

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Court of Appeals No. S-25-026

Appellee

Trial Court No. 24-CR-0019

v.

John G. Kettelman

DECISION AND JUDGMENT

Appellant

Decided: October 20, 2026

* * * * *

Beth Tischler, Prosecuting Attorney, and
Emily A. Winter, Assistant Prosecuting Attorney, for appellee.

Tyler Naud Jechura, for appellant.

* * * * *

DUHART, J.

{¶ 1} Appellant, John Kettelman, appeals the June 17, 2025 judgment of the Sandusky County Common Pleas Court. For the reasons that follow, we affirm.

Background

{¶ 2} On March 17, 2023, at approximately 6:40 a.m., Kettelman was driving his Kenworth semi-truck in a Sunoco gas station parking lot on State Route 20 outside of

Clyde, Ohio. He was pulling a 53-foot empty flatbed trailer. This particular gas station had two exits. One exit consisted of a small “back road that goes out to a county road, and then you can go up to a light” where you can turn either eastbound or westbound. The second exited onto Route 20 and consisted of an entrance coming from the eastbound lanes, a concrete pad divider, and then a curved drive exiting to the right (eastbound). At this exit, there was at least one “No Left-Hand Turn” sign posted. State Route 20 was not lit in this area. The only available lights came from the gas station.

{¶ 3} Kettelman initially attempted to leave the parking lot by the county road, but then he backed his truck up and headed for the State Route 20 exit. There, Kettelman exited through the entrance lane, pulled straight across State Route 20 with his cab in the median and the flatbed trailer blocking both eastbound lanes of Route 20. While he was blocking both lanes of traffic, eastbound vehicles began approaching. The lead vehicle was driven by Adam Leutenegger. Leutenegger stated that it was dark and rainy, and as he approached the gas station in the left lane of traffic, he saw some lights in the road. At first he wasn’t sure what the lights were, but then he realized it was a truck crossing lanes, so he slammed on his brakes. He guessed it “was something like two light posts distance, so something like maybe 70 or 80 feet maybe” away from the lights when he realized the road was blocked. He believed he had to slam on his brakes because he “was about to smash right into this truck that was crossing the lanes.” Shortly after Leutenegger slammed on his brakes, D.E.’s vehicle approached in the right lane and hit Kettelman’s semi-truck. D.E. was pronounced dead at the scene. Kettelman had been stopped in the road with his brakes applied for 23 seconds before the crash occurred.

{¶ 4} On January 5, 2024, Kettelman was indicted on the following offenses: aggravated vehicular homicide in violation of R.C. 2903.06(A)(1)(a) and (B)(2)(a), a felony of the second degree (Count 1); aggravated vehicular homicide, in violation of R.C. 2903.06(A)(2)(a) and (B)(3), a felony of the third degree (Count 2); operating a vehicle under the influence of alcohol, a drug of abuse, or a combination of them - OVI, in violation of R.C. 4511.19(A)(1)(a) and (G)(1)(a), a misdemeanor of the first degree (Count 3); and operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance - OVI, in violation of R.C. 4511.19(A)(1)(j)(viii)(II) and (G)(1)(a), a misdemeanor of the first degree (Count 4). On May 22, 2025, the State moved to dismiss Counts 1, 3, and 4. The request was granted and Count 2 was renumbered as Count 1.

{¶ 5} Kettelman pled not guilty and the case proceeded to trial.

Trial

{¶ 6} At trial, the State presented the testimony of Leutenegger, Captain Brian McGrady, with the Sandusky County Sheriff's office, and Trooper Zachary Morris, Sergeant Robert Marshall, and Trooper Ryan Thomas, a crash reconstructionist, all with the Ohio State Highway Patrol. These witnesses testified consistently to the facts described above. Trooper Thomas also discussed his findings as follows:

In this case the fact that Mr. Kettelman pulled out of the gas station through the entrance, through a no left turn entrance, being it was dark, raining, and stopped in the roadway for over 20 seconds, um, I feel that it was reckless, um, and it was the sole contributing factor to the crash.

{¶ 7} The State also introduced exhibits, including a video of the accident taken from the gas station, and video from Sergeant Marshall’s body worn camera (BWC). Kettelman did not present any witnesses.

{¶ 8} After the testimony was concluded, the jury retired to deliberate. During deliberations, the jury had two questions, one of which was “We can’t consider any other lesser charge, correct?” Prior to responding to the jury, the court discussed the question with the attorneys and stated that the court’s response to that question would be “Correct,” and asked if there was any problem with that. Kettelman’s attorney shook his head no, and then asked, “Didn’t you hear ‘right’?”

{¶ 9} The jury returned a verdict of guilty to the charge of aggravated vehicular homicide.

{¶ 10} Kettelman was sentenced on June 17, 2025, to 18 months in prison.

Kettelman appealed, raising the following assignments of error:

- I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT DID NOT ALLOW THE JURY TO CONSIDER A LESSER CHARGE AGAINST MR. KETTEMAN.
- II. THE CONVICTION OF MR. KETTEMAN IS BOTH INSUFFICIENT AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE, AS SHOWN BY THE JURY’S REQUEST TO CONSIDER A LESSER CHARGE AGAINST HIM.¹

¹ Kettelman’s brief includes two versions of the second assignment of error. In the beginning of his brief, his second assignment of error only argues that his conviction is against the manifest weight of the evidence. However, in the body of his brief, his second assignment of error contends his conviction was both based on insufficient evidence and was against the manifest weight of the evidence. As he argues both, we have listed the second version of his second assignment of error and have considered both alleged errors.

First Assignment of Error

{¶ 11} Kettelman contends that the trial court abused its discretion when it failed to allow the jury to consider a lesser included offense.

{¶ 12} “[A] judge is to give instructions on lesser-included and inferior-degree offenses only when the evidence would allow a jury to reasonably reject the greater offense and find the defendant guilty on the lesser-included or inferior-degree offenses.” *State v. Knuff*, 2024-Ohio-902, ¶ 183, quoting *State v. Lloyd*, 2022-Ohio-4259, ¶ 26.

{¶ 13} Kettelman maintains that a lesser included instruction was warranted because he “did not present a complete defense to the charge,” “[r]ather the evidence presented showed the weather conditions may have contributed to the accident . . . and the layout of the gas station can seem convoluted.” As support for his argument, he points to the jury’s question regarding whether they could consider any lesser charges. We note that Kettelman has not specified any particular lesser included offense on which the judge should have instructed the jury.

{¶ 14} Crim.R. 30 states:

On appeal, a party may not assign as error the giving or the failure to give any instructions unless the party objects before the jury retires to consider its verdict, stating specifically the matter objected to and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury.

{¶ 15} Kettelman did not request a jury instruction on any lesser included offense. Moreover, he did not raise any objection when the judge stated that he was going to

respond “correct” to the jury’s question that it could not consider any lesser included offense.

{¶ 16} “When properly objected to by the challenging party, ‘we review a trial court’s decision refusing to give a requested jury instruction for abuse of discretion.’ However, when the challenging party did not object to the trial court’s failure to give a particular instruction below, our review of the trial court’s decision as to that instruction is limited to plain error.” (Citations omitted.) *State v. Sepeda*, 2022-Ohio-1889, ¶ 33 (6th Dist.).

{¶ 17} Pursuant to Crim.R. 52(B), “Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.” The standard for plain-error review has four elements: “First, there must be an error. Next, the error must be plain or obvious. Third, the error must ‘affect[] “substantial rights”’ [which has been] interpreted . . . ‘to mean that there is a reasonable probability that the error affected the outcome of the trial.’ And fourth, the rule is discretionary; plain error should be recognized ‘only to prevent a manifest miscarriage of justice.’” (Citations omitted.) *State v. Khalif*, 2026-Ohio-2689, ¶ 25. The burden is on Kettelman to demonstrate that a plain error affected his substantial rights. *Id.*, quoting *State v. Perry*, 2004-Ohio-297, ¶ 14.

{¶ 18} In the context of whether it was plain error to fail to instruct on lesser included offenses, we have previously presumed “that trial counsel’s failure to seek instructions on lesser included offenses reflected a tactical decision to seek an acquittal rather than a conviction on lesser included offenses” and that, therefore, “the court could

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not have committed plain error by failing to instruct the jury on those lesser[]included instructions absent a request from counsel because, to do so, the trial court would have necessarily risked undermining defense counsel’s trial strategy.” *State v. Miller*, 2019-Ohio-2649, ¶ 37 (6th Dist.). Following this reasoning, we have found no plain error “for the trial court to omit an instruction on a lesser included offense because the court must give deference to ‘the strategic significance of a defendant’s decision whether to present a jury with a possible intermediate result, or to leave the jury with an all-or-nothing proposition in the hope of an acquittal.’” *Id.*, quoting *State v. Herrera*, 2006-Ohio-3053, ¶ 90 (6th Dist.). Based on the foregoing, we do not find the trial court’s failure to instruct on a lesser included offense to be a manifest miscarriage of justice.

{¶ 19} Additionally, Kettelman did not identify the lesser included offense on which he believes the trial court should have provided an instruction. It is Kettelman’s burden to formulate an argument on appeal and support that argument with citations to the record and with legal authority. *State v. Sims*, 2025-Ohio-5827, ¶ 38 (6th Dist.), quoting *State v. Watson*, 2009-Ohio-330, ¶ 5 (9th Dist.). *See also* App.R. 16(A)(7). “Where an appellant fails to develop an argument in support of an assignment of error, this court will not create one ...” *Id.* at ¶ 39, quoting *State v. Fenderson*, 2022-Ohio-1973, ¶ 70 (6th Dist.). Here, we will not presume which offense Kettelman claims is a lesser included offense for which the trial court should have provided an instruction. Without a specific offense, we cannot analyze whether it was plain error to fail to provide an instruction.

{¶ 20} We therefore find Kettelman’s first assignment of error not well-taken.

Second Assignment of Error

Sufficiency of the Evidence

{¶ 21} The sufficiency of the evidence presents a question of law. *State v. Harvey*, 2022-Ohio-4650, ¶ 52 (6th Dist.), citing *State v. Thompkins*, 78 Ohio St.3d 380 (1997). “The test of sufficiency is one of adequacy, and a conviction lacking evidence as to every element of the offense is a denial of due process.” *State v. Thompson*, 2026-Ohio-1491, ¶ 20 (6th Dist.), citing *Thompkins* at 386-387 and *State v. Messenger*, 2022-Ohio-4562, ¶ 13.

{¶ 22} When reviewing the sufficiency of the evidence, this “court views the evidence in the light most favorable to the prosecution and asks whether ““any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt.””” *State v. Brown*, 2025-Ohio-2804, ¶ 16, quoting *State v. Dean*, 2015-Ohio-4347, ¶ 150. “The appropriate standard of review for a sufficiency-of-the-evidence challenge is ‘whether, if believed, the evidence can sustain the verdict as a matter of law.’ When reviewing whether the State met its burden of production, ‘an appellate court does not ask whether the evidence should be believed but, rather, whether the evidence, “if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt.””” (Citations omitted.) *Id.* at ¶ 17. “A verdict should not be disturbed on appeal unless reasonable minds could not reach the trier of fact’s conclusion.” *State v. Jordan*, 2023-Ohio-3800, ¶ 16.

{¶ 23} The charge at issue required the jury to find that Kettelman, while operating a motor vehicle, recklessly caused the death of another. R.C. 2903.06(A)(2)(a). There is
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no dispute that Kettelman was operating a motor vehicle and that D.E. died as a result of collision with that motor vehicle. The issue of contention at trial was whether Kettelman recklessly caused D.E.'s death.

{¶ 24} In support of his claim that the evidence was insufficient, he refers to the jury question regarding whether it could consider any lesser included offenses. This is not a basis for finding insufficient evidence. Once the jury was informed that it could not consider a lesser charge, the jury ultimately found Kettelman guilty. While he has not specifically raised any other issues regarding the sufficiency of the evidence in his argument regarding the second assignment of error, we will consider his statements, made with respect to his first assignment of error, that the weather conditions and the layout of the gas station could have contributed to the accident.

{¶ 25} “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).

{¶ 26} We are obligated to view the evidence in a light most favorable to the State. When conducting such a review, we find sufficient evidence to establish that Kettelman recklessly caused D.E.'s death. Kettelman drove his semi out of the entrance of the gas station, across State Route 20, and stopped, leaving his empty trailer blocking two lanes of traffic when visibility was limited by darkness and rain. Although Kettelman points to the

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weather as something that would reduce his culpability, we do not agree. He was aware of the weather and the darkness when he drove out the entrance and stopped his truck across two lanes of traffic, and he should have been aware that these conditions might make it difficult for oncoming traffic to see his trailer. Based on this evidence, we cannot say that reasonable minds could not find these actions to be reckless.

Manifest Weight

{¶ 27} A challenge based upon the manifest weight of the evidence asks “whether the State met its burden of persuasion.” *State v. Reillo*, 2026-Ohio-2701, ¶ 24.

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*.”

(Emphasis in original.) *Id.* at ¶ 25, quoting *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 12, quoting *Thompkins*, 78 Ohio St.3d at 387. “Accordingly, under a manifest-weight review, a court ‘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.’” *Id.* at ¶ 26, quoting *State v. Brown*, 2025-Ohio-2804, ¶ 30. “[A]ppellate courts may ‘vacate a jury’s verdict and order a new trial “only in the exceptional case in which the evidence weighs heavily against the conviction.”’” *Id.* at ¶ 27, quoting *Brown* at ¶ 31.

{¶ 28} “[I]n weighing the evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact.” *Id.* at ¶ 28, citing *Eastley* at ¶ 21. “If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.” *Id.*, citing *In re. Z.C.*, 2023-Ohio-4703, ¶ 14. An appellate court only disregards that presumption “when evidence contradicts a fact-finder’s findings” or “when a witnesses’ testimony is so inconsistent as to material facts, so impeached, or so fantastical as to make it patently unbelievable.” *Id.* at ¶ 3. In those instances, the reviewing court “sits at a ‘thirteenth juror’ who may disagree with the fact-finder’s resolution of the *conflicting evidence*.” (Emphasis in original.) *Id.* at ¶ 27.

{¶ 29} Kettelman’s arguments regarding manifest weight are the same as those regarding sufficiency of the evidence. For the reasons discussed above, we do not find this to be an exceptional case where the evidence weighs heavily against the conviction and thus find Kettelman’s conviction is not against the manifest weight of the evidence.

{¶ 30} Kettelman’s second assignment of error is found not well-taken.

Conclusion

{¶ 31} The judgment of the Sandusky County Court of Common Pleas is affirmed. Pursuant to App.R. 24, Kettelman is hereby ordered to pay the costs incurred on appeal.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27.
See also 6th Dist.Loc.App.R. 4.

Thomas J. Osowik, P.J.

JUDGE

Myron C. Duhart, J

JUDGE

Charles Sulek, J
CONCUR.

JUDGE

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