

**IN THE COURT OF APPEALS  
FIRST APPELLATE DISTRICT OF OHIO  
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-190528
	:	TRIAL NO. C-19TRD-7903B
Plaintiff-Appellee,	:	
	:	<i>OPINION.</i>
vs.	:	
ALEXANDRA RAGONESI,	:	
	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Municipal Court

Judgment Appealed From Is: Reversed and Appellant Discharged

Date of Judgment Entry on Appeal: November 18, 2020

*Joseph T. Deters*, Hamilton County Prosecuting Attorney, and *Adam Tieger*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

*Ragonesi Law Firm, LLC*, and *Christopher Ragonesi*, for Defendant-Appellant.

**WINKLER, Judge.**

{¶1} Following a bench trial, defendant-appellant Alexandra Ragonesi was convicted in the Hamilton County Municipal Court of failing to stop after an accident under R.C. 4549.02. She now appeals that conviction. She presents a single assignment of error for review, in which she contends that the evidence was insufficient to support her conviction. We find merit in this assignment of error, and we, therefore, reverse her conviction and order her discharged.

{¶2} The state's evidence showed that in the early morning hours of February 17, 2019, Robin McGinley, a Lyft driver, turned onto Birney Lane and saw taillights "off the left-hand side" of the road. She pulled over, got out of her car, and walked over to where she had seen the taillights. She saw that the front of a car had hit a pole and that it was smoking. She was afraid it was going to catch on fire.

{¶3} McGinley did not see anyone around. The car was running, and it was still in drive. She reached in, put the vehicle in park, and turned off the car. She looked around for a phone, but did not see anyone. She also looked around to see if she could "find an individual because I figured someone had to be hurt." She did not find any one. She then called the police.

{¶4} McGinley waited at the scene until the police came. She parked her car in the left lane in front of the damaged car, with her hazard lights on "so that someone coming up over the hill would be able to see that there was something there." She said that the car was "partially on the road," and she was afraid that "oncoming traffic would have smacked the car."

{¶5} Hamilton County Sheriff Deputy Matthew Mistler responded to the scene of the accident. When he arrived, he saw "a car wrapped around a telephone

pole.” The car was resting halfway in the main roadway. It was totaled, and its airbag had been deployed. Deputy Mistler also noted that the pole, which was about a foot off the road, “had a pretty good chunk taken out of the side.” Based on the evidence at the scene, he determined that the driver had failed to stop at a stop sign, had lost control of the car, had gone off the roadway, and had struck the telephone pole.

{¶6} Deputy Mistler entered the car’s license plate number into his computer and discovered that Ragonesi was the registered owner of the vehicle. He also called for backup to assist in the search for the driver, whom he thought may have been seriously injured.

{¶7} Corporal Ryan Wolf of the Hamilton County Sheriff’s Department arrived at the scene to assist Deputy Mistler. He observed “a vehicle that was crashed, disabled, off the left side of the road.” He and Mistler went to the address listed on the vehicle registration, but Ragonesi was not present at that address.

{¶8} Later, Ragonesi’s parents contacted Deputy Mistler. Two-and-a-half hours after the accident, Deputy Mistler met with Ragonesi and her parents in a parking lot three blocks away from the accident scene. Ragonesi’s parents would not allow Deputy Mistler to speak to Ragonesi. Ragonesi’s mother told him that she and her daughter would go to the police station the next day “to resolve everything.”

{¶9} The following day, Ragonesi arrived at the station and spoke to Deputy Mistler. She admitted that she had been driving the vehicle that had been in the accident the previous night. Deputy Mistler then cited her for leaving the scene of the accident under R.C. 4549.02.

{¶10} After the state presented its evidence, Ragonesi moved for a judgment of acquittal under Crim.R. 29(A), which the trial court overruled. Ragonesi then

presented the testimony of Terri Friedrich who lived on Birney Lane. Friedrich testified that she and her husband heard Ragonesi's cry for help. They found her next to her car, crying, and brought her into their house to get her out of the bitter cold. Friedrich went outside to try to find Ragonesi's phone, and met an Uber or Lyft driver who had already called the police. She went back in the house when she couldn't find the phone, and she, her husband, and Ragonesi waited for the police to arrive.

{¶11} Because it was so cold, they stayed in the kitchen, which was in the back of the house. Consequently, they did not realize that the police had come and gone, and the car had been towed. The Friedrichs were able to contact Ragonesi's friend, who called Ragonesi's mother, who came and got her.

{¶12} In her sole assignment of error, Ragonesi contends that the trial court erred in denying her Crim.R. 29 motion for a judgment of acquittal and in finding her guilty of violating R.C. 4549.02 because the evidence was insufficient to support the conviction. Ragonesi argues that the state failed to prove that she struck a person or another vehicle that was on a public road. She argues that evidence showing that she struck an object on private property is insufficient to support the conviction.

{¶13} We would note that R.C. 4549.02 has been amended a number of times, most recently in 2016. Ragonesi's argument that the state had to show that she struck a person or another vehicle is based on previous versions of the statute. It now refers to collisions with persons or property, but the requirement that the collision be on a public road or highway remains. We agree that the evidence was insufficient to support the conviction because the state failed to prove that the collision occurred on a public road or highway.

{¶14} The standard of review for the denial of a Crim.R. 29(A) motion for a judgment of acquittal is the same standard for a challenge to the sufficiency of the evidence. *State v. Tenace*, 109 Ohio St.3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37; *State v. Pope*, 1st Dist. Hamilton No. C-180587, 2019-Ohio-3599, ¶ 3. The relevant inquiry, when reviewing the sufficiency of the evidence, 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 offense proved beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus; *State v. Hackney*, 1st Dist. Hamilton No. C-150375, 2016-Ohio-4609, ¶ 29.

{¶15} R.C. 4549.02(A)(1) provides

In the case of a motor vehicle accident or collision with persons or property on a public road or highway, the operator of the motor vehicle, having knowledge of the accident or collision, immediately shall stop the operator's motor vehicle at the scene of the accident or collision. The operator shall remain at the scene of the accident or collision until the operator has given the operator's name and address and, if the 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 all of the following:

- (a) Any person injured in the accident or collision;
- (b) The operator, occupant, owner, or attendant of any motor vehicle damaged in the accident or collision;
- (c) The police officer at the scene of the accident or collision.

{¶16} Ragonesi relies on *State v. Clark*, 5th Dist. Stark No. 7544, 1988 WL 142297 (Dec. 28, 1988). In that case, the defendant’s vehicle skidded down a street and struck a utility pole. Police found the defendant’s vehicle in a private parking lot. The court held that the evidence was insufficient to support the defendant’s conviction under R.C. 4549.02 because no evidence supported “the State’s assertion that any property ‘upon any of the public roads or highways’ was damaged pursuant to R.C. 4549.02.” *Id.* at \*1.

{¶17} Similarly, in *State v. Cutlip*, 2018-Ohio-726, 106 N.E.3d 1263 (9th Dist.), the court reversed the defendant’s conviction for violating a municipal ordinance with language similar to R.C. 4549.02. The defendant lost control of his vehicle, drove off the road, and crashed into a mailbox, before landing upside down in a ditch. The municipal court found that he violated the ordinance because he had lost control of his vehicle while on a public road, and only then proceeded off the roadway onto private property.

{¶18} The court of appeals reversed the conviction stating, Under the plain language of the ordinance, the accident or collision must occur on a public roadway. In this case, the only collisions occurred off the roadway when Mr. Cutlip crashed into mailbox and a ditch. Although not every “accident” requires a collision, Mr. Cutlip’s mere failure to control the vehicle on the roadway did not constitute an accident.

*Id.* at ¶ 9.

{¶19} The court added that “[o]ther Ohio district courts, construing Revised Code Section 4549.02(A), which is identical to the ordinance, are in agreement that the accident or collision must occur on a public road or highway.” *Id.* at ¶ 10. *Accord*

*State v. Teeple*, 3d Dist. Seneca No. 13-17-28, 2018-Ohio-1767 (defendant went off the road and hit a sign); *State v. Frankart*, 3d Dist. Seneca No. 13-15-03, 2015-Ohio-2737 (defendant's vehicle collided with a utility pole, pole broke over private property, vehicle left the scene); *State v. Spence*, 12th Dist. Clermont No. CA2002-Ohio-012, 2002-Ohio-3600 (driver lost control and hit a utility pole adjacent to highway). Compare *State v. Pieronek*, 2019-Ohio-4305, 148 N.E.2d 75 (9th Dist.) (defendant was properly found guilty of violating R.C. 4549.02 when a truck he was driving on a public roadway collided with overhead power lines).

{¶20} In this case, the state failed to show that the collision with persons or property occurred on a public road or highway. The evidence unequivocally showed that Ragonesi's car collided with a telephone pole off of the side of the roadway. The fact that part of the car remained in the roadway is irrelevant. Ragonesi was simply charged under the wrong statute, and the state never sought to amend the complaint. See *State v. Muchmore*, 1st Dist. Hamilton No. C-140056, 2014-Ohio-5096, ¶ 9-20.

{¶21} Because the state failed to prove an essential element of the offense, the evidence was insufficient to support Ragonesi's conviction for violating R.C. 4549.02. Consequently, we sustain Ragonesi's assignment of error, and we reverse her conviction and order her discharged.

Judgment reversed and appellant discharged.

**MOCK, P.J.**, and **ZAYAS, J.**, concur.

Please note:

The court has recorded its own entry this date.