

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2009-01-009
 :
 - vs - : AMENDED OPINION
 : 8/3/2009
 :
 CHRISTOPHER A. GREATHOUSE, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 08CR25174

Rachel A. Hutzel, Warren County Prosecuting Attorney, Michael Greer, 500 Justice Drive,
Lebanon, Ohio 45036, for plaintiff-appellee

Thomas J. Diehl & Co., LLC, Martin E. Hubbell, 304 East Warren Street, Lebanon, Ohio
45036, for defendant-appellant

RINGLAND, J.

{¶1} Defendant-appellant, Christopher A. Greathouse, appeals his conviction in the
Warren County Court of Common Pleas for failure to comply with the order or signal of a
police officer.

{¶2} On July 9, 2008, around 8:00 p.m., an officer from the Springboro Police
Department observed a large, dual-wheeled pickup truck with an obstructed license plate
make several lane violations while driving on State Route 741. The officer activated his

overhead lights to initiate a traffic stop. When the truck failed to stop, the officer turned his siren on and off to gain the driver's attention. The truck turned onto a small access road. The vehicle proceeded to travel approximately 250 feet on the access road before appellant stopped the vehicle. Appellant placed the vehicle in reverse, exited the vehicle, and ran because he thought he would be incarcerated for driving under suspension. Appellant testified at trial that he was attempting to place the truck in park, but accidentally put it in reverse, before running from the vehicle. The officer exited his cruiser, running between the rear of the truck and the front of his cruiser. Since the vehicle was equipped with an automatic transmission, the truck proceeded to drive in reverse and struck the officer's cruiser.

{¶3} Appellant was apprehended shortly thereafter and charged with failure to comply with an order or signal of a police officer in violation of R.C. 2921.331(B) with a specification that appellant caused a substantial risk of serious physical harm to persons or property under R.C. 2921.331(C)(5)(a)(ii), a felony of the third degree. Appellant was also charged with vandalism in violation of R.C. 2909.05(B)(2). Following a bench trial, the judge dismissed the vandalism charge, but convicted appellant for failure to comply. Appellant was sentenced to one year in prison, a three-year license suspension, and required to pay restitution in the amount of \$1,327.60 for damage to the police cruiser. Appellant timely appeals, raising one assignment of error:

{¶4} "APPELLANT'S CONVICTION FOR FAILURE TO COMPLY IS NOT SUPPORTED BY SUFFICIENT EVIDENCE."

{¶5} In his sole assignment of error, appellant challenges the sufficiency of the evidence. Appellant argues that "none of the aggravating facts normally associated with a failure to comply conviction" are present in this case. Specifically, appellant submits that the incident was short in duration and that he stopped shortly after the officer initiated the traffic

stop. Further, appellant urges that the operation of the vehicle was not directly linked with his intention to flee, since he pulled into the first reasonably available place to stop, and stopped the vehicle only 24 seconds after the officer initiated the stop.

{¶6} Appellant also challenges the specification added to his conviction. Appellant claims that he only acted negligently in placing the truck in reverse and the statute requires a greater level of culpability. He cites the statements of the trial court, that found "there is no evidence that he knowingly attempted to damage the cruiser" and "I don't believe he had any intention of ramming the vehicle." Appellant also submits that there was insufficient evidence of a substantial risk of physical harm, both to the officer and the cruiser. Specifically, appellant argues that the damage to the cruiser was minimal since the officer transported him to the police station in the vehicle after arrest and the officer would not have been hurt by the vehicle.

{¶7} In reviewing the sufficiency of the evidence underlying a criminal conviction, an appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Lucas*, Tuscarawas App. No. 005AP090063, 2006-Ohio-1675, ¶8; *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. "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. Haney*, Clermont App. No. CA2005-07-068, 2006-Ohio-3899, ¶14, quoting *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, ¶37.

{¶8} Appellant was charged pursuant to R.C. 2921.331(B), which provides, "[n]o 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." The offense is elevated to a third-degree felony if, "[t]he operation of the motor vehicle by the offender caused a substantial risk of serious physical harm to persons or

property." R.C. 2921.331(C)(5)(a)(ii).

{¶9} After review of the record, we find sufficient evidence to support appellant's conviction. In this case, the officer activated his overhead lights to initiate the traffic stop. Appellant acknowledged viewing the overhead signal before the officer activated the audible signal. Although the incident occurred over a short distance, appellant's actions clearly demonstrate that he operated the truck to willfully elude and flee the officer. Despite appellant's testimony, the evidence shows he was not merely attempting to find a suitable spot to stop. See *State v. Jackson*, Montgomery App. No. 21300, 2006-Ohio-1971, ¶68. Instead, after receiving both the audible and visual signals from the officer, appellant turned onto an access road and continued to drive his vehicle another 250 feet, positioning himself in an area where he could quickly exit the vehicle and run from the officer. Appellant used the vehicle to distance himself from the officer, stop the car in an opportunistic location, and position himself to run in order to avoid prosecution for driving under suspension. See *State v. Peck*, Lake App. No. 2004-L-021, 2005-Ohio-1413, ¶18.

{¶10} In *State v. Fairbanks*, 117 Ohio St.3d 543, 2008-Ohio-1470, the Ohio Supreme Court examined the enhancement provision of R.C. 2921.331(C)(5)(a)(ii). The court found, "In this case, R.C. 2921.331(C)(5)(a)(ii) is not an element that has a specified culpable mental state. Instead, the penalty enhancement is contingent upon a factual finding with respect to *the result or consequence* of the defendant's willful conduct. Whether the result or consequence was intended by the defendant is of no import. If the trier of fact finds beyond a reasonable doubt that a substantial risk of serious physical harm to persons or property actually resulted from the defendant's conduct, then the enhancement is established. This is purely a question of fact concerning the consequences flowing from the defendant's failure to comply. It involves no issue of intent or culpability, and no inquiry into the defendant's state of mind with respect to that element is contemplated or necessary. It is analogous to

determining whether the offense occurred in daylight or in darkness or whether the place where it occurred was dusty or wet. It is simply a finding of the presence or absence of a condition." (Emphasis sic.) Id. at ¶11.

{¶11} As discussed in *Fairbanks*, appellant's intent, mistake, negligence or excuses for putting the truck in reverse are irrelevant to the enhancement provision. Appellant placed his large, dual-wheeled pickup in reverse as he fled. The truck proceeded to drive backwards, eventually colliding with the police cruiser and causing \$1,327.60 in damage. Moreover, as appellant fled on foot, the officer chased after him, running between the truck and the cruiser. The officer testified that, as he ran between the vehicles, he noticed that appellant's truck was moving backward toward the cruiser. If the officer would have been sandwiched between the vehicles, he could have been seriously injured. Clearly, appellant's conduct caused a substantial risk of serious physical harm to the officer and did cause serious damage to the cruiser.

{¶12} Accordingly, appellant's sole assignment of error is overruled.

{¶13} Judgment affirmed.

BRESSLER, P.J., and YOUNG, J., concur.