[Cite as *State v. Chakirelis*, 2010-Ohio-970.]

THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

GEAUGA COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2009-G-2914**
- vs -	:	
HARRY L. CHAKIRELIS,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Chardon Municipal Court, Case No. 2009 TRD 02406.

Judgment: Affirmed.

Dennis M. Coyne, City of Chardon Prosecutor, Dennis M. Coyne Co., L.P.A., 1428 Hamilton Avenue, Cleveland, OH 44114-1106 (For Plaintiff-Appellee).

Ralph C. Buss, Law Offices of Ralph C. Buss, 168 East High Street, P.O. Box 705, Painesville, OH 44077 (For Defendant-Appellant).

TIMOTHY P. CANNON, J.

{¶1} Appellant, Harry L. Chakirelis, appeals from the judgment entered by the Chardon Municipal Court. Chakirelis received a $75 fine and was assessed court costs for his conviction as a result of violating Ohio's assured clear distance ahead statute.

{¶2} On March 28, 2009, Eugene Wetzel was operating a skid steer[1] on State Route 608 in Hambden Township. Wetzel was traveling northbound, with half of the

1. A skid steer is a smaller piece of excavation equipment. Such machines are commonly called "Bobcats"; however, "Bobcat" is a trademarked name. This particular skid steer was manufactured by New Holland.

vehicle on the berm to the right of the white edge line, and the other half of the vehicle protruding into the northbound lane of travel. Wetzel normally keeps the skid steer in his barn, which is located to the south of his residence. That day, Wetzel was planning to perform some work at his home with the skid steer, so he was driving it to his house via Route 608. Wetzel estimated there are approximately 50 to 75 yards separating the driveway to his barn from the driveway to his home.

{¶3} When Wetzel was about 20 feet from the driveway to his residence, the skid steer was struck from behind by a pick-up truck, which was operated by Chakirelis. Chakirelis was also traveling northbound on Route 608.

{¶4} Chakirelis was charged with one count of R.C. 4511.21(A). Chakirelis pled not guilty, and the matter proceeded to a bench trial before the magistrate. The state called two witnesses: Wetzel and Trooper Ebon Harrison of the Ohio State Highway Patrol, who investigated the accident. Chakirelis did not call any witnesses; however, he introduced several exhibits during defense counsel's cross-examination of Trooper Harrison, including photographs of the accident scene and Trooper Harrison's report. These exhibits were admitted.

{¶5} The magistrate issued a decision recommending Chakirelis be found guilty of violating R.C. 4511.21. Pursuant to Crim.R. 19(D)(3)(b), Chakirelis filed objections to the magistrate's decision. The basis of his objections was that the state failed to prove all the elements of the offense. The trial court adopted the magistrate's decision, convicted Chakirelis of one count of violating R.C. 4511.21(A), fined him $75, and assessed court costs.

{¶6} Chakirelis raises the following assignment of error:

{¶7} "The trial court erred to the prejudice of defendant-appellant in finding for plaintiff-appellee at the close of defendant-appellant's case."

{¶8} On appeal, Chakirelis challenges his conviction for violating Ohio's assured clear distance ahead statute. However, he does not indicate whether he is challenging the sufficiency of the evidence presented by the state or whether he is contesting his conviction on the basis that it is against the manifest weight of the evidence. The Supreme Court of Ohio has held that "[t]he legal concepts of sufficiency of the evidence and weight of the evidence are both quantitatively and qualitatively different." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. Upon examination of Chakirelis' appellate brief, as well as his objections to the magistrate's decision, we construe his argument as challenging the sufficiency of the evidence. Thus, we will conduct a review of that issue. However, upon a review of the entire record, we note that Chakirelis' argument would also fail on manifest weight grounds. See, e.g., *State v. Cadiou*, 11th Dist. No. 2005-L-206, 2006-Ohio-6537, at ¶60.

{¶9} When determining whether there is sufficient evidence presented to sustain a conviction, "[t]he 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 the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307.

{¶10} Chakirelis was charged with violating R.C. 4511.21(A), which provides, in part:

{¶11} "[N]o person shall operate any motor vehicle *** upon any street or highway at a greater speed than will permit the person to bring it to a stop within the assured clear distance ahead."

{¶12} Regarding the elements of the assured clear distance ahead statute, the Supreme Court of Ohio has held:

{¶13} "[A] person violates the assured clear distance ahead statute if 'there is evidence that the driver collided with an object which (1) was ahead of him in his path of travel, (2) was stationary or moving in the same direction as the driver, (3) did not suddenly appear in the driver's path, and (4) was reasonably discernable.'" *Pond v. Leslein* (1995), 72 Ohio St.3d 50, 52. (Citations omitted.)

{¶14} While *Pond v. Leslein* reviewed Ohio's assured clear distance ahead statute in the context of a civil case, several Ohio courts have applied this test in the context of criminal cases. See *State v. Klein* (Mar. 27, 1998), 11th Dist. No. 95-P-0053, 1998 Ohio App. LEXIS 1214, at *7; *State v. Hochstetler*, 9th Dist. No. 03CA0025, 2004-Ohio-595, at ¶11; *State v. Passmore*, 4th Dist. No. 04CA28, 2005-Ohio-1569, at ¶7; and *State v. Finn*, 6th Dist. No. WD-07-086, 2008-Ohio-4126, at ¶15. In addition, the magistrate used this standard, and both parties advocate it is the appropriate standard by citing it in their appellate briefs.

{¶15} Regarding the first of the *Pond v. Leslein* factors, Wetzel testified that he was traveling northbound on Route 608, with part of the skid steer on the berm and the other half of the vehicle in the northbound lane. Specifically, he testified that "the left tire [of the skid steer] was probably about 18 inches left of the white line on the edge of the road." In addition, Trooper Harrison testified regarding defense exhibit four. He testified that this photograph depicted the tire marks from the skid steer and that the

marks were "about 2 feet away from the berm line." Accordingly, the state presented evidence that the skid steer was, at least partially, in the northbound lane of travel on Route 608. In *State v. Passmore*, the Fourth Appellate District upheld the appellant's conviction for violating Ohio's assured clear distance ahead statute where (1) the victim's vehicle "was primarily in her lane of travel"; (2) the appellant's vehicle collided with the rear of victim's vehicle; and (3) both vehicles were traveling in the eastbound lane. *State v. Passmore*, 2005-Ohio-1569, at ¶9. Similarly, in this matter, the state presented evidence that both Chakirelis' and Wetzel's vehicles were traveling in the northbound lane of Route 608. As such, there was sufficient evidence that the skid steer was in Chakirelis' "path of travel."

{¶16} The next requirement under *Pond v. Leslein* is that the vehicle struck was stationary or moving in the same direction as the striking vehicle. Wetzel testified that he was traveling northbound in the skid steer at approximately six to eight m.p.h. His testimony indicates that after entering the roadway from the driveway to his farm, Wetzel only traveled in a northbound direction. This instant matter is distinguishable from that of *State v. Finn*, where a semi-truck was backing into a driveway and, thus, moving perpendicularly to the traffic flow of the roadway when it was struck by an oncoming vehicle. *State v. Finn*, 2008-Ohio-4126, at ¶3. In this matter, the state presented sufficient evidence that Wetzel's skid steer was traveling in the same direction as Chakirelis' vehicle at the time of the collision.

{¶17} Regarding the third prong of the *Pond v. Leslein* analysis, Chakirelis argues that the skid steer suddenly appeared in his lane of travel. In his brief, Chakirelis states that Wetzel was traveling on the berm and "[a]t some point prior to the collision, Mr. Wetzel attempted to pull his vehicle onto the roadway." However, as

previously noted, Wetzel testified that he was traveling with half of the skid steer on the berm and half of it in the northbound lane of travel. There was no evidence presented that he suddenly entered the lane of travel from the berm.

{¶18} Chakirelis also contends that the fact the skid steer did not have mirrors supports the conclusion that it suddenly entered his path. In his brief, he argues "Wetzel testified that he had no mirrors on the bobcat, [sic] and therefore, did not ascertain whether or not it was safe to pull out into traffic." Wetzel testified that the total distance between the point he entered the roadway to his driveway was 50 to 75 yards. In addition, he testified that he was only about 20 feet from his driveway when the collision occurred. Taken together, along with the fact that he was only traveling six to eight m.p.h., the evidence indicates that Wetzel had been on Route 608 for some time prior to the collision.

{¶19} We note the case law regarding an object suddenly appearing in the driver's path requires that the other vehicle entered the path of travel in such a fashion that the driver was not "left with enough forward distance to avoid the collision through the exercise of ordinary care." *State v. Hochstetler*, 2004-Ohio-595, at ¶14. In *Hochstetler*, a garbage truck was attempting to make a right turn. Id. at ¶4. The garbage truck left its lane of travel, went left of the centerline, and then reentered its previous lane of travel, at which time it was struck by the vehicle that had been following it. Id. at ¶4-6. The Ninth Appellate District concluded that the appellant did not violate Ohio's assured clear distance ahead statute, since the garbage truck suddenly entered his path of travel. Id. at ¶14-15. Unlike the situation in *Hochstetler*, the evidence in this matter suggests that Wetzel was traveling in a consistent, straight direction and did not suddenly swerve into Chakirelis' path of travel. Accordingly, the evidence presented at

trial is not consistent with Chakirelis' theory that Wetzel suddenly "pulled out" into his path of travel.

{¶20} Regarding the final *Pond v. Leslein* factor, we address whether the skid steer was reasonably discernable. Chakirelis argues that he should not have been convicted of violating Ohio's assured clear distance ahead statute because the skid steer did not have a triangular slow-moving vehicle emblem pursuant to R.C. 4513.11(B). Whether Wetzel was required to have a slow-moving vehicle emblem is not relevant for the purpose of this analysis. For example, an individual can violate Ohio's assured clear distance ahead statute by striking a stationary passenger vehicle or an individual in the roadway as a result of an unrelated accident. See *State v. Finn*, 2008-Ohio-4126, at ¶27, citing *Shooter v. Perella*, 6th Dist. No. L-07-1066, 2007-Ohio-6122, at ¶22 and *Davis v. Gill* (Oct. 20, 2000), 6th Dist. No. L-00-1090, 2000 Ohio App. LEXIS 4862, at *4-5. The fact that a disabled passenger vehicle or individual in the middle of the road may lack a slow-moving vehicle emblem does not relieve one of the obligations imposed by R.C. 4511.21(A).

{¶21} The question is whether the skid steer was reasonably discernable. Trooper Harrison testified that the accident occurred during daylight hours on a nice day with no adverse weather conditions. In addition, Wetzel testified that the skid steer had two red lights and one white light on the back of the skid steer, all of which were illuminated. Also, he testified that a magnetic LED flashing light was activated on the back of the skid steer. Taken together, there was evidence presented that the skid steer was reasonably discernable.

{¶22} Chakirelis also argues that the state did not present evidence that the lights on the skid steer strictly complied with the requirements set forth in R.C.

4513.11(A). Likewise, whether the lights on the skid steer complied with the statutory requirements is not relevant. If the skid steer was reasonably discernable, Chakirelis violated Ohio's assured clear distance ahead statute, even if it had no light. See, e.g., *State v. Klein*, 1998 Ohio App. LEXIS 1214, at *5. In *State v. Klein*, this court affirmed a conviction for a violation of Ohio's assured clear distance ahead statute, where a vehicle struck a tractor trailer from behind on the Ohio Turnpike during a snow storm in daylight hours. Id. at *14. In that matter, the trial court concluded, "the question of the truck's lights was not important." Id. at *5. Since the instant matter occurred during daylight hours with no adverse weather conditions, we conclude that there was sufficient evidence presented that the skid steer was reasonably discernable, regardless of whether its lights strictly complied with the statutory requirements.

{¶23} In conclusion, the state presented sufficient evidence, from which the trier-of-fact could find Chakirelis guilty of violating Ohio's assured clear distance ahead statute beyond a reasonable doubt. Therefore, Chakirelis' conviction is supported by sufficient evidence.

{¶24} Chakirelis' assignment of error is without merit.

{¶25} The judgment of the Chardon Municipal Court is affirmed.

MARY JANE TRAPP, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.