

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

STATE OF OHIO,	:	APPEAL NO. C-100440
	:	TRIAL NO. B-0906001
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
TIMOTHY INGRAM,	:	
Defendant-Appellant.	:	

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

In five assignments of error, defendant-appellant Timothy Ingram appeals his convictions for aggravated vehicular homicide and aggravated vehicular assault. We affirm.

On August 29, 2009, at 1:40 a.m., Ingram was driving his car and attempted to enter I-275. At the time, he was under a lifetime driver's license suspension from Indiana. Instead of using the entry ramp, which was under construction, Ingram drove up the exit ramp. He passed several "Wrong Way" signs and proceeded north on the southbound portion of the highway. He entered the center lane of travel and, shortly thereafter, struck a car driven by Dale Smith and occupied by Velma Johnson. As a result of the accident, Smith died and Johnson received significant injuries.

While at the scene of the accident, Ingram admitted that he had been drinking prior to the accident. Deputies found an empty beer bottle and several empty 16-ounce beer cups that were still wet in Ingram's vehicle. Ingram was taken to the

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 11.1.1.

hospital, where he was read his *Miranda*<sup>2</sup> rights. He told deputies that he had consumed a six-pack of beer and taken pain medication prior to the accident. He also said that he drank and took drugs on a daily basis. Ingram refused to submit to a blood test and deputies obtained a warrant. The amount of blood drawn was not enough to conduct both an alcohol and a drug test, so deputies opted for an alcohol test. The blood tested at slightly under the legal limit.

Ingram was indicted on two counts of aggravated vehicular homicide<sup>3</sup> and two counts of vehicular assault.<sup>4</sup> He proceeded to trial without a jury. He was convicted of one count of aggravated vehicular homicide<sup>5</sup> and sentenced to prison for eight years. He was also convicted of one count of vehicular assault<sup>6</sup> and sentenced to prison for five years. The trial court ordered Ingram to serve the sentences consecutively for a total of 13 years in prison.

In his first assignment of error, Ingram claims that his convictions were based upon insufficient evidence. In his second, he claims that his convictions were against the manifest weight of the evidence. In his third, he claims that the trial court improperly denied his motion for an acquittal. We address the assignments together.

The standards for determining whether a conviction was based upon insufficient evidence or was against the manifest weight of the evidence are well established. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.<sup>7</sup> The standard of review for the denial of a Crim.R. 29(A) motion to acquit is

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<sup>2</sup> *Miranda v. Arizona* (1966), 384 U.S. 436, 86 S.Ct. 1602.

<sup>3</sup> R.C. 2903.06(A)(1)(b), R.C. 2903.06(A)(2).

<sup>4</sup> R.C. 2903.08(A)(1)(a), R.C. 2903.08(A)(2)(b).

<sup>5</sup> R.C. 2903.06(A)(2).

<sup>6</sup> R.C. 2903.08(A)(2)(b).

<sup>7</sup> See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

the same as the standard of review for the sufficiency of the evidence.<sup>8</sup> On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice in finding the defendant guilty.<sup>9</sup>

Ingram was convicted of aggravated vehicular homicide, which required that the state show that he had operated his vehicle in a criminally reckless manner and that someone had died as a proximate result of his recklessness.<sup>10</sup> He was also convicted of vehicular assault, which required a showing that he had recklessly caused serious physical harm to another person while operating a motor vehicle.<sup>11</sup> Ingram argues that his driving did not rise to the level of recklessness and that his convictions were therefore improper. We disagree.

Ingram was driving while under a lifetime driving suspension from Indiana. He passed several “Wrong Way” signs as he entered the interstate highway going in the wrong direction. Once he entered the highway, it should have been apparent that he was going the wrong way when the other half of the highway was on the wrong side of his vehicle. Instead of immediately attempting to pull to the side, Ingram moved to the center lane, where he struck the vehicle in which Smith was killed and Johnson was injured. Based upon the foregoing, there was sufficient evidence to convict Ingram, and we cannot conclude that the trial court clearly lost its way and created a manifest miscarriage of justice in finding him guilty. Ingram’s first three assignments of error are overruled.

In his fourth assignment of error, Ingram claims that the trial court erred when it imposed maximum, consecutive sentences. While he concedes that the sentences fall within the statutory range, he claims that the imposition of the

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<sup>8</sup> *State v. McClendon*, 1st Dist. No. C-050274, 2006-Ohio-1846, at ¶9.

<sup>9</sup> *Thompkins*, supra, at 387.

<sup>10</sup> R.C. 2903.06(A)(2).

<sup>11</sup> R.C. 2903.08(A)(2)(b).

maximum penalty was an abuse of discretion. We disagree. Ingram had served four previous prison terms in Indiana for drunken-driving offenses and for driving while under a lifetime driver's license suspension. Johnson told the trial court that she was so badly injured that she would not be able to work again and that she had lost Smith, her fiancé, in the crash. The trial court did not abuse its discretion by imposing maximum sentences.

Ingram also claims that the trial court erred when it failed to make the findings required by R.C. 2929.14(E)(4) before imposing consecutive sentences. He argues that such findings are now required after the decision of the United States Supreme Court in *Oregon v. Ice*.<sup>12</sup>

The Ohio Supreme Court had held that R.C. 2929.14(E)(4) was unconstitutional in *State v. Foster*.<sup>13</sup> In a recent decision, the court determined that *Oregon v. Ice* did not revive the provision.<sup>14</sup> Trial courts are not obligated to engage in judicial fact-finding prior to imposing consecutive sentences unless the General Assembly enacts new legislation requiring that such findings be made.<sup>15</sup> Therefore, the trial court did not err in imposing consecutive sentences without applying R.C. 2929.14(E).<sup>16</sup>

Ingram's fourth assignment of error is overruled.

In his final assignment of error, Ingram argues that the trial court erred when it denied his motion to suppress the statements he had made to the deputies when he was at the hospital, because he had just been in an accident, he might have been

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<sup>12</sup> (2009), 555 U.S. 160, 129 S.Ct. 711.

<sup>13</sup> *State v. Foster*, 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

<sup>14</sup> *State v. Hodge*, 128 Ohio St.3d 1, 2010-Ohio-6320, 941 N.E.2d 768, paragraph two of the syllabus.

<sup>15</sup> *Id.* at paragraph three of the syllabus.

<sup>16</sup> See *id.* at ¶40.

under medication, and he had failed to sign the *Miranda*<sup>17</sup> form for some reason. We disagree.

The record indicates that Ingram was not in police custody at the time he was being questioned. He had not been arrested, and the deputies only engaged Ingram intermittently to the extent that hospital personnel would allow them. In fact, one of the deputies testified on cross-examination that he was not worried about Ingram leaving the hospital because he “figured when [Ingram] was done he would be free to go.” Thus, Ingram’s *Miranda* rights were not triggered.<sup>18</sup> The fact that his rights were read to him, regardless of whether he signed the form, does not change this result.

Even if Ingram was in custody, the record supports the conclusion that Ingram understood his rights and voluntarily waived them. Two deputies testified that they spoke to him and that he understood what was happening around him, that he gave appropriate answers to questions, and that he was otherwise lucid. The deputy that read the *Miranda* rights to Ingram testified that Ingram understood what was read to him and that he voluntarily waived his rights and spoke to the deputies. Although the deputy could not remember specifically why Ingram had not signed the waiver form, he believed that it had to do with his being treated at the time. Other than conjecture in his brief regarding his injuries or the possibility that he might have been medicated, there is no evidence in the record that Ingram’s ability to understand and waive his rights was impaired to such a degree that his waiver was invalid.

Ingram’s fifth assignment of error is overruled.

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<sup>17</sup> *Miranda v. Arizona* (1966), 384 U.S. 436, 86 S.Ct. 1602.

<sup>18</sup> See, e.g., *State v. Rice*, 1st Dist. No. C-090071, C-090072, C-090073, 2009-Ohio-6332, at ¶¶11-15.

**OHIO FIRST DISTRICT COURT OF APPEALS**

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Having considered and overruled each of Ingram's five assignments of error, we affirm the judgment of the trial court.

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.

**DINKELACKER, P.J., HILDEBRANDT and FISCHER, JJ.**

To the Clerk:

Enter upon the Journal of the court on May 31, 2011

per order of the Court \_\_\_\_\_  
Presiding Judge

