

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

STATE OF OHIO,	:	APPEAL NO. C-100524
	:	TRIAL NO. B-0908788
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
GABRIEL L. LOWE,	:	
	:	
Defendant-Appellant.	:	

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

Defendant-appellant Gabriel L. Lowe appeals his convictions and sentences for one count of aggravated vehicular homicide² and three counts of aggravated vehicular assault.³ We affirm.

In his first assignment of error, Lowe argues that the trial court improperly allowed the state's expert to testify regarding the results of a drug test. But Lowe was not convicted of the aggravated-vehicular-homicide or aggravated-vehicular-assault counts alleging impaired operation of his vehicle.⁴ Since he was not convicted of the impairment counts, the admission of the testimony was harmless. His first assignment of error is overruled.

In his second assignment of error, Lowe argues that he was denied effective assistance of counsel. We have reviewed the conduct of trial counsel in light of Lowe's argument. Counsel did not violate the duties owed to his client, and nothing done by

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

² R.C. 2903.06(A)(2)(a).

³ R.C. 2903.08(A)(2)(b).

⁴ Compare R.C. 2903.06(A)(1)(a) and 2903.08(A)(1)(a) (the "impairment" subsections) with R.C. 2903.06(A)(2)(a) and 2903.08(A)(2)(b) (the "reckless" subsections).

counsel prejudiced Lowe.⁵ Since counsel engaged in sound trial strategy, we overrule Lowe's second assignment of error.

In his third assignment of error, Lowe argues that the trial court erred by not properly instructing the jury on the meaning of "heedless" and "perversely" as used in the definition of "reckless." The trial court properly instructed the jury to give the words their ordinary and common meanings.⁶ The third assignment of error is overruled.

In his fourth assignment of error, Lowe argues that the evidence was insufficient to support his convictions and that they were against the manifest weight of the evidence. Several motorists testified that Lowe had been driving extremely dangerously moments before the crash. On the other hand, Lowe gave several inconsistent accounts of the events that led to the death of Shawna Ishmael and the injuries of Larry Jones, Rosalyn Jones, and Sterling Waller. We have reviewed the entire record and conclude that the state presented adequate evidence on each element of the offenses for which Lowe was convicted.⁷ And the trier of fact did not lose its way and create a manifest miscarriage of justice.⁸ We overrule Lowe's fourth assignment of error.

In his final assignment of error, Lowe argues that the trial court improperly sentenced him without considering the purposes and principles of sentencing. There is no indication in the record that the court failed to consider the applicable statutory sentencing factors, and the court imposed a sentence within the statutory range.⁹ As a result, Lowe's sentence is proper and we overrule his fifth assignment of error.

Having considered each of Lowe's assignments of error, we affirm the judgment of the trial court.

⁵ See *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052.

⁶ *State v. Mahoney* (1986), 34 Ohio App.3d 114, 120, 517 N.E.2d 957

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

⁸ See *id.* at 387.

⁹ See *State v. Nelson*, 172 Ohio App.3d 419, 2007-Ohio-3459, 875 N.E.2d 137; R.C. 2929.28.

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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., SUNDERMANN and HENDON, JJ.

To the Clerk:

Enter upon the Journal of the Court on July 27, 2011

per order of the Court _____.

Presiding Judge

