

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 91514**

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**STATE OF OHIO**

PLAINTIFF-APPELLEE

vs.

**RAYMOND GRABLOVIC**

DEFENDANT-APPELLANT

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**JUDGMENT:**  
**AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-499683

**BEFORE:** Dyke, P.J., Celebrezze, J., and Jones, J.

**RELEASED:** June 11, 2009

**JOURNALIZED:**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

ANN DYKE, P.J.:

{¶ 1} Defendant Raymond Grablovic appeals from his convictions for aggravated vehicular assault and other offenses. For the reasons set forth below, we affirm.

{¶ 2} On August 9, 2007, defendant was indicted pursuant to a four-count indictment in connection with a motor vehicle collision between his van and a motorcycle driven by James Snyder. In Count 1, defendant was charged with aggravated vehicular assault pursuant to R.C. 2903.08(A)(1)(a) (alleging that defendant caused serious physical harm to Snyder as the proximate result of committing a violation of R.C. 4511.19 or of a substantially equivalent municipal ordinance). In Count 2, defendant was charged with violating R.C. 2903.08(A)(2)(a) (alleging that defendant recklessly operated his vehicle and caused serious physical harm to Snyder). In Count 3, defendant was charged with driving under the influence of alcohol, and in Count 4, defendant was charged with driving with a prohibited breath-alcohol concentration.

{¶ 3} Defendant pled not guilty and the matter proceeded to a bench trial on April 15, 2008. The defense stipulated that the element of serious physical harm was established, and the state presented the testimony of Snyder and North Olmsted Police Officers Jennifer Hayner, Eric Morgan, and Walter Novak.

{¶ 4} Snyder testified that on August 5, 2006, he was driving a motorcycle at approximately 9:15 p.m. He was operating his vehicle on Clague Road. According to Snyder, the headlight of the motorcycle turns on automatically when the vehicle is

started. He had no memory of the collision and next recalls waking up in the hospital. Medical records admitted into evidence indicated that Snyder had not been drinking and further state, in relevant part:

{¶ 5} “He hit a car with his motorcycle with no helmet on. He was amnesic to the events, according to the squad, but no definite loss of consciousness.”

{¶ 6} Snyder denied telling medical personnel that his motorcycle struck another vehicle and denied stating that the collision occurred because he lost control of his vehicle.

{¶ 7} Officer Hayner testified that she responded to the scene and observed the motorcycle in front of defendant’s driveway on Clague. She observed defendant attempting to retrieve something from the van. His eyes were glassy, his speech was “a little slurred at first,” and there was a “moderate odor of alcohol” about him.

{¶ 8} Defendant told Officer Hayner that he had consumed about three beers at Cedar Point earlier that day and was just returning from the store to buy beer. He stated that he thought he had struck a boulder at the end of his driveway, then realized that it was a motorcycle.

{¶ 9} Officer Hayner administered field sobriety tests and determined that defendant was under the influence of alcohol. He was brought to the police station and a breath-alcohol test was administered to him.

{¶ 10} The front of the van near the left headlight and the driver’s side of the van were damaged. Photographs admitted into evidence indicate that the front bumper was displaced, the front end, the area of the driver’s side front headlight was

smashed, and the driver's side front end was damaged. Photographs further indicated that the motorcycle sustained heavy damage just past the front tire, on the left side.

{¶ 11} Officer Novak testified that the breath-alcohol test was administered within the requisite time period. Defendant's level was .110 or in excess of the statutory limit.

{¶ 12} Officer Morgan testified that the bumper of defendant's van was wedged into the foot peg of the motorcycle. There were no skid marks on the road.

{¶ 13} The trial court subsequently acquitted defendant of Count 2 and convicted him of the remaining offenses. The court then sentenced him to three years incarceration for aggravated vehicular assault, plus a concurrent six-month term for the other offenses. Defendant now appeals and assigns two errors for our review.

{¶ 14} For his first assignment of error, defendant challenges the sufficiency of the evidence supporting his conviction for aggravated vehicular assault and asserts that the trial court erred in denying his motion for a judgment of acquittal.

{¶ 15} Sufficiency is a term of art meaning that legal standard that is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support the jury verdict as a matter of law. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541.

{¶ 16} Crim.R. 29(A) governs motions for acquittal and provides for a judgment of acquittal if the evidence is insufficient to sustain a conviction. Pursuant to Crim.R.

29, a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt. A Crim.R. 29(A) motion for acquittal “should be granted only where reasonable minds could not fail to find reasonable doubt.” *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 23, 514 N.E.2d 394; *State v. Jordan*, Cuyahoga App. Nos. 79469 and 79470, 2002-Ohio-590.

{¶ 17} The standard for a Rule 29 motion is virtually identical to that employed in testing the sufficiency of the evidence. *State v. Thompkins*, supra.

{¶ 18} In *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, the Ohio Supreme Court set forth the following standard of review to be applied by an appellate court when reviewing a claim of insufficient evidence:

{¶ 19} “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 a 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. (*Jackson v. Virginia* [1979], 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, followed.)”

{¶ 20} The elements of aggravated vehicular assault as charged in this matter are set forth in R.C. 2903.08(1)(a) as follows:

{¶ 21} “(A) No person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause serious physical harm to another person or another’s unborn in any of the following ways:

{¶ 22} “(1)(a) As the proximate result of committing a violation of division (A) of section 4511.19 of the Revised Code or of a substantially equivalent municipal ordinance; \* \* \*.”

{¶ 23} In this matter, defendant does not challenge his conviction under Count 3 for driving under the influence of alcohol and under Count 4 for driving with a prohibited breath-alcohol concentration. Rather, defendant maintains that there is insufficient evidence that his operation of the van was the “proximate cause” of the collision in which Snyder was injured. In this regard, defendant notes that the state did not present eyewitness testimony and did not present accident reconstruction testimony. Defendant claims, essentially, that the van incurred only driver’s side damage and not front damage, and this indicates that Snyder’s motorcycle sideswiped the van, and the van did not turn into the path of the motorcycle.

{¶ 24} The state’s evidence indicated that the collision occurred just in front of defendant’s driveway. Defendant stated that he thought he struck a boulder as he was turning from Clague Road into his driveway, and he then realized it was a motorcycle. Although defendant insists that only the side of the van was damaged,

thus creating reasonable doubt as to whether the van struck the motorcycle or the motorcycle sideswiped the van, this is completely unsupported by the photographs of the damage. These reveal that the front of the van, including the bumper and area near the driver's side headlight, and the side of the van were damaged. The photographs also indicated that the key area of damage of the motorcycle was just behind the front tire on the left. Further, it is undisputed that the front bumper of the van was wedged beneath the foot peg of the motorcycle.

{¶ 25} In accordance with all of the foregoing, the trial court properly denied defendant's motion for a judgment of acquittal. The state's evidence regarding the crime of aggravated vehicular assault is not insufficient as a matter of law. Rather, the state's evidence is sufficient to convince the average mind of defendant's guilt beyond a reasonable doubt, and any rational trier of fact could have found the essential elements of aggravated vehicular assault proven beyond a reasonable doubt. In particular, the element of proximate cause was established as the collision occurred as defendant turned into the motorcycle as defendant approached his driveway.

{¶ 26} The first assignment of error is overruled.

{¶ 27} In his second assignment of error, defendant contends that his conviction for aggravated vehicular assault is against the manifest weight of the evidence.



{¶ 28} In *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541, the Ohio Supreme Court illuminated its test for manifest weight of the evidence as follows:

{¶ 29} “Weight 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. It indicates clearly to the jury that the party having the burden of proof will be entitled to their verdict, if, on weighing the evidence in their minds, they shall find the greater amount of credible evidence sustains the issue which is to be established before them. Weight is not a question of mathematics, but depends on its effect in inducing belief.” Black’s Law Dictionary (6 Ed.1990), at 1594.

{¶ 30} When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a “thirteenth juror” and disagrees with the factfinder’s resolution of the conflicting testimony. *Id.*, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 45, 102 S.Ct. 2211, 2220, 72 L.Ed.2d 652, 663. The 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. See *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717, 720-721.

{¶ 31} 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.*

{¶ 32} Defendant challenges the weight of the evidence, contending that the van sustained driver's side damage, and that defendant's vehicle was not the proximate cause of the collision. As we noted earlier, the state's evidence indicated that the collision occurred just in front of defendant's driveway, and defendant indicated that he believed that he struck a boulder as he was turning from Clague Road into his driveway. It is also beyond dispute that not only the driver's side, but also the front of the van sustained damage in the collision. In addition, the motorcycle sustained heavy damage just behind the front tire, on the left. This supports the inference that the front of the van struck the moving motorcycle as the van began a turn into the driveway before the motorcycle had passed the front of defendant's driveway. Moreover, it is undisputed that the front bumper of the van was wedged beneath the foot peg of the motorcycle.

{¶ 33} Accordingly, we reject defendant's challenge to the manifest weight of the evidence supporting his conviction for aggravated vehicular assault. The second assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Common Pleas Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to  
Rule 27 of the Rules of Appellate Procedure.

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ANN DYKE, PRESIDING JUDGE

FRANK D. CELEBREZZE, JR., J., and  
LARRY A. JONES, J., CONCUR