

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Sheila G. Farmer, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	
RONALD J. MILLS	:	Case No. 14CA9
	:	
Defendant-Appellant	:	<u>O P I N I O N</u>

CHARACTER OF PROCEEDING: Appeal from Mount Vernon Municipal Court, Case No. 13TRC03150

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT: August 8, 2014

APPEARANCES:

For Plaintiff-Appellee

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For Defendant-Appellant

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Farmer, J.

{¶1} On July 28, 2013, appellant was charged with driving while under the influence in violation of R.C. 4511.19(A)(1)(a), failure to stop after an accident in violation of R.C. 4549.02, and failure to control in violation of R.C. 4511.202. Appellant was subsequently charged with an additional charge of driving while under the influence in violation of R.C. 4511.19(E)(1). Said charges arose from a motor vehicle accident wherein appellant drove his vehicle onto the property of another and damaged the patio/deck, fencing, furniture, landscaping, and a pine tree.

{¶2} The driving while under the influence charges were dismissed. A bench trial on the remaining two charges commenced on March 24, 2014. At the conclusion of the state's case, appellant moved to dismiss the R.C. 4549.02 charge as the evidence did not establish a collision with persons or property upon a public road or highway. The trial court denied the motion. By judgment entry filed April 1, 2014, the trial court found appellant guilty of both charges, and ordered him to pay an aggregate fine of \$900.00 and serve five years of community control.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

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{¶4} "AS A MATTER OF LAW, THE TRIAL JUDGE COMMITTED ERROR PREJUDICIAL TO THE DEFENDANT-APPELLANT BY CONVICTING HIM OF A VIOLATION OF R.C. 4549.02(A) BECAUSE THE EVIDENCE PRODUCED AT TRIAL WAS INSUFFICIENT TO MEET ALL OF THE ELEMENTS OF THAT CHARGED CRIME."

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{¶5} Appellant claims the trial court erred in finding him guilty of R.C. 4549.02 as the evidence was insufficient to support the conviction. We agree.

{¶6} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks*, 61 Ohio St.3d 259 (1991). "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." *Jenks* at paragraph two of the syllabus, following *Jackson v. Virginia*, 443 U.S. 307 (1979).

{¶7} Appellant was convicted of violating R.C. 4549.02, "[s]topping after accident; exchange of identity and vehicle registration," which states the following:

In case of accident to or collision with persons or property *upon any of the public roads or highways*, due to the driving or operation thereon of any motor vehicle, the person driving or operating the motor vehicle, having knowledge of the accident or collision, immediately shall stop the driver's or operator's motor vehicle at the scene of the accident or collision and shall remain at the scene of the accident or collision until the driver or operator has given the driver's or operator's name and address and, if the driver or operator is not the owner, the name and address of the owner of that motor vehicle, together with the registered number of that motor vehicle, to any person injured in the accident or collision or to the operator, occupant, owner, or attendant of any motor vehicle damaged in the

accident or collision, or to any police officer at the scene of the accident or collision. (Emphasis added).

{¶8} The undisputed facts establish appellant drove from a property located at 11023 Sycamore Street, crossed the street, and entered a property located at 5322 Graber Road, striking a patio/deck and damaging fencing, furniture, landscaping, and a pine tree. T. at 11-12, 15-16, 25, 28, 42. The owner of the Graber Road property testified "we live quite a ways from any road." T. at 5. The responding officer agreed that all the damage was done to the private property on Graber Road, and testified "I didn't see anything on the road, on the roadway that was damaged." T. at 42.

{¶9} In *State v. Clark*, 5th Dist. Stark No. 7544, 1998 WL 142297 (Dec. 28, 1988), this court found a violation of R.C. 4549.02 required evidence of damage to persons or property "upon any of the public roads or highways." Based on the facts in *Clark*, we found the appropriate charge should have been R.C. 4549.021, "[d]uty to stop after accident occurring on property other than public highways" i.e., private property. The facts sub judice support the same finding and we therefore reaffirm the *Clark* decision herein.

{¶10} Upon review, we find insufficient evidence to support a conviction of R.C. 4549.02.

{¶11} The sole assignment of error is granted.

{¶12} The judgment of the Mount Vernon Municipal Court of Knox County, Ohio is hereby reversed, and the matter is remanded to said court to enter an acquittal on the R.C. 4549.02 charge and resentence accordingly.

By Farmer, J.

Gwin, P.J. and

Delaney, J. concur.

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