

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-060421
	:	TRIAL NO. C-05CRB-24066
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
GREG A. LEONARD,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a bench trial, Greg A. Leonard was found guilty of criminal damaging in violation of R.C. 2909.06(A)(1). The trial court sentenced him to 15 days' incarceration and ordered restitution in the amount of \$170. Leonard now appeals. We conclude that his assignments of error do not have merit, and we affirm the judgment of the trial court.

Leonard, while unlawfully detained incident to his arrest for allegedly obstructing official business, had caused damage to a police cruiser when he kicked the rear passenger window out of its track. Leonard had been placed under arrest after his heated reaction to the unlawful arrest and alleged mistreatment of his son by police officers following a traffic stop. Leonard was charged with obstruction of

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

official business, resisting arrest, and criminal damaging. At the conclusion of the state's case, the trial court granted Leonard's Crim.R. 29 motion on the obstruction and resisting-arrest charges.

In Leonard's first assignment of error, he claims that the trial court erred when it overruled his Crim.R. 29 motion for a judgment of acquittal on the criminal-damaging charge. Leonard contends that the trial court erred in denying his motion for acquittal because the criminal-damaging charge "flowed from [his] illegal arrest." In his second assignment, Leonard challenges the weight of the evidence adduced to support his criminal-damaging conviction. We consider Leonard's two assignments of error together.

A Crim.R. 29 motion for a judgment of acquittal challenges the sufficiency of the evidence to prove an offense. In a challenge to sufficiency of the evidence, the question is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt.² Conversely, in resolving a challenge to the weight of the evidence, we must review the entire record, weigh the evidence, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.³ A new trial should be granted only in exceptional cases where the evidence weighs heavily against the conviction.⁴ Ultimately, "the weight to be given the evidence and the credibility of the witnesses are primarily for the trier of fact."⁵

² See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

³ See *id.* at 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 485 N.E.2d 717.

⁴ See *id.*

⁵ *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

Our review of the record leads us to conclude that the state presented sufficient evidence of the criminal-damaging offense. And notwithstanding Leonard's argument otherwise, his unlawful detention was not a franchise to commit or a legal defense against a charge of criminal damaging. Further, we cannot say that the trier of fact lost its way when it found Leonard guilty of the offense. Leonard admitted to "striking" the police cruiser's window several times. And although Leonard testified that his actions had not caused damaged to the window, the trial court was free to believe the arresting officers' testimony to the contrary. The trial court was in the best position to judge the credibility of the arresting officers and Leonard. We conclude that its judgment was not against the manifest weight of the evidence. The first and second assignments of error are overruled.

And we therefore affirm the judgment of the trial court.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R.24.

PAINTER, P.J., HENDON and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on June 27, 2007
per order of the Court _____.
Presiding Judge