[Cite as *State v. Amin*, 2015-Ohio-1902.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO Plaintiff-Appellee -vs- NRUJAL AMIN Defendant-Appellant	JUDGES: Hon. W. Scott Gwin, P. J. Hon. John W. Wise, J. Hon. Craig R. Baldwin, J. Case No. 14 COA 17 O P I N I O N

CHARACTER OF PROCEEDING:	Criminal Appeal from the Municipal Court, Case No. 14 TRC 02192D
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	May 18, 2015

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
ANDREW N. BUSH ASSISTANT LAW DIRECTOR 1213 East Main Street Ashland, Ohio 44805	THOMAS L. MASON MASON, MASON & KEARNS P. O. Box 345, 153 West Main Street Ashland, Ohio 44805

Wise, J.

{¶1} Appellant Nrujal Amin appeals his conviction and sentence entered in the Ashland Municipal Court following a jury trial.

{¶2} Appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶1} On April 4, 2014, Trooper Elliott Rawson of the Ashland Highway Patrol Post responded to Interstate 71 just North of Ashland to investigate a report of a reckless driver. *Id.* Trooper Rawson observed a vehicle matching the description of the reported reckless vehicle and pulled up behind it. (T. at 49). This occurred at approximate mile post 187 just north of U.S. 250 in Ashland county. (T. at 49). Trooper Rawson followed the vehicle off the exit ramp for U.S. Route 250, with one vehicle in between them. (T. at 50). Appellant turned left onto U.S. Route 250 westbound, and then turned left onto County Road 1575 southbound. (T. at 53-54). Appellant then turned left into the parking lot of the Days Inn Hotel. During this time, Trooper Rawson observed Appellant driving unusually close to the back of a truck, while braking heavily periodically to avoid hitting the truck. *Id.* Trooper Rawson then observed Appellant make a wide, left turn and overcorrect into the middle of the road. *Id.*

{¶2} In speaking with Appellant, Trooper Rawson noticed a strong odor of alcoholic beverage and bloodshot glassy eyes. (T. at 58). Trooper Rawson also stated that Appellant was unable to provide a coherent storyline about where he was coming from and when he had gotten off work that day in Burbank, Ohio. (T. at 59-61). Appellant admitted to drinking a couple Corona beers, but when asked where he drank

the beers, Appellant again gave an unusual answer indicating the beers were not in the car. (T. at 63).

{¶3} Trooper Rawson then administered Field Sobriety Tests in which he observed six of six clues on the HGN test, four of eight possible clues on the walk and turn test, and four clues on the one-legged stand test. (T. at 64-68). Appellant later refused a breath test and was charged with Operating a Vehicle Under the Influence of Alcohol and/or Drugs in violation of R.C. §4511.19(A)(l)(A) and §4511.19(A)(2)(A) for having a prior refusal in twenty years, as well as Marked Lanes and Failure to Wear a Safety Belt.

{¶4} The case proceeded to a jury trial on June 4, 2014.

{¶5} At trial, the jury heard testimony from Trooper Rawson, who recounted the above described events. Trooper Rawson stated that "there was an incident of a report of reckless driving." (T. at 45). Defense counsel objected to this statement, arguing that same was hearsay. In response to defense counsel's objection, the trial court gave a limiting instruction, explaining to the jury that it could consider the statement solely for the purpose of explaining why Trooper Rawson responded to the area. (T. at 46).

{¶6} Appellant also testified at trial, stating that on the day in question he had consumed the equivalent of two beers at approximately 1:00 p.m. (T. at 121-123). He testified that he did not begin driving home until around 8:30 p.m. (T. at 122, 124). Appellant explained that he turned into the parking lot for the Days Inn because he and his wife operated the hotel and also lived there. (T. at 125-126). Appellant stated that he did not believe any alcohol he had consumed that day had any effect on him. (T. at 130, 133).

{¶7} Appellant's wife, Purvi Amin, testified that she witnessed Appellant's performance on the field sobriety tests and that she believed he performed them without any problems, and further, that she did not notice any indicia of impairment at that time or forty (40) minutes later when she picked him up at the Ashland County Post of the Ohio State Highway Patrol. (T. at 161-166).

{¶8} Ellen Briggs, who was working with Appellant that day, testified that she saw Appellant when he left work and did not notice anything unusual about him that would indicate that he was impaired. (T. at 176-7).

{¶9} A certified copy of the Appellant's conviction for OVI in the Canton, Ohio Municipal Court in 2008 was admitted in evidence. (Transcript, Pages 80-82).

{¶10} Appellant was convicted of all charges and sentenced to ninety (90) days in jail, with sixty days suspended. Appellant was granted a stay of execution pending this appeal.

{¶11} Appellant assigns the following error for review:

{¶12} "I. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY PERMITTING EVIDENCE TO BE ADMITTED THAT A DRIVER HAD REPORTED THAT THE APPELLANT WAS DRIVING ERRATICALLY WHERE THE REPORTING DRIVER DID NOT TESTIFY AT THE JURY TRIAL."

I.

{¶13} In his sole Assignment of Error, Appellant argues that the trial court erred in admitting into evidence Trooper Rawson's statement concerning the report of reckless driving he received from the dispatcher. We disagree.

{¶14} Appellant herein argues that the trial court erred in admitting Trooper Rawson's testimony regarding the dispatch he received over the police radio because the statement was inadmissible hearsay pursuant to Evid.R. 802:

> Hearsay is not admissible except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio.

{¶15} Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Evid.R. 801(C). Hearsay is generally not admissible unless it falls within one of the exceptions to the rule against hearsay. Evid.R. 802, 803, 804; *State v. Steffen* (1987), 31 Ohio St.3d 111, 509 N.E.2d 383. Statements constitute hearsay only if they were offered to prove the truth of the matters asserted in those statements. If those statements were offered for some other purpose, they are not inadmissible hearsay. *State v. Davis* (1991), 62 Ohio St.3d 326, 344, 581 N.E.2d 1362.

{¶16} Upon review, we find no error in the trial court's decision to admit this statement. Trooper Rawson did not identify Appellant in this specific statement and did not testify regarding the caller's statements to dispatch. More importantly, the trial court instructed the jury that this statement was offered to show why Trooper Rawson responded to that particular area of the highway and was not offered to prove the matter asserted, i.e., that Appellant was driving erratically. See Evid.R. 801(C). This Court is mindful that “[a jury is] presumed to obey the court's instruction.” *State v. Tillman* (1997), 119 Ohio App.3d 449, 461, 695 N.E.2d 792.

{¶17} Even assuming the trial court erred in allowing this testimony, any error must be considered harmless as we find this testimony was cumulative of other overwhelming evidence that Appellant was driving impaired. As stated above, Trooper Rawson testified as to his own personal observations of Appellant's erratic driving, strong odor of alcohol, bloodshot glassy eyes, confusing and incoherent statements, and Appellant's admission of consumption of alcohol. Additionally, Appellant performed poorly on the field sobriety tests.

{¶18} Crim.R. 52(A) addresses harmless error, stating that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." To find that an error in a criminal matter was harmless, this Court must find that the error was harmless beyond a reasonable doubt. *Chapman v. California* (1967), 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705, paragraph two of the syllabus; *State v. Lytle* (1976), 48 Ohio St.2d 391, 403, 358 N.E.2d 623, vacated on other grounds in (1978), 438 U.S. 910, 98 S.Ct. 3135, 57 L.Ed.2d 1154. This Court, however, may overlook an error where the properly admitted evidence comprises "overwhelming" proof of defendant's guilt. *State v. Williams* (1983), 6 Ohio St.3d 281, 290, 452 N.E.2d 1323, citing *Harrington v. California* (1969), 395 U.S. 250, 254, 89 S.Ct. 1726, 23 L.Ed.2d 284. "Where there is no reasonable possibility that unlawful testimony contributed to a conviction, the error is harmless and therefore will not be grounds for reversal." *State v. Brown* (1992), 65 Ohio St.3d 483, 485, 605 N.E.2d 46, quoting *Lytle,* 48 Ohio St.2d at paragraph three of the syllabus. When determining whether the admission of evidence is harmless, therefore, this Court must find "there is no reasonable probability that the evidence may have contributed to the defendant's conviction." *State v. Hardin,* (Dec. 5,

2001), 9th Dist. No. 3203-M, citing *State v. DeMarco* (1987), 31 Ohio St.3d 191, 195, 509 N.E.2d 1256.

{¶19} Based on the foregoing, we find Appellant's sole Assignment of Error not well-taken and overrule same.

{¶20} The decision of the Municipal Court of Ashland County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Baldwin, J., concur.

JWW/d 0508