defendant-Appellant, DaJuan Thomas, appeals the judgment of the Youngtown Municipal Court convicting him of one count of driving without a license, a violation of R.C. 4510.12(A)(1), and sentencing him accordingly.

{¶2} On appeal, Thomas argues his conviction was against the manifest weight of the evidence. Upon review of the record, Thomas's argument is meritless. Resolution of this case hinged on credibility determinations that were best made by the trial court as fact-finder. It does not appear that the trial court clearly lost its way so as to create a manifest miscarriage of justice. Accordingly, the trial court's decision is affirmed.

### **Facts**

{¶3} On October 25, 2007, Thomas was cited by Youngtown police for driving without a license, a violation of R.C. 4510.12(A)(1). Thomas pled not guilty to the charge. On March 31, 2008, a bench trial was held. The State first called Youngtown Police Officer Joseph Moran. Moran testified that on October 25, 2007, he and other officers responded to a domestic violence call at 2232 Ohio Avenue in Youngtown, Ohio. Upon arrival, Moran entered the residence and took a report from the alleged victim, Richawn Davis. Davis identified her assailant as a man named Larry Moore, who had since left the scene. As Moran and the other officers departed the residence, Moran stated Davis yelled out that she saw Moore inside a car that was driving past the house. Moran testified he could not recall if Davis was standing on her porch or had called to him through the window when she saw the vehicle.

{¶4} Moran testified that he then turned around and observed the car, which was a green Cadillac containing two men, a driver and a front-seat passenger. Moran stated that as the Cadillac passed, both the passenger and the driver looked directly at him and Davis. Moran testified he was approximately thirty-five feet away from the Cadillac at the time, and that the Cadillac was driving by at a slow rate of speed. He opined that Davis was also able to see the vehicle's occupants. Moran recalled that the driver was wearing a bright green shirt that "stood out."

{¶5} Moran said he then got into his police cruiser and followed the Cadillac, at a

low rate of speed, without engaging his overhead lights. He admitted that by the time he got into his cruiser, the Cadillac had travelled about 60-80 feet and turned off of Ohio Avenue. Moran admitted he lost sight of the Cadillac for about twenty seconds after the vehicle made that turn. Moran testified he was then directed by a bystander on the street to look behind a nearby house, where he subsequently found the Cadillac parked. Moran testified that only about a minute to a minute and a half elapsed between the time he first observed the vehicle in front of Davis's home and when he saw it parked.

{¶6} Moran stated he observed two males standing outside of the Cadillac when he approached it. He testified that Thomas was one of the men, and that he was wearing a bright green shirt. Moran identified Thomas as the defendant in the courtroom. Moran testified that Thomas admitted to him that he was driving the Cadillac. Moran stated that Thomas told him he pulled behind the house because he did not have a valid driver's license. Moran testified that the other officer on the scene confirmed that Thomas did not have a valid driver's license.

{¶7} On cross, Moran stated he could not recall whether he or his partner actually questioned the two men about who was driving the Cadillac. Moran also admitted that when Thomas made the admission about driving the Cadillac, Moran was looking for contraband that may have been dropped from the vehicle. However, Moran stated he was in close proximity to Moore at that time Moore admitted he was the driver. Moran then reviewed State's Exhibit 2, which was the report made by the other officer at the scene. When asked if that report identified what he heard as Thomas's admission that day, Moran replied that it did. Moran stated that the other individual who was in the Cadillac never admitted to Moran that he was the one driving the vehicle. Moran further testified that it turned out this other individual was not Moore, the alleged assailant for whom they were searching.

{¶8} The State then called Darlene Jones, supervisor of the Youngstown branch of the Ohio Bureau of Motor Vehicles and keeper of records there. Jones identified State's Exhibit 1, which is a certified copy of a release of registration information for Thomas. She stated that this document is kept with her office, and that it showed Thomas

did not have a valid Ohio driver's license. She further testified that it appeared from the certified driving record that Thomas has never held a valid license. The exhibit was then marked and admitted.

{¶9} Richawn Davis then testified on behalf of the defense. She stated she resides at 2232 Ohio Avenue, and that she called 911 at approximately 4:00 pm on October 25, 2007, because her son's father, Larry Moore, had been hitting her. She said that police arrived and took a report. Davis stated she told Moran she thought she saw Moore inside of a Cadillac that was driving past her home. She testified that when she told Moran this, Moran was facing towards her and away from the street. She claimed that by the time Moran turned around to look, the Cadillac had already passed and had turned onto another street. She stated that the officers then jumped into their cruisers and followed the Cadillac.

{¶10} Davis said that she is familiar with Thomas because he is Moore's cousin. Davis testified that it is her understanding that the Cadillac belongs to Thomas, but that "they all drive it." She stated she has never been friends with Thomas and never talks to him. She said she is familiar with him only because she sees him ride around the neighborhood with Moore. She stated she has not had any contact with Thomas since the incident.

{¶11} When Davis saw the Cadillac that day she recognized it and assumed Moore would be in the car with Thomas. She testified that the driver of the Cadillac was wearing a black hoodie and a hat, similar to what Moore was wearing that day, which was why she mistook the man for Moore. Davis testified that she did observe Thomas in the Cadillac that day, but that he was in the *passenger seat*. She identified Thomas for the record as the defendant in the courtroom. On cross, Davis stated she recalled Thomas wearing a "bright green Dickey outfit" that day.

{¶12} At the close of trial, the court found Thomas guilty as charged, and was sentenced to sixty days in jail, a \$200.00 fine, plus court costs. The court also ordered him placed on basic probation supervision upon his release from jail, for a period of eighteen months. Thomas moved the trial court to stay his sentence pending appeal,

which was granted on the condition that Thomas post bond, which he did.

### **Manifest Weight**

{¶13} In his sole assignment of error, Thomas asserts:

{¶14} "Appellant's conviction [sic] was rendered against the manifest weight of the evidence put forth at his trial." Thomas was convicted of one count of driving without a license, pursuant to R.C. 4510.12(A)(1), which states:

{¶15} "No person, except those expressly exempted under sections 4507.03, 4507.04, and 4507.05 of the Revised Code, shall operate any motor vehicle upon a public road or highway or any public or private property used by the public for purposes of vehicular travel or parking in this state unless the person has a valid driver's license issued under Chapter 4507 of the Revised Code or a commercial driver's license issued under Chapter 4506 of the Revised Code." R.C. 4510.12(A)(1)

{¶16} In determining whether a verdict is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences and determine whether, in resolving conflicts in the evidence, 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. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, 678 N.E.2d 541.

{¶17} "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.) In making its determination, a reviewing court is 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.*

{¶18} However, a conviction will only be reversed as against the manifest weight of the evidence in exceptional circumstances. *Id.* This is so because the trier of fact is in a better position to determine credibility issues, since he personally viewed the demeanor, voice inflections and gestures of the witnesses. *State v. Hill* (1996), 75 Ohio St.3d 195, 204, 661 N.E.2d 1068; *State v. DeHass* (1967), 10 Ohio St.2d 230, 231, 39 O.O.2d 366, 227 N.E.2d 212.

{¶19} Ultimately, "the reviewing court must determine whether the appellant or the appellee provided the more believable evidence, but must not completely substitute its judgment for that of the original trier of fact 'unless it is patently apparent that the factfinder lost its way.'" *State v. Pallai*, 7th Dist. No. 07MA198, 2008-Ohio-6635, at ¶31, quoting *State v. Woulard*, 158 Ohio App.3d 31, 2004-Ohio-3395, 813 N.E.2d 964, at ¶81. In other words, "[w]hen there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one we believe." *State v. Dyke*, 7th Dist. No. 99CA149, 2002-Ohio-1152, at ¶13, citing *State v. Gore* (1999), 131 Ohio App.3d 197, 201, 722 N.E.2d 125.

{¶20} To determine whether Thomas's conviction was against the manifest weight of the evidence, we must weigh the competing evidence presented by both sides at trial. It is undisputed that Thomas did not have a valid license on October 25, 2007, thus the only issue is whether Thomas was actually driving the Cadillac that day.

{¶21} The State presented the testimony of Moran, a Youngstown Police Officer. Moran testified he saw Thomas, who was wearing a bright green shirt, driving the Cadillac that day. He stated that when Davis alerted him about the Cadillac, he turned around and had a clear view of the faces of both the passenger and the driver. Further, Moran claimed Thomas admitted that he was driving the car and that he pulled behind a house because he did not have a license.

{¶22} Thomas presented the testimony of Davis in his defense. Davis testified that she did not observe Thomas driving, but rather he was in the passenger seat. She also claimed Moran did not turn around to look at the Cadillac until it had already turned off of Ohio Avenue.

{¶23} The fact that Moran could not recall if he personally asked the two men who was driving the Cadillac would seem to somewhat support the defense's case. Likewise, the fact that Moran was busy looking for contraband when he heard Thomas admit he was the driver supports the defense's case. However, the fact that Davis also recalled Thomas wearing a bright green shirt that day would seem to support the State's case.

{¶24} In the end, although neither side presents a completely unbelievable version

of the events, it seems that the reasonable inferences which may be drawn from the evidence tend to favor the State. This case hinged on a credibility determination. The court could have believed Moran's testimony, or it could have believed Davis's testimony. Ultimately, the trial court found Davis was not credible, mainly because it found her claim that Moran failed to turn around immediately to view the Cadillac was unbelievable. Specifically, the court stated:

{¶25} "In assessing the credibility of the witnesses, I noted what Mr. Hartup just pointed out in his closing summation. That in the heat of the moment when they are investigating, when police are investigating a domestic violence case with significant injuries to this woman I find it totally implausible when she identifies a potential perpetrator going past the house that the officers wouldn't turn immediately to look. I find it unbelievable that they wouldn't turn until the car was two blocks down the street ready to turn the corner. That certainly sheds a lot of light from my standpoint as to this witness' [Davis's] credibility."

{¶26} Credibility determinations like this are best left to the fact-finder, which in this case, was the trial court. Upon reviewing all the evidence in this case, the trial court did not clearly lose its way so as to create a manifest miscarriage of justice. Accordingly, Thomas's sole assignment of error is meritless and the judgment of the trial court is affirmed.

Donofrio, J., concurs.

Waite, J., concurs.