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State of Ohio, Appellee v. Vernie L. Moore, Appellant

Court of Appeals No. F-09-011

COURT OF APPEALS OF OHIO, SIXTH APPELLATE DISTRICT, FULTON  
COUNTY

2010 Ohio 1369; 2010 Ohio App. LEXIS 1155

March 31, 2010, Decided

**PRIOR HISTORY:** [\*\*1]  
Trial Court No. 08TRD03051E.

**DISPOSITION:** JUDGMENT REVERSED.

**COUNSEL:** Scott Haselman, Fulton County  
Prosecuting Attorney, and T. Luke Jones,  
Assistant Prosecuting Attorney, for appellee.

Konrad Kuczak, for appellant.

**JUDGES:** OSOWIK, P.J. Peter M. Handwork,  
J., Mark L. Pietrykowski, J., Thomas J.  
Osowik, P.J., CONCUR.

**OPINION BY:** Thomas J. Osowik

**OPINION**

**DECISION AND JUDGMENT**

OSOWIK, P.J.

[\*P1] This is an appeal from a judgment of the Fulton County Court, Eastern District, which convicted appellant of two Ohio commercial trucking traffic violations, including gross weight overload and a violation of special permit conditions. For the reasons set forth below, this court reverses the judgment of the trial court.

[\*P2] Appellant, Vernie L. Moore, sets forth the following seven assignments of error:

[\*P3] "FIRST ASSIGNMENT OF ERROR. The trial court committed prejudicial error by convicting appellant absent proof beyond a reasonable doubt.

[\*P4] "SECOND ASSIGNMENT OF ERROR. The trial court committed prejudicial error by excluding any mention of Michigan's weight laws.

[\*P5] "THIRD ASSIGNMENT OF ERROR. The trial court committed prejudicial error by not taking judicial notice of *Michigan Statute MCLA § 257.724a*.

[\*P6] "FOURTH ASSIGNMENT OF ERROR. The trial court committed prejudicial [\*\*2] error by failing to instruct the jury how Michigan legal weights are calculated.

[\*P7] "FIFTH ASSIGNMENT OF ERROR. The trial court committed prejudicial error by overruling appellant's *Rule 29* motions.

[\*P8] "SIXTH ASSIGNMENT OF ERROR. The trial court committed prejudicial error by sending Exhibit Z to the jury.

[\*P9] "SEVENTH ASSIGNMENT OF ERROR. The conviction of appellant is contrary to due process of law."

[\*P10] The following undisputed facts are relevant to the issues raised on appeal. On September 11, 2008, appellant was operating an eight-axle commercial tractor-trailer truck combination transporting a load of steel from a Delta, Ohio steel manufacturing facility. Appellant, a commercial truck operator, possessed and was operating under the auspices of an ODOT issued 365-day continuing Michigan Legal Special Hauling Permit.

[\*P11] In order to accommodate Michigan generated commercial trucking commerce in connection to steel manufacturing facilities erected in northwestern Ohio, the Ohio Administrative Code specifically established "Michigan special legal permits" enabling otherwise overweight commercial vehicles to lawfully travel between specified locations in Williams, Fulton or Lucas Counties and the Michigan [\*\*3] border over designated routes. *Ohio Adm.Code 5501:2-1-01(O)*.

[\*P12] These ODOT-issued special hauling permits are explicitly based upon, and governed by, Michigan's weight and axle laws. Those respective Michigan-based traffic weight parameters provide that a gross commercial vehicle weight shall not exceed 154,000 pounds and that axle-weight requirements are inapplicable to lift-axle equipped vehicles when the axles are properly raised, such as when negotiating turns. *Mich.Comp. Laws Ann., Chapter 257.724a*.

[\*P13] On September 11, 2008, appellant was operating a commercial tractor-trailer combination vehicle, under the authority of an ODOT-issued Michigan special hauling permit, transporting a load of steel product away from a Fulton County, Ohio steel complex. In the course of negotiating a right-hand turn onto Rt. 20A and a left-hand turn onto Rt. 109, appellant lifted his vehicle's air axle. The safety necessity of doing so is uncontroverted given both the physical damage otherwise sustained by roadways and the unsafe incursion of the commercial vehicle into other lanes of traffic

that would otherwise occur.

[\*P14] Following the above-referenced traffic turns, appellant was stopped by an Ohio State [\*\*4] Highway Patrol trooper. Appellant was cited for gross overload of Ohio's weight laws and of violating a special permit condition. The permit citation was premised upon appellant's permit noting an eight-axle vehicle while the necessity of appellant lifting the air-axle to safely negotiate turns arguably resulted in appellant operating a seven-axle vehicle at the time of the alleged offenses.

[\*P15] On March 20, 2009, appellant's case proceeded to jury trial. In the course of trial, the court would not take judicial notice of *Mich.Comp.Laws Ann., Chapter 257.724a*, overruled appellant's motion to dismiss, failed to read proposed jury instructions regarding Michigan weight and axle provisions, and sua sponte forwarded an exhibit to the jury pertaining to Ohio's hauling permit regulations. In other words, the court conducted the trial as if Michigan traffic weight and axle laws were not applicable despite the special hauling permit. In conjunction with this, also notable at trial was the citing trooper's unilateral conclusion that appellant's ODOT-issued Michigan special hauling permit was void because, "it was not the right number of the axles."

[\*P16] Following jury trial, appellant was convicted [\*\*5] of both citations. Appellant was fined \$ 1,649 plus court costs. Timely notice of appeal was filed.

[\*P17] In his first assignment of error, appellant asserts that the trial court erred and abused its discretion in convicting appellant. In support, appellant contends that proof of guilt beyond a reasonable doubt was not shown. Appellant argues that no evidence was submitted establishing any violations of Michigan's weight or axle laws which were expressly rendered applicable to appellant at the time of the incident based upon his Michigan special hauling permit.

[\*P18] *Ohio Adm.Code 5501:2-1-01* establishes in relevant part, "Michigan legal permits means a permit granting a special privilege which allows an overweight vehicle for movement between a specified point in Williams, Fulton or Lucas Counties in Ohio and the Michigan border, over prescribed routes. The permitted weight shall be based on the state of Michigan's weight law, with a gross vehicle weight not to exceed one hundred fifty-four thousand pounds, and shall have sufficient number of axles to meet the Michigan weight law." In conjunction with the above, *Mich.Comp.Laws Ann., Chapter 257.724a* establishes in pertinent part, "the axle [\*\*6] weight requirements of this chapter do not apply to a vehicle equipped with lift axles during the period in which axles are raised to negotiate an intersection, driveway, or other turn and until the lift axles are fully engaged after the period of time or the distance necessary to negotiate that intersection, driveway, or other turn."

[\*P19] Sufficiency of the evidence is a question of law as to whether the evidence is legally adequate to support a jury verdict as to all elements of the crime. *State v. Thompkins (1997)*, 78 *Ohio St. 3d* 380, 386, 1997 *Ohio 52*, 678 *N.E.2d* 541. When reviewing the sufficiency of the evidence to support a conviction, an appellate court must determine whether the evidence admitted at trial, if believed, would convince an average person of the party's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *State v. Jenks (1991)*, 61 *Ohio St.3d* 259, 574 *N.E.2d* 492, paragraph two of the syllabus. A conviction that is based on legally insufficient evidence constitutes a denial of due process, and will bar a retrial. *Thompkins, supra*, at 386-387.

[\*P20] [\*\*7] We have carefully reviewed

and considered the record of evidence. The record shows that at the time of the incident appellant was operating with a valid ODOT-issued Michigan special hauling permit. The record shows that appellant was not traveling with a gross vehicle weight in excess of 154,000 pounds. As such, appellant was in conformity with Michigan weight law. The record shows that appellant's actions with respect to lifting the air-axle to safely negotiate turns were likewise in conformity with Michigan law. The record shows that Michigan weight law was explicitly applicable to appellant under *Ohio Adm.Code 5501:2-1-01(O)*.

[\*P21] Appellee's contention that Ohio laws should nevertheless be applied in this matter is fundamentally based upon the conclusion of the trooper that appellant's permit was voided by his action in raising the air-axle while negotiating turns. That conclusion is legally untenable.

[\*P22] Michigan weight laws expressly authorize the lifting of an air-axle to negotiate turns and expressly render inapplicable Michigan weight-axle requirements while the axle(s) is raised. When considering that appellant's actions pursuant to his ODOT-issued Michigan special hauling permit [\*\*8] are explicitly governed by Michigan's weight law pursuant to *Ohio Adm.Code 5501:2-1-01(O)*, we find that one can only conclude that no rational trier of fact could have found appellant guilty beyond a reasonable doubt.

[\*P23] The trooper's unilateral conclusion that appellant's permit was voided given his temporary seven-axle status while negotiating a turn requires a finding that performing an action expressly authorized by Michigan weight law, pursuant to an Ohio-issued hauling permit explicitly controlled by Michigan weight law, voids the very permit controlled by Michigan weight law. Such a conclusion entails circular reasoning and is wholly untenable.

[\*P24] We find that the record shows that

appellant was in conformity with Michigan weight law and operating under a valid Ohio issued Michigan special hauling permit controlled by Michigan weight law at the time of this incident. Wherefore, no rational trier of fact could have found the elements of the offenses charged shown beyond a reasonable doubt. We find appellant's first assignment of error well-taken.

[\*P25] Appellant's third, fourth, fifth, and sixth assignments of error are likewise rooted in the same underlying legal premise that had the trial [\*\*9] court properly examined and applied Michigan weight law, the disputed trial court actions would not have occurred. These assignments respectively assert that the trial court erred in failing to take judicial notice of *Mich.Comp.Laws Ann., Chapter 257.724a*, erred in failing to instruct the jury on Michigan weight calculations, erred in denying appellant's *Crim.R. 29* motion for acquittal, and erred in sua sponte furnishing the jury an exhibit on Ohio permit regulations. On the same basis as was set forth in response to the first assignment of error, we find these assignments of error well-taken.

[\*P26] Based upon the foregoing, we find

that the trial court erred and abused its discretion in convicting appellant of *R.C. 5577.04* and *R.C. 4513.34*. As such, we reverse the conviction and judgment of the trial court and render a judgment of acquittal. Given that the conviction was based upon legally insufficient evidence, due process bars retrial pursuant to *Thompkins*. Given these conclusions, appellant's remaining two assignments of error are moot.

[\*P27] Wherefore, we reverse the conviction and judgment of the trial court and acquit appellant. Appellee is ordered to pay the cost of this appeal pursuant [\*\*10] to *App.R. 24*.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to *App.R. 27*. See, also, *6th Dist.Loc.App.R. 4*.

Peter M. Handwork, J.

Mark L. Pietrykowski, J.

Thomas J. Osowik, P.J.

CONCUR.

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