

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO
VILLAGE OF GRANVILLE

Plaintiff-Appellee

-vs-

WILLIAM LAVERY,

Defendant-Appellant

: JUDGES:
:
: Hon. W. SCOTT GWIN, P.J.
: Hon. JOHN W. WISE, J.
: Hon. PATRICIA A. DELANEY, J.

: Case No. 2007-CA-34
:
:
:
:

: O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Licking County Municipal
Court, Case No. 06 TRC 13704

JUDGMENT:

Reversed and Final Judgment Entered

DATE OF JUDGMENT ENTRY:

October 16, 2007

APPEARANCES:

For Plaintiff-Appellee:
DOUGLAS E. SASSEN
Newark Law Director
40 W. Main Street, 4th Floor
Newark, Ohio 43055

For Defendant-Appellant:
DAVID B. STOKES
21 West Church Street, Suite 206
Newark, Ohio 43055

Delaney, J.

{¶1} Appellant, William L. Lavery, appeals a judgment of the Licking County Municipal Court which found him guilty of violating R.C. 4511.19(A)(1)(h), operating a vehicle while under the influence, and R.C. 4511.213, failure to yield to safety vehicle.

{¶2} Appellant raises two assignments of error:

{¶3} I. THE TRIAL COURT COMMITTED PLAIN ERROR, HARMFUL ERROR AND/OR ABUSED ITS DISCRETION IN FINDING APPELLANT GUILTY AND IMPOSING SENTENCES.

{¶4} II. THE TRIAL COURT ERRED AND/OR ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION TO SUPPRESS.

{¶5} The record shows appellant originally pled not guilty, but changed his plea to no contest after the court overruled his motion to suppress.

{¶6} Appellee, the State of Ohio, concedes appellant's first assignment of error and agrees the trial court did not comply with R.C. 2937.07, which mandates an explanation of facts prior to a guilty finding on a no-contest plea. Appellee also concedes double jeopardy attached and there cannot be a subsequent prosecution.

{¶7} Accordingly, the first assignment of error is sustained.

{¶8} Appellant's second assignment of error is overruled as moot.

{¶9} For the foregoing reasons, the judgment of the Licking County Municipal Court is reversed, and pursuant to App. R. 12(B) we enter final judgment of acquittal.

By: Delaney, J.

Gwin, P.J. and

Wise, J. concur.

HONORABLE PATRICIA A. DELANEY

HONORABLE W. SCOTT GWIN

HONORABLE JOHN W. WISE

PAD:kgb

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
VILLAGE OF GRANVILLE	:	
Plaintiff-Appellee	:	
	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
WILLIAM L. LAVERY	:	
	:	
Defendant-Appellant	:	Case No. 2007 CA 34
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Licking County Municipal Court is reversed, and pursuant to App. R.12(B) we enter final judgment of acquittal. Costs assessed to appellee.

HONORABLE PATRICIA A. DELANEY

HONORABLE W. SCOTT GWIN

HONORABLE JOHN W. WISE