

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

STATE OF OHIO, :
 :
 Plaintiff-Appellee, : CASE NO. CA2004-02-002
 :
 - vs - : O P I N I O N
 : 2/7/2005
 :
 SHAWN OSBORNE, :
 :
 Defendant-Appellant. :

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. 2001-2105

Thomas F. Grennan, Brown County Prosecuting Attorney, Mary McMullen, 220 East Cherry Street, Georgetown, Ohio 45121, for plaintiff-appellee

Katherine M. Kelly, 108 S. High Street, Mt. Orab, Ohio 45154, for defendant-appellant

VALEN, J.

{¶1} Defendant-appellant, Shawn Osborne, appeals her conviction in Brown County Common Pleas Court for driving under the influence ("DUI") and aggravated vehicular assault.

{¶2} Appellant was charged with DUI and aggravated vehicular assault after a July 2001 accident in which the vehicle she was driving struck the rear of a parked vehicle, pinning and seriously injuring a pedestrian who was loading the trunk of the parked vehicle. A jury found appellant guilty of

both offenses. Appellant now appeals her conviction and assigns one error.

{¶3} Assignment of Error No. 1:

{¶4} "THE JURY ERRED IN REACHING GUILTY VERDICTS AGAINST APPELLANT."

{¶5} Appellant argues that there was insufficient evidence to support the verdicts and that the verdicts were contrary to the manifest weight of the evidence.

{¶6} Sufficiency of the evidence is the legal standard applied to determine whether the case may go to the jury or whether the evidence is legally sufficient as a matter of law to support the jury verdict. State v. Smith, 80 Ohio St.3d 89, 113, 1997-Ohio-355. After viewing the evidence in a light most favorable to the prosecution, the relevant inquiry is whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Id.*

{¶7} The DUI statute, R.C. 4511.19(A)(1), states that: "[N]o person shall operate any vehicle, streetcar, or trackless trolley within this state, if any of the following apply: (1) The person is under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse."

{¶8} For aggravated vehicular assault, R.C. 2903.08 states, in part, that: "(A) No person, while operating or participating in the operation of a motor vehicle * * * shall cause serious physical harm to another person * * * in any of the following ways: (1) (a) As the proximate result of

committing a violation of division (A) of section 4511.19 of the Revised Code * * *."

{¶9} It is uncontested that appellant was driving the vehicle that struck the pedestrian standing behind the parked vehicle. The state presented testimony from a motorist who was driving her vehicle behind appellant's vehicle for two or three miles before the vehicles entered the town of Sardinia. The motorist observed appellant's vehicle weave off the right shoulder into the grass twice and also weave left of center twice before the vehicles entered the town. The motorist and law enforcement witnesses also testified that appellant was observed to be unsteady on her feet after the accident.

{¶10} Police officers also testified that there was an odor of alcohol on or about appellant, that her eyes were bloodshot, that she appeared confused, and that her speech was slurred. Appellant refused to submit to any field sobriety or chemical testing. The victim testified about the serious nature of his leg injuries.

{¶11} Reviewing the evidence in the record, we find that any rational trier of fact could have found the essential elements of the two crimes proven beyond a reasonable doubt.

{¶12} When an appellant argues that her conviction is against the manifest weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and 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 the conviction must be reversed and a new trial ordered. State v. Otten (1986), 33 Ohio App.3d 339, 340. An appellate court should only invoke this power in extraordinary circumstances where the evidence presented at trial weighs heavily in favor of an appellant. Id.

{¶13} We have previously outlined the evidence presented by the state on the two charges. Appellant challenged through cross-examination the credibility of one of the testifying law enforcement officers, and emphasized any discrepancies in the testimony of the witnesses. Appellant presented on cross-examination the inference that the physical observations made about appellant could be explained as normal reactions to her involvement in a serious accident, rather than signs of intoxication.

{¶14} We have reviewed the record under the applicable standard. We cannot say that the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. Appellant's assigned error is overruled.

{¶15} Judgment affirmed.

YOUNG, P.J., and WALSH, J., concur.