

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
WOOD COUNTY

City of Bowling Green

Court of Appeals No. WD-10-012

Appellee

Trial Court No. 09TRD09801-A

v.

Richard P. Gannon

DECISION AND JUDGMENT

Appellant

Decided: February 4, 2011

* * * * *

Matthew L. Reger, City of Bowling Green Prosecuting Attorney,
for appellee.

Carrie A. Connelly, for appellant.

* * * * *

PIETRYKOWSKI, J.

{¶ 1} This is an appeal from a judgment of the Bowling Green Municipal Court which found defendant-appellant, Richard P. Gannon, guilty of one count of failure to maintain reasonable control of his automobile in violation of Bowling Green Code of

Ordinances 73.12(A). Gannon now challenges that conviction through the following assignments of error:

{¶ 2} "1. The Bowling Green Municipal Court erred as a matter of law when it found that the defendant violated a traffic control device by crossing a double yellow line when he turned left onto East Wooster Street from a private drive.

{¶ 3} "2. The Bowling Green Municipal Court erred as a matter of law when it found that the raised 'island' controlling traffic from a private drive was a lawful traffic control device.

{¶ 4} "3. The Bowling Green Municipal Court erred in finding that appellant's conduct in turning left onto Wooster Street and 'pushing the car a little bit from each stop sign' constituted failure to maintain reasonable control. Such finding is against the manifest weight of the evidence."

{¶ 5} On November 30, 2009, at approximately 8:00 p.m., Patrolman Michael Geiman of the Bowling Green Police Department was involved in a traffic stop of a driver at the intersection of Wooster and Campbell Hill in Bowling Green, Ohio, when he witnessed appellant turn left out of the Chipotle parking lot and head west bound on Wooster. Geiman's attention was drawn to the turn because of the squealing sound made by appellant's tires. The entrance to and exit from the Chipotle parking lot from eastbound Wooster are separated by a concrete divider that is curved into and out from the parking lot. One purpose of the divider is purportedly to encourage those exiting from the lot to turn right, or eastbound, onto Wooster. Nevertheless, there is no sign

demanding a right turn only, and left turns from the parking lot onto westbound Wooster are not prohibited by law. Because Patrolman Geiman was involved in a traffic stop, he notified other officers in the area and gave a description of the car.

{¶ 6} Patrolman Christopher Garman was in the area, driving eastbound on Wooster, when he heard Geiman's radio call. He then saw appellant's vehicle, a tan Mercury Grand Marquis, heading westbound. Garman made a U-turn and followed appellant's vehicle for several blocks. During that time, Garman testified, the vehicle made a right hand turn onto Enterprise, causing the car to shift to the left, and accelerated rapidly between intersections and stop signs. Garman then initiated a traffic stop and cited appellant for failure to maintain reasonable control of his vehicle in violation of Bowling Green Code of Ordinances 73.12(A).

{¶ 7} Appellant's case was tried to the bench below. Officers Geiman and Garman testified as did appellant. At the conclusion of the trial, the court determined that appellant was in violation of the ordinance. In reaching this conclusion, the court stated:

{¶ 8} "But really keying in what I see here, the thing that it is of most concern to me, is how reasonable is the turn. I think all of your testimony, the officers were clear that you didn't – you stayed within the lanes, nobody tried to cite you for speeding. You may have been speeding but nobody put radar on or anything like that. And your vehicle was in the lanes that they were supposed to be in at least after you were finished making your turn. Now, here is the key in this, and I believe it is a violation to make a left hand turn where you did because you crossed the double yellow line. And these photographs if

you look at them it is pretty straight forward, you have a turn lane here. This is on the left side of that diamond of that traffic island where your vehicle comes out on the right side, you have got arrows right here in the street are saying, forward or right in the southern most eastbound lane. The second lane is straight. The third lane is the left hand turn lane for the intersection. And after that comes the double yellow line. There is no center turn lane there going both directions that allows you to go left in the center turn lane there, which means that in and of itself is a violation and you weren't cited for that. And as you look at the photograph it is clear why they put this island here because they don't want people to pull the left turn so close to an intersection, which at times is a major intersection, if there are games and stuff going on, which nobody testified that is going on. So that is my major concern."

{¶ 9} The court then entered judgment accordingly, finding appellant guilty of failure to maintain reasonable control, and imposed a fine of \$25 plus court costs. Appellant now appeals that judgment.

{¶ 10} Because appellant's assignments of error are related, we will discuss them together. Appellant asserts that because he did not violate a traffic control device by crossing the double yellow line and did not make an illegal left hand turn when exiting the Chipotle parking lot, the trial court's finding that he failed to maintain reasonable control of his vehicle was against the manifest weight of the evidence.

{¶ 11} Under the manifest weight of the evidence standard of review, the appellate court sits as a "thirteenth juror" and may disagree with the fact finder's resolution of the

conflicting evidence. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. The appellate court "reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *Id.*, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶ 12} Bowling Green Code of Ordinances 73.12(A) states in relevant part: "No person shall operate a motor vehicle * * * on any street, highway, or property open to the public for vehicular traffic without being in reasonable control of the vehicle * * *." This statute is identical to R.C. 4511.202. The Ohio Revised Code does not define the term "reasonable control." Courts, however, have stated that "[s]imply put, motor vehicle operators must keep their vehicles under control and on their own side of the roadway." *State v. Davis*, 4th Dist. No. 04CA1, 2004-Ohio-5680, ¶ 11, citing *State v. Lunsford* (1987), 118 Ohio App.3d 380, 383, and *Oechsle v. Hart* (1967), 12 Ohio St.2d 29, 34. That is, "the statute focuses on a driver's control or failure to control a vehicle[.]" *State v. Tyler*, 4th Dist. No. 02CA2644, 2002-Ohio-4509, ¶ 13. "Only proof of facts going to the unreasonable manner in which the defendant operates his vehicle is sufficient to sustain a conviction under that statute." *State v. Butcher* (1983), 12 Ohio App.3d 87, 89.

{¶ 13} Officer Geiman testified below that although a left hand turn out of the Chipotle parking lot is not prohibited, he did not believe that such a turn was "reasonable," so he notified other officers in the area of the violation. He also testified that in his view, that was the basis for the citation. Officer Geiman, however, did not issue the citation. Officer Garman did. Officer Garman testified that he cited appellant for failure to maintain reasonable control based on the fact that appellant peeled his tires for an extended period of time, rapidly accelerated between stops, and made a hard right hand turn. On cross-examination, however, Garman admitted that appellant never appeared to be out of control of his vehicle.

{¶ 14} In our view, the controlling issue under a prosecution for a violation of R.C. 4511.202, and hence for a violation of Bowling Green Code of Ordinances 73.12(A), is whether the driver maintained actual physical control of his vehicle at all times. Upon a review of the record below, it is clear that both the prosecution and the court focused exclusively on whether a reasonable person would have made a left hand turn under the circumstances, not whether appellant himself maintained actual physical control of his vehicle in this matter. Moreover, the court then used the fact that appellant crossed the double yellow lines separating the east and west bound lanes of Wooster to support its finding that it was unreasonable for appellant to make the left hand turn. However, R.C. 4511.25(C) provides:

{¶ 15} "Upon any roadway having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle or trackless trolley shall be driven

to the left of the center line of the roadway, except when authorized by official traffic control devices designating certain lanes to the left of the center of the roadway for use by traffic not otherwise permitted to use the lanes, or except as permitted under division (A)(2) of this section.

{¶ 16} "*Division (C) of this section shall not be construed as prohibiting the crossing of the center line in making a left turn into or from an alley, private road, or driveway.*" (Emphasis added.)

{¶ 17} Because appellant was making a legal left hand turn from a private driveway onto westbound Wooster, the court erred in supporting its finding of "unreasonableness" with the fact that appellant crossed the double yellow lines.

{¶ 18} Upon review of the entire record in this case and the unconflicting evidence, we must conclude that in finding appellant guilty of failing to maintain reasonable control, the lower court clearly lost its way and such finding was against the manifest weight of the evidence. The assignments of error are well-taken.

{¶ 19} On consideration whereof, we find that appellant was prejudiced and prevented from having a fair trial and the judgment of the Bowling Green Municipal Court is reversed. This case is remanded to that court for further proceedings consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R.

24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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