[Cite as *State v. Frankart*, 2015-Ohio-2737.]

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
SENECA COUNTY

STATE OF OHIO,

PLAINTIFF-APPELLEE, **CASE NO. 13-15-03**

v.

LANDON E. FRANKART, **O P I N I O N**

DEFENDANT-APPELLANT.

Appeal from Tiffin-Fostoria Municipal Court
Trial Court No. TRD 1405248A

Judgment Reversed and Cause Remanded

Date of Decision: July 6, 2015

APPEARANCES:

John M. Kahler **for Appellant**

Hunter M. Brown **for Appellee**

SHAW, J.

{¶1} Defendant-appellant Landon E. Frankart ("Frankart") appeals the February 18, 2015, judgment of the Tiffin-Fostoria Municipal Court sentencing Frankart to 180 days in jail with 160 suspended after Frankart was convicted in a jury trial of "Stopping after accident; exchange of identity and vehicle registration," or as it is known colloquially, "Hit-Skip," in violation of R.C. 4549.02(A), a misdemeanor of the first degree. Frankart was also convicted in the same proceeding by a bench trial of Failure to Control in violation of Tiffin City Ordinance 331.34(a), a minor misdemeanor, and he appeals his sentence for Failure to Control, which consisted of a $50 fine, six points added to his license, and a six month license suspension.

{¶2} The facts relevant to this appeal are as follows. In the early morning hours of December 24, 2014, a vehicle collided with a utility pole approximately two or three feet off of a road in Tiffin, Ohio. The utility pole broke and fell over into a nearby parking lot—away from the street—and multiple pieces broke off from the vehicle as a result of the collision. After the collision, the vehicle left the scene.

{¶3} A witness reported the incident to the police, giving the license plate number of the suspected vehicle. A Tiffin police officer responded to the scene of the collision and surveyed the damage, while two deputy sheriffs from the Seneca

County Sheriff's Department drove to the residence of the registered owner of the suspected vehicle, Frankart. At Frankart's residence, a black Cadillac was in the driveway, which was heavily damaged. The officers spoke briefly with Frankart, who appeared intoxicated and had blood on his shirt and his chin. Rather than answer any questions, Frankart asked to speak with an attorney.

{¶4} On December 24, 2014, Frankart was charged with "Hit-Skip" in violation of R.C. 4549.02(A), a misdemeanor of the first degree, and Failure to Control in violation of Tiffin City Ordinance 331.34(a), a minor misdemeanor. Frankart pled not guilty to the charges.

{¶5} On February 18, 2015, the case proceeded to a jury trial on the "Hit-Skip" charge and a bench trial on the Failure to Control charge. At trial the State called the Tiffin police officer who surveyed and photographed the scene of the accident, and the two Seneca County sheriff's deputies who first responded to Frankart's residence to try and locate the suspected vehicle.

{¶6} At the conclusion of the State's case, Frankart made a Crim.R. 29 motion for acquittal. In his motion Frankart argued that under *State v. Spence*, 12th Dist. Clermont No. CA2002-02-012, 2002-Ohio-3600, and this Court's holding in *State v. Provino III*, 3d Dist. Seneca No. 13-07-19, 2007-Ohio-6974,[1] Frankart could not be convicted of this crime because he did not collide with an

[1] In *Provino III*, this Court cited *Spence* and held "[R.C. 4549.02(A)] requires that the defendant's vehicle collide with either a pedestrian or another motor vehicle." *Provino III* at ¶ 11.

individual, a vehicle, or property upon the roadway rather than adjacent to it, as was required under R.C. 4549.02(A) for a conviction.

{¶7} After Frankart made his motion for acquittal, but before the trial court ruled on it, the State moved to amend the charging instrument from "Hit-Skip" in violation of R.C. 4549.02(A) to the charge of "Failure to stop after accident involving property of others" in violation of R.C. 4549.03(A), which unlike "Hit-Skip" under R.C. 4549.02(A), included accidents with real or personal property *adjacent* to roadways.

{¶8} The trial court denied the State's motion to amend the charging instrument; however, the court also overruled Frankart's Crim.R. 29 motion for acquittal. After his motion for acquittal was overruled, Frankart did not present any evidence and rested his case, then renewed his Crim.R. 29 motion for acquittal at the close of evidence, which was also denied.

{¶9} The "Hit-Skip" charge was then submitted to the jury, and the jury returned a guilty verdict on that count. The trial court found Frankart guilty of the Failure to Control charge.

{¶10} The trial court proceeded immediately to sentencing and ordered that Frankart serve 180 days in jail on the Hit-Skip conviction, with 160 suspended, and ordered Frankart to pay a $50 fine on the Failure to Control conviction. The

trial court also ordered six points to be added to Frankart's license, and a six month license suspension.

{¶11} On February 18, 2015, judgment entries were filed memorializing Frankart's convictions and sentences. On the entry convicting Frankart of Failure to Control he was ordered to pay a $50 fine, his license was suspended for 6 months, and 6 points were added to his license. (Doc. 29). In the entry on "Hit-Skip" Frankart was sentenced to 180 days in jail with 160 suspended. (Doc. 29).[2]

{¶12} It is from these judgments that Frankart appeals, asserting the following assignments of error for our review.

ASSIGNMENT OF ERROR 1
THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR ACQUITTAL PURSUANT TO CRIM. RULE 29.

ASSIGNMENT OF ERROR 2
THE TRIAL COURT ERRED WHEN ITS SENTENCE EXCEEDED THE STATUTORY PENALTY FOR FAILURE TO CONTROL.

First Assignment of Error

{¶13} In Frankart's first assignment of error, he argues that the trial court erred in denying his Crim.R. 29 motion for acquittal. Specifically, he contends that pursuant to *State v. Spence*, 12th Dist. Clermont No. CA2002-02-012, 2002-

[2] On February 19, 2015, the trial court filed a *nunc pro tunc* entry, finding Frankart guilty of "Hit Skip," as the original judgment entry did not have the box checked indicating a finding of guilt. (Doc. No. 37). The *nunc pro tunc* entry also ordered six points to be added to Frankart's license for the "Hit Skip" conviction, which was not stated in the original entry. (*Id.*)

Ohio-3600, and this Court's holding in *State v. Provino III*, 3d Dist. Seneca No. 13-07-19, 2007-Ohio-6974, Frankart could not be convicted of the crime he was charged with because he did not strike a person or vehicle upon the roadway.[3]

{¶14} Criminal Rule 29(A) provides that a court must order the entry of a judgment of acquittal of a charged offense "if the evidence is insufficient to sustain a conviction of such offense[.]" Crim.R. 29(A). However, "a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt." *State v. Bridgeman*, 55 Ohio St.2d 261 (1978), syllabus. Thus, a motion for acquittal tests the sufficiency of the evidence. *State v. Tatum*, 3d Dist. Seneca No. 13–10–18, 2011–Ohio–3005, ¶ 43, citing *State v. Miley*, 114 Ohio App.3d 738, 742 (4th Dist.1996).

{¶15} When an appellate court reviews a record for sufficiency, 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. Monroe*, 105 Ohio St.3d 384, 2005–Ohio–2282, ¶ 47. Sufficiency is a test of adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997). Accordingly, the question of whether the offered evidence is sufficient to sustain a verdict is a question of law. *State v.*

[3] Frankart does not challenge his conviction for Failure to Control. He makes no argument regarding it in his first assignment of error, and, more explicitly, in his second assignment of error he states, "Appellant Landon Frankart does not contest his conviction for Failure to Control[.]" (Appt.'s Br. at 9).

Perkins, 3d Dist. Hancock No. 5-13-01, 2014-Ohio-752, ¶ 30, citing *Thompkins* at 386.

{¶16} In this case, Frankart was convicted of "Hit-Skip" in violation of R.C. 4549.02(A), which reads,

> **(A) In case of accident to or collision with persons or property *upon any of the public roads or highways,* due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, immediately shall stop the * * * vehicle at the scene of the accident or collision and shall remain at the scene of the accident or collision until the driver * * * has given the driver's * * * name and address * * * to any person injured in the accident or collision *or* to the operator, occupant, owner, *or* attendant of any motor vehicle damaged in the accident or collision, or to any police officer at the scene of the accident or collision.**

(Emphasis added).

{¶17} In order to convict Frankart at trial of "Hit-Skip," the State called three witnesses, beginning with Officer Scott McDole of the Tiffin Police Department. Officer McDole testified that on December 24, 2014, at approximately 2:00 a.m. he was dispatched for a report of a vehicle that had struck a utility pole "on West Market Street between Jolly's and Wendy's." (Tr. at 72-73). Officer McDole testified he went to the described area and observed that the specified utility pole was "down basically in the parking lot of Molyet's Farm Market on West Market Street." (*Id.*)

{¶18} Officer McDole testified that he took photographs of the damage to the utility pole, which was broken in half, and contacted AEP to deal with the live electrical wire. (Tr. at 73). Photographs of the pole were introduced into evidence. Officer McDole testified that he located vehicle parts around where the pole had been struck "consisting of plastic pieces, lens coverings" and a "headlight assembly" ranging from a "chrome color to black." (*Id*. at 76). Officer McDole testified that black paint chips were also on the pole itself. (*Id*.)

{¶19} Officer McDole testified that dispatch informed him that the complainant had provided a license plate number and a description of the vehicle that had struck the pole. (Tr. at 76-77). That information was run through LEADS, which showed that the suspected vehicle was a Cadillac owned by Frankart. (*Id*.) Officer McDole testified that he requested that the Seneca County Sheriff's Department send a deputy to Frankart's residence to check for the suspected vehicle. (Tr. at 77).

{¶20} Officer McDole testified that he next finished up with the accident scene and did some paperwork. Officer McDole testified that he then received a call from the Seneca County Sheriff's Department at approximately 3:40 a.m. informing him that they had located Frankart and the suspected vehicle at Frankart's residence. (*Id*. at 78).

{¶21} Officer McDole testified that he went out to Frankart's residence, and observed extensive damage to the right front of Frankart's black Cadillac. (Tr. at 78). Officer McDole testified that there was "damage to the front bumper, quarter panel, headlight area, the right front tire was deflated and it appeared that it had been driven on its rim." (*Id*.) He testified the damage to the vehicle was consistent with the damage at the scene of the incident. (*Id*. at 79). Officer McDole testified that he also located some vomit on the driver's side of the vehicle. (*Id*. at 78). Photographs of the damaged vehicle as it was found in Frankart's driveway were introduced into evidence.

{¶22} Officer McDole testified that Frankart was in the back of Deputy Weimerskirch's patrol vehicle when he arrived at Frankart's residence. (Tr. at 82). Officer McDole testified that he spoke with Frankart and asked Frankart if he could describe what had taken place and Frankart stated that he wanted to speak to an attorney. (*Id*.) Officer McDole testified that he did not ask Frankart any other questions at that time. (*Id*.) Officer McDole testified that based on his observations he prepared a citation for "hit skip leaving the scene and failure to control." (*Id*.)

{¶23} On cross-examination Officer McDole testified that the utility pole that had been struck was not actually in the road at all, and that it was two to three feet away from the curb when it was struck. (Tr. at 93). Officer McDole also

testified that it was raining out, and that he observed ruts in Frankart's driveway from where the vehicle had been driven on the rim. (*Id*. at 91).

{¶24} The State next called Chris Weimerskirch, a Deputy with the Seneca County Sheriff's Office. Deputy Weimerskirch testified that in the early morning hours of December 24, 2014, his assistance was requested in aiding the Tiffin Police Department locate a vehicle. (Tr. at 100). Deputy Weimerskirch testified that dispatch gave him an address to see if there was a vehicle parked with heavy front-end damage, so he went to the specified residence—Frankart's—and located a black Cadillac with heavy right front end damage. (*Id*. at 101). Deputy Weimerskirch testified that in addition to the damage to the body of the vehicle he "noticed the front right tire completely blown out. And there was a, a mark going down the driveway" from where it appeared the vehicle had been driven on its rim. (Tr. at 105). Deputy Weimerskirch testified that he arrived at Frankart's residence a little after 3:00 a.m., and that he let dispatch know he had located the suspected vehicle. (*Id*.)

{¶25} Deputy Weimerskirch testified that he and Deputy Huffman, who had also arrived at the scene, knocked several times on the door of the residence and Charles Frankart, Frankart's father, eventually answered the door. Deputy Weimerskirch testified that Charles looked surprised when he was informed of, and observed, the Cadillac's damage. (Tr. at 101).

{¶26} Deputy Weimerskirch testified that he then requested to speak with Frankart, and Charles stated that Frankart was asleep. Deputy Weimerskirch testified that Charles eventually went inside and awakened Frankart, and that Frankart eventually came outside. Deputy Weimerskirch testified that when Frankart came outside he had a small cut under his chin, he was unsteady on his feet, and had a strong odor of an intoxicating beverage coming from his breath. (Tr. at 103). Deputy Weimerskirch testified that Frankart's eyes were glassy, and his speech was slurred. (*Id.*) Deputy Weimerskirch testified that he saw what appeared to be some dried vomit on Frankart's shirt. (*Id.*)

{¶27} Deputy Weimerskirch testified that he asked Frankart if he was the owner of the vehicle, and Frankart said that he was. Deputy Weimerskirch testified that he then told Frankart he was going to put him in his patrol car until Officer McDole arrived to question him. (Tr. at 104).

{¶28} The State next called Deputy Matthew Huffman of the Seneca County Sheriff's Department. Deputy Huffman testified that he also was dispatched to Frankart's residence to check for a vehicle that had been involved in an accident, and he corroborated the testimony of Deputy Weimerskirch. Deputy Huffman testified that he arrived and located the vehicle, which had a lot of damage on the right front portion, and that he noticed grooves in the gravel driveway from where it looked like the Cadillac had been driven on its rim. (Tr. at

116). Deputy Huffman also testified that he observed vomit on the driver's side of the vehicle and on Frankart's shirt along with some blood. (Tr. at 119).

{¶29} After Deputy Huffman's testimony was concluded, the State rested its case. Frankart then made a Crim.R. 29 motion for acquittal. In making his motion, Frankart argued that under *State v. Spence*, 12th Dist. Clermont No. CA2002-02-012, 2002-Ohio-3600, and this Court's holding in *State v. Provino III*, 3d Dist. Seneca No. 13-07-19, 2007-Ohio-6974, which relied heavily on *Spence*, Frankart could not be convicted of the crime as alleged because he did not collide with a vehicle or pedestrian upon the roadway, and, as it was a one-person accident, there was no one to whom he should have reported the accident under the statute.

{¶30} After Frankart made his motion for acquittal, but before the trial court ruled on the motion, the State moved to amend the charging instrument from a violation of R.C. 4549.02(A) to a violation of R.C. 4549.03(A), which reads,

> **(A) The driver of any vehicle involved in an accident resulting in damage to real property, or personal property attached to real property, legally upon *or adjacent to a public road or highway* immediately shall stop and take reasonable steps to locate and notify the owner or person in charge of the property of that fact * * *[.]**

(Emphasis added).

{¶31} The trial court then considered both Frankart's motion for acquittal and the State's motion to amend and conducted the following analysis.

> **First of all * * * having dealt with Pr[o]vino when I was here, I don't think that it's applicable in this particular case at all because there was no, there was a plea of no contest in which later went up. And we've adduced a whole lot of testimony here today. I do believe that reasonable minds can differ. I believe that the evidence has been brought forward. But I guess at this point, it's, it's more of a fundamental question of whether or not, I guess, this was adequately charged right out of the gate. I mean, I don't, I don't think there's been any great controversy about the damage that was done, you know, the police reports were fairly straightforward. I can recollect that a case that we had similar to this not so long ago where the State made the motion shortly before we started the trial, and in which I granted, but I, I have to say I'm somewhat hesitant in the middle of a trial after the State's already rested to say, oh, well, you know, the evidence hasn't quite lived up to what we thought the expectations were, so now we want to amend the charge.**
>
> *** * ***
>
> **I'm inclined not to grant the State's motion to amend. Again, I'm not sure, I don't believe that pursuant to Rule 29, I think that there's, this is, this has been a very inarticulate case on some of the issues with regard to where the pole was and whether it was in the right of way.[4] * * * If you want to proceed, it's fine, but I, I'm not inclined to grant the motion to amend.**

(Tr. at 132-133).

{¶32} The trial court thus denied the motion for acquittal and the motion to amend. In arguing that the trial court should have granted his motion for acquittal, Frankart renews the arguments that he made to the trial court, stating that the

[4] As Frankart points out in his brief to this Court, there is no requirement in R.C. 4549.02(A) that the pole be in the "right of way;" rather, the requirement is that the person or property struck be upon the roadway.

statutory elements could not be proven, pointing this Court to the decisions in *Spence* and *Provino III* as support for his argument.

{¶33} In *State v. Spence*, 12th Dist. Clermont No. CA2002-02-012, 2002-Ohio-3600, a driver hit a utility pole adjacent to a highway and was charged with a violation of R.C. 4549.02(A). *Spence* at ¶ 13. The driver pled no contest to the charge, was convicted, and then appealed to the Twelfth District Court of Appeals, which reversed, based on the following reasoning.

> **In the case at bar, the explanation of circumstances is insufficient to warrant a guilty finding under R.C. 4549.02. By its very terms, R.C. 4549.02 provides that any accident subject to the section involves a collision with either a pedestrian or another motor vehicle. Here, there was no accident or collision involving a pedestrian or another vehicle. No person was injured nor any other motor vehicle damaged as a result of the accident.**
>
> **The facts of this case are more compatible with R.C. 4549.03 as they involve a collision with property located adjacent to a highway. Given that R.C. 4549.03 applies, it is highly unlikely that appellant could have readily determined the owner of the utility pole at 2:00 a.m., or that he had an adequate opportunity to identify the owner of the utility pole before being arrested. Furthermore, appellant was still well within the 24-hour period for reporting such an accident when he was arrested.**

Spence at ¶¶ 12-13.

{¶34} The decision in *Spence* is factually analogous to the case before us, and Frankart urges us to apply it and similarly find that there was insufficient

evidence presented in this case.[5] Frankart further points us to our own decision in *State v. Provino III*, 3d Dist. Seneca No. 13-07-19, 2007-Ohio-6974, where we followed *Spence* to a degree. In *Provino III*, a driver ran off the road into a ditch and sustained damage to his own vehicle. *Provino III* at ¶ 12. The driver in *Provino III* pled no contest to a violation of R.C. 4549.02(A), was convicted, and appealed to this Court. We reversed *Provino III*'s conviction, reasoning,

> **We do not believe that the explanation of circumstances set forth in this case was sufficient to prove a violation of R.C. 4549.02(A). The statute requires that the defendant's vehicle collide with either a pedestrian or another motor vehicle. See *State v. Spence*, 12th Dist. No. CA2002–02–012, 2002-Ohio-3600, 2002 WL 1495341, at ¶ 12. The evidence in this case is clear that Provino was involved in only a one-car accident with no pedestrian having been hit. In *Spence*, the defendant drove a friend's vehicle into a telephone pole, causing damage to the vehicle. Id. at ¶ 3. In this case, the defendant simply lost control and went into a ditch. In both cases, "[n]o person was injured nor any other motor vehicle damaged as a result of the accident." Id. at ¶ 12.**
>
> **Most of the cases reviewing R.C. 4549.02(A) refer to the statute as the "hit-skip" or "hit-and-run" statute. See generally *State v. Johnson*, 9th Dist. No. 22789, 2006-Ohio-2277, 2006 WL 1236058; *North Olmsted v. Gallagher* (1981), 2 Ohio App.3d 414, 2 OBR 490, 442 N.E.2d 470. Those cases all involve situations where the defendant strikes a pedestrian, a person riding a bike, or another vehicle where people are injured. This case does not present a similar scenario. R.C. 4549.02(A) also applies when**

[5] Another case very similar to *Spence*, which was not cited by Frankart, is *State v. Clark*, 5th Dist. Stark No. 7544, 1988 WL 142297 (Dec. 28, 1988). In *Clark* the Fifth District Court of Appeals determined that where Clark's vehicle "skidded down [a roadway] and struck a utility pole owned by Ohio Power" and he "left the scene before police arrived," he could not be convicted of a violation of R.C. 4549.02(A) because the utility pole was not on the roadway as was required for a conviction under the statute. Although *Clark* is an older case, the Fifth District recently reaffirmed *Clark*'s holding in *State v. Mills*, 5th Dist. Knox No. 14CA9, 2014-Ohio-3563, ¶ 9.

> **drivers hit parked vehicles and leave the scene without stopping to provide their information. Again, this case does not present that type of situation.** ***As stated above, the only person who suffered any injury in this case was the owner of the vehicle because the left side of the Envoy was damaged. However, the owner already knew Provino's identity because he had allowed Provino to use the vehicle.*** **On this record, we find the explanation of circumstances is insufficient to warrant a guilty finding under R.C. 4549.02(A).**

(Emphasis added.) *Provino III* at ¶¶ 11-12.

{¶35} While *Provino III* is not as factually analogous to the case *sub judice* as *Spence*, it does prove instructive here as it emphasizes that a key requirement of R.C. 4549.02(A) is the "failure to notify" one of the specified parties. To find Frankart guilty of "Hit-Skip" in violation of R.C. 4549.02(A), multiple elements have to be proven, including that there was an accident to, or collision with, persons or property upon the roadway, *and* that Frankart failed to report it to any one of three people before leaving the scene: "[1] any person injured in the accident or collision *or* [2] to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, *or* [3] to any police officer at the scene of the accident or collision." R.C. 4549.02(A).

{¶36} The State initially argued that it had satisfied the first portion of the statute requiring an accident to, or collision with, persons or property upon the roadway because the utility pole was "upon the roadway." Notwithstanding the

contrary holding in *Spence*,[6] the utility pole being "upon the roadway" is not consistent with the definitions of street/highway,[7] or roadway[8] pursuant to the definitions in R.C. 4511.01, which limit the street/highway/roadway to the area used for vehicular travel, and the definition for "roadway" expressly excludes the "berm or shoulder."

{¶37} Perhaps recognizing that the utility pole would not qualify as "upon the roadway," the State now argues that the accident to or collision with persons or property upon the roadway elements are satisfied by damage to the *road itself* as a result of the accident. In support of this contention, the State points to photographs showing a tire mark at the scene of the crash, and pictures of the scuffed curb. The State also argues that Frankart was driving on his rim at one point, as evidenced by the marks in *his driveway*, and that it could be inferred that such marks were in the roadway as well, thereby damaging it.

{¶38} Despite the State's arguments, there is no indication from a plain reading of R.C. 4549.02(A) that damage to the *roadway itself* invokes any potential criminal liability for "Hit-Skip" under *this* statute. However, even if we were to somehow accept that damage to the roadway itself satisfies the elements

[6] And also the Fifth District's holding in *Clark*.
[7] Revised Code 4511.01(BB) defines "[s]treet" or "highway" as "the entire width between the boundary lines of every way open to the use of the public as a thoroughfare for purposes of vehicular travel."
[8] Revised Code 4511.01(EE) defines "roadway" as "that portion of a highway improved, designed, or ordinarily used for vehicular travel, except the berm or shoulder. If a highway includes two or more separate roadways the term 'roadway' means any such roadway separately but not all such roadways collectively."

of an accident to *persons* or *property upon* the roadway, the State *still* had to establish that Frankart failed to report the accident to *any one* of the three people listed in the statute.

{¶39} Here, similar to *Provino III*, Frankart was the only person injured in the accident, and he was also the owner/operator of the only vehicle damaged in the accident or collision. Thus if there was anyone to report the accident to, it was himself. Revised Code 4549.02(A) specifically states that Frankart could report to *any one* of the three listed people. There is no conjunctive "and" used in the statute requiring Frankart to report to more than one person, or to specifically report to a police officer in the event of a one car accident.

{¶40} As the State was required to present evidence that Frankart failed to properly notify a specified person under the statute in the event of a qualifying accident to, or collision with, persons or property upon the roadway, and we can find no evidence that Frankart failed to report this incident to one of the three statutorily specified individuals since he was one of the specified individuals, we cannot find that the State presented sufficient evidence of this element. Therefore we find that there was insufficient evidence presented to convict Frankart, and

Frankart's first assignment of error is sustained.[9]

Second Assignment of Error

{¶41} In Frankart's second assignment of error, he argues that the trial court improperly ordered a six month license suspension and improperly added six points to his license for the Failure to Control charge.

{¶42} The State counters Frankart's argument by stating that the license suspension and six points were appropriate on the Hit-Skip charge, so despite the fact that the trial court placed the suspension and points on the wrong judgment entry, the suspension and points were appropriate in their totality because "[c]learly the penalties on the [Failure to Control] [were] meant for the [Hit-Skip] conviction. As such, while the penalties may have the wrong case number, the penalties themselves are not improper." (Appe. Br. at 6).

{¶43} The State thus implicitly concedes that six points and six months license suspension were improper for the Failure to Control conviction. We cannot accept the State's argument that because the sentences were proper for another conviction they can effectively be "tacked on" to a different charge in a

[9] We would note that the State attempted to amend its charge to a violation of R.C. 4549.03(A), and in somewhat similar factual situations to this case, convictions have been upheld under *that* statute. *See State v. Muchmore*, 1st Dist. Hamilton No. C-140056, 2014-Ohio-5096 (finding trial court's grant of a motion to amend charging instrument from charge of violating R.C. 4549.02 to a violation of R.C. 4549.03 was proper, and that there was sufficient evidence to support conviction under 4549.03 where car hit fire hydrant adjacent to road and driver left the scene); *see also State v. Knowlton*, 4th Dist. Washington No. 10CA31, 2012-Ohio-2350 (upholding conviction under R.C. 4549.03 where driver hit utility pole and left scene). However, the question of what Frankart *could possibly have been* convicted of instead of R.C. 4549.02(A) is not before this Court, and we will not further address it.

different judgment entry. It is undisputed that the Failure to Control conviction was for a minor misdemeanor, which carries with it a maximum fine of $150. *See* Tiffin City Ordinance 303.99; *see also* R.C. 2929.28. There is no indication that a six month license suspension or six points being added by the trial court is an appropriate punishment for *this* charge.

{¶44} Moreover, as we have reversed Frankart's conviction for "Hit-Skip," the sentence would no longer be proper even if we accepted the State's argument for some type of "package" sentence here. Therefore, Frankart's second assignment of error is sustained, and the portion of his Failure to Control judgment entry purporting to impose a license suspension and add points to his license is reversed and remanded to the trial court for resentencing.

{¶45} For the foregoing reasons Frankart's first assignment of error is sustained, and his second assignment of error is sustained. The judgment of the Tiffin-Fostoria Municipal Court is therefore reversed, and this case is remanded to the trial court for further proceedings consistent with this opinion.

Judgment Reversed and
Cause Remanded

ROGERS, P.J. and PRESTON, J., concur.

/jlr