[Cite as *State v. Schwieterman*, 2023-Ohio-2613.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY

STATE OF OHIO	:	
Appellee	:	C.A. No. 2023-CA-14
v.	:	Trial Court Case No. 22 TRD 03800
KEVIN M. SCHWIETERMAN	:	(Criminal Appeal from Municipal Court)
Appellant	:	

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O P I N I O N

Rendered on July 28, 2023

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TUCKER, J.

{¶ 1} Kevin M. Schwieterman appeals from his conviction for leaving the scene of an accident without providing identifying information to an injured party in violation of R.C. 4549.02(A)(1)(a).

{¶ 2} Schwieterman challenges the legal sufficiency and manifest weight of the evidence to sustain his conviction. He contends the evidence presented at trial compelled

a finding that he reasonably believed the other party, a bicyclist, was uninjured and, therefore, that he was free to leave without providing his name, address, and license-plate number.

{¶ 3} We conclude that Schwieterman's conviction was based on legally sufficient evidence and was not against the weight of the evidence. Assuming, arguendo, that Schwieterman's awareness of the other party's being injured was required, the bicyclist testified that he was he was bleeding from multiple visible locations as a result of abrasions he sustained when falling to the road after colliding with Schwieterman's truck. The trial court was entitled to credit this testimony, which alone supported a finding that Schwieterman knew the victim had been injured in the collision. Accordingly, the trial court's judgment will be affirmed.

I. Background

{¶ 4} The present appeal stems from a collision involving a pick-up truck driven by Schwieterman and a bicycle operated by Wesley Peters. The incident occurred on the afternoon of April 22, 2022, at the intersection of Franklin Street and Sugar Run Trail in Bellbrook. Schwieterman made a left-hand turn in the intersection as Peters approached from the opposite direction and went straight through. The result was that Peters' bicycle collided with the rear of Schwieterman's truck. The collision knocked Peters off of his bicycle, which landed on top of him.

{¶ 5} Peters testified that he got up, pushed his bicycle to the roadside, and sat in the grass. He described his mental condition as disoriented and in "shock." As Peters collected himself, Schwieterman parked his truck and approached on foot. At some point,

Schwieterman asked whether Peters was "okay." Peters testified that he responded by saying something like, "[E]verything feels fine, I'm not sure if I'm okay." Peters also recalled saying something like, "I'm not sure, I feel fine at the moment, * * * I just kind of want to call my mom." According to Peters, Schwieterman then said, "[W]ell in that case I'm going to go," and Peters responded, "okay." Peters testified that his shorts were torn, there was a dent in his helmet, he felt tightness in his calf, and he had bloody abrasions on his thigh, ankles, back, and elbows. He recalled there being "lots of blood."

{¶ 6} After Schwieterman left the scene without providing his name, address, or license-plate number, Peters' mother arrived and called the police. Paramedics also arrived and transported Peters to the hospital, where he was diagnosed with a broken bone in his hand. On cross-examination, Peters acknowledged that an incident report he completed shortly after the accident failed to mention tightness in his calf or the presence of "lots of blood." When asked whether Schwieterman had offered to take him home, Peters responded that he did not recall. However, he did not dispute such an offer.

{¶ 7} The next witness was Bellbrook police officer Anthony Ruble. Upon arriving at the scene, Ruble spoke with Peters and his mother, who advised the officer that they were "okay." Based on familiarity with Schwieterman and his truck, Ruble thought he may have been the driver who collided with Peters' bicycle. Ruble spoke to Schwieterman on the phone that same day, and Schwieterman admitted being involved. At that point, Ruble turned the investigation over to Bellbrook police officer Stephanie Bennington, who was the State's final witness.

{¶ 8} Bennington testified that she observed Peters sitting in the grass and talking

to Schwieterman as she drove to work. She also saw Schwieterman's parked truck. Neither Peters nor Schwieterman appeared to be in any distress, so Bennington continued on her way. As she was driving past, she did not observe any visible wounds on Peters, but she was only able to see him from the waist up and he was wearing a black T-shirt. Upon arriving at work, she heard a dispatch about the accident. She returned to the scene, where she saw Peters being placed in an ambulance to be taken to the hospital. Bennington also viewed a photograph of Schwieterman and identified him as the man she had seen talking to Peters. She interviewed Schwieterman the following day, and he acknowledged colliding with Peters' bicycle. On cross-examination, Bennington agreed that she did not see Peters covered with "lots of blood" while driving past the scene. She also recalled Peters admitting to her that he had told Schwieterman he was okay and that Schwieterman could leave.

{¶ 9} Following Bennington's testimony, the trial court recalled Peters as a witness. In response to questioning from the trial court, Peters explained that he had suffered a broken scaphoid bone in his hand. He testified that he had been wearing shorts and a T-shirt and that most of his "road rash" injuries were to his thigh, leg, elbows, knees, and back. Peters reiterated that his shorts were torn and that he was visibly bleeding. He stated that his bicycle had hit the side of Schwieterman's truck.

{¶ 10} After hearing the foregoing testimony, the trial court found Schwieterman guilty of violating R.C. 4549.02(A)(1)(a), a first-degree misdemeanor. It imposed a 180-day jail sentence with 170 days suspended, imposed a $500 fine with $250 suspended, placed Schwieterman on two years of probation, and suspended his driver's license for

six months. The trial court stayed execution of sentence pending appeal.

II. Analysis

{¶ 11} In his sole assignment of error, Schwieterman challenges the legal sufficiency and manifest weight of the evidence to sustain his conviction.

{¶ 12} "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. 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." *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 13} Our analysis is different when reviewing a manifest-weight argument. When a conviction is challenged on appeal as being against the weight of the evidence, an appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). A judgment should be reversed as being against the manifest weight of the evidence "only in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 14} With the foregoing standards in mind, we reject Schwieterman's legal-

sufficiency and manifest-weight challenges to his conviction. We begin with a review of R.C. 4549.02, which provides:

> (A)(1) In the case of a motor vehicle accident or collision with persons or property on a public road or highway, the operator of the motor vehicle, having knowledge of the accident or collision, immediately shall stop the operator's motor vehicle at the scene of the accident or collision. The operator shall remain at the scene of the accident or collision until the operator has given the operator's name and address * * * together with the registered number of that motor vehicle, to all of the following:
>
> (a) Any person injured in the accident or collision;
>
> (b) The operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision;
>
> (c) The police officer at the scene of the accident or collision.

{¶ 15} For purposes of Schwieterman's appeal, the State concedes that R.C. 4549.02(A)(1)(b) and (c) do not apply because Peters' bicycle was not a motor vehicle and no police officer was present when Schwieterman left the scene. *See State v. Bryant*, 160 Ohio St.3d 113, 2020-Ohio-1041, 154 N.E.3d 31, ¶ 20 ("If there is no 'police officer at the scene,' an operator does not violate R.C. 4549.02(A)(1) by failing to provide the specified information to a police officer."). In addition, Schwieterman concedes that he had knowledge of his collision with Peters' bicycle and that he left without giving Peters the identifying information referenced in the statute. Schwieterman also concedes that Peters in fact was injured, at least insofar as he had a broken bone in his hand.

{¶ 16} The only disputed issue is whether R.C. 4549.02(A)(1)(a) obligated Schwieterman to give Peters his identifying information before leaving based on Peters' status as a person injured in the collision. Schwieterman contends he reasonably believed Peters was uninjured based on Peters' statements that he was "okay," that he just wanted to call his mother, and that Schwieterman could leave. Schwieterman stresses that he had no way of knowing Peters had a broken bone or a tight calf. As for the existence of visible blood, Schwieterman notes that neither officer mentioned it and that Peters did not mention "lots of blood" in his written police statement. Under these circumstances, Schwieterman contends his conviction predicated on Peters' being a person injured in the collision was based on legally insufficient evidence and was against the weight of the evidence.

{¶ 17} Upon review, we find Schwieterman's argument to be unpersuasive. In essence, he asserts that he could not be convicted unless he knew Peters was injured. As the State points out, however, the only mens rea requirement found in R.C. 4549.02(A)(1) pertains to a defendant's knowledge of the accident or collision. The statute contains no mens rea regarding awareness of a person's being injured. The normal rule is that when a statute contains a mens rea for one element but not for other elements in the section defining the offense "no culpable mental state need be proved" for those other elements. *State v. Johnson*, 128 Ohio St.3d 107, 2010-Ohio-6301, 942 N.E.2d 347, ¶ 38. "[I]f the General Assembly intends for the additional elements to carry their own mens rea, it must say so." *Id.*; *see also State v. Tolliver*, 140 Ohio St.3d 420, 2014-Ohio-3744, 19 N.E.3d 870, ¶ 10 ("The state need prove culpability only for the elements for which a

mental state is specified in the section defining the offense, and courts should not fill any gaps by inserting culpability requirements that the text and ordinary rules of construction cannot bear."). Under *Johnson*, it would make no difference whether Schwieterman reasonably believed Peters was uninjured when he left the scene. By leaving without providing identifying information, he incurred the risk that Peters might be injured and that he might be in violation of the statute.

{¶ 18} Some courts nevertheless have read R.C. 4549.02(A) as implicitly requiring awareness by a defendant that someone was injured or that another vehicle was damaged. For example, in *Tallmadge v. Gray*, 9th Dist. Summit No. 26122, 2012-Ohio-4429, the Ninth District reversed a defendant's conviction under a local ordinance analogous to R.C. 4549.02 where he left the scene of an accident without providing his identifying information. Although the defendant had caused $338.62 in damage to another person's car, the majority noted that the damage was not apparent at the scene. The Ninth District saw no evidence to support an inference that the defendant was aware or should have been aware of any damage. Under these circumstances, the Ninth District found legally insufficient evidence to convict the defendant of leaving the scene without

giving the other driver his identifying information.[1] In a case pre-dating *Johnson*, this court likewise opined that R.C. 4549.02 "implicitly require[s] proof that the defendant knew that someone was injured as a precondition of punishment for failing to furnish name and address to an injured person." *State v. Walker*, 2d Dist. Montgomery No. 15193, 1996 WL 11391, *2 (Jan. 12, 1996).

{¶ 19} Here Schwieterman's conviction was supported by the evidence even if we accept, arguendo, that he was required to be aware of Peters' status as an injured person. Although Peters advised Schwieterman that he seemed to be "okay," Peters testified that his shorts were torn and that he had bloody abrasions on his thigh, ankles, back, and elbows. We acknowledge the existence of conflicting testimony regarding the extent of Peters' visible injuries. Officer Bennington did not notice any injuries when she drove past the scene, and various reports filed in the case do not mention Peters' being bloody. Bennington also testified that she did not see Peters "covered with lots of blood." But this does not mean that Peters had no visibly bleeding abrasions. It would not be unreasonable to infer that Peters, who was wearing shorts and a T-shirt, would be bleeding from "road rash" injuries, as he claimed, after colliding with Schwieterman's truck

[1] A dissenting judge in *Tallmadge* determined that the State was required to prove recklessness by the defendant regarding the existence of damage to the other vehicle. The dissenting judge concluded that the record supported a finding of recklessness. Under *Johnson*, however, recklessness is supplied as the applicable mental state only when (1) there is a complete absence of mens rea accompanying any element of the section defining the offense and (2) there is no plain indication of an intent to impose strict liability. *Johnson* at ¶ 33-39. As set forth above, R.C. 4549.02(A)(1) provides that a defendant must have knowledge of the accident or collision. The inclusion of this mens rea regarding one element would seem to preclude inserting a means rea of recklessness regarding awareness of another party's injury or the existence of damage to another vehicle.

and falling in the street. In fact, Peters' own police statement, which he provided shortly after the accident, does mention that he scraped his thigh and elbow on the road.

{¶ 20} Peters' testimony that he was bleeding from multiple abrasions caused by the collision, if believed, was legally sufficient to support a finding that Schwieterman knew Peters had been injured in the collision. A finding that Schwieterman knew Peters had been injured also was not against the weight of the evidence. Once again, Peters fell to the roadway wearing shorts and a T-shirt after colliding with Schwieterman's truck. Peters testified that he was bleeding from his thigh, ankles, back, and elbows. As the trier of fact, the trial court was entitled to credit this testimony, which supported a finding that Peters was injured. The trial court reasonably could have inferred that the "road rash" would have been visible to Schwieterman, meaning that he knew Peters had been injured.[2] Based on the record before us, a rational trier of fact could have found Schwieterman guilty of violating R.C. 4549.02(A)(1)(a). We also are unpersuaded that the trial court clearly lost its way and created a manifest miscarriage of justice. This is not an exceptional case in which the evidence weighed heavily against the conviction. Accordingly, Schwieterman's two assignments of error are overruled.

III. Conclusion

{¶ 21} The judgment of the Xenia Municipal Court is affirmed.

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LEWIS, J. and HUFFMAN, J., concur.

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[2] In its oral ruling from the bench, the trial court focused primarily on Peters' broken hand. It noted, however, that he was treated for "injuries" and that the broken bone was "one" of his injuries.