

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

STATE OF OHIO,	:	APPEAL NO. C-090852
Plaintiff-Appellee,	:	TRIAL NO. 09TRD-52943
vs.	:	<i>JUDGMENT ENTRY.</i>
RANDY BURNETT,	:	
Defendant-Appellant.	:	

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

Defendant-appellant Randy Burnett appeals from his conviction for operating an unsafe vehicle,² challenging the weight and the sufficiency of the evidence used to obtain his conviction. We reverse.

In October 2009, Burnett was driving a tractor-trailer on northbound Interstate 75, hauling a Komatsu backhoe on the trailer, when an officer pulled him over. The Komatsu backhoe had a shovel in the front and a digging accessory attached to the back. The officer noted that the four axles of the backhoe were secured with chains but that, under the Federal Motor Carrier Rules and Regulations (“the FMCRR”), the hydraulic accessories were not “secured” to the trailer and that Burnett was therefore operating a vehicle in an unsafe manner.

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

² R.C. 4513.02(A).

R.C. 4513.02(A) prohibits a person from driving or moving a vehicle that is in such an unsafe condition that it endangers another person. Part 393.130 of the FMCRR requires that “accessory equipment, such as hydraulic shovels, must be completely lowered and secured to the vehicle.” During the bench trial, the citing officer noted that because Burnett had not used straps over the accessories, they were not properly secured to the trailer. The officer further testified that after he had cited Burnett, he required him to chain the accessories to the trailer before leaving the scene.

In his defense, Burnett testified that he had been hauling heavy equipment for 20 to 30 years, that the accessories were secured to the vehicle (albeit not with straps) by a locking-pin assembly, and that the citing officer would not look underneath the accessories to determine whether they were actually secured to the trailer. According to Burnett, the trailer had clevises (locking devices) on which the hydraulic shovel was lowered and pinned.

The state did not rebut Burnett’s testimony that he had secured the hydraulic accessories by using a pin lock inserted through a clevis; it merely presented additional testimony that straps or chains had not been placed over the accessories.

The FMCRR does not require straps or chains to be placed over hydraulic accessories. It merely requires that accessories be lowered and secured, and it does not specify a preferred method for securing accessories. Burnett testified that the accessories were lowered and secured with locking pins and clevises.

Because the hydraulic accessories were properly lowered and secured, Burnett was not operating an unsafe vehicle. The evidence was insufficient to support the conviction.

OHIO FIRST DISTRICT COURT OF APPEALS

Because the conviction was not supported by sufficient evidence, we reverse the trial court's judgment and discharge Burnett from further prosecution.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on September 10, 2010

per order of the Court _____.

Presiding Judge