

COURT OF APPEALS  
ASHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

GEORGE A. HITCHCOCK

## Defendant-Appellant

: JUDGES:

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Hon. John W. Wise, P.J.  
Hon. Patricia A. Delaney, J.  
Hon. Craig R. Baldwin, J.

Case No. 16-COA-021

## OPINION

CHARACTER OF PROCEEDING:

Appeal from the Ashland Municipal  
Court, Case No. 16TRD01862

**JUDGMENT:**

AFFIRMED

DATE OF JUDGMENT ENTRY:

January 9, 2017

APPEARANCES:

For Plaintiff-Appellee:

ANDREW N. BUSH  
Assistant Director of Law  
1213 E. Main St.  
Ashland, OH 44805

For Defendant-Appellant:

MATTHEW J. MALONE  
10 East Main Street  
Ashland, OH 44805

*Delaney, J.*

{¶1} Defendant-Appellant George A. Hitchcock appeals his May 16, 2016 conviction and sentence for reckless operation, a minor misdemeanor in violation of R.C. 4511.20, by the Ashland Municipal Court. Plaintiff-Appellee is the State of Ohio.

### **FACTS AND PROCEDURAL HISTORY**

{¶2} On March 19, 2016, Ohio State Highway Patrol Trooper Paul Green was patrolling U.S. Route 42 during the midnight shift from 10:00 p.m. to 6:00 a.m. U.S. Route 42 is a two-lane highway, with driveways for private residences and businesses. There are multiple intersections governed by stoplights. The road is flat and straight in some areas or with hills and blind curves in other areas. The speed limit on U.S. Route 42 is either 50 mph or 55 mph, depending on the location of the city limits. On March 19, 2016, the pavement of U.S. Route 42 was dry and there were no adverse weather conditions.

{¶3} At approximately 2:00 a.m., while travelling northbound on U.S. Route 42 in Ashland County, Ohio, Trooper Green observed a dark vehicle make a right turn from Ohio State Route 603 onto northbound U.S. Route 42. (T. 7). Trooper Green thought the vehicle either blew the stop sign or made a hard right turn while accelerating rapidly. (T. 7). Trooper Green wanted to investigate further and followed the vehicle. (T. 7).

{¶4} Trooper Green lost sight of the vehicle and accelerated to catch the vehicle. (T. 8). He did not know his speed when he started following the vehicle, but in order to catch up, he accelerated from 90 mph to over 100 mph. (T. 8-9). From Mile Post 1 to Mile Post 2 or 3, Trooper Green estimated he was travelling over 100 mph. (T. 8-9). He could not see the taillights of the dark vehicle because the vehicle had just crested a hill. (T. 9, 24). Trooper Green increased his speed to 115 mph when he saw the vehicle's taillights

quite a distance in front of him. (T. 9). At Mile Post 4, Trooper Green increased his speed to 120 mph to try to catch the vehicle. (T. 10). At 120 mph, Trooper Green thought he should be able to catch the vehicle, but he could not. At Mifflin Avenue, Trooper Green was travelling close to 130 mph to attempt to catch the vehicle. (T. 10, 19).

{¶5} Two cars and a semi-truck going southbound on U.S. Route 42 passed the vehicle and Trooper Green's cruiser. At Mile Post 5, Trooper Green knew there was a curve in the road coming up. (T. 10). He initiated his overhead lights. The dark vehicle slowed down and stopped at King Road. (T. 11).

{¶6} Trooper Green approached the vehicle, a Jeep Cherokee, and the driver identified himself as Defendant-Appellant George A. Hitchcock. Hitchcock had a passenger sitting in the front passenger seat. Hitchcock told Trooper Green his registration was expired. (T. 22). Trooper Green did not suspect any alcohol or drug use. (T. 26). After consulting with his supervisor, Trooper Green issued Hitchcock a citation for reckless operation, in violation of R.C. 4511.20. (T. 22).

{¶7} The matter proceeded to a bench trial on May 16, 2016. At trial, Trooper Green testified and the dash cam video of Trooper Green's pursuit and stop of Hitchcock's vehicle was admitted into evidence. The trial court found Hitchcock guilty of reckless operation, suspended his driver's license for three years, and imposed a fine of \$150.00 and court costs.

{¶8} It is from this conviction and sentence Hitchcock now appeals.

### ASSIGNMENT OF ERROR

{¶9} Hitchcock raises one Assignment of Error:

{¶10} “APPELLANT’S CONVICTION FOR RECKLESS OPERATION IN VIOLATION OF R.C. 4511.20 WAS NOT SUPPORTED BY SUFFICIENT EVIDENCE.”

### ANALYSIS

{¶11} Hitchcock argues in his sole Assignment of Error that his conviction for reckless operation was not supported by sufficient evidence. We disagree.

{¶12} The standard of review for a challenge to the sufficiency of the evidence is set forth in *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991) at paragraph two of the syllabus, in which the Ohio Supreme Court held, “An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt. 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.”

{¶13} Hitchcock was convicted of reckless operation, in violation of R.C. 4511.20(A). The statute reads, “[n]o person shall operate a vehicle, trackless trolley, or streetcar on any street or highway in willful or wanton disregard of the safety of persons or property.”

{¶14} In *State v. Ducheine*, 5th Dist. Licking No. 09 CA 0096, 2010-Ohio-3122, ¶ 13, this Court defined “willful or wanton” as follows:

The Ohio Supreme Court has held that willful conduct ‘implies an act done intentionally, designedly, knowingly, or purposely, without justifiable excuse.’ *State v. Earlenbaugh* (1985), 18 Ohio St.3d 19, 21, 479 N.E.2d 846, citing Black's Law Dictionary (5 Ed.1979) 1434. Wanton conduct, on the other hand, is defined as ‘an act done in reckless disregard of the rights of others which evinces a reckless indifference of the consequences to the life, limb, health, reputation, or property of others.’ *Id.* at 21–22.

*State v. Melvin*, 5th Dist. Ashland No. 11-COA-016, 2011-Ohio-6418, ¶¶ 7-8.

{¶15} Hitchcock argues on appeal that his speed alone is insufficient to support his conviction for reckless operation. Hitchcock is correct when he states that Ohio courts have held that speeding alone does not constitute reckless operation. See *State v. Hartman*, 41 Ohio App.3d 142, 534 N.E.2d 933 (12th Dist.1987); *State v. Pessefall*, 87 Ohio App.3d 222, 621 N.E.2d 1370 (4th Dist.1993). The trial court must also examine the facts surrounding the violation to determine whether the defendant acted in willful or wanton disregard of the safety of persons or property. *Id.*

{¶16} Hitchcock argued during the bench trial that speed alone was insufficient to constitute reckless operation. The trial court acknowledged the argument and agreed the trial court was required to look at all of the circumstances surrounding the driving, not just the speed. (T. 34). The trial court found the evidence demonstrated Hitchcock acted in a willful or wanton disregard of the safety of persons or property in violation of R.C. 4511.20(A). Before pronouncing judgment, the trial court stated:

\* \* \* [W]e don't just have speed here, we have extreme speed, \* \* \*. Look at the driver, look at the vehicle, and we look at the road conditions, look

at the area, Mr. Hitchcock drove that vehicle past two fatalities that I know of, at well over 110 miles an hour, \* \* \* so it's an extremely dangerous area, and you have a lot of – it's not a limited access highway, it's not straight, it's not level. It has got a ton of driveways that people could be pulling out of, and it has got cross intersections \* \* \*. Never expecting some person to be driving at 120, 130 miles an hour, driving a black Jeep in the middle of the night. \* \* \*

(T. 34-35).

{¶17} Our review of the record indicates the State produced sufficient evidence to convince a trier of fact that Hitchcock acted “wantonly in disregard for the safety of others” upon which the trier of fact could find him in violation of R.C. 4511.20(A). Hitchcock's speed, with full knowledge of the surrounding circumstances, supports the trial court's determination. At 2:00 a.m., Hitchcock travelled at an excessive speed on U.S. Route 42. The speed limit on U.S. Route 42 is either 50 mph or 55 mph, depending on the location of the city limits. Trooper Green testified he travelled at a speed of 130 mph, but could not catch up to Hitchcock's vehicle. U.S. Route 42 is a two-lane, limited access highway. Driveways to private residences and businesses directly access the highway. Hitchcock passed three vehicles traveling the opposite direction and crossed at least two intersections governed by stoplights. While U.S. Route 42 is flat and straight in some areas, there are also hills and blind curves. On March 19, 2016, the pavement was dry and there were no adverse weather conditions. The State, however, provided sufficient evidence that Hitchcock's speed, the time of day, and the nature of the roadway demonstrated a “reckless disregard of the rights of others which evinces a reckless

indifference of the consequences” to the safety and property of other motorists traveling on the road; the evidence was also sufficient to show that Hitchcock, “with full knowledge of the surrounding circumstances, recklessly and inexcusably disregards the rights of other motorists.” *Earlenbaugh* at 21-22, 479 N.E.2d 846.

### **CONCLUSION**

{¶18} The sole Assignment of Error is overruled.

{¶19} The judgment of the Ashland Municipal Court is affirmed.

By: Delaney, J.,

Wise, P.J. and

Baldwin, J., concur.