

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

State of Ohio

Court of Appeals No. L-14-1119

Appellee

Trial Court No. 14TRD00734

v.

Vincent Smith

**DECISION AND JUDGMENT**

Appellant

Decided: June 30, 2015

\* \* \* \* \*

John B. Arnsby, Maumee Municipal Prosecutor, for appellee.

Brad F. Hubbell, for appellant.

\* \* \* \* \*

**JENSEN, J.**

{¶ 1} Defendant-appellant, Vincent Smith, appeals a judgment of the Maumee Municipal Court finding him guilty of failure to maintain reasonable control of his vehicle. In his sole assignment of error, Smith asserts “the evidence was insufficient to

support the finding and the finding was not sustained by the manifest weight of the evidence.” For the reasons that follow, we affirm the decision of the trial court.

{¶ 2} On February 27, 2014, Smith was driving his commercial motor vehicle south on Interstate 475 in Monclova Township, Lucas County, Ohio. Having just made a delivery, his “single axle truck” was pulling an empty trailer on the expressway. The area was under a “Level II” snow emergency. As a precaution, Smith was driving 50 m.p.h., 15 m.p.h. under the posted speed limit. Suddenly, Smith “lost traction.” Despite utilizing the “Smith System” of defensive driving, his truck went off the roadway and hit the guardrail. He was cited for failure to maintain reasonable control of his vehicle in violation of R.C. 4511.202.

{¶ 3} At a trial before the bench, Ohio State Patrol Trooper Steven Joseph Zientek explained that when he arrived on scene, Smith’s trailer was blocking the right southbound lane and his cab was “hung up” on the concrete guardrail. Trooper Zientek indicated that windy weather conditions had caused snow to blow across the expressway and create a patch of “black ice.” Shortly after Smith collided with the guardrail but before Trooper Zientek arrived on scene, six other drivers lost control of their vehicles on the same patch of black ice.

{¶ 4} Trooper Zientek testified that he had passed through the stretch of roadway seconds before Smith’s accident. Trooper Zientek explained:

I was traveling slow because I actually had vehicles passing me. I think I was travelling maybe 40, 40 miles an hour on the roadway. But

there was areas that had the black ice. It was just slick. Just had to be cautious \* \* \* no standing snow on the roadway that you could see.

{¶ 5} In a post-crash voluntary statement, Smith wrote: “Heading south on 475 about 50 mph empty. I hit a patch of ice and jackknife off the road.” At trial, Smith explained, in his own words, what happened:

A. The truck hit the black ice. As I explained, I asked the officer what happened basically, and that’s when he explained the condition of the road at that point. So at that point is when I discovered that I had hit black ice.

\* \* \*

Q. What happened in the truck?

A. Oh, in the truck? Basically I lost traction. The truck lost the traction that was on the road.

\* \* \*

Q. Do you have any training as to what to do in those situations?

A. Yes. We have a Smith System basically is what – the 5 keys to driving. It’s what we try to use to stay in place. But if you don’t catch a situation like that or if you don’t hit the dry spot in less than – you only have like a half a second or so to fix that action. You don’t – just the truck do basically what it wants to do.

Q. What did you do?

A. What I did, I basically just held onto the steering wheel and just went basically for the right. I – really was nothing else I could do.

Q. Did you point it off to the right?

A. Yes.

Q. To get out of –

A. And I hit the ice, the steering, I turned kind of like to the right side because I didn't want to go over to the lane across the median. So I was keeping in mind that when you're following the Smith System you have to leave yourself an out and you leave yourself some distance in between. So in driving, that was the only way I could have seen to where \* \* \* it would have been safe to put the truck \* \* \*.

{¶ 6} At the conclusion of the trial, the court found appellant guilty as charged. In reaching this conclusion, the court stated: “all of the essential elements have been established to my satisfaction. Regardless of the conditions, you're to drive to those conditions. You know, if it requires you to go 25 miles an hour rather than 50, that's what the law requires.” The court then entered its judgment and imposed a fine of \$25 plus costs.

{¶ 7} On appeal, Smith asserts three arguments under his sole assignment of error. We will address each argument individually.

## Sufficiency of the Evidence

{¶ 8} First, Smith asserts that the evidence presented at trial was insufficient to support a conviction. Sufficiency of the evidence is a legal standard testing if the evidence submitted at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). The test is whether, “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.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. Criminal convictions should not be overturned on the basis of evidence insufficiency unless reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Tibbetts*, 92 Ohio St.3d 146, 162, 749 N.E.2d 226 (2001).

{¶ 9} R.C. 4511.202 provides that “[n]o 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 \* \* \*.” The Ohio Revised Code does not define the term “reasonable control.” However, in *Bowling Green v. Gannon*, 6th Dist. Wood No. WD-10-012, 2011-Ohio-490, we determined that “the controlling issue under a prosecution for a violation of R.C. 4511.202 \* \* \* is whether the driver maintained actual physical control of his vehicle at all times.” *Id.* at ¶ 14. We have also held that “proof of facts going to the unreasonable manner in which the defendant operates his vehicle” is sufficient to sustain a conviction under R.C. 4511.202. *State v. Butcher*, 12 Ohio App.3d 87, 89, 466 N.E.2d 189 (6th Dist.1983).

{¶ 10} Here, Smith was traveling 50 m.p.h. while pulling an empty trailer during a “Level II” snow emergency. When his vehicle crossed a section of the expressway covered in “black ice,” it skidded out of his lane of travel and into a guardrail. This evidence, if believed, could support a finding that Smith was without reasonable control of his vehicle. Thus, we disagree with Smith’s assertion that insufficient evidence was presented to support his conviction.

### **Manifest Weight of the Evidence**

{¶ 11} Second, Smith asserts that his conviction was contrary to the manifest weight of the evidence. When an appellate court considers a claim that a conviction is against the manifest weight of the evidence, the court must dutifully “examine the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses, and determine whether 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.’” *Tibbetts*, 92 Ohio St.3d 146 at 163, quoting *Thompkins*, 78 Ohio St.3d at 387.

{¶ 12} Smith argues that his conviction was against the manifest weight of the evidence because the evidence shows that he exerted control of his vehicle when he “guided” it off of the roadway. While we commend Smith for his utilization of a defensive driving technique to avoid a more serious collision, use of the technique does not diminish his responsibility in regard to the subject statute. As stated above, “the controlling issue under a prosecution for a violation of R.C. 4511.202 \* \* \* is whether the

driver maintained actual physical control of his vehicle at all times.” *Gannon*, 2011-Ohio-490, at ¶ 14.

{¶ 13} It is undisputed that appellant skidded out of his lane of traffic and into the guardrail. At trial, he admitted there was little he could do once his truck hit the black ice and started sliding. While appellant attempted to control his vehicle by guiding it away from the median, we cannot say that the trial court lost its way or created a manifest miscarriage of justice when it inferred that Smith’s speed on the portion of expressway contributed to his failure to maintain actual physical control of his vehicle while skidding on the black ice. Thus, we find that the trial court’s conviction is not against the manifest weight of the evidence. Accordingly, appellant’s second argument under his sole assignment of error is not well-taken.

### **Strict Liability**

{¶ 14} Third, Smith asserts that the trial court erred by applying a strict liability standard to determine his guilt, i.e., his vehicle went off the roadway, thus he was without reasonable control of his vehicle.

{¶ 15} However, there is nothing in the record to indicate that the court did, in fact apply such a standard. In declaring Smith guilty of the charged offense, the trial court indicated that it was satisfied all of the elements of the offense had been satisfied. The trial court explained: “[r]egardless of the conditions, you’re to drive to those conditions. You know, if it requires you to go 25 miles an hour rather than 50, that’s what the law requires.” In other words, the court found Smith’s speed unreasonable considering the

adverse weather conditions. As stated above, “proof of facts going to the unreasonable manner in which the defendant operates his vehicle” is sufficient to sustain a conviction under R.C. 4511.202. *Butcher*, 12 Ohio App.3d 87 at 89. We find no merit in appellant’s third argument under his sole assignment of error.

{¶ 16} For the reasons set forth above, appellant’s sole assignment of error is not well-taken. The judgment of the Maumee Municipal Court is affirmed. Costs of this appeal are taxed to appellant pursuant to App.R. 24.

Judgment affirmed.

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

Thomas J. Osowik, J.

\_\_\_\_\_  
JUDGE

James D. Jensen, 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:  
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.