

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

STATE OF OHIO,	:	APPEAL NO. C-080274
Plaintiff-Appellee,	:	TRIAL NO. C-07TRC-43881A
vs.	:	<i>JUDGMENT ENTRY.</i>
DAVY JORDAN, III,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

On August 10, 2007, Officer Justin Dishion of the Hamilton County Sheriff's Department received a dispatch for a possibly impaired driver heading south on I-71. Dishion received a second dispatch for a disabled vehicle on southbound I-71. Dishion testified that both dispatches involved the same vehicle, which Dishion described as a "smaller pickup truck." When Dishion arrived at the scene, Davy Jordan was trying to change the tires on his truck. Dishion testified that "two or three" of the truck's tires were flat. The keys were in the ignition. Dishion stated on direct examination that he could not recall whether the truck was running, but later testified on cross-examination that the truck was not running. Dishion stated that Jordan smelled of an alcoholic beverage and was "obviously intoxicated." Jordan told Dishion that he had been driving the truck. Jordan was unable to perform field-sobriety tests because he could

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

not stand without leaning against the truck. Jordan failed the horizontal gaze nystagmus test.

While in Dishion's cruiser, Jordan admitted that he had been drinking at a Mason, Ohio, pub and had consumed "about a six pack." When Dishion asked Jordan if he was intoxicated, Jordan answered, "Yeah, I would say." A breathalyzer test resulted in a deficient sample. Jordan was convicted of operating a motor vehicle while under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a).

Jordan's sole assignment of error, alleging that his conviction was based upon insufficient evidence because the state failed to prove that he had "operated" his vehicle within the meaning of R.C. 4511.19(A)(1)(a) while under the influence of alcohol, is overruled. Jordan had driven his truck to the scene. Jordan admitted to Dishion that he had driven the truck, that he had been drinking, and that he was intoxicated. Jordan was impaired to the point that he was unable to perform field-sobriety tests. Jordan's defense that the truck was "inoperable" failed because he admitted that he had operated the truck before it became disabled.<sup>2</sup> The evidence was sufficient to prove that Jordan had "operated" his vehicle while under the influence of alcohol.

Therefore, the judgment of the trial court is affirmed. Further, a certified copy of this Judgment Entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**SUNDERMANN, P.J., PAINTER and DINKELACKER, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on \_\_\_\_\_

per order of the Court \_\_\_\_\_.

Presiding Judge

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<sup>2</sup> See *State v. Cooper* (Mar. 10, 2000), 1st Dist. No. C-990370.