

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

State of Ohio

Court of Appeals No. L-13-1266

Appellee

Trial Court No. CR0201202657

v.

Michael Anthony Yates

DECISION AND JUDGMENT

Appellant

Decided: February 27, 2015

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
Matthew D. Simko, Assistant Prosecuting Attorney, for appellee.

Jon D. Richardson, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a November 15, 2013 judgment of the Lucas County Court of Common Pleas, which found appellant guilty of one count of aggravated vehicular homicide, in violation of R.C. 2903.06(A)(2), a felony of the second degree,

and one count of vehicular assault, in violation of R.C. 2903.08(A)(2), a felony of the third degree. For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, Michael Anthony Yates, sets forth the following two assignments of error:

No. 1. The trial [c]ourt's finding that Mr. Yates acted recklessly was against the manifest weight of the evidence, and as such, the conviction for aggravated vehicular homicide was against the manifest weight of the evidence.

No. 2. The trial [c]ourt's reliance on the fact that Mr. Yates' operator's license was suspended when determining whether he acted recklessly was contrary to law.

{¶ 3} The following undisputed facts are relevant to this appeal. On July 21, 2012, a group of four friends from the Cleveland area decided to travel to Toledo in order to visit the Hollywood Casino. After the group settled into their hotel, they began to walk from the hotel to the nearby casino.

{¶ 4} At approximately this same time, appellant, who had consumed an excessive amount of oxycodone, was driving his motor vehicle. Appellant exited I-75 and drove east on Miami Street in the immediate vicinity of the casino along the same route upon which the Cleveland visitors were walking towards the casino. While traveling down the street in excess of the speed limit, appellant drove his vehicle off of Miami Street onto

the adjacent sidewalk, struck a fire hydrant and continue driving. Tragically, as appellant continued to drive upon the public sidewalk, he struck two of the members of the group from Cleveland walking to the casino. One member of the group was killed and another was seriously injured.

{¶ 5} On October 29, 2012, appellant was indicted on one count of aggravated vehicular homicide, in violation of R.C. 2903.06, a felony of the second degree, and one count of vehicular assault, in violation of R.C. 2903.08, a felony of the third degree. On September 24, 2013, a two-day bench trial commenced. On September 30, 2013, appellant was found guilty of both counts. On November 15, 2013, appellant was sentenced to a five-year term of incarceration for the aggravated vehicular homicide conviction, and a three-year term of incarceration for the vehicular assault conviction, the sentences ordered to be served concurrently. This appeal ensued.

{¶ 6} In the first assignment of error, appellant contends that the trial court finding of recklessness against appellant was against the manifest weight of the evidence, thereby compromising the corresponding verdict contingent upon the element of recklessness. We do not concur.

{¶ 7} When reviewing a claim that a verdict is against the manifest weight of the evidence, the appellate court must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether the court clearly lost its way in resolving evidentiary conflicts so as to create such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. *State v. Thompkins*, 78

Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). Reversal on manifest weight grounds is reserved for the exceptional case in which the evidence weighs heavily against the conviction. *Thompkins* at 387.

{¶ 8} In support of the first assignment, appellant unpersuasively claims the testimony of one eyewitness can be construed in favor of appellant's unsupported claim that he was asleep at the time his vehicle collided with the pedestrians so as to potentially preclude a finding of recklessness. Notably, the record shows that appellant drove his vehicle over a curb and struck a fire hydrant immediately prior to striking the victims.

{¶ 9} Our review of the testimony upon which appellant relies reveals that the witness simply noted that the witness did not observe "much movement" by appellant of the steering wheel until after the pedestrians had been struck by appellant's vehicle. Appellant contends that, "This testimony is more suggestive of the accuracy of defense counsel's argument than contrary to it." We are not convinced.

{¶ 10} We have carefully reviewed and considered the record of evidence. The record reflects that appellant conceded that he consumed more than the prescribed amount of oxycodone prior to driving his motor vehicle. The record reflects that immediately following the accident, an emergency responder observed that appellant exhibited "pin-point pupils" consistent with the overdose and also observed oxycodone pills scattered about the interior of the vehicle.

{¶ 11} In conjunction with the above, testimony from a sergeant with the Ohio State Highway Patrol who examined the black box of appellant's truck reflected constant

foot pressure by appellant on the accelerator until the point of impact, thereby demonstrating appellant to be in control of the vehicle prior to impact in contradiction of appellant's theory of having been asleep at the wheel. In addition, testimony from the Lucas County Coroner's Office established that appellant's toxicology results were consistent with impairment of the driver.

{¶ 12} Given that the record shows that appellant was speeding at the time of the incident, drove over a curb and struck a fire hydrant, continued to drive upon the sidewalk with constant acceleration pressure prior to striking the victims, and consumed excessive oxycodone prior to driving, the record encompasses ample evidence in support of the disputed finding of recklessness.

{¶ 13} Wherefore, we do not concur in appellant's claim that the finding of recklessness was against the manifest weight of the evidence. Appellant's first assignment of error is found not well-taken.

{¶ 14} In appellant's second assignment of error, it is similarly asserted that the finding of recklessness was compromised. In support, appellant suggests that the trial court unduly relied upon the fact that appellant's operator's license was suspended at the time of the incident in support of the recklessness finding. In conjunction with this, appellant relies upon the case of *State v. Hatfield*, 11th Dist. Ashtabula No. 2006-A-033, 2007-Ohio-7130.

{¶ 15} We have reviewed *Hatfield* as applied to appellant's assertion in the instant case and find appellant's reliance on it to be misplaced. Contrary to the position

suggested by appellant, *Hatfield* was pointing out that a suspended license, in and of itself, does not suffice to establish recklessness in a vehicular homicide or aggravated vehicular homicide case. The court stated in relevant part at ¶ 138, “[T]he suspension itself sheds no light on the quality of appellant’s driving at the time of the accident.”

{¶ 16} By contrast, the present case involves ample additional evidence establishing recklessness regardless of the status of appellant’s operator’s license. The record of evidence in the case before us shows that appellant consumed an excessive amount of oxycodone, was speeding, drove onto the sidewalk and through a fire hydrant and continue driving, continued to apply consistent pressure to the accelerator prior to impact with the pedestrians, exhibited pinpoint pupils to the emergency responders, and had toxicology test results consistent with impairment. Accordingly, the trial court did not improperly rely upon the suspension itself in support of the disputed finding. The record demonstrates that the status of appellant’s operator’s license at the time of the incident can be removed from consideration and ample evidence remained before the trial court in support of the finding of recklessness. Wherefore, we find appellant’s second assignment of error not well-taken.

{¶ 17} On consideration whereof, we find that substantial justice has been done in this matter. The judgment of the Lucas County Court of Common Pleas is hereby 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

Thomas J. Osowik, J.

JUDGE

Stephen A. Yarbrough, P.J.
CONCUR.

JUDGE

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