[Cite as *State v. Lennox*, 2011-Ohio-5103.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2010-L-104**
- vs -	:	
ANDREW M. LENNOX,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Lake County Court of Common Pleas, Case No. 09 CR 000305.

Judgment: Affirmed.

Charles E. Coulson, Lake County Prosecutor, and *Joshua S. Horacek*, Assistant Prosecutor, 105 Main Street, P.O. Box 490, Painesville, OH 44077 (For Plaintiff-Appellee).

Albert L. Purola, 38298 Ridge Road, Willoughby, OH 44094 (For Defendant-Appellant).

MARY JANE TRAPP, J.

{¶1} Appellant, Andrew M. Lennox, appeals from his conviction and sentence in the Lake County Court of Common Pleas for Aggravated Vehicular Homicide and Operating a Vehicle Under the Influence of Alcohol, a Drug of Abuse, or a Combination of Them ("OVI"). An evening spent enjoying music with his girlfriend, Heather Fiorelli, came to a deadly ending when Mr. Lennox's car struck a telephone pole, tearing the car in two, and killing Ms. Fiorelli. No reasonable doubt exists that the causes of this tragic

accident were Mr. Lennox's alcohol-impaired driving at a high rate of speed, and his failure to heed a stop sign before hitting an anomaly in the road, which catapulted his car off the road and into the pole. The state presented more than sufficient evidence that the alcohol he consumed before driving substantially impaired Mr. Lennox's driving, and that the alcohol was a substantial factor in Ms. Fiorelli's death.

{¶2} Mr. Lennox was sentenced to four years in prison and his license was suspended for life. He now argues for reversal of his conviction asserting three grounds: he was incompetent to stand trial because of amnesia resulting from a head injury sustained in the accident; his statement made in an interview with police should have been suppressed because of a claimed Fourth Amendment violation; and insufficient evidence existed to support the conviction.

{¶3} We affirm the trial court's judgment finding that the state presented sufficient evidence that Mr. Lennox's intoxication was a substantial factor in causing the accident that killed Heather Fiorelli. Examining the totality of the circumstances surrounding his station-house interview, we find that Mr. Lennox was not in custody at that time and, thus, the Fourth Amendment warrant requirement was not triggered. Mr. Lennox voluntarily went with the police and voluntarily made incriminating statements. We also find no error in the trial court's competency decision. Despite experiencing amnesia after a head injury sustained in the deadly crash, Mr. Lennox understood the nature of the proceedings against him and was able to assist his attorney in mounting a defense, all hallmarks of legal competency to stand trial.

{¶4} **Substantive Facts and Procedural History**

{¶5} Late in the evening of April 17, 2009, Mr. Lennox attended a concert in Cleveland with Ms. Fiorelli. Before and during the concert, Mr. Lennox drank several

shots of liquor and a few beers, apparently under the assumption that Ms. Fiorelli would be driving home. Although Ms. Fiorelli began the drive to Eastlake, Mr. Lennox took over the wheel somewhere along Lakeshore Boulevard.

{¶6} In the one o'clock hour on April 18, 2009, Mr. Lennox increased his speed while on Roberts Road in Eastlake (a 25 m.p.h. zone) to about 68 m.p.h. He ran through a stop sign at Willowick Drive, hit a bump in the road formed by the conjunction of asphalt and concrete, and lost control of his vehicle. The vehicle struck a telephone pole and was split into two pieces. Both Mr. Lennox and Ms. Fiorelli were ejected from the vehicle. Mr. Lennox sustained a laceration to his forehead. Ms. Fiorelli died at the scene of the accident; her death caused by blunt impact to her head, trunk, and extremities, resulting in fatal brain injury.

{¶7} Lieutenant Herron of the Eastlake Police Department was first to arrive on scene, shortly after the crash. He found Mr. Lennox face down, attempting to get up. Mr. Lennox was advised not to stand, but he did so and inquired whether Ms. Fiorelli could drive the car home for him. He was placed in a police van to await medical attention, while Lieutenant Herron continued to investigate the crash. Shortly thereafter, Officer Formick arrived on scene and spoke with Mr. Lennox in the police van. Upon opening the door to the van, Officer Formick noticed an odor of alcohol. Officer Formick attempted to discuss the crash, but Mr. Lennox appeared confused and again asked whether Ms. Fiorelli could drive home. He did not understand the extent of the accident, nor did he realize that Ms. Fiorelli had died at the scene.

{¶8} Soon thereafter, Mr. Lennox was treated by paramedics on-scene and then transported, via ambulance, to Lake West Hospital. Eventually, he was life-flighted

to MetroHealth Medical Center for further care, and was released later that same morning.

{¶9} Upon hearing that Mr. Lennox had been released, Detective Doyle, of the Eastlake Police Department, sent Patrolman Tanner to escort Mr. Lennox from his parents' home to the station for an interview. Patrolman Tanner made it clear to Mr. Lennox and his parents that Mr. Lennox was not under arrest, but that Detective Doyle was eager to speak with him that afternoon. Mr. Lennox accompanied Patrolman Tanner in a marked police cruiser, while his parents followed in their own vehicle. Mr. Lennox participated in a 15-minute interview with Detective Doyle and was then taken home by his parents.

{¶10} The following day, Eastlake Police arrested Mr. Lennox and charged him with one count of Aggravated Vehicular Homicide in violation of R.C. 2903.06(A)(1)(a), a second degree felony; one count of Aggravated Vehicular Homicide in violation R.C. 2903.06(A)(2)(a), a third degree felony; one count of Operating a Vehicle Under the Influence of Alcohol, a Drug of Abuse, or a Combination of Them in violation of R.C. 4511.19(A)(1)(a), a first degree misdemeanor; one count of Operating a Vehicle Under the Influence of Alcohol, a Drug of Abuse, or a Combination of Them in violation R.C. 4511.19(A)(1)(b), a first degree misdemeanor; and one count of Operating a Vehicle While Under the Influence of a Listed Controlled Substance or a Listed Metabolite of a Controlled Substance in violation of R.C. 4511.19(a)(1)(j)(viii)(I), a first degree misdemeanor. Mr. Lennox was also charged with three minor traffic violations, which were dismissed prior to trial.

{¶11} Mr. Lennox pleaded not guilty to all charges, and filed a suggestion of incompetency to stand trial and a motion to suppress evidence. He was examined by a

court psychologist, a competency hearing was held, and he was found competent to stand trial.

{¶12} Mr. Lennox's motion to suppress was also denied after hearing. Waiving his right to a jury trial, his case was tried to the bench over three days. The trial court found Mr. Lennox guilty of all charges, and, after a pre-sentence investigation, he was sentenced to a four-year term of imprisonment on Count One, which was merged with Count Two. He was also sentenced to serve a six-month term on Count Three, which was merged with Counts Four and Five. The trial court ordered the sentences to run concurrently for a total period of incarceration of four years.

{¶13} Mr. Lennox now timely appeals his conviction and raises three assignments of error:

{¶14} "[1.] The evidence is constitutionally insufficient to support a conviction on Aggravated Vehicular Homicide in Count 1 on either prong --- the OVI predicate, or whether alcohol was the proximate cause of the crash --- it is constitutionally sufficient to convict on Vehicular Homicide in Count 2.

{¶15} "[2.] The trial court erred in overruling Lennox's motion to suppress the evidence of his interview with Detective Doyle obtained after an unconstitutional seizure.

{¶16} "[3.] Where a defendant cannot remember any of the events immediately preceding the crash because of amnesia resulting from brain trauma suffered in the collision, and cannot help [h]is counsel re-create what happened, he is incompetent to stand trial for the charge."

{¶17} **Whether Evidence was Sufficient to Sustain a Conviction**

{¶18} In his first assignment of error, Mr. Lennox argues that the state failed to present sufficient evidence to sustain his conviction under Count One, Aggravated Vehicular Homicide in violation of R.C. 2903.06(A)(1)(a).

{¶19} R.C. 2903.06(A)(1)(a) states that "[n]o person, while operating or participating in the operation of a motor vehicle, motorcycle, snowmobile, locomotive, watercraft, or aircraft, shall cause the death of another or the unlawful termination of another's pregnancy *** [a]s 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." Mr. Lennox argues that the state failed to prove the element of proximate cause and, therefore, his conviction under Count One should be reversed. In essence, Mr. Lennox argues there was insufficient evidence that the alcohol he consumed before driving substantially impaired his driving or that the alcohol was a substantial factor in Ms. Fiorelli's death.

{¶20} **Standard of Review**

{¶21} A trial court shall grant a motion for acquittal when insufficient evidence exists to sustain a conviction. Crim.R. 29(A). A sufficiency-of-the-evidence claim challenges whether the state has presented sufficient evidence on each element of the offense to allow the case to go to the jury or to sustain the verdict as a matter of law. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386.

{¶22} "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* (1991), 61 Ohio St.3d 259, paragraph two of syllabus. A sufficiency challenge requires this court to review the record to determine whether the state presented evidence on each of the elements of the offense. This test involves a question of law and does not permit us to weigh the evidence. *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶23} This court reviewed a similar case in *State v. Filchock*, 166 Ohio App.3d 611, 2006-Ohio-2242. In *Filchock*, the appellant also argued that the evidence was not sufficient to sustain his conviction of Aggravated Vehicular Homicide in violation of R.C. 2903.06(A)(1), because the victim's death "was not caused by impaired driving, but from some other cause." Id. at ¶76. We held that "'[i]t is well established that the definition of of "cause" in criminal cases is identical to the definition of "proximate" cause in civil cases. *** The general rule is that a defendant's conduct is the proximate cause of injury or death to another if the defendant's conduct (1) is a "substantial factor" in bringing about the harm and (2) there is no other rule of law relieving the defendant of liability.'" Id. at ¶77, quoting *State v. Flanek* (Sept. 2, 1993), 8th Dist. No. 63308, 1993 Ohio App. LEXIS 4282, *18-19 (citations omitted). Furthermore, we reiterated that a defendant will not escape liability merely because factors other than his own acts contributed to the death, so long as those factors were not the sole cause. See *Flanek*, supra.

{¶24} Upon review of the state's evidence, it is clear that the state introduced sufficient evidence from which a rational trier of fact (the trial judge in this case) could have found, beyond a reasonable doubt, that Mr. Lennox operated his vehicle under the influence of drugs or alcohol and that his alcohol-impaired driving was a proximate

cause of Ms. Fiorelli's death. Evidence supporting this conclusion comes from a variety of sources.

{¶25} **Admissions by Mr. Lennox**

{¶26} The state presented evidence that Mr. Lennox made admissions of alcohol consumption prior to the crash to a number of people, including Lieutenant Kovacic of the Eastlake Fire Department, and Officer Formick and Detective Doyle of the Eastlake Police Department. Officer Formick testified that he smelled "an immediate odor of alcoholic beverage" when he opened the police van door to speak with Mr. Lennox, who then proceeded to tell the officer he had "had three or four Jacks and one or two beers." Mr. Lennox again admitted to having three or four drinks and one or two beers, when Officer Formick spoke to him at MetroHealth later in the morning. Officer Formick testified that after speaking to Mr. Lennox, and based on the totality of the circumstances, he "believed [Mr. Lennox] was under the influence."

{¶27} Furthermore, Patrolman Gutka of the Eastlake Police Department testified that a bottle of Jack Daniels whisky was found at the scene of the accident, "on the tree lawn between the road and the sidewalk between the front of the car and the rear of the end of the car." The bottle was found among various personal items from Mr. Lennox's vehicle, and Mr. Lennox admitted in an interview that he had sipped from that bottle earlier on the night of the accident.

{¶28} The recorded interview with Detective Doyle was also submitted to the court. Mr. Lennox explained that, because he had been drinking, Ms. Fiorelli was going to drive home. While she drove he fell asleep, from the alcohol more than anything else. Ms. Fiorelli woke him, however, and insisted he drive because she was "kinda freaking out cause she was fallin' asleep and passing out at the wheel." When he took

over driving he recalled being a "little fuzzy." The last thing he could remember was seeing a hot dog shop on Roberts Road and then flashes of them sliding sideways.

{¶29} When confronted with information that he had driven at an excessive rate of speed and that he failed to stop at the stop sign at Roberts Road and Willowick Drive, his response was "how?" He stated that he "wouldn't have driven that fast down that road" and that he was not in a hurry to get home.

{¶30} **Scientific Evidence**

{¶31} To further support allegations of Mr. Lennox's intoxication and to demonstrate the effect his alcohol-impaired driving had that night, the state presented testimony from two forensic scientists. Szabolcs Solfalvi, a forensic chemist with the Cuyahoga County Coroner's Office, testified that he tested Mr. Lennox's blood, which was drawn with Mr. Lennox's permission approximately an hour and a half after the accident at MetroHealth. His blood registered five nanograms per milliliter of the marijuana metabolite, tetrahydrocannabinol (THC).

{¶32} Edward Rohde, a senior forensic toxicologist and chemist at the Lake County Crime Lab, also tested Mr. Lennox's blood, finding a blood alcohol concentration ("BAC") of either .082 or .083 an hour and a half after the accident. Mr. Rohde was able to conduct a retrograde extrapolation of Mr. Lennox's BAC, and testified that he would have had a BAC of anywhere between .099 and .116 at the time of the crash. Mr. Rohde went on to describe the effects of an elevated BAC on an individual's driving and how judgment, reasoning, and ability to filter and respond to stimuli are all decreased as a result. A person with Mr. Lennox's BAC levels will exhibit some impairment in their emotional stability, ability to control their inhibitions, critical judgment, memory and comprehension, and reaction time and muscle coordination.

{¶33} Mr. Lennox places significant focus on the bump or anomaly in the road at the intersection of Roberts Road and Willowick Drive. He argues the evidence establishes that this bump was the sole cause of his loss of control and the accident. However, the state's accident reconstructionist, Dale Dent, testified that the bump was merely a "catalyst" for Mr. Lennox's loss of control and not the exclusive cause. Mr. Dent opined that had the car been traveling at the 25 m.p.h. speed limit, the anomaly would not have caused any problems for Mr. Lennox. Furthermore, Mr. Dent testified that there was no evidence of breaking or corrective steering by Mr. Lennox after encountering the bump. Mr. Dent stated that "there [are] many maneuvers that you can take to try to regain control of the car." Not one of those maneuvers appears to have been taken by Mr. Lennox.

{¶34} While this road anomaly undisputedly played some role in the resulting accident, the conditions directly leading to the accident were set in motion well before Mr. Lennox encountered the bump. He had been drinking, driving at a high rate of speed, and failed to heed a stop sign that would have slowed the speed of the car before encountering the bump. The situation was ripe for disaster. Considerable evidence exists to support the determination that Mr. Lennox's alcohol consumption that evening played a substantial role in causing the accident. Whether it informed his decision to speed and run a stop sign, or whether it impaired his ability to control the vehicle upon hitting the bump, the trial court did not err in finding that sufficient evidence was presented to support the state's allegation that Mr. Lennox's alcohol-impaired driving proximately caused the motor vehicle accident resulting in Ms. Fiorelli's death. Therefore, assignment of error one is without merit.

{¶35} **Motion to Suppress**

{¶36} Mr. Lennox asserts, in his second assignment of error, that the trial court erred in failing to suppress his interview with Detective Doyle. He argues that it was forcibly obtained without probable cause or a warrant, in violation of his Fourth Amendment rights.

{¶37} **Standard of Review**

{¶38} "At a hearing on a motion to suppress, the trial court functions as the trier of fact, and, therefore, is in the best position to weigh the evidence by resolving factual questions and evaluating the credibility of any witnesses." *State v. McGary*, 11th Dist. No. 2006-T-0127, 2007-Ohio-4766, ¶20, quoting *State v. Molek*, 11th Dist. No. 2001-P-0147, 2002-Ohio-7159, ¶24, citing *State v. Mills* (1992), 62 Ohio St.3d 357, 366. Thus, "[a]n appellate court must accept the findings of fact of the trial court as long as those findings are supported by competent, credible evidence." Id., quoting *Molek* at ¶24, citing *State v. Retherford* (1994), 93 Ohio App.3d 586. See, also, *City of Ravenna v. Nethken*, 11th Dist. No. 2001-P-0040, 2002-Ohio-3129, ¶13. "After accepting such factual findings as true, the reviewing court must then independently determine, as a matter of law, whether or not the applicable legal standard has been met." Id.

{¶39} **The Fourth Amendment and Restraint of Liberty**

{¶40} For purposes of the Fourth Amendment, "even when the intrusion is limited, the person's liberty must have been restrained by physical force or a show of authority before he will be deemed to have been seized." *State v. Grant* (July 14, 1989), 11th Dist. No. 1362, 1989 Ohio App. LEXIS 2807, *7, citing *State v. Maurer* (1984), 15 Ohio St.3d 239, 255 (emphasis omitted). The Supreme Court of Ohio has held that, "[i]n judging whether an individual has been placed into custody the test is whether, under the totality of the circumstances, a 'reasonable person would have

believed that he was not free to leave.'" *State v. Gumm*, 73 Ohio St.3d 413, 429, quoting *U.S. v. Mendenhall* (1980), 446 U.S. 544, 554. "Whether there was a show of authority sufficient to communicate to a reasonable person that he was not free to leave is a factual determination for the trial court to make." *State v. Welz* (Dec. 9, 1994), 11th Dist. No. 93-L-137, 1994 Ohio App. LEXIS 5528, *5, citing *Florida v. Bostick* (1991), 501 U.S. 429, 437.

{¶41} This court has acknowledged the four requisite elements of an arrest established by the Ohio Supreme Court: "(1) [a]n intent to arrest, (2) under real or pretended authority, (3) accompanied by an actual or constructive seizure or detention of the person, and (4) which is so understood by the person arrested." *Grant* at *7, quoting *State v. Barker* (1978), 53 Ohio St.2d 135, paragraph one of the syllabus.

{¶42} **Was this a Custodial Interrogation?**

{¶43} Mr. Lennox relies heavily on *Dunaway v. New York* (1979), 442 U.S. 200, to establish that his conversation with the police on the afternoon of April 18, 2009 constituted a custodial interrogation. In *Dunaway*, the petitioner was taken into custody as a suspect in an attempted robbery. The police did not have enough evidence to arrest the petitioner, but admitted he would have been restrained if he had attempted to leave.

{¶44} The United States Supreme Court held that "detention for custodial interrogation *** intrudes so severely on interests protected by the Fourth Amendment as necessarily to trigger the traditional safeguards against an illegal arrest." Id. at 216. *Dunaway*, however, is distinguishable from the case *sub judice*, and Mr. Lennox was not detained for custodial interrogation so as to trigger the protections of the Fourth Amendment.

{¶45} Ohio courts have found that factual circumstances similar to Mr. Lennox's do not rise to the level of custodial interrogation. In *Ohio v. Davis*, 7th Dist. No. 08 MA 236, 2011-Ohio-292, the defendant was suspected of setting a fire. A detective was sent to his home to bring him and his two brothers to the station for an interview. The defendant's family had no car, and thus transport in the police vehicle was necessary. The detective drove the three brothers to the station in a non-secure cruiser; however, the three boys were handcuffed during the ride. The handcuffs were removed while they waited to be interviewed. Detectives read the defendant his Miranda rights before interviewing him. Despite being transported to the station in a police vehicle and being handcuffed during the trip, the defendant was not deemed to have been in custody for Fourth Amendment purposes.

{¶46} Similarly, in *State v. Carter*, 3d Dist. No. 1-10-01, 2010-Ohio-5189, the court held a reasonable person would have felt free to leave the interview because, among other reasons, the defendant voluntarily got into a police cruiser to go to the station; he was not handcuffed; only two officers were present during the interview; the door to the interview room was closed but not locked; the atmosphere in the interview was casual and the defendant was calm for the most part; and, the defendant had access to his cell phone and used it during the interview.

{¶47} The *Carter* court acknowledged that "the interview was approximately two hours in duration; that the officers did not inform Carter that he could terminate the interview; that Carter became agitated approximately fifteen minutes before departing; and, that Carter did not have unobstructed access to the door due to the small size of the interview room. However, under the totality of the circumstances, we find that a reasonable person in Carter's situation would have felt free to leave during the

interview. Further, we do not find that there was a formal arrest or 'restraint on freedom of movement of the degree associated with a formal arrest.'" Id. at ¶26 (citations omitted).

{¶48} Just as in *Carter,* the totality of circumstances in Mr. Lennox's case point to a voluntary, not custodial, interrogation. Mr. Lennox had been involved in a fatal car accident the night before, and the police's interest in investigating the incident quickly was reasonable. Mr. Lennox was picked up from his parents' home after an officer assured both his parents and Mr. Lennox multiple times that he was not under arrest. The detective simply wanted to talk to him about the accident in an effort to better understand how the accident occurred. As with the defendant in *Davis*, it was reasonable for the police to transport Mr. Lennox to the station, considering both the destruction of his car the night before, and that he had sustained a head injury.

{¶49} The transporting officer stated at the suppression hearing that he was not directed to arrest Mr. Lennox that day; he was merely to escort him to the station. In fact, Mr. Lennox was not arrested that day. Before transporting Mr. Lennox, the officer allowed him to leave the room unsupervised to change clothes. In addition, Mr. Lennox rode in the front seat of the officer's police cruiser, rather than in the secured back seat, and was not handcuffed -- two other indications of lack of restraint not afforded those under arrest. At no time did Mr. Lennox protest or refuse to accompany Patrolman Tanner to the station.

{¶50} At the station, Mr. Lennox was brought to a conference room, not an interrogation room or cell, where he was Mirandized for good measure. Mr. Lennox's interview lasted approximately 15 minutes, far less than the several hours the defendant in *Carter* spent talking to police. Further, Mr. Lennox's parents were invited to follow the

officer's car to the station and did so. At the end of the interview, he was permitted to leave with them.

{¶51} Competent, credible evidence was submitted during the suppression hearing to support the conclusion that Mr. Lennox was not in fact under arrest, nor that his interview rose to the level of a custodial interrogation. Mr. Lennox failed to demonstrate a restraint by physical force or show of authority sufficient to constitute a seizure, nor did he put forward evidence that a reasonable person in his position would not have felt free to leave the interview. Accepting the trial court's findings of fact as true, and applying them to the law on seizures in Ohio, we cannot conclude Mr. Lennox was illegally arrested or subjected to a restraint on his freedom of movement to the degree associated with a formal arrest, nor that he was subjected to an inappropriate custodial interrogation. As the trial court did not err in refusing to suppress the statements made during Mr. Lennox's April 18, 2009 interview, the second assignment of error is without merit.

{¶52} **Whether Mr. Lennox was Competent to Stand Trial**

{¶53} Mr. Lennox, in his third assignment of error, argues that he was incompetent to stand trial because he suffered a concussion in the car accident around which this case revolves, causing him to experience amnesia for the period beginning in the minutes before the accident until he was en route to a hospital.

{¶54} **Standard of Review**

{¶55} "[A]n appellate court will not disturb a trial court's competency determination if the record demonstrates there was some reliable, credible evidence to support its conclusion." *In re J.W.*, 11th Dist. No. 2010-G-2972, 2011-Ohio-1163, ¶40, citing *State v. Williams* (1986), 23 Ohio St.3d 16, 19. A defendant is considered

competent when "he has 'sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and *** has a rational as well as factual understanding of the proceedings against him.'" *State v. Marquez*, 11th Dist. No. 2007-A-0085, 2008-Ohio-5324, ¶43, quoting *State v. Berry* (1995), 73 Ohio St.3d 354, 359.

{¶56} In Ohio, "amnesia alone is not sufficient to render the accused incompetent to stand trial." *State v. Brooks* (1986), 25 Ohio St.3d 144. "Although 'there are no definitive judicial explanations' of what constitutes the ability to assist in one's own defense, *** it is clear that the cases without exception reject the notion that an accused possesses that ability only if he is able to remember the circumstances of the crime with which he is charged." Id. at 151, quoting *Morrow v. State* (1980), 47 Md. App. 296. This court has specifically adopted the *Brooks* holding and language. See, *State v. DeMarco*, 11th Dist. No. 2007-L-130, 2008-Ohio-3511.

{¶57} *DeMarco* presents a set of facts considerably similar to the case *sub judice.* The appellant was driving "at a high rate of speed" and collided with another car, killing the driver and injuring one of the passengers. The appellant moved for a finding of incompetence, claiming he had amnesia and had no memory of the events charged in the indictment. After a clinical psychologist testified that appellant did indeed suffer from amnesia, the trial court still found him competent to stand trial, because he was "capable of understanding the nature and objective of these proceedings against him, and *** of assisting in his defense." Id. at ¶6.

{¶58} Much like the defendant in *DeMarco*, Mr. Lennox experienced very limited and discrete amnesia. Experts for both sides acknowledged they had no reason to believe Mr. Lennox's amnesia was malingered, however, they each concluded Mr.

Lennox met both prongs of the test for competency in Ohio. See, R.C. 2945.37(G); *Berry,* supra.

{¶59} Mr. Lennox was able to relate information about the events of the evening leading up to the crash coherently, including that he and his fiancée had been drinking and where they had been. No question existed as to whether Mr. Lennox was able to understand why he was involved in the case and what his role was, fulfilling the first prong of the *Berry* test.

{¶60} The defense's own expert testified that, based on what he had observed, Mr. Lennox had the "ability to speak intelligently with [his attorney] on whatever it is they want to talk about," including trial strategy. In addition, Mr. Lennox did not experience continuing memory loss of events after the car accident or any difficulty with short-term memory. As a result, both experts testified Mr. Lennox would be able to comprehend trial testimony, remember it, and help his attorney react to it.

{¶61} The expert testimony supported the trial court's determination that Mr. Lennox was competent to stand trial. Because reliable, credible evidence existed to sustain the trial court's determination, this court will not overturn the trial court's conclusion of competency. The defendant's third assignment of error is without merit.

{¶62} For the reasons discussed above, the judgment of the Lake County Court of Common Pleas is affirmed.

CYNTHIA WESTCOTT RICE, J.,

THOMAS R. WRIGHT, J.,

concur.