

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

PETER RACIC

Defendant-Appellant

JUDGES:

Hon. Julie A. Edwards, P.J.

Hon. William B. Hoffman, J.

Hon. Patricia A. Delaney, J.

Case No. 2010CA00013

O P I N I O N

CHARACTER OF PROCEEDING:

Appeal from the Stark County Court of
Common Pleas, Case No. 2009CR1078

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

November 29, 2010

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

JOHN D. FERRERO
PROSECUTING ATTORNEY,
STARK COUNTY, OHIO

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Hoffman, J.

{¶1} Defendant-appellant Peter Racic appeals his conviction entered by the Stark County Court of Common Pleas on one count of vehicular assault, in violation of R.C. 2903.08(A)(2)(B), a felony of the fourth degree. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE CASE

{¶2} On September 14, 2009, Appellant was indicted on one count of aggravated vehicular assault, in violation of R.C. 2903.08(A)(1); one count of vehicular assault, in violation of R.C. 2903.08(A)(2)(b); and one count of operating a vehicle intoxicated, in violation of R.C. 4511.19(A)(1)(a).

{¶3} Following a jury trial, Appellant was found guilty of the vehicular assault charge. The jury form signed by the twelve jurors states, “we the jury in this case, being duly impaneled and sworn, do find the defendant, Peter A. Racic, guilty of the offense of vehicular assault in violation of R.C. 2903.08(A)(2)(b).”

{¶4} Appellant now appeals his conviction, assigning as error:

{¶5} “I. THE VERDICT FORM WAS INADEQUATE TO SUPPORT APPELLANT’S CONVICTION FOR VEHICULAR ASSAULT AS A FOURTH DEGREE FELONY.”

{¶6} In his sole assignment of error, Appellant argues the verdict form is insufficient to support his conviction for vehicular assault as a fourth degree felony pursuant to *State v. Pelfrey* 112 OhioSt.3d 422, 2007-Ohio-256.

{¶7} Appellant was found guilty of vehicular assault, in violation of R.C. 2903.08(A)(2)(b), a fourth degree felony. The statute reads,

{¶8} “(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause serious physical harm to another person or another's unborn in any of the following ways:

{¶9} ****

{¶10} “(2) In one of the following ways:

{¶11} ****

{¶12} “(b) Recklessly.

{¶13} ****

{¶14} “(C)(1) Whoever violates division (A)(2) or (3) of this section is guilty of vehicular assault and shall be punished as provided in divisions (C)(2) and (3) of this section.

{¶15} “(2) Except as otherwise provided in this division, vehicular assault committed in violation of division (A)(2) of this section is a felony of the fourth degree. Vehicular assault committed in violation of division (A)(2) of this section is a felony of the third degree if, at the time of the offense, the offender was driving under a suspension imposed under Chapter 4510. or any other provision of the Revised Code, if the offender previously has been convicted of or pleaded guilty to a violation of this section or any traffic-related homicide, manslaughter, or assault offense, or if, in the same course of conduct that resulted in the violation of division (A)(2) of this section, the offender also violated section 4549.02, 4549.021, or 4549.03 of the Revised Code.”

{¶16} In *State v. Pelfrey*, 112 Ohio St.3d 422, 2007-Ohio-256, the Supreme Court held,

{¶17} “We hold that pursuant to the clear language of R.C. 2945.75, a verdict form signed by a jury must include either the degree of the offense of which the defendant is convicted or a statement that an aggravating element has been found *to justify convicting a defendant of a greater degree of a criminal offense.*” (Emphasis added.)

{¶18} Here, Appellant was not convicted of a greater degree of the criminal offense charged. The degree of the offense charged was a felony of the fourth degree and it was not elevated by an additional element or elements. The offense was not made more serious by the presence of an additional element, pursuant to R.C. 2945.75(A). Rather, the statute charged specifically classifies the degree of the offense as a felony of the fourth degree. Accordingly, the verdict from is sufficient to support Appellant’s conviction.

{¶19} Appellant’s conviction in the Stark County Court of Common Pleas is affirmed.

By: Hoffman, J.

Edwards, P.J. and

Delaney, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

s/ Patricia A. Delaney
HON. PATRICIA A. DELANEY

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

STATE OF OHIO

Plaintiff-Appellee

-vs-

PETER RACIC

Defendant-Appellant

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JUDGMENT ENTRY

Case No. 2010CA00013

For the reason stated in our accompanying Opinion, the judgment of the Stark County Court of Common Pleas is affirmed. Costs to Appellant.

s/ William B. Hoffman

HON. WILLIAM B. HOFFMAN

s/ Julie A. Edwards

HON. JULIE A. EDWARDS

s/ Patricia A. Delaney

HON. PATRICIA A. DELANEY