[Cite as *State v. Caldwell*, 2024-Ohio-5506.]

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

STATE OF OHIO,	:	
	:	Case No. 23CA1
Plaintiff-Appellee,	:	
	:	
v.	:	DECISION AND JUDGMENT
	:	ENTRY
MARK A. CALDWELL JR.,	:	
	:	
Defendant-Appellant.	:	**RELEASED: 11/15/2024**

APPEARANCES:

R. Jessica Manungo, Assistant State Public Defender, Office of the Public Defender, Columbus, Ohio, for appellant.

Randy Dupree, Jackson County Prosecuting Attorney, and Collen Williams, Assistant Jackson County Prosecuting Attorney, Jackson, Ohio, for appellee.

Wilkin, J.

{¶1} This is an appeal from a Jackson County Court of Common Pleas judgment of conviction in which appellant, Mark A. Caldwell, Jr. ("Caldwell"), was convicted of failure to comply with the order or signal of a police officer. The trial court sentenced Caldwell to 36 months in prison. Caldwell asserts three assignments of error: (1) the trial court plainly erred when it provided the jury with improper supplemental instructions, in violation of the instructions proposed by the Supreme Court of Ohio, after the jury indicated that it was deadlocked, (2) Mr. Caldwell was denied effective assistance of counsel when his attorney failed to object to the improper supplemental instruction given to the jury after it was deadlocked, and (3) Mr. Caldwell's convictions were against the manifest weight of the evidence.

FACTS AND PROCEDURAL BACKGROUND

{¶2} Keith Copas, a patrol sergeant for the Jackson County Sheriff's Office, attempted to execute a traffic stop after he observed a red Jeep Cherokee ("Jeep") run two stop signs. However, the Jeep did not stop so Sergeant Copas pursued the Jeep, which crashed twice. After the second crash, Caldwell fled, but was arrested nearby. The State charged Caldwell with one count of failing to comply with the order or signal of a police officer in violation of R.C. 2921.331(B), a third-degree felony.

{¶3} The case went to trial. The State presented four witnesses. The first to testify was Sergeant Copas. He explained that on October 23, 2021, he was traveling westbound in an SUV patrol vehicle on Chillicothe Pike when he noticed in his rear-view mirror that a Jeep traveling in the opposite direction had no taillights. Consequently, Sergeant Copas executed a U-turn and began following the Jeep. After he observed the Jeep run a second stop sign, Sergeant Copas attempted to execute a traffic stop, activating his lights and siren. However, the Jeep did not stop. As the Jeep turned left onto Clinton Street, it hit the curb, went into a yard and struck a large bush causing it to spin 180 degrees, and then hit a utility pole as it was moving backwards. Sergeant Copas testified that he was able to look through the windshield of the Jeep and recognized both the passenger, Chris Blazer, and the driver, although he could not recall the driver's name "off the top of [his] head[.]"

{¶4} Attempting to flee the scene, the Jeep started moving toward Sergeant Copas passing on his right before entering a neighbor's backyard

where it struck a hedge and came to rest. Both the driver and Blazer exited the vehicle. By this time, other officers had arrived at the scene. Sergeant Copas apprehended Blazer and placed him in his SUV. Shortly thereafter, another officer radioed that he had someone in custody, which was Caldwell. Sergeant Copas was "(100%) sure" that Caldwell was the driver of the Jeep that night.

{¶5} Deputy Steve Sickles with the Jackson County Sheriff's Office was the second to testify on behalf of the State. Sickles testified that Caldwell was detained on Clinton Street, and that he took Caldwell into custody.

{¶6} According to the map on the accident report, the Jeep crashed in someone's yard between Clinton Street and an alley, which ran parallel to each other. The State's third witness was Ryan O'Connor, who testified that at the time of this incident he lived at 130 Clinton Street in Jackson, Ohio. Around midnight on the date of the crash, he heard a "commotion" that included "sirens" and "flashing [lights]." At that time, he saw a man running down the alley by his house. That man tried to sit on O'Connor's porch, but O'Connor told him to leave. O'Connor testified that the person who attempted to sit on his porch was the same man who was taken into custody that night. He testified that usually there are people walking around at midnight but he did not notice anyone walking that night aside from the man who was taken into custody, who he identified as Caldwell.

{¶7} The State's final witness was Thomas King, a Jackson police officer who investigated this incident and completed a crash report. Officer King

testified that the report reflected details of the incident, including that the Jeep knocked down a utility pole. The State then rested.

{¶8} The defense presented no witnesses. After denying Caldwell's Crim.R. 29 motion for acquittal, the State and the defense gave their closing arguments. The court then instructed the jury, which retired to deliberate.

{¶9} During deliberations, the jury asked the court if it could review "Copas' testimony." Because the transcript had not been completed yet, the parties agreed that the jury could hear an audio recording of part of his testimony. After listening to the testimony, the jury returned to deliberate.

{¶10} The jury then notified the court that it could not "come to alignment and agreement on a verdict for Mark Caldwell. What are next steps?" The court went on the record with counsel to address the question:

> The jury's been out about two (2) hours. Uh * * * I think it is too early to give the… um… OJI instruction in 429 which is the possibility of a verdict. Which is sometimes for a shorthand we refer to as the "deadlock instruction." I think it's way too early to give that instruction. Um… and we had discussed bringing the jury back in and encouraging them to continue in their deliberations to see if they could reach a verdict and send them back in. Um… is the State agreeing… in agreement with that… uh… resolution?

{¶11} The State agreed. The defense "reluctantly" agreed, but stated if the jury says they are "deadlocked that we go from that point to see what * * * to see what * * * ." The court interrupted, responding: "I'm not going to ask them if they're deadlocked." Defense counsel responded: "Okay."

{¶12} The court brought the jury into the courtroom and said:

> Ladies and gentlemen of the jury, I've gotten your question. Uh * * * what I'm going to tell you is I'm going to ask you to * * * uh * * * is to continue your deliberations pursuant to your instructions that I have previously given you with an eye to see if you can reach a verdict. It's only been about two (2) hours. Which, I know may seem like a long time to you but for jury deliberations that's not what I would consider necessarily a lengthily time. So * * uh * * * I'm going to ask you to come back * * * go back and deliberate and, you know, if you have additional questions, I'll answer those questions as you put them in writing. Alright, so folks, I'll have you go back in the room. I'll have someone come in and I'll take * * * people are probably getting hungry for lunch * * * see most people are nodding their heads * * * we'll come into to take some pizza orders here in a couple of minutes, okay. Thank you.

The jury resumed their deliberations.

{¶13} Subsequently, the jury had a third request to see Ryan O'Connor's statement from the night of October 23, 2021. The court told the jury that his statement was not admitted into evidence and consequently the jury could not view his statement. The jury again resumed their deliberations.

{¶14} The jury informed the Court: "After much deliberation we are still not aligned on a decision of guilt or non guilt for Mr. Caldwell. We've discussed many angles." Speaking to the prosecutor and defense counsel, the trial judge suggested that he instruct the jury on the deadlock instruction. Both counsel agreed. The jury was then brought into the courtroom and the court addressed the jury as follows:

> Thank you. Please be seated. Ladies and gentlemen of the jury, in response to your fourth question, I am going to give the following instruction to you: I am going to give you an instruction that courts in Ohio give in this situation. The process of discussion and deliberation in the jury room is necessarily slow and requires consideration and patience. The secrecy that surrounds your efforts will result in a verdict, if, after the following instruction, you are unable to reach a verdict, please advise the court in writing. In a large proportion of cases, absolute certainty cannot be

> attained or expected. Although the verdict must reflect the * * * uh * * * verdict of each individual juror and not the mere acquiescence in the conclusion of other jurors, each question submitted to you should be examined with proper regard and deference to the opinions of others. It is desirable that the case be decided. You were selected in the same manner, and from the same source, as any future jury would be. There is no reason to believe that the case will ever be submitted to a jury more capable, impartial, or intelligent than this one. Likewise there is no reason to believe that more or clearer evidence will be produced by either side. It is your duty to decide the case, if you can conscientiously do so. You should listen to one another's opinions with a disposition to be persuaded. Do not hesitate to reexamine your views and change your position if you are convinced it is erroneous. If there is disagreement, all jurors should reexamine their positions, given that a unanimous verdict has not been reached. Jurors for acquittal should consider whether their doubt is reasonable, considering it is not shared by others, equally honest, who have heard the same evidence, with the same desire to arrive at the truth, and under the same oath. Likewise jurors for a convictions should ask themselves whether they might not reasonably doubt the correctness of a judgment not concurred in by all the other jurors. So at this point, I will ask you to go back into the jury room and * * * uh * * * you can indicate if you * * * I guess if you can't reach a decision, you're going to have to advise me in writing of that fact. So, at this time, I'll return you to the jury room and we'll wait to hear from you. Thank you.

{¶15} The jury again resumed deliberation, but this time the jury reached a verdict. The judge addressed the jury: "Alright please be seated. Alright, Ladies and Gentlemen, I had * * * of the jury, I understand you have reached a verdict?" The jury foreperson responded affirmatively and informed that the court that they found Caldwell guilty of failing to comply with order or signal of a police officer. After the jury was polled, and each juror responded that they had found Caldwell guilty, the jury was excused.

{¶16} On December 22, 2022, the court held a sentencing hearing. After hearing the positions of the State and the defense, the court stated that it had

considered the evidence in light of the sentencing factors in R.C. 2929.11 and 2929.12 and sentenced Caldwell to a 36-month prison term. The court also notified Caldwell that upon his release he would be subject to post-release control.

{¶17} It is Caldwell's conviction for failing to follow the order or signal of a police officer that is the subject this appeal.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT PLAINLY ERRED WHEN IT PROVIDED THE JURY WITH IMPROPER SUPPLEMENTAL INSTRUCTIONS, IN VIOLATION OF THE INSTRUCTIONS PROPOSED BY THE SUPREME COURT OF OHIO, AFTER THE JURY INDICATED THAT IT WAS DEADLOCKED. STATE V. HOWARD, 42 OHIO ST.3D 18, 24, 537 N.E.2D 188 (1989): OHIO JURY INSTRUCTIONS, CR SECTION 429.09(2) (REV. AUG. 15, 2018); TR. 262-254

II. MARK CALDWELL JR. WAS DENIED EFFECTIVE ASSISTENCE OF COUNSEL WHEN HIS ATTORNEY FAILED TO OBJECT TO THE IMPROPER SUPPLEMENTAL INSTRUCTIONS GIVEN TO THE JURY AFTER IT WAS DEADLOCKED. STRICKLAND V. WASHINGTON, 466 U.S. 668, 104 S.CT. 2052, 80 L.ED.2D 674 (1984); STATE V. BRADLEY, 42 OHIO ST.3D 136, 538 N.E.2D 373 (1989); STATE V. HOWARD, 42 OHIO ST.3D 18, 24, 537 N.E.2D 188 (1989); OHIO JURY INSTRUCTIONS, CR SECTION 429.09(2) (REV. AUG. 15, 2018); TR. 262-264.

III. MR. CALDWELL'S CONVICTIONS WERE AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE. FIFTH AND FOURTEENTH AMENDMENTS, U.S. CONSTITUTION; ARTICLE I, SECTIONS 10 AND 16, OHIO CONSTITUTION. T.P. 165-198.

I. First Assignment of Error

{¶18} Caldwell asserts that it was plain error when the trial court provided the jury with an improper supplemental instruction in violation of the instructions for a deadlocked jury set out in *State v. Howard*, 42 Ohio St.3d 18, 24 (1989). Caldwell acknowledges that a trial court has discretion in fashioning jury instructions, but that discretion is not absolute.

{¶19} Caldwell also acknowledges that there is no bright-line test for determining when a jury is deadlocked, but when it is determined that a jury is deadlocked *Howard* sets out the instruction that should be given to the jury. Caldwell claims that Ohio courts have held that when a jury is deadlocked a court must substantially comply with the *Howard* instruction. Under *Howard,* a supplemental instruction cannot be "coercive."

{¶20} Caldwell maintains that when the jury first informed the trial court that they could not "come to alignment and agreement on a verdict for Mark Caldwell. What are the next steps[,]" they were indicating that they were deadlocked. Caldwell argues that the trial court's supplemental instruction was improper, specifically pointing out that the court asked the jury to continue its deliberations "with an eye to see if [they could] reach a verdict." (Brackets sic.) Caldwell claims that the trial court's supplemental instruction was "coercive" like the trial court's instructions in *Howard* and *United States v. Jenkins*, 380 U.S. 445 (1965) and pressured the jury into making a decision.

{¶21} In this case, Caldwell claims that the trial court's first supplemental instruction did not comport entirely with the *Howard* instruction because it did not indicate that the jury should reach a verdict only if they could conscientiously do

so. This instruction was incomplete because it "pushed" jurors to reach a unanimous verdict while omitting that it be done conscientiously.

{¶22} Caldwell argues that the trial court's first supplemental instruction, which was coercive, is inextricably linked to the verdict. Caldwell argues that the court's first supplemental instruction "set the tone" for the jury's deliberations, which was that a unanimous verdict was the only option open to the jury.

{¶23} The trial court's second supplemental instruction did use the conscientious consideration language, but it did not remedy the infirmity of the first one that failed to do so. Rather, it "told the jury if they were unable to reach a verdict, they had to advise the court in writing." Further, the first supplemental instruction directed the jury to continue their deliberations "with an eye * * * [to] reach a verdict because they had not deliberated for a lengthy time." Caldwell argues there is a reasonable probability the second supplemental instruction reinforced the first, defective, supplemental instruction that the jury had to continue to deliberate and would not be released until they reached a unanimous verdict.

{¶24} Caldwell claims that his substantial rights were affected when the trial court initially gave the supplemental instruction that was coercive and incomplete.

{¶25} In response, the State argues that because Caldwell's trial counsel did not object to the instructions that the trial court gave to the jury, we should review this assignment of error under a plain error analysis. Plain error is found

only to prevent a manifest miscarriage of justice, and, but for that error, the outcome of the case would have changed.

{¶26} The State maintains that the trial court did not err when it determined that the jury had not deliberated long enough to give the *Howard* instruction as its initial supplemental instruction. The State maintains that "[t]he trial court has the discretion to determine when enough time has passed to determine that a jury is deadlocked and whether *Howard* Instructions" are necessary.

{¶27} The State also claims that the first supplemental instruction given to the jury by the trial court was not coercive. The court herein instructed the jury to deliberate "with an eye to see if you can reach a verdict[,]" which is not coercive. The State notes that after the initial supplemental instruction, the jury informed the court that it still could not reach a decision. This shows that "the jury did not feel coerced into reaching a verdict by the [court's] statement, because they came back after deliberations without a verdict."

{¶28} The State maintains that Caldwell cannot show that failing to give the *Howard* instruction was plain error because the outcome of the trial would not have been different if the *Howard* instruction had been given. After all, the jury came back again unable to reach a verdict. Therefore, the State claims that Caldwell's first assignment of error should be overruled.

A. Law

{¶29} In *Howard*, 42 Ohio St.3d 18 (1989), the Supreme Court of Ohio approved a supplemental charge to be given to a jury deadlocked as to judgment

or acquittal. In *Howard*, the Ohio Supreme Court approved the following jury instruction for deadlocked juries:

> The principal mode, provided by our Constitution and laws, for deciding questions of fact in criminal cases, is by jury verdict. In a large proportion of cases, absolute certainty cannot be attained or expected. Although the verdict must reflect the verdict of each individual juror and not mere acquiescence in the conclusion of your fellows, each question submitted to you should be examined with proper regard and deference to the opinions of others. You should consider it desirable that the case be decided. You are selected in the same manner, and from the same source, as any future jury would be. There is no reason to believe the case will ever be submitted to a jury more capable, impartial, or intelligent than this one. Likewise, there is no reason to believe that more or clearer evidence will be produced by either side. It is your duty to decide the case, if you can conscientiously do so. You should listen to one another's arguments with a disposition to be persuaded. Do not hesitate to reexamine your views and change your position if you are convinced it is erroneous. If there is disagreement, all jurors should reexamine their positions, given that a unanimous verdict has not been reached. Jurors for acquittal should consider whether their doubt is reasonable, considering that it is not shared by others, equally honest, who have heard the same evidence, with the same desire to arrive at the truth, and under the same oath. Likewise, jurors for conviction should ask themselves whether they might not reasonably doubt the correctness of a judgment not concurred in by all other jurors.

Id. at paragraph two of the syllabus.

{¶30} "[T]he trial judge, who has followed the course of juror deliberations and who has the benefit of nuanced observation of the jury, is generally in a far better position than a reviewing court to determine the appropriate timing of such a charge." *Jones v. Cleveland Clinic Found.*, 2020-Ohio-3780, ¶25. "Thus, a trial court's decision whether and when to provide the instruction is a matter within the

court's discretion and is reviewed only for an abuse of that discretion." *Id.*; *State v. Gapen*, 2004-Ohio-6548, ¶ 127. The term "abuse of discretion" connotes more than an error of judgment; it implies the court's attitude is unreasonable, arbitrary, or unconscionable. *State v. Hamblin*, 2022-Ohio-516, ¶ 9 (4th Dist.), citing *State v. Bear,* 2021-Ohio-1539, ¶ 13 (4th Dist.), citing *State v. Adams*, 62 Ohio St.2d 151, 157 (1980).

{¶31} When an appellant, like Caldwell herein, fails to object to jury instructions, he waives all but plain error. *State v. Owens*, 2020-Ohio-4616, ¶ 7, citing *State v. Diar*, 2008-Ohio-6266, ¶ 127. Therefore, any abuse of discretion for "[a]n improper jury instruction, or a failure to give an instruction, will not constitute plain error unless, but for the error, the outcome of the trial would clearly have been otherwise." *State v. Gary*, 2000-Ohio-1679, * 4 (3rd Dist.), citing *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph two of syllabus. " 'Notice of plain error is to be taken with utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.' " *Id*., quoting *State v. Williams*, 51 Ohio St.2d 112 (1977), paragraph three of the syllabus, vacated on other grounds, 438 U.S. 911 (1978).

{¶32} "There is no formula or required period of time a trial court must wait for a *Howard* instruction to be appropriate." *State v. Hassan*, 2013-Ohio-2071, ¶ 30 (10th Dist.), citing *State v. Shepard*, 2007-Ohio-5405, ¶ 11-12 (10th Dist.); *State v. McCormick*, 2020-Ohio-3140, ¶ 16 (11th Dist.). "[T]here is no bright-line test to determine what constitutes an irreconcilably deadlocked jury." *State v. King*, 2013-Ohio-4791, ¶ 26 (8th Dist.). Courts have discretion to determine

when a jury is deadlocked for purposes of the *Howard* instruction. *See State v. Brown*, 2003-Ohio-5059, ¶ 38. "Several courts have agreed that an initial comment by the jurors after only a short period of deliberation does not require that the Court immediately give a *Howard* instruction." *State v. Gary*, 2000-Ohio-1679, * 5 (3rd Dist.), citing *State v. Dickens* 1998 WL 226537 (1st Dist. May 8, 1998); *State v. Beasley*, 1999 WL 162453 (1st. Dist. March 26, 1999).

B. Analysis

{¶33} Approximately two hours into their deliberation, the jury informed the trial court that it could not "come to alignment and agreement on a verdict for Mark Caldwell. What are the next steps?" In response to the jury's query, the trial court addressed counsel for both parties and noted that it had only been two hours since deliberations had commenced. The trial court believed that it was too soon for a *Howard* instruction and suggested encouraging the jury to continue deliberating "to see if they could reach a verdict." The court indicated that "it was not going to ask the jury if it was deadlocked." Both counsels agreed. Courts have reasoned that brief deliberations can support finding that it is too early to give a *Howard* instruction. *See Gary* at * 5 (Jurors deliberated four hours before informing the court that they were having difficulty reaching a verdict); *Dickens* at * 2 (Jurors deliberated 2 hours and 15 minutes before informing the court they were having difficulty reaching a verdict); *Beasley* at * 3 (Jury had deliberated just short of three hours before informing the trial court they were having difficulty reaching a verdict). Consistent with these cases, we find that the trial court's decision that the jury was not deadlocked after two hours of

deliberation was not unreasonable, arbitrary, or unconscionable. As the Supreme Court has recognized, "the trial judge, who has followed the course of juror deliberations and who has the benefit of nuanced observation of the jury, is generally in a far better position than a reviewing court to determine the appropriate timing of such a charge." *Cleveland Clinic Found.*, 2020-Ohio-3780, at ¶ 25.

{¶34} Instead of giving the jury the *Howard* instruction at this time, the trial court asked the jury to continue its deliberations "with an eye to see if [they could] reach a verdict." (Brackets sic.) Comparing this instruction to the instruction found in *United States v. Jenkins*, Caldwell argues it was coercive. 380 U.S. 445 (1965). In *Jenkins*, "the jury sent a note to the trial judge advising that it had been unable to agree upon a verdict 'on both counts because of insufficient evidence.' " *Id*. at 446. In response, the judge instructed the jury: " 'You have got to reach a decision in this case.' " *Id*. The Supreme Court found that instruction coercive and reversed the appellant's conviction and ordered a new trial. *Id*. The court herein instructed the jury to deliberate "with an eye to see *if* you can reach a verdict." (Emphasis added.) Unlike the instruction in *Jenkins*, we find this instruction encourages, but does not coerce, the jury to reach a verdict. Moreover, the jury's act of deliberating after the initial supplemental instruction and coming back again without a verdict actually shows that the initial supplemental instruction was not coercive because it did not cause the jury to reach a verdict.

{¶35} In sum, we find that the trial court's decision not to give the jury the *Howard* instruction after the jury's initial indication that it was having difficulty reaching an agreement on a verdict was not unreasonable, arbitrary, or unconscionable because the jury had deliberated for only two hours. Further, we find the initial supplemental instruction given by the court to the jury was not coercive. Consequently, because the court's action in this regard was not an abuse of its discretion, it was also not plain error, and we overrule Caldwell's first assignment of error.

II. Second Assignment of Error

{¶36} In his second assignment of error, Caldwell claims that his trial counsel was ineffective for not objecting to the trial court's first supplemental instruction in which the trial court asked the jury to deliberate "with an eye to see if you can reach a verdict."

{¶37} The State argued that Caldwell's trial counsel's performance was not deficient under the first prong of the test for ineffective assistance of counsel. Further, Caldwell suffered no prejudice by his counsel's failure to object. Therefore, the State asks us to overrule Caldwell's second assignment of error.

A. Law

{¶38} "To establish constitutionally ineffective assistance of counsel, a defendant must show that (1) his counsel's performance was deficient and (2) the deficient performance prejudiced the defense and deprived the defendant of a fair trial." *State v. Platt*, 2024-Ohio-1330, ¶ 89 (4th Dist.), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "In Ohio a properly licensed attorney is

presumed competent." *State v. Ruble*, 2017-Ohio-7259, ¶ 47 (4th Dist.), citing *State v. Gondor*, 2006-Ohio-6679, ¶ 62. Therefore, when reviewing an ineffective-assistance-of-counsel claim, "we must indulge in 'a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.' " *Id*., quoting *Strickland* at 697.

{¶39} " 'Failure to satisfy either part of the test [i.e., show deficient performance or prejudice] is fatal to the claim.' " *Platt* at ¶ 88, quoting *State v. Jones*, 2008-Ohio-968, ¶ 14 (4th Dist.). "Therefore, if one element is dispositive, a court need not analyze both." *Id*., citing *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000).

B. Analysis

{¶40} We have determined that the trial court did not abuse its discretion in giving the supplemental instruction that asked the jury to deliberate "with an eye to see if you can reach a verdict." Therefore, it follows that the failure of Caldwell's trial counsel to object to this instruction cannot be the basis for a claim of ineffective assistance of counsel because that failure was not deficient representation, let alone plain error. Therefore, we overrule Caldwell's second assignment of error.

III. Third Assignment of Error

{¶41} In his third assignment of error, Caldwell argues that his conviction for failing to follow the order of a police officer is against the manifest weight of

the evidence. Caldwell claims that apprehension in the vicinity of the incident is not enough to determine that he was the driver of the Jeep that was involved in the accident herein. Caldwell claims that Sergeant Copas, who pursued the Jeep, never saw who was driving it. While Sergeant Copas was able to recognize the passenger in the Jeep, he was unable to identify Caldwell as the driver. There is no video footage of the incident. Only after other officers arrived was Caldwell apprehended. And it was only after Caldwell was apprehended that Sergeant Copas identified Caldwell as the driver.

{¶42} In response, the State claims that Sergeant Copas testified that after the Jeep crashed, he was able to look directly into its windshield at the driver. He claimed that he knew the passenger by name and "he knew the driver but could not remember his name off the top of his head." Sergeant Copas testified that he was 100% certain that the person taken into custody (Caldwell) was the driver of the Jeep.

{¶43} The State claims that testimony of other witnesses also supports that Caldwell was the driver. Ryan O'Connor testified that night a man, the only person whom he saw at the time, ran through the alley and attempted to sit on the porch of O'Connor's home, which was near the accident. O'Connor told him to leave. O'Connor testified that the man was Caldwell.

A. Law

1. Manifest Weight of the Evidence

{¶44} In a manifest-weight-of-the-evidence analysis, "the appellate court 'sits as a thirteenth juror' and assesses whether it disagrees with the factfinder's

resolution of the conflicting testimony." *State v. Griffin*, 2013-Ohio-3309, ¶ 31 (4th Dist.), quoting *State v. Thompkins,* 78 Ohio St.3d 380, 387, 1997-Ohio-52 (1997). "Weight of the evidence concerns the inclination of the greater amount of credible evidence offered at trial to support one side of the issue over the other; it relates to persuasion and involves the effect of the evidence in inducing belief." *Fox v. Positron Energy Res., Inc.*, 2017-Ohio-8700, ¶ 10 (4th Dist.), citing *Paulus v. Beck Energy Corp.*, 2017-Ohio-5716, ¶ 16 (7th Dist.).

{¶45} " 'In determining whether a criminal conviction is against the manifest weight of the evidence, we must review the entire record, weigh the evidence and all reasonable inferences, [and] consider the credibility of witnesses[.]' " [Brackets sic.] *State v. Ratliff*, 2024-Ohio-61, ¶ 48 (4th Dist.), quoting *State v. Evans*, 2023-Ohio-1879, ¶ 26 (4th Dist.), citing *Thompkins*, 78 Ohio St.3d at 387 (1997). A reviewing court must " '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 reversal of the conviction is necessary.' " *Id.* at ¶ 48, quoting *Evans* at ¶ 26. "To satisfy this test, the state must introduce substantial evidence on all the elements of an offense, so that the jury can find guilt beyond a reasonable doubt." *State v. Guice*, 2024-Ohio-1914, ¶ 80 (4th Dist.), citing *State v. Eskridge*, 38 Ohio St.3d 56 (1988), syllabus; *State v. Harvey*, 2022-Ohio-2319, ¶ 24 (4th Dist.). "Because a trier of fact sees and hears the witnesses, appellate courts will also afford substantial deference to a trier of fact's credibility determinations." *Id*., citing *State v. Schroeder*, 2019-Ohio-4136, ¶ 61 (4th Dist.).

{¶46} Ultimately, " '[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence.' " *State v. Newcomb*, 2024-Ohio-805, ¶ 19 (4th Dist.), quoting *C.E. Morris Co. v. Foley Const. Co.*, 54 Ohio St.2d 279 (1978), syllabus.

B. Analysis

{¶47} Caldwell was convicted of failing to comply with the order of a police officer under R.C. 2921.331 (B), which states: "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." Caldwell does not dispute whether the elements of this offense are against the manifest weight of the evidence. Rather, he claims that evidence identifying him as the offender in this case is against the manifest weight of the evidence.

{¶48} Sergeant Copas testified that after the Jeep's initial crash, the Jeep turned 180 degrees so that Copas' vehicle was facing the front of the Jeep. Copas testified that he could see through the windshield. He stated that he "immediately recognized the passenger as James Chris Blazer. I've dealt with Chris for a long time. Um * * * and I knew the defendant but I * * * I couldn't pick his name out right off the top of my head that quick." After the Jeep fled and crashed a second time, the driver fled. Sergeant Copas heard on the radio that the officers had someone in custody. Sergeant Copas testified that he went "to that location and * * * uh * * * found Mark Caldwell, Jr. and knew him to be the one that had been driving that car or that Jeep." Sergeant Copas maintained that

he was "(100%) sure" that Caldwell was the driver of the Jeep that night. During the State's re-direct examination, Sergeant Copas testified that because of the lighting, he could not see the driver when he got out of the Jeep, but he asserted that he "already knew who [the driver] was."

{¶49} Ryan O'Connor testified that he lives at 130 Clinton Street in Jackson, Ohio. He stated that about midnight the night of the incident herein, he heard sirens and lights nearby so he stepped out of the house to see what was happening. O'Connor testified that a man came running down the alley by his house and tried to sit on his porch, but O'Connor told him to leave. He testified that police officers subsequently arrested that man, who O'Connor identified as Caldwell.

{¶50} From Sergeant Copas' testimony, we find that a jury could reasonably infer that when he saw the driver after the initial accident, he recognized Caldwell, but just could not recall his name at that moment. Although his view of Caldwell through the windshield was relatively brief, Sergeant Copas testified that he was "100% sure" that Caldwell was driving the Jeep that night. Furthermore, O'Connor, who resides close to the accident scene herein, identified Caldwell as the man running down the alley by his house around midnight. O'Connor testified that it was not unusual for persons to walk around his neighborhood like "zombies" late at night. However, he testified that the night of the accident Caldwell was the only person whom he saw and he was running down the alley behind his house. The jury could be persuaded that O'Connor's

testimony corroborated that Caldwell was the one fleeing the nearby accident scene and was apprehended nearby.

{¶51} We find the testimony of Sergeant Copas and O'Connor provide some competent credible evidence that identifies Caldwell as the person who was driving the Jeep. Therefore, we do not find that the jury clearly lost its way in convicting Caldwell of failing to comply with the order or signal of a police officer so as to create a manifest miscarriage of justice requiring reversal of his conviction. Accordingly, we overrule Caldwell's third assignment of error.

CONCLUSION

{¶52} Having overruled all three of Caldwell's assignments of error, we affirm the trial court's judgment of conviction.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and the 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 JACKSON 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.

Abele, J. and Hess, 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.