[Cite as *State v. Hill*, 2010-Ohio-5356.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94256

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

CHERYL HILL

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-519929

BEFORE: Stewart, J., Rocco, P.J., and Cooney, J.

RELEASED AND JOURNALIZED: November 4, 2010

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MELODY J. STEWART, J.:

{¶ 1} Defendant-appellant, Cheryl Hill, appeals the judgment of the Cuyahoga County Court of Common Pleas convicting her of one count of failure to stop after an accident in violation of R.C. 4549.02. For the reasons stated below, we affirm.

{¶ 2} On the morning of January 13, 2009, 14-year-old Taylor Price was riding his bicycle to school. As he crossed the intersection of Fulton Road

and the I-71 exit ramp in Cleveland, he was struck by a school bus driven by appellant. Price was thrown from the bicycle and suffered serious injuries including multiple fractures of the skull, collar bone, ribs, and other bones. The bus continued on its route with the bicycle lodged underneath. At the first bus stop, Bobby Betts, one of the parents waiting with his children for the school bus, dislodged the bike. Appellant continued on with her route. Betts retained the bike and turned it over to police later that day.

{¶ 3} Appellant was subsequently indicted on charges of aggravated vehicular assault, tampering with the evidence, and failure to stop after an accident. The state dismissed the tampering charge. The jury found appellant not guilty of the assault charge but guilty of failing to stop after the accident. The trial court sentenced appellant to two years of community control sanctions and a $2,500 fine.

{¶ 4} Appellant timely appeals, assigning as a single error that the state's evidence was insufficient to support the conviction. Appellant argues that to convict her, the state had to prove that she knowingly failed to stop after an accident. She argues that since she did not know she had been in an accident, the state cannot prove the "knowingly" element of the offense and her conviction must be vacated.

{¶ 5} When reviewing a claim that there is insufficient evidence to support a conviction, we view the evidence in a light most favorable to the

prosecution to determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus.

{¶ 6} R.C. 4549.02(A), provides, in pertinent part:

{¶ 7} "(A) In case of accident to or collision with persons or property upon any of the public roads or highways, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, immediately shall stop the driver's or operator's motor vehicle at the scene of the accident or collision and shall remain at the scene of the accident or collision until the driver or operator has given the driver's or operator's name and address and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to any person injured in the accident or collision or to the operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision, or to any police officer at the scene of the accident or collision.

{¶ 8} "In the event the injured person is unable to comprehend and record the information required to be given by this section, the other driver involved in the accident or collision forthwith shall notify the nearest police authority concerning the location of the accident or collision, and the driver's

name, address, and the registered number of the motor vehicle the driver was operating, and then remain at the scene of the accident or collision until a police officer arrives, unless removed from the scene by an emergency vehicle operated by a political subdivision or an ambulance."

{¶ 9} Thus, one of the required elements of the offense is knowledge by the appellant of the accident or collision. "In Ohio, juries are instructed that the element of knowledge is to be determined from the attendant facts and circumstances particular to each case. 'Since you cannot look into the mind of another, knowledge is determined from all the facts and circumstances in evidence. You will determine from these facts and circumstances whether there existed at the time in the mind of the defendant an awareness of the probability that * * *.' 4 Ohio Jury Instructions (1997), Section 409.11(3)." *State v. Teamer*, 82 Ohio St.3d 490, 492, 1998-Ohio-193, 696 N.E.2d 1049.

{¶ 10} Therefore, the question of whether there existed in the mind of the appellant an awareness of the probability that an accident or collision occurred, is to be determined from all the attendant facts and circumstances available.

{¶ 11} The victim, Taylor Price, testified that as he approached the intersection, he saw that the light was red for traffic exiting the highway. He said he saw the bus start to slow down and he thought it was going to stop so he started across the intersection. Instead of stopping, the bus sped up

and went through the red light, hitting him as it turned right onto Fulton. Price said, as the bus approached the intersection, he could see the driver and she looked his way before he started into the intersection. He assumed she saw him. He said after the bus hit him, he saw his bike stuck under the bus as the bus kept going. Price later selected appellant's picture from a photo array.

{¶ 12} Betts testified that he was outside cleaning snow off of his car at about 6:25 a.m. on January 13, 2009 before driving his kids to the bus stop. He was surprised to see a boy riding past his house on a bicycle. He then drove his children to the bus stop, which was about three-minutes away. The bus was about ten minutes late. At 6:58 a.m., he saw the school bus approach with a bicycle sticking out from underneath. The handlebars of the bicycle were stuck in the front axle of the bus, between the two front tires. When Betts told the driver about the bike, she said she hit a pothole and heard some noise but did not know she had hit a bicycle. Betts told her "it looked like the little boy's bike that rode past me." Appellant allowed Betts and another parent to extricate the bike and then continued on with her regular route. Betts put the bike in the back of his truck. Later that day, he got a call that the police wanted to collect the bike, so he took it to the police station.

{¶ 13} Appellant testified that she exited I-71 and Fulton and came to a complete stop at a red light. After the light changed to green, she looked both ways and then proceeded to turn right onto Fulton. She hit a bump that she thought was a pothole. She drove on and heard a dragging or scraping noise under the bus. She stopped on Fulton in front of the police station and looked under the bus and saw the bike. She called dispatch to report that she had a bike stuck underneath her bus, but no one answered. She continued on to her first stop to tell the parents that she could not drive the children to school because of the bicycle. Appellant said she tried to call dispatch again, but again no one answered. The parents pulled the bicycle out from under the bus, and she continued on her regular route. She said that Betts never said anything to her about seeing a child riding a bicycle like the one stuck under the bus. She also disputed Betts's testimony that she was surprised when he told her there was a bicycle stuck underneath the bus.

{¶ 14} Viewing the evidence in a light favorable to the state, we find that a reasonable trier of fact could find that appellant was aware of the probability that an accident or collision had occurred involving the bus she was driving and a bicycle and its rider. Therefore, appellant's single assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of 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 Cuyahoga County Court of Common Pleas to carry this judgment into execution. 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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MELODY J. STEWART, JUDGE

KENNETH A. ROCCO, P.J., and
COLLEEN CONWAY COONEY, J., CONCUR