

[Cite as *State v. Taylor*, 2010-Ohio-3814.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BROWN COUNTY

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	CASE NO. CA2009-08-032
- vs -	:	<u>OPINION</u> 8/16/2010
KENNETH TAYLOR,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM BROWN COUNTY COURT OF COMMON PLEAS
Case No. 2008-2064

Jessica Little, Brown County Prosecuting Attorney, Mary McMullen, 200 East Cherry Street, Georgetown, Ohio 45121, for plaintiff-appellee

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POWELL, J.

{¶1} Kenneth Taylor drove a delivery truck into the rear of a stopped sport utility vehicle, killing the back-seat passenger and seriously injuring two people in the front seat. He was convicted in Brown County Common Pleas Court of aggravated vehicular homicide and two counts of vehicular assault. Taylor appealed, arguing that the state failed to prove his conduct was reckless. Based on evidence that

Taylor was previously driving erratically, that he approached an intersection of stopped vehicles at 50 to 60 m.p.h. and failed to brake until impact, we reject Taylor's argument and affirm.

{¶2} On December 21, 2007, Charles Keith was driving a red Jeep Commander (SUV) eastbound on St. Rt. 32. Keith's mother-in-law, Nellie Scheid, was riding in the front passenger seat, and Keith's wife, Janet, was riding in the back seat area. They stopped for a traffic light at the intersection of St. Rt. 32 and Eastwood Road in Brown County.

{¶3} Taylor's truck, also described as a single-unit or straight truck, was eastbound on St. Rt. 32 around 1:00 p.m. He began work that day at 6:30 a.m. Taylor was trying to locate a destination in Clermont County. He was unfamiliar with the area and realized after crossing into Brown County that he had missed his turn.

{¶4} James Bettle was driving eastbound on St. Rt. 32 behind what he thought was an "18-wheeler." Bettle called 911 and reported that he was staying some distance behind this white truck that was swerving over the line and moving back and forth on both sides of the two eastbound lanes.

{¶5} According to Bettle, a large truck blew its horn at the white truck when it attempted to pass and it was forced "clean over into the inside lane in the grass" by the truck.

{¶6} Bettle was attempting to get closer to the truck to obtain a license number when he told the 911 operator that the white truck "plowed into" someone. Bettle saw a red vehicle shoot left across the large intersection and onto northbound Eastwood Road. The white truck swerved to its left and stopped. He did not notice any brake lights from the truck until after the impact. Bettle ran over to the truck after

the crash and identified Taylor as the individual behind the wheel.

{¶7} Jerry Brothers was also eastbound on St. Rt. 32 when he saw a truck drifting between the right and left lanes of eastbound St. Rt. 32 some distance before the crash. Audrey Yazell also saw the truck, which she described as swerving between the lanes. Both did not believe it was safe to drive around the truck.

{¶8} As Yazell approached the intersection with Eastwood Road, she observed the traffic light turn from red to green. She said that "no one had a chance to get off their brakes," before the truck that had been weaving hit the back of a maroon vehicle in the right lane. Yazell said the truck shoved the maroon vehicle toward the center of the road. The truck lost momentum and stopped near the eastbound left turn lane, but the maroon vehicle continued across oncoming traffic lanes and came to a stop on Eastwood Road.

{¶9} The three witnesses who testified about Taylor's driving estimated his speed as he drove on St. Rt. 32 in the range of 50 to 60 m.p.h. They gave their estimates by gauging their vehicle speed and whether they were gaining or losing ground on the truck.

{¶10} Sgt. Charles Scales from the Ohio State Highway Patrol testified about the procedures, equipment, and software programs used to assist in reconstruction of this accident. He was the second officer to identify a series of photographs taken at the scene of the vehicles involved. He described how the photographs accurately depicted the "crush depth" of damage to the SUV.

{¶11} Sgt. Scales offered his opinion that the truck's brakes were applied "just about the same time it was colliding with the red Jeep Commander." "And when I say about the same time, it could have been just after that."

{¶12} Sgt. Scales said the truck forced the SUV forward into the back of a mini-van and forced the mini-van into the back of a semi-truck stopped at the traffic light. Sgt. Scales indicated that there was a "secondary collision" between Taylor's truck and the SUV, "which ultimately maintained...the speed transfer to the Jeep Commander, forced it across 32 through the median, across the other side and off onto Eastwood Road."

{¶13} Sgt. Scales acknowledged that estimating the speed of Taylor's truck was difficult in this case, but indicated that his estimate was "in the ballpark" of 60 miles per hour. He said the speed limit on that portion of St. Rt. 32 was 60 m.p.h. for cars and 55 m.p.h. for trucks.

{¶14} Taylor's case was tried to the bench and he was convicted of recklessly causing the death of the SUV's rear-seat passenger while operating a motor vehicle,¹ and recklessly causing serious physical harm to the driver and front-seat passenger.²

{¶15} Taylor claims in his single assignment of error that there was insufficient evidence to support his conviction on all three counts because the state failed to prove that he acted recklessly. Taylor argues that the reckless finding was in error when he was not impaired by drugs or alcohol, and he had no knowledge of any risk that might have caused the accident.

{¶16} According to the Ohio Supreme Court in *State v. Hancock*, when reviewing a challenge to the sufficiency of the evidence to support a criminal conviction, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the

1. R.C. 2903.06(A)(2)(a).

2. R.C. 2903.08(A)(2)(b).

essential elements of the crime beyond a reasonable doubt.³

{¶17} Taylor testified at trial that he had been driving tractor-trailers for 20 years without an accident. He said he was driving safely, was not drowsy, and not under the influence of drugs or alcohol. He was unfamiliar with the area and missed his turn, but was not driving distracted. Taylor thought he slowed to 35 m.p.h. as he approached the intersection with Eastwood Road. He recalled seeing four to six vehicles backed up from the intersection and "stood" on his brakes when he realized everyone was stopped. Taylor did not believe he was driving erratically.

{¶18} Taylor suggested in his testimony that he may have suffered a heart attack, which would explain any erratic driving. He acknowledged that no one could say when he had the heart attack. However, Taylor said he was taking high blood pressure medicine at the time and his physician recently indicated that Taylor had suffered some kind of attack before 2009.

{¶19} The 2007 version of the Ohio Revised Code stated that "a person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature."⁴ "A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist."⁵ A "risk" means a significant possibility, as contrasted with a remote possibility, that a certain result may occur or

3. *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶34.

4. R.C. 2901.22(C).

5. *Id.*

that certain circumstances may exist.⁶

{¶20} While we could locate no factually similar cases, we find support for the recklessness determination from *State v. Hall*, a case from the Second Appellate District.⁷ In *Hall*, a finding of recklessness was upheld when a truck, while merging onto an interstate, moved into the left-most lane. This maneuver forced a vehicle in the left lane into the median, and that vehicle went out of control and collided with oncoming traffic.⁸

{¶21} The *Hall* court found the defendant did not check for traffic before merging directly into the left lane. Based on this finding, the Second District held that the defendant, acting with heedless indifference to the consequences, perversely disregarded a known risk that his conduct was likely to cause a certain result.⁹

{¶22} We conclude from a review of the evidence in Taylor's case that the state presented sufficient evidence for the trial court to find that Taylor recklessly caused serious physical harm and a death while operating a motor vehicle.

{¶23} Taylor was an experienced truck driver familiar with the limitations of a large truck and the likelihood of a serious result from unsafe driving. Taylor approached an intersection of stopped vehicles at a speed in excess of 50 m.p.h. and only applied his brakes at the time of impact with the SUV. The observations of three witnesses established that Taylor was operating his truck in an unsafe manner before he "plowed" into the SUV.

6. R.C. 2901.01(A)(7).

7. *State v. Hall*, Montgomery App. No. 19671, 2004-Ohio-663.

8. *Id.* at ¶3.

9. *Id.* at ¶43-44.

{¶24} We reject Taylor's argument that his conviction should be overturned because the state failed to prove that his conduct was reckless. Sufficient evidence was admitted to find Taylor guilty of the offenses beyond a reasonable doubt. Taylor's single assignment of error is overruled.

{¶25} The sentencing entry indicates that Taylor was found guilty of two counts of aggravated vehicular assault, felonies of the fourth degree. The language of Taylor's indictment is consistent with two fourth-degree felony counts of vehicular assault. According to the applicable statutes, when a defendant is charged with recklessly causing serious physical harm while operating a motor vehicle, the offense is vehicular assault.¹⁰ The judgment entry should be modified to reflect that Taylor was convicted of two counts of vehicular assault, as well as aggravated vehicular homicide.

{¶26} Judgment affirmed as modified.

YOUNG, P.J., and HENDRICKSON, J., concur.

10. R.C. 2903.08(A)(2)(b) and R.C. 2903.08(C)(1).