[Cite as *State v. Delgado*, 2010-Ohio-848.]

IN THE COURT OF APPEALS

TWELFTH APPELLATE DISTRICT OF OHIO

BUTLER COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-04-103
	:	O P I N I O N
- vs -		3/8/2010
	:	
LUIS DELGADO,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2008-06-1046

Robin N. Piper III, Butler County Prosecuting Attorney, Daniel G. Eichel, Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Repper, Pagan, Cook, Ltd., John H. Forg III, 1501 First Avenue, Middletown, Ohio 45044, for defendant-appellant

POWELL, J.

{¶1} Defendant-appellant, Luis Delgado, appeals from his conviction in the Butler County Court of Common Pleas for one count of aggravated vehicular assault. We affirm.

{¶2} On the evening of March 28, 2008, appellant and Michelle Soria were involved in a single-car crash while they were travelling northbound on Woodsdale Road located in Madison Township, Butler County, Ohio. As a result of the crash, both

appellant and Soria suffered significant injuries.

{¶3} Following a police investigation, appellant, the alleged driver of the vehicle, was charged with aggravated vehicular assault in violation of R.C. 2903.08(A)(1)(a), which, due to his driver's license suspension at the time of the crash, rose to a second-degree felony. After a two-day jury trial, appellant was found guilty and sentenced to serve a mandatory term of eight years in prison.

{¶4} Appellant now appeals his conviction, raising one assignment of error.

{¶5} "THE TRIAL COURT ERRED IN CONVICTING [APPELLANT] OF AGGRAVATED VEHICULAR ASSAULT AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE." [sic]

{¶6} In his sole assignment of error, appellant argues that his aggravated vehicular assault conviction was against the manifest weight of the evidence. Specifically, appellant claims the "evidence demonstrates that Soria * * * was driving the vehicle at the time of the accident," and therefore, "the jury's verdict stands against the manifest weight of the evidence." We disagree.

{¶7} A manifest weight challenge concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other. *State v. Ghee,* Madison App. No. CA2008-08-017, 2009-Ohio-2630, ¶9, citing *State v. Thompkins,* 78 Ohio St.3d 380, 387, 1997-Ohio-52; *State v. Elmore,* 111 Ohio St.3d 515, 2006-Ohio-6207, ¶44. A court considering whether a conviction is against the manifest weight of the evidence must review the entire record, weighing the evidence and all reasonable inferences, and consider the credibility of the witnesses. *State v. Hancock,* 108 Ohio St.3d 57, 2006-Ohio-160, ¶39; *State v. Lester,* Butler App. No. CA2003-09-244, 2004-Ohio-2909, ¶33; *State v. James,* Brown App. No. CA2003-05-009, 2004-Ohio-1861, ¶9. However, when reviewing the evidence, the decision of

the jurors is owed deference since they are best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony. *Mason v. Molinari,* Warren App. No. CA2006-05-056, 2007-Ohio-5395, ¶63; *State v. Bolish,* Butler App. No. CA2005-10-441, 2006-Ohio-5375, ¶43; *State v. DeHass* (1967), 10 Ohio St.2d 230, paragraph one of the syllabus. Therefore, upon review, the question is 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. *State v. Good,* Butler App. No. CA2007-03-082, 2008-Ohio-4502, ¶25; *State v. Blanton,* Madison App. No. CA2005-04-016, 2006-Ohio-1785, ¶7; *Thompkins* at 387, 1997-Ohio-52.

{¶8} Appellant was charged with aggravated vehicular assault in violation of R.C. 2903.08(A)(1)(a), which prohibits any person, "while operating or participating in the operation of a motor vehicle," from causing "serious physical harm to another person * * * [a]s the proximate result of committing a violation of division (A) of section 4511.19 of the Revised Code." Pursuant to R.C. 4511.19(A)(1)(a), no person shall operate a vehicle if, at the time of the operation, "the person is under the influence of alcohol."

{¶9} At trial, Soria testified that while she was eating at a local Taco Bell restaurant, appellant, whom she had previously dated, called and asked if she would return his clothes that were stored in the trunk of her car. Soria then testified that she agreed to return the clothes later that evening, and that, when she arrived at his apartment, appellant was in the kitchen "drinking on a big bottle of Tequila."

{¶10} Soria continued by testifying that once the pair went outside to retrieve his clothes, appellant, who was "belligerent drunk," started screaming and yelling before he "jumped in" the car and tried "to take off with it." In response, Soria testified that she "panicked and ran to the passenger side and tried to stop him." However, following a

brief struggle, Soria stated that appellant was able to put the car in reverse and back out of the driveway. When asked why she got into the car with appellant, Soria testified that "it was [her] car," he was drunk, he did not have a license, and that "he had no right to drive it."

{¶11} Soria then testified that appellant, who was driving "absolutely insane" by "running red lights and stop signs and driving 70 miles an hour on these back roads," told her that they were "supposed to be together," and that he was "going to end it right now." According to Soria, appellant then "jerked" the steering wheel to the right causing the car to veer off the road and strike a utility pole. The force of the crash broke the pole and ejected both Soria and appellant from the vehicle into the surrounding field. In describing the injuries she sustained that evening, Soria testified that her "back was broken in about seven different places," her "jaw was split completely in half," she "had broken four ribs," suffered "a collapsed lung," and sustained "severe road rash to the entire right side of [her] face."[1]

{¶12} Soria continued by testifying that once she regained consciousness next to her vehicle, she was "confused," and that she "had no idea what had happened or how [she] got there." Soria then testified that although she "vaguely" remembers initially telling a deputy at the scene that she was driving, she began to remember the crash "[w]hen the paramedics were putting [her] on the backboard," and that she then "explained everything" to the deputy.

{¶13} Also at trial, Deputy Connie Rocky with the Butler County Sheriff's Office testified that he was the first officer to arrive at the scene, and that, although Soria initially claimed that she was the driver, she was "groggy" and "appeared to be confused

1. The state also presented a number of photographs showing Soria lying in a hospital bed with a back brace, large bruises and cuts on her face, as well as a tube draining blood from underneath her scalp.

* * * like she was just now waking up, trying to figure out what had just happened." Deputy Rocky then testified that after Soria received some medical attention, he overheard her tell medical personnel that appellant "tried to kill [her]" by driving her car into the utility pole. The state also presented testimony from Detective Duane Monroe, a veteran officer trained in accident reconstruction with the Butler County Sheriff's Office, who testified that the driver, upon being ejected from the vehicle, would have come to rest in the area where appellant was found lying unconscious that evening.

{¶14} Besides this testimony, the state also presented evidence indicating Soria's purse and Taco Bell bag were found lying on the passenger's side of the vehicle, and that a bloody sandal matching the one found on appellant's right foot was discovered lodged underneath the driver's side pedals.

{¶15} After a thorough review of the record, we find that the state presented substantial, credible evidence to support appellant's aggravated vehicular assault conviction beyond reasonable doubt. See, e.g., *State v. Osborne*, Brown App. No. CA2004-02-002, 2005-Ohio-415; see, also, *State v. Croston*, Stark App. No. 2008-CA-00084, 2008-Ohio-5562, ¶45-46; *State v. VanHoose*, Pike App. No. 07CA765, 2008-Ohio-1122, ¶15. As noted above, although Soria initially stated that she was driving the vehicle that evening, the evidence clearly indicates that appellant, while in a highly intoxicated state, ignored traffic signals and stops signs as he drove at speeds approaching 70 m.p.h. before swerving off the road directly into a utility pole that resulted in serious physical harm to Soria, his passenger. As a result, we find that the jury's verdict was not against the manifest weight of the evidence. Therefore, appellant's sole assignment of error is overruled.

{¶16} Judgment affirmed.

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