

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio/City of Toledo

Court of Appeals No. L-12-1165

Appellee

Trial Court Nos. CRB-11-19060-0103
CRB-11-19060-0203

v.

Denzell D. Jones

DECISION AND JUDGMENT

Appellant

Decided: September 20, 2013

* * * * *

David L. Toska, Chief Prosecutor, City of Toledo, and
Sharon D. Gaich, Assistant Prosecutor, for appellee.

Stephen D. Long, for appellant.

* * * * *

YARBROUGH, J.

{¶ 1} Appellant, Denzell Jones, appeals from the judgment of the Toledo Municipal Court, entered upon a jury verdict, convicting him of obstructing official business, disorderly conduct, and resisting arrest. Finding no error, we affirm.

I. Facts and Procedural Background

{¶ 2} On December 5, 2011, two City of Toledo Water Department workers arrived at appellant's residence to shut off his water service for non-payment. The workers testified that upon their arrival, appellant came running out of his house, yelling, and ordering them to get off his private property. The workers retreated to their truck. Appellant then went inside his house and retrieved a video camera, phone, and several documents, including a quitclaim deed, which he claimed gave him the right to prohibit anyone from coming onto his property.

{¶ 3} After receiving emergency calls from both the water department and appellant, Toledo Police Officer George Roush responded to the residence. Roush explained to appellant that the water department had the right to turn off his service for non-payment, but nonetheless attempted to negotiate a resolution whereby the water department would leave the service on if appellant made a payment. Appellant, however, believed that he was legally able to, and in fact did discharge his debt. In addition, appellant believed that because gold and silver are the only authorized forms of currency, and because U.S. currency is no longer backed by gold or silver, it was impossible for appellant to pay the water department. Thus, he contended that he did not owe anything to the water department. Furthermore, appellant attempted to explain to Roush that because he owned the property, the workers could not come on it to turn off the water. Upon hearing this, Roush determined that a resolution could not be reached, and requested additional officers at the scene.

{¶ 4} Officers Dorothy Hayes and Clarence Young, and Sergeant Jeffrey Glover arrived as backup. The officers attempted to explain to appellant that the city had a right to turn off his water if he did not pay his bill, but appellant would not accept the explanation. Appellant was loud and argumentative, and demanded that the officers get off his private property. Hayes testified that at one point a neighbor came out on the porch to see what was going on. The officers informed appellant that if he did not permit the workers to turn off the water, he would be arrested for obstructing official business.

{¶ 5} The officers then directed the workers to turn off the water. As the workers were approaching, Roush and Hayes testified that appellant took an aggressive step towards the workers. At that point, Young grabbed appellant by the shoulder or collar, and appellant spun away and started to head toward his house. A brief scuffle ensued, resulting in appellant being taken to the ground. Roush and Hayes testified that appellant was facedown with his hands under his body, would not put his hands behind his body, and was kicking and yelling. Eventually, appellant was subdued, handcuffed, and placed in a cruiser.

{¶ 6} Appellant was charged with obstructing official business in violation of Toledo Municipal Code 525.07(a), a second degree misdemeanor, disorderly conduct in violation of Toledo Municipal Code 509.03(a)(3), a minor misdemeanor, and resisting arrest in violation of Toledo Municipal Code 525.09(a), a second degree misdemeanor. Appellant pleaded not guilty and the matter proceeded to a jury trial. Appellant waived

his right to appointed counsel and elected to represent himself. A public defender was also provided to assist appellant if he had any questions.

{¶ 7} During a break in the trial after the first witness, the following exchange occurred:

THE COURT: Let's go back on the record before we call the jurors in. Juror Number 7 * * * stopped [the court bailiff] to report something he felt was important to stop. [Court bailiff], if you would just state on the record what he said to you.

[COURT BAILIFF]: He mentioned that the federal jury that he sat on dealt with the issue of a nonpayment of taxes and the issue of currency, U.S. currency.

THE COURT: He made no further statements?

[COURT BAILIFF]: None.

THE COURT: Okay. I just wanted to put this on the record so Counsel and the parties were aware of it. I don't intend to take any further action on that issue.

Thereafter, the trial continued, and the jury heard testimony from the two water department workers, Officer Roush, Officer Hayes, Sergeant Glover, appellant's neighbor, and appellant himself. In addition, two videos of the incident were played for the jury. One was recorded by Glover's dashboard camera. The other was recorded by

the camera in appellant's hand. Following the presentation of evidence and closing arguments, the jury returned a verdict of guilty as to each count.

II. Analysis

{¶ 8} Appellant has timely appealed his conviction, and now raises two assignments of error:

1. The trial court erred to the substantial prejudice of the defendant-appellant by failing to strike a juror for cause after the juror failed to disclose serving on a jury involving similar issues during *voir dire*, thus violating defendant-appellant's rights guaranteed by Article I, Section 10 of the Ohio Constitution and the Sixth and Fourteenth Amendments of the United States Constitution.

2. The verdicts of the jury with regard to obstructing official business and resisting arrest were not supported by the substantial weight of the evidence and were against the manifest weight of the evidence.

A. Right to Impartial Jury

{¶ 9} In his first assignment of error, appellant argues that when the juror disclosed his service on a federal jury involving issues of U.S. currency and non-payment of tax, the trial court was obligated to investigate, or permit the parties to investigate, the juror's ability to be impartial in this case. Appellant contends that the trial court's failure to do so deprived him of the opportunity to strike the juror, and thus denied him his right to an impartial jury.

{¶ 10} “One touchstone of a fair trial is an impartial trier of fact-‘a jury capable and willing to decide the case solely on the evidence before it.’” *McDonough Power Equip., Inc. v. Greenwood*, 464 U.S. 548, 554, 104 S.Ct. 845, 78 L.Ed.2d 663 (1984), quoting *Smith v. Phillips*, 455 U.S. 209, 217, 102 S.Ct. 940, 71 L.Ed.2d 78 (1982). “*Voir dire* examination serves to protect that right by exposing possible biases, both known and unknown, on the part of potential jurors.” *Id.*

{¶ 11} Here, the potential jurors were informed prior to being selected that this was a criminal case for the offenses of obstructing official business, disorderly conduct, and resisting arrest. The potential jurors were also informed that this case involved the water department. The trial court then asked the potential jurors, “Is there any one of you that cannot base your verdict solely upon the facts as testified to by the witnesses, the exhibits that are admitted into evidence, and the law as given to you by the Court?” In addition, the court asked them, “Is there any reason why you cannot serve on this jury and render a fair and impartial decision when the case is finally submitted to the Jury?” The juror at issue did not affirmatively respond to those questions. Later during voir dire, the juror disclosed that he had served on a federal criminal jury approximately three years earlier. However, appellant did not ask any follow-up questions to determine what the issues were in that case. Ultimately, the jury was seated without appellant making any challenges for cause, or using any of his peremptory challenges.

{¶ 12} Appellant’s claim can be characterized as one based on juror misconduct in that the juror failed to disclose potential bias or prejudice. In *State v. Williams*, 79 Ohio

St.3d 1, 4, 679 N.E.2d 646 (1997), the defendant alleged that during voir dire prospective jurors concealed prior knowledge of the case, rumors about the case, and anxiety concerning court security. The defendant argued that the trial court erred by curtailing his inquiry into the prospective jurors' misconduct, and by refusing to conduct an investigation into the matter. The Ohio Supreme Court rejected the defendant's argument. In its reasoning, the court recognized that "to establish a constitutional violation * * * the [defendant] must demonstrate that one of the jurors seated was not impartial." *Id.* To that end, "unless a juror is challenged for cause, he or she is presumed to be impartial." *Id.* Further, where a juror conceals information, "[a] court may infer bias if it finds *deliberate* concealment; however, if the concealment was unintentional, the [defendant] must show that the juror was actually biased." (Emphasis sic.) *Id.*, citing *Zerka v. Green*, 49 F.3d 1181, 1184-1186 (6th Cir.1995).

{¶ 13} In *Williams*, the Ohio Supreme Court first noted that because the defendant did not challenge the prospective jurors on the ground that they concealed information, he waived any errors involved. *Id.* Nonetheless, the court reviewed the allegations for plain error. Upon examining the allegations as they related to the individual jurors, the court determined that none of the jurors deliberately concealed information. Thus, it held that no presumption of bias arose. *Id.* at 4-5.

{¶ 14} Similarly, here, appellant did not challenge the juror for cause, and did not object at the time the court placed the conversation on the record. Thus, appellant has waived any error. Furthermore, under a plain error review, appellant has failed to

demonstrate that the juror was biased. First, because he did not challenge the juror, the juror is presumed impartial. Second, appellant has not established a presumption of bias because the juror never deliberately concealed any information; the juror simply was never questioned about the nature of the federal case, and based on the information given to him about appellant's case, it was not patently obvious that the two would be similar in any way. Finally, the juror's statements themselves do not demonstrate any bias or prejudice. Whatever the similarities between the federal case and appellant's case regarding the defendants' views on the validity of U.S. currency, such views are not material to the factual question posed to the jury regarding whether appellant's conduct satisfied the elements of the crimes for which he was charged. Therefore, we do not find that appellant was denied his right to a fair and impartial jury.

{¶ 15} Accordingly, appellant's first assignment of error is not well-taken.

B. Manifest Weight

{¶ 16} In his second assignment of error, appellant contends that his convictions for obstructing official business and resisting arrest are based on insufficient evidence and are against the manifest weight of the evidence.

{¶ 17} Insufficiency and manifest weight are distinct legal theories. "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). "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 the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 18} In contrast, when reviewing a manifest weight claim,

The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines 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. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction. *State v. Lang*, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596, ¶ 220, quoting *Thompkins* at 387.

1. Obstructing Official Business

{¶ 19} Appellant was convicted of obstructing official business in violation of Toledo Municipal Code 525.07(a), which provides, “No person, without privilege to do so and with purpose to prevent, obstruct or delay the performance by a public official of any authorized act within his official capacity, shall do any act which hampers or impedes a public official in the performance of his lawful duties.” Appellant contends that the evidence presented at trial shows only that he “argued” with the water department workers, questioned them, and called the police. Furthermore, appellant contends that no

evidence exists to show that he engaged in any unprivileged acts, such as making threats of physical harm or physically blocking the workers from the shut-off valve.

{¶ 20} Upon our review of the record, the testimony from the trial reveals that the water department workers arrived with a work order to perform their lawful duty of turning off appellant's water service. Appellant prevented the workers from accomplishing this task by coming out of the door yelling at them and ordering them off his property, effectively chasing the workers back to their truck. Based on this evidence, we find that a rational trier of fact could have found the elements of the crime of obstructing official business proven beyond a reasonable doubt. Thus, the conviction is based on sufficient evidence. Moreover, we do not think this is the exceptional case where the evidence weighs heavily against the conviction. In fact, the circumstances surrounding the incident are largely undisputed. Therefore, appellant's conviction is not against the manifest weight of the evidence.

2. Resisting Arrest

{¶ 21} Turning to appellant's conviction for resisting arrest, Toledo Municipal Code 525.09(a) provides, "No person, recklessly or by force, shall resist or interfere with a lawful arrest of himself or another." Appellant raises two points. First, he argues that his arrest was not lawful because he was merely videotaping the activities and expressing his belief that he had the right to order the water department workers off his property. Second, he argues that he could not recklessly or forcefully resist because his hands were occupied holding papers, a video camera, and a phone.

{¶ 22} As to the former argument, appellant’s conduct constituted obstructing official business as discussed above. Thus, his arrest was lawful. As to the latter argument, the testimony revealed that appellant was lying on his hands, refused to put his hands behind his back, and was kicking and yelling. From this, a rational fact finder could have found, and the jury did not lose its way in finding, that appellant was forcefully resisting. Therefore, his conviction for resisting arrest is not based on insufficient evidence or against the manifest weight of the evidence.

{¶ 23} Accordingly, appellant’s second assignment of error is not well-taken.

III. Conclusion

{¶ 24} For the foregoing reasons, the judgment of the Toledo Municipal Court is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____

JUDGE

Arlene Singer, P.J. _____

JUDGE

Stephen A. Yarbrough, J. _____
CONCUR.

JUDGE

<p>This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: http://www.sconet.state.oh.us/rod/newpdf/?source=6.</p>
