[Cite as *State v. Taylor*, 2015-Ohio-745.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO,	)	
	)	CASE NO. 14 MA 5
PLAINTIFF-APPELLEE,	)	
	)	
- VS -	)	OPINION
	)	
GARY L. TAYLOR,	)	
	)	
DEFENDANT-APPELLANT.	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from County Court No. 5, Court, Case No. 13 TRD 3397.

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellee:

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JUDGES:
Hon. Mary DeGenaro
Hon. Gene Donofrio
Hon. Cheryl L. Waite

Dated: February 10, 2015

[Cite as *State v. Taylor*, 2015-Ohio-745.]
DeGenaro, J.

{¶1} Defendant-Appellant Gary Taylor appeals the judgment of the Mahoning County Court Area No. 5 convicting him of violating R.C. 4511.42(A), failing to yield the right-of-way when turning left. Taylor asserts that his conviction is based upon insufficient evidence and against the manifest weight of the evidence. As the record demonstrates that his arguments are meritless, the decision of the trial court is affirmed.

Facts and Procedural History

{¶2} As Taylor has raised both sufficiency and manifest weight challenges to his conviction, the testimony taken during the bench trial is recounted in detail.

{¶3} Elizabeth Nelson was traveling northbound on Route 46 at 35 mph when she saw a road paver in front of her in the opposite lane of traffic. The paver then turned in front of her vehicle, and because she only had a few seconds to react, she collided with it because there was not enough time to stop. There were no flaggers, men working, or road signs in the area or anything that impaired her vision. Nelson testified that she suffered a head injury from the collision, which she was still being treated for, and does not remember much about the collision as a result. On cross-examination Nelson admitted that she sneezed twice after she turned onto Route 46 but prior to the collision. Nelson testified that she didn't have time to take evasive action, but her statement at the scene indicated that she hit her brakes and swerved in an attempt to avoid the paver.

{¶4} Ohio State Highway Patrol Trooper Michael Vitullo responded to the scene. The trooper observed that Nelson's northbound vehicle collided with the paver in the middle of the roadway; that the paver was at an angle facing southeast, midway through a left turn when the vehicles collided. The trooper was able to ascertain the speed of the vehicles only through statements: Taylor's paver was traveling about 2 mph, as it was set at 15 feet per minute; and Nelson's between 35 and 40 mph, which the trooper deemed was consistent with the amount of damage based upon his experience. On cross examination, the trooper acknowledged that Nelson declined treatment at the scene and that there are times where citations aren't issued due to the "circumstances."

{¶5} Based upon the trooper's observations and statements made at the scene, the trooper cited Taylor for failing to yield the right-of-way to Nelson's vehicle. The

trooper stated,"[t]he immediate risk factor I believe is that the vehicle making the turn couldn't make the turn in enough time to provide the right-of-way for the northbound vehicle."

{¶6} Kathleen Dutko observed the collision and testified that she was traveling behind Nelson's vehicle, and as she approached the top of the grade she could see a piece of equipment making a turn and that it was "already in the middle of the road." Dutko then took her foot off the accelerator, but the brake lights of Nelson's vehicle did not come on. Dutko stated that she observed someone on the paver waving his arms. On cross, the State questioned Dutko about the inconsistency in her statement to the trooper and her testimony regarding the distance of Nelson's vehicle from the paver.

{¶7} Taylor testified that he was operating a paver for his employer heading southbound on Route 46, and did not observe any traffic coming towards him when he began to make a left turn. As he was making the turn he saw Nelson's vehicle, and a co-worker began waving his arms to get the driver to stop; but Nelson never stopped and collided with the paver. Taylor believed he had "more than enough time" to make the turn, and he observed that Nelson's head was down prior to the collision.

{¶8} Taylor was found guilty of violating R.C. 4511.42(A).

Sufficiency and Weight of the Evidence

{¶9} We will consider Taylor's two assignments of error together:

> "THE VERDICT OF GUILTY IS NOT SUPPORTED BY THE SUFFICIENTCY (sic) OF THE EVIDENCE."
>
> "THE VERDICT OF GUILTY IS AGAINST THE WEIGHT OF THE EVIDENCE."

{¶10} When reviewing the sufficiency of the evidence, an appellate court examines the evidence admitted at trial to determine whether the evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

"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." *Id*., citing *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

{¶11} Conversely, "[w]eight of the evidence concerns the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541. A conviction will only be reversed as against the manifest weight of the evidence in exceptional circumstances. *Id*. This is so because the triers of fact are in a better position to determine credibility issues, since they personally viewed the demeanor, voice inflections and gestures of the witnesses. *State v. Hill,* 75 Ohio St.3d 195, 204, 661 N.E.2d 1068 (1996); *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967).

{¶12} Thus, an appellate court must review the entire record, weigh the evidence and all reasonable inferences and determine 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. *Thompkins* at 387. However, "[w]hen there exist two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our province to choose which one we believe." *State v. Dyke*, 7th Dist. No. 99 CA 149, 2002-Ohio-1152, *2, citing *State v. Gore*, 131 Ohio App.3d 197, 201, 722 N.E.2d 125 (7th Dist.1999). Under these circumstances the verdict is not against the manifest weight and should be affirmed.

{¶13} Taylor was cited under R.C. 4511.42(A), which requires that a driver "intending to turn to the left within an intersection * * * shall yield the right of way to any vehicle * * * approaching from the opposite direction, whenever the approaching vehicle * * * is within the intersection or so close to the intersection * * * as to constitute an immediate hazard." R.C. 4511.01(UU)(1) defines right-of-way as the right of a vehicle to proceed uninterrupted in a lawful manner to continue in that direction in preference to another vehicle approaching from a different direction into its path.

{¶14} Although Taylor admitted to turning left believing he had "more than enough

time" to make the turn, he nonetheless argues that Nelson's actions negate his culpability, contending that because Nelson's testimony was different from her statement at the scene, there was insufficient evidence to support his conviction. Taylor further argues that Dutko's testimony establishes that Nelson's inattentiveness caused the collision. He also argues that Nelson may have exceeded the posted speed limit, been distracted by sneezing, and had enough time to brake.

{¶15} These arguments are not supported by the evidence and ignore Taylor's own testimony. The Fifth District considered and rejected a similar argument in *State v. Baugnet*, 4th Dist. No. 04CA17, 2005-Ohio-653:

> Because the trooper who observed Baugnet turn left in front of traffic testified that the oncoming vehicle had to take evasive action to avoid hitting Baugnet's tractor-trailer, the record contains sufficient evidence to support his conviction. Additionally, this evidence constitutes competent and credible evidence to support his conviction, and, therefore, his conviction is not against the manifest weight of the evidence. While Baugnet correctly notes that the evidence shows that the vehicle was some distance away when he began his turn, distance alone does not indicate whether an oncoming vehicle constitutes an "immediate hazard." The trooper, who has over twenty years of experience in law enforcement, stated that Baugnet's action created an immediate hazard to the oncoming vehicle and this statement sufficiently supports Baugnet's conviction.

Id. at ¶ 2.

{¶16} Further, Ohio courts have held that failure to yield is a strict liability offense, consistently rejecting excuses for failure to yield. See *City of Akron v. Charley*, 2 Ohio Misc.2d 1, 440 N.E.2d 837 (M.C.1982). *State v. Pottenger*, 4th Dist. No. 602, 1986 WL 12403, *1 (Nov. 4, 1986).

{¶17} Taylor admitted turning left in front of Nelson but mistakenly believed he had enough time to clear the intersection; consequently Nelson hit his paver. While Nelson's

testimony was inconsistent, it was undisputed that she suffered a head injury and suffered memory loss. The trooper testified Taylor's action of turning without having enough time caused the collision, just as the trooper had concluded in *Baugnet*. The evidence establishes beyond a reasonable doubt that Taylor was the operator of the offending vehicle, that he turned left as Nelson was approaching from the opposite direction, and that Taylor failed to yield the right of way to her.

{¶18} Accordingly, Taylor's conviction is supported by the sufficiency and weight of the evidence. Taylor's assignments of error are meritless, and the judgment of the trial court is affirmed.

Donofrio, P.J., concurs.

Waite, J., concurs.