

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
PORTAGE COUNTY**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

ALBERT C. DITOMASO,

Defendant-Appellant.

CASE NO. 2026-P-0034

Criminal Appeal from the
Court of Common Pleas

Trial Court No. 2024 CR 00411

OPINION AND JUDGMENT ENTRY

Decided: October 13, 2026
Judgment: Reversed and remanded

Connie J. Lewandowski, Portage County Prosecutor, and *Vincent V. Vigluicci*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Wesley C. Buchanan, 50 South Main Street, Suite 625, Akron, OH 44308 (For Defendant-Appellant).

SCOTT LYNCH, J.

{¶1} Defendant-appellant, Albert DiTomaso, appeals his convictions and sentence for Aggravated Vehicular Homicide, Aggravated Vehicular Assault, Vehicular Assault, Operating a Vehicle While Under the Influence, and Assured Clear Distance in the Portage County Court of Common Pleas. For the following reasons, we reverse the judgment of the lower court and remand for further proceedings consistent with this opinion.

{¶2} On May 17, 2024, DiTomaso was indicted by the Portage County Grand Jury for two counts of Aggravated Vehicular Homicide, felonies of the second and third

degree, in violation of R.C. 2903.06; Aggravated Vehicular Assault, a felony of the third degree, in violation of R.C. 2903.08; Vehicular Assault, a felony of the fourth degree, in violation of R.C. 2903.08; three counts of Operating a Vehicle While Under the Influence, misdemeanors of the first degree in violation of R.C. 4511.19; and Assured Clear Distance, a minor misdemeanor, in violation of R.C. 4511.21.

{¶3} On April 11, 2025, DiTomaso filed a motion seeking to invoke his right to represent himself and requesting that discovery information be provided to him. At an April 16, 2025 hearing on the motion, DiTomaso indicated that he wanted to represent himself because he had not received or viewed certain documents, including victim medical records. It was noted that DiTomaso had previously asked to represent himself and then agreed to be represented by counsel. The court observed: “If you are wishing to proceed pro se and representing yourself for purposes of the trial, then we will do that but you can’t go back and forth. So it has to be one or the other.” The court reviewed his education, questioned his familiarity with the legal system, advised him of his right to be represented by counsel, and accepted his waiver of the right to counsel.

{¶4} A jury trial was held on April 29-30, 2025. The following pertinent testimony and evidence were presented:

{¶5} Anna Kruse was in her driveway on the night of January 22, 2024, when she observed a car coming fast down the road. She was aware that the Spectrum worker had his truck parked in the road near her residence. While she was at her door, she heard a crash, turned around, and observed the worker lying on the ground.

{¶6} Kyle Dickman, a maintenance technician for Spectrum investigating a service issue, was parked on the road and had set up a “safety zone” which included

placing about six cones in the road around his vehicle. He turned on the vehicle's strobe light and light bar at the bottom of the vehicle as well as its headlights and taillights. While he was standing on the back deck of his truck, DiTomaso struck the vehicle and Dickman was "launched into the air." He recalled hearing a vehicle accelerating before the collision and thinking "please don't hit me because . . . it seemed like the engine was really revving at the time." He believed a driver should have seen his vehicle. As a result of the accident, he suffered injuries to his back.

{¶7} Several officers from the Kent Police Department, Michael Carnahan, Shawn Driscoll, and Matthew Moore, responded to the scene. They observed that the sedan driven by DiTomaso was heavily damaged and crashed into the back of the Spectrum truck. They noted that the Spectrum truck had flashing lights and cones surrounding it. In the passenger seat of the sedan was William Williams, who was deceased.

{¶8} Officers Carnahan and Driscoll observed that the roadways were clear and did not have any hazards at the time of the crash. Carnahan's investigation determined DiTomaso had been the driver of the sedan and was at fault for rear-ending the parked Spectrum truck. Patrolman Christopher Neal of the Macedonia Police Department also investigated the crash as part of the Summit Metro Crash Response Team. He observed that there were no obstructions, hazards, snow or ice, or defects in the vehicle which would have led to the crash.

{¶9} When DiTomaso was placed in an ambulance, Carnahan smelled a strong odor of alcoholic beverage. David Strenk, a firefighter/paramedic, also noted that DiTomaso smelled like alcohol, had slurred speech, and stated that he had a "ton of

drinks.” Officers Carnahan and Neal opined that had DiTomaso not been intoxicated or impaired, he would not have hit the Spectrum truck.

{¶10} Meghan Skidmore, a criminalist at the Ohio State Highway Patrol Crime Lab, tested DiTomaso’s blood sample and determined his blood alcohol level was .289.

{¶11} The jury found DiTomaso guilty of six of the eight counts, with two not being placed before the jury. He was ordered to serve an aggregate term of 10 to 13 and one-half years in prison.

{¶12} DiTomaso appealed and this court dismissed for lack of a final appealable order since two charges were not resolved. The court subsequently issued a nunc pro tunc entry which noted that the court dismissed one count of OVI on the State’s request as well as an entry dismissing the Assured Clear Distance charge.

{¶13} On appeal, DiTomaso raises the following assignments of error:

{¶14} “[1.] The evidence was insufficient as a matter of law to convict Albert.”

{¶15} “[2.] Albert’s convictions were against the manifest weight of the evidence.”

{¶16} “[3.] Albert was sentenced contrary to law.”

{¶17} “[4.] Albert’s waiver of counsel was not knowingly, intelligently, or voluntarily made.”

{¶18} We will first consider DiTomaso’s fourth assignment of error as it is dispositive of several issues on appeal. DiTomaso argues that he “signed a generic waiver” of his right to counsel; the court did not advise him of the penalties he faced; the “court explained some of the process to [him], but [he] was questioning his due process rights”; and he “was wavering on whether or not he actually wanted to represent himself.” He concludes that this failure to engage in a full colloquy of his right to waive counsel

requires reversal for a new trial.

Waiver of a Criminal Defendant's Right to Counsel

{¶19} The Sixth Amendment to the United States Constitution and Section 10, Article I of the Ohio Constitution provide a criminal defendant the right to counsel. “However, a criminal defendant also has the constitutional right to waive counsel and to represent himself or herself at trial.” *State v. Nixon*, 2023-Ohio-4871, ¶ 93 (11th Dist.), citing *Faretta v. California*, 422 U.S. 806 (1975); *State v. Gibson*, 45 Ohio St.2d 366 (1976), paragraph one of the syllabus.

{¶20} “[T]he Constitution . . . require[s] that any waiver of the right to counsel be knowing, voluntary, and intelligent.” *Nixon* at ¶ 93, citing *Iowa v. Tovar*, 541 U.S. 77, 87-88; Crim.R. 44(A) (“counsel shall be assigned to represent the defendant at every stage of the proceedings . . . unless the defendant, after being fully advised of their right to assigned counsel, knowingly, intelligently, and voluntarily waives their right to counsel”). “In order to establish an effective waiver of [the] right to counsel, the trial court must make sufficient inquiry to determine whether [the] defendant fully understands and intelligently relinquishes that right.” *Nixon* at ¶ 93, citing *Gibson* at paragraph two of the syllabus. “The Sixth Amendment does not require extensive warnings in every case.” *State v. Johnson*, 2006-Ohio-6404, ¶ 102. However, “a trial judge ‘must investigate [a defendant’s request for self-representation] as long and as thoroughly as the circumstances of the case before him demand.’” *State v. Obermiller*, 2016-Ohio-1594, ¶ 42, citing *Von Moltke v. Gillies*, 332 U.S. 708, 723-724 (1948).

{¶21} There is no “prescribed . . . formula or script to be read to a defendant who states that he elects to proceed without counsel. The information a defendant must

possess in order to make an intelligent election . . . will depend on a range of case-specific factors, including the defendant's education or sophistication, the complex or easily grasped nature of the charge, and the stage of the proceeding." (Citations omitted.) *Johnson* at ¶ 101. "[B]efore permitting self-representation, the trial court must ensure that a defendant is 'aware of the dangers and disadvantages of self-representation' so that 'he knows what he is doing and his choice is made with eyes open.'" (Citations omitted.) *State v. McAlpin*, 2022-Ohio-1567, ¶ 47. Further, it has been held that a valid waiver of counsel "must be made with an appreciation of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter." (Citation omitted.) *State v. Yeager*, 2023-Ohio-2541, ¶ 19 (11th Dist.).

{¶22} Rulings on motions to represent oneself have been reviewed de novo. *State v. Simon*, 2021-Ohio-3090, ¶ 38 (4th Dist.); *State v. Farmer-Reese*, 2023-Ohio-4772, ¶ 8 (10th Dist.) ("the Supreme Court of Ohio appears to have undertaken a de novo review" on the issue of waiver of counsel); see also *State v. Graham*, 2023-Ohio-2728, ¶ 58 (11th Dist.). "Courts are to indulge every reasonable presumption against the waiver of a fundamental constitutional right, including the right to be represented by counsel." *State v. Herron*, 2010-Ohio-2050, ¶ 20 (11th Dist.).

The Record Does not Demonstrate DiTomaso's Waiver of Counsel was Knowingly, Intelligently, and Voluntarily Given

{¶23} In the present matter, the record indicates that at some stage in the proceedings, DiTomaso had sought to represent himself but ultimately determined that he wanted counsel. At the April 16 pretrial hearing, however, DiTomaso affirmed that he

wished to proceed pro se. When the court inquired about his reasons, DiTomaso expressed dissatisfaction with counsel not showing him certain medical records. The court informed DiTomaso that he could not “go back and forth” on whether he would be represented, stated that it could appoint standby counsel, and explained the concept of hybrid counsel. The court discussed allowing DiTomaso to view medical records. It then inquired whether DiTomaso had issued subpoenas for trial and he indicated he would be cross-examining the state’s witnesses. The court asked about DiTomaso’s level of education, which included some college. DiTomaso was questioned about his prior experience in the court system and indicated he had not represented himself in court proceedings or been a defendant in a trial but had been through the court system before. Finally, the court inquired: “I’m going to advise you again that you have a right to be represented by counsel. If you can’t afford counsel, obviously, they will be appointed. I appointed Mr. Perry to represent you previously, but you are in this instance knowingly, voluntarily and intelligently waiving your right to counsel; is that correct?” to which DiTomaso responded in the affirmative. DiTomaso signed a written waiver.

{¶24} Under these circumstances, we do not find that the court satisfied the requirement to make a sufficient inquiry to determine whether DiTomaso relinquished his right to counsel voluntarily. There is no question that it reviewed his familiarity with court proceedings, as well as his education. These questions exhibited some, but not extensive, experience with the courts. However, the court did not address several other important issues relating to self-representation.

{¶25} Significantly, the court did not outline each of the offenses with which DiTomaso was charged, nor discuss the potential penalties for each of these offenses.

This is a significant step in reviewing one's desire to waive counsel that has been consistently referenced in the case law for proper waiver. In *State v. Engle*, 2009-Ohio-1944 (2d Dist.), the appellate court found the waiver colloquy insufficient where the trial court "fully probed [the defendant's] capacity to represent himself based on his education, age, and experience" but did not address the nature of the charges, the punishments, or possible defenses. It concluded that, "[h]aving made no mention at all of those matters to defendant in relation to the case against him, the court could not discharge the duty to investigate defendant's understanding of them, which . . . is necessary to rebut the strong presumption against waiver." *Id.* at ¶ 62. Also *State v. Meyer*, 2022-Ohio-1226, ¶ 35 (5th Dist.) (holding that the trial court erred in permitting the defendant to proceed pro se where, although it gave extensive advisements about the consequences and the defendant demonstrated an understanding of the charges, it did not advise him of the potential penalties). While we recognize that each case is reviewed on a case-by-case basis, there is nothing about DiTomaso's background or criminal experience that demonstrates bypassing this review was not impactful on the intelligent and voluntary waiver of the right to counsel.

{¶26} The State argues that it was clear DiTomaso had familiarity with the charges against him, citing statements made by DiTomaso during the pretrial hearing after the waiver had been accepted. For example, DiTomaso expressed concern that he was not served with the indictment and questioned whether additional charges had been added: "I said where is this F-2 coming from, why am I even being asked to try and deal for an F-3, I only see an F-3, and [counsel] said, well I already told you you had an F-2 months ago." While it was evident DiTomaso was involved in the case and had awareness of the

offenses against him, this also exhibits significant confusion by DiTomaso regarding indictments, which charges had been brought at which time, and whether these charges were properly brought against him. While it is true that the court did answer questions regarding the indictment and charging process in reviewing whether the right to counsel was properly waived, it never listed each of the offenses and their degrees, nor did it discuss the possible penalties at any point during the April 16, 2025 pretrial hearing. There also was not a discussion of potential defenses to the charges. Even if DiTomaso's comments, after waiver was accepted, exhibited some familiarity with the charges against him, the court's review of each charge and penalty would have allowed for an intelligent and knowing waiver and reinforced the seriousness of proceeding without counsel.

{¶27} Further, the State notes that DiTomaso “had [the indictment] explained to him on multiple occasions,” which appears to be based on defense counsel's statement that he reviewed the indictment with DiTomaso multiple times. The duty to review those requirements relating to waiver, including the nature of the offenses and penalties, cannot be delegated to counsel since it is the obligation of the court and in court review is necessary to create a record. *State v. Smallwood*, 2020-Ohio-5556, ¶ 51-52 (6th Dist.).

{¶28} The court also did not adequately address the dangers of self-representation. Prior to accepting his waiver of counsel, the court reviewed that DiTomaso could not have hybrid counsel and could not utilize standby counsel to also represent him, but it did not discuss specific disadvantages of representing himself and the impact of this on the outcome of the trial. In contrast, this court has upheld the waiver of counsel where a court advised a defendant of disadvantages of representing himself such as giving up the right to claim ineffective assistance of counsel, losing on appeal

issues relating to evidence due to unawareness of how to make objections, and that an attorney may be aware of ways to defend him that he was not. *State v. Rivers*, 2023-Ohio-3533, ¶ 58 (11th Dist.). This court has found waiver of the right to counsel was not voluntarily made where “[t]here is no indication in the transcript that the court informed appellant of the dangers or disadvantages of self-representation” and “appellant was not informed of the nature of the charges against him, the statutory offenses included within the charges, the possible sentence he could incur, or the possible defenses to the charges and circumstances in mitigation thereof.” *State v. Dressler*, 1997 WL 269193, *3 (11th Dist. May 2, 1997).

{¶29} Of note, during the pretrial hearing, DiTomaso raised questions relating to the validity of the indictment due to “chain of custody” and the court stated, “That’s where it becomes difficult, Mr. DiTomaso. You don’t understand that law and you’re filing motions that I know your lawyers have explained to you are not valid legally. Again, you can represent yourself, but you have to understand what you are doing.” This occurred after the waiver and the court did not revisit waiver with DiTomaso in light of this confusion or reinforce that counsel may present a better opportunity to prevail. Rather, it tends to demonstrate the disadvantages DiTomaso may have faced by representing himself.

{¶30} While the State also notes that a written waiver was executed, this waiver states only the following: “I, Albert DiTomaso, after having been informed by the Court that I have a right to be represented by counsel, and that if I cannot afford counsel, counsel will be appointed to represent me at no charge, and do knowingly, voluntarily, and intelligently waive that right.” (Sic.) It does not contain any advisements regarding the charges, penalties, possible defenses, or disadvantages of proceeding pro se. The

question here is not whether DiTomaso agreed to waive his rights but whether that waiver was made in a manner that was knowing and intelligent after the proper inquiry from the court. Further, absent an adequate dialogue regarding the waiver of counsel, a written waiver is not sufficient to establish a valid waiver. *State v. Conard*, 2024-Ohio-1906, ¶ 21 (2d Dist.).

{¶31} For these reasons, we find that DiTomaso did not waive his right to counsel knowingly, intelligently, and voluntarily and reverse DiTomaso's convictions. Upon remand, appellant must be afforded a new trial wherein he is to be represented by counsel, unless he makes a knowing and voluntary waiver. *Dressler* at *8.

{¶32} The fourth assignment of error is with merit.

{¶33} In his first assignment of error, DiTomaso argues that the evidence was insufficient to convict him. He contends that there was a lack of evidence to demonstrate that he was driving recklessly which warrants reversal of his convictions.

Sufficient Evidence Existed to Sustain Convictions Based on Recklessness

{¶34} Although we have found reversal for a new trial is warranted based upon the waiver of counsel issue, this assignment of error is not rendered moot. As this court has explained: "when evidence is insufficient to support an offense, such matter cannot be ignored merely because the appellate court is remanding for retrial on other grounds. The state is never permitted a second chance at providing sufficient evidence of an offense where the state originally presented insufficient evidence." *State v. Donkers*, 2007-Ohio-1557, ¶ 55 (11th Dist.).

{¶35} Sufficiency of the evidence is a "term of art meaning that legal standard which is applied to determine . . . whether the evidence is legally sufficient to support the

jury verdict as a matter of law.” (Citation omitted.) *State v. Thompkins*, 1997-Ohio-52, ¶ 23. “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 the defendant’s guilt beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259 (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.* “A challenge to the sufficiency of the evidence presents a question of law, which on appeal is reviewed de novo.” *State v. Dunn*, 2024-Ohio-5742, ¶ 28.

{¶36} While DiTomaso argues generally that his “convictions must be reversed,” his sole argument relates to whether the State proved that his conduct was reckless, citing the aggravated vehicular homicide statute. We will address only counts two and four, the Aggravated Vehicular Homicide charge in violation of R.C. 2903.06(A)(2)(a), and the Vehicular Assault charge in violation of R.C. 2903.08(A)(2)(b), which include the element of recklessness.

{¶37} Pursuant to R.C. 2903.06(A)(2)(a), “[n]o person, while operating . . . a motor vehicle . . . shall cause the death of another . . . [r]ecklessly.” Pursuant to R.C. 2903.08(A)(2)(b), “[n]o person, while operating . . . a motor vehicle . . . shall cause serious physical harm to another person . . . recklessly.” “A person acts recklessly when, with heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that the person’s conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with

heedless indifference to the consequences, the person disregards a substantial and unjustifiable risk that such circumstances are likely to exist.” R.C. 2901.22(C).

{¶38} The testimony presented from multiple witnesses indicated that Dickman’s use of cones and lights alerted drivers to the presence of the Spectrum truck in the road. Testimony further demonstrated that the conditions on that night were dry and there were no visibility issues. Carnahan also testified that there were no indications DiTomaso attempted to brake at the time he crashed into the Spectrum truck. Most significantly, there was evidence that DiTomaso was intoxicated at the time of the accident, including testimony of multiple witnesses noting the smell of alcohol about DiTomaso’s person, DiTomaso’s statement that he had a “ton of drinks,” and testimony that his blood alcohol level was .289. Case law is clear that “evidence of driving under the influence is sufficient to establish the element of recklessly.” *State v. Butcher*, 2008-Ohio-3743, ¶ 50 (11th Dist.), citing *State v. Driesbaugh*, 2003-Ohio-3866, ¶ 51 (11th Dist.). “[T]he rationale behind this legal conclusion” is that “[a] licensed driver is charged with the knowledge that driving while under the influence is against the law, and creates a substantial risk to himself and others.” (Citation omitted.) *Id.*, citing *State v. Ward*, 2003-Ohio-5847, ¶ 9 (4th Dist.). Thus, the evidence was sufficient to demonstrate that DiTomaso was reckless in operating the vehicle and caused the crash which resulted in Williams’ death and Dickman’s injuries.

{¶39} DiTomaso’s arguments that it was dark, he was not speeding significantly, there was no evidence he was swerving, and that there were conflicts about where the victim was standing during the collision, do not rebut the foregoing. As noted above, the facts tended to demonstrate DiTomaso got in an accident that was not caused by any

basis but his own driving, and his intoxication justifies a finding of recklessness.

{¶40} The first assignment of error is without merit.

Additional Assignments of Error are Moot

{¶41} In his second assignment of error, DiTomaso argues that his convictions are against the manifest weight of the evidence. In the third assignment of error, he argues that his sentence was contrary to law. Since this matter is being remanded due to the error relating to waiver of counsel, these assignments of error are moot. *State v. Mathers*, 2002-Ohio-4117, ¶ 9, fn. 2 (2d Dist.) (“[t]he reversal of [defendant’s] conviction and sentence on the basis of his [waiver of counsel] assignment of error plainly renders moot his arguments that his conviction is against the manifest weight of the evidence and that the trial court erred in imposing consecutive sentences”).

{¶42} The second and third assignments of error are moot.

{¶43} For the foregoing reasons, the judgment of the lower court is reversed and this matter is remanded for further proceedings consistent with this opinion. Costs to be taxed against the parties equally.

EUGENE A. LUCCI, J.,

ROBERT J. PATTON, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the Opinion of this court, the fourth assignment of error is with merit, the first assignment of error is without merit, and the second and third assignments of error are moot. The order of this court is that the judgment of the Portage County Court of Common Pleas is reversed and this matter is remanded for further proceedings consistent with this opinion.

Costs to be taxed against the parties equally.

JUDGE SCOTT LYNCH

JUDGE EUGENE A. LUCCI,
concur

JUDGE ROBERT J. PATTON,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY
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A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.
