IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NOS. C-180490
		C-180491
Plaintiff-Appellee,	:	C-180492
		TRIAL NOS. 17TRC-42369A
vs.	:	17TRC-42369B
		17TRC-42369C
JASON FEARS,	:	
		JUDGMENT ENTRY.
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Following a bench trial, defendant-appellant Jason Fears was found guilty of operation of a motor vehicle without reasonable control in violation of R.C. 4511.202, failure to stop after an accident in violation of R.C. 4549.021, and operating a vehicle while under the influence of drugs or alcohol ("OVI") in violation of R.C. 4511.19(A)(1)(a). He was sentenced as appears of record. Fears filed a notice of appeal for each conviction, which we consolidated for review. Fears's sentences were stayed pending his appeals.

In his appellate brief, Fears notified this court that he is no longer pursing his appeal for the reasonable-control conviction. Therefore, we dismiss the appeal numbered C-180490. We now address his two assignments of error pertaining to his remaining appeals.

In his first assignment of error, Fears contends that his OVI conviction should be reversed because the trial court erred by not allowing Fears's case manager at Talbert House, Theresa Kemper, to testify that Fears had a medical diagnosis of paranoid schizophrenia, and that when he does not take his prescribed medicine (a monthly injection), he becomes uncooperative and paranoid. We disagree.

First, Fears argues that Kemper's proffered testimony that Fears had a medical diagnosis was admissible under Evid.R. 803(4). However, Fears's doctor, not Fears, told Kemper about Fears's medical diagnosis. "Evid.R. 803(4) applies only to statements made by a patient for purposes of that patient's medical diagnosis and treatment. It cannot be used to admit opinion testimony of treating physicians." *Guarino-Wong v. Hosler*, 1st Dist. Hamilton No. C-120453, 2013-Ohio-1625, ¶ 10.

Next, Fears argues that it was error to exclude Kemper's testimony that he becomes uncooperative and paranoid when he has missed a monthly injection. He contends that this testimony would have provided an alternative explanation for his conduct on the night that he was arrested for OVI. However, after reviewing the record, we cannot say that the trial court abused its discretion in so ruling because the exclusion of the proffered testimony did not affect Fears's substantial rights. *See* Evid.R. 103(A). Even if the excluded testimony had been admitted, that evidence would not negate the proof of Fears's guilt. The police officers investigating Fears for OVI testified that he had an odor of an alcoholic beverage emanating from him, that he had slow speech and mannerisms, confusion, and that he exhibited signs of impairment on the field-sobriety tests. Further, Fears admitted to drinking two beers that night, narrowly avoiding an accident with another car, running a red light and crashing into a utility pole. Fears also refused a urine test because he "had smoked marijuana." None of Kemper's testimony was going to contradict any of this

evidence. Kemper was not going to testify that any of those signs of impairment testified to by the officers were caused by Fears missing his monthly injection. Accordingly, we do not agree that Kemper's proffered testimony would have provided an alternative explanation to Fears's conduct that night.

Because the trial court did not abuse its discretion in excluding Kemper's testimony, we overrule the first assignment of error. *See State v. Salaam*, 1st Dist. Hamilton Nos. C-150092 and C-150099, 2015-Ohio-4552, ¶ 6 (we review a trial court's decision to admit or exclude evidence for an abuse of discretion).

In his second assignment of error, Fears contests the sufficiency of the evidence underlying his conviction for failure to stop in violation of R.C. 4549.021. At trial, the state argued that Fears had failed to stop his motor vehicle after hitting a utility pole, which was attached to land adjacent to a public roadway, and then failed to report the accident.

In reviewing a record for sufficiency, "the relevant inquiry 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 crime proven beyond a reasonable doubt." *State v. Monroe*, 105 Ohio St.3d 384, 2005-Ohio-2282, 827 N.E.2d 285, ¶ 47, quoting *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

R.C. 4549.021(A)(1) provides in relevant part that "[i]n the case of a motor vehicle accident or collision resulting in injury or damage to persons or property on any public or private property *other than a public road or highway*, the operator of the motor vehicle * * * shall stop at the scene of the accident [and] [u]pon request of any person who is injured * * * or any other person, the operator shall give that person the operator's name and address." If the operator of the motor vehicle

involved in the accident or collision does not provide the information specified in R.C. 4549.012(A)(1), then the operator must report the accident to law enforcement within 24 hours of the accident. R.C. 4549.012(A)(2).

Fears argues for the first time on appeal that he was charged under the wrong statute, maintaining that R.C. 4549.021 does not apply to accidents involving property attached to land adjacent to a public road, but seemingly only applies to accidents involving two or more motor vehicles or a motor vehicle and a pedestrian. He contends, instead, that he should have been charged under R.C. 4549.03, which applies to damage to property on or adjacent to a public road. *See State v. Muchmore*, 1st Dist. Hamilton No. C-140056, 2014-Ohio-5096, ¶ 12. Unfortunately, because Fears did not raise this issue below or object to being improperly charged in the complaint, he has waived this issue on appeal. *See* Crim.R. 12(C)(2) and (H); *State ex rel. Bevins v. Cooper*, 138 Ohio St.3d 275, 2014-Ohio-544, 6 N.E.3d 33, ¶ 8.

Next, Fears argues, that even if he was properly charged under R.C. 4549.021, the state did not prove that he had failed to stop after crashing into the utility pole. We disagree. Although police officers did not personally observe the accident, there was sufficient circumstantial evidence presented to demonstrate that Fears did not stop at the scene of the accident. *See State v. Durr*, 58 Ohio St.3d 865, 568 N.E.2d 674 (1991) (the elements of an offense may be proven by direct evidence, circumstantial evidence, or both); *State v. Franklin*, 62 Ohio St.3d 118, 124, 580 N.E.2d 1 (1991), citing *State v. Nicely*, 39 Ohio St.3d 147, 529 N.E.2d 1236 (1988) (a conviction can be sustained based on circumstantial evidence alone).

Here, Fears admitted he crashed into the utility pole while he was fleeing from people he thought were chasing him. If he was trying to outrun someone, then a trier of fact can reasonably infer that he did not stop after hitting the pole. This

inference is further supported by Fears's admission that after hitting the utility pole, he drove through a red light to continue trying to escape people allegedly chasing him. When he finally did stop at a United Dairy Farmers store, an investigating police officer observed the fresh damage to his car. Viewing these facts in a light most favorable to the state, a trier of fact could reasonably have found that Fears did not stop his vehicle after hitting the utility pole.

Finally, Fear contends that even if this court finds there was sufficient evidence presented to demonstrate that he had not stopped at the scene of the accident, he fulfilled his duty under R.C. 4549.021(A)(2) by reporting the accident to law enforcement within 24 hours of the accident. But Fears did not *voluntarily* report that he had hit a utility pole. Fears only admitted to hitting the pole after police officers questioned him about it. Viewing these facts in a light most favorable to the state, and considering that Fears failed to stop at the scene, the trier of fact could have reasonably inferred that Fears had not intended to report the accident. *See In re D.B.,* 5th Dist. Stark No. 2016CA00189, 2017-Ohio-4174, ¶ 21 (defendant's statements to police in response to questions did not equate to "reporting" the crash). Thus, Fears did not comply with R.C. 4549.021(A)(2).

Because there was sufficient evidence presented to show that Fears failed to stop after hitting the utility pole and then failed to report the accident to law enforcement within a 24-our period, we overrule the second assignment of error.

Accordingly, for the reasons set forth, the judgments of the trial court in the appeals numbered C-180491 and C-180492 are affirmed, and the appeal numbered C-180490 is dismissed.

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.

MOCK, P.J., MYERS and **BERGERON, JJ.**

To the clerk:

Enter upon the journal of the court on January 15, 2020

per order of the court _____.
Presiding Judge