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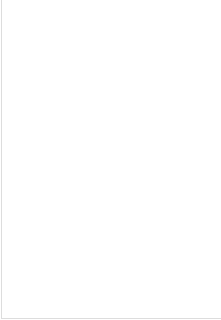
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Man who drove into ditch after claiming deer was in road loses appeal

ANNIE YAMSON | Daily Reporter
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A man who swerved his car to avoid hitting a deer had his conviction for failure to maintain control of his vehicle affirmed this week by a panel of judges in the Ninth District Court of Appeals.

According to case summary, in the early morning hours of Oct. 16, 2013, Trooper Daniel Jones happened upon a vehicle in a ditch alongside State Road in Medina County.

Jones also saw Spencer Gabriel walking in the roadway.

Gabriel told the trooper that he had swerved to avoid hitting a deer and his car ended up in the ditch.

Jones issued Gabriel a citation for failure to control, in violation of R.C. 4511.202, a minor misdemeanor.

But Gabriel challenged the citation, entering a not guilty plea in the Wadsworth Municipal Court. The matter proceeded to a bench trial.

At the close of evidence, the trial judge stated that, according to the statute, "if you're going to drive on the road, you have to do it with reasonable control, period."

"So what's reasonable control?" the judge asked. "I suppose the officer came along and finds a car in the ditch. Prima facie, Mr. Gabriel didn't intend to drive it in there, so he didn't have control of it."

The municipal court held that the only evidence was that a deer existed in the roadway at one point, but there was no testimony about where the deer came from, whether it was standing still, running or walking.

"So, I don't know if he skidded or attempted evasive action or not," said the judge. "I don't know. There's no evidence to show it. From the evidence, it looks like he just drove off the side of the road, okay?"

The trial court subsequently overruled a motion to acquit from Gabriel, issued a finding of guilt, imposed a fine and assessed two points against Gabriel's driver's license.

In his first assignment of error on appeal to the Ninth District court, Gabriel argued that the trial court erred in overruling his motion for acquittal because there was insufficient evidence to support a guilty verdict.

"The state presented Trooper Jones as its only witness," wrote Judge Carla Moore for the court of appeals.

Jones testified he did not observe any evidence of evasive driving such as brake or skid marks but he also stated that the roadway was wet, which would explain the absence of the marks.

"He also testified that 'there was possibly some doubt' in his mind as to whether Mr. Gabriel actually swerved to avoid hitting a deer, although the surrounding area was wooded and a deer could have been in the roadway," wrote Moore.

The appellate panel ruled that that was sufficient evidence to sustain a conviction.

"The evidence shows that Mr. Gabriel drove left of the center line in his lane of traffic, crossed over into the oncoming lane of traffic, drove off the left side of the road and landed

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his vehicle in a ditch, all within approximately 80 feet of his own driveway," wrote Moore.
"The trial court did not commit error in determining that Mr. Gabriel lacked reasonable control of his vehicle."

Gabriel also challenged the manifest weight of the evidence, but the appellate panel found little merit to his arguments.

"While Trooper Jones acknowledged that the area near the location of the accident is wooded and there could possibly be a deer in the roadway, there was absolutely no evidence of there actually being a deer in the roadway," wrote Moore.

The court of appeals cited *State v. Davis*, a fourth district case.

The court of appeals in that case agreed with the defendant that a driver may avoid a violation of a traffic statute that regulates the operation of a motor vehicle if the motorist can show that an emergency or scenario over which he or she had no control made it impossible to comply with the statute's requirements.

"For example, a driver proceeding lawfully in her lane of travel suddenly struck by a motorist that ignored a stop sign, and as a result of the collision forced to veer or travel to the left of the center line should not be held to have violated the statute," the Fourth District court held.

In *Davis*' case, the court of appeals held that she failed to persuade the court that an emergency existed. The Ninth District ruled that the same was true in Gabriel's case.

The judgment of the Wadsworth Municipal Court was upheld with Presiding Judge Eve Belfance and Judge Beth Whitmore concurring.

The case is cited *State v. Gabriel*, 2014-Ohio-5387.



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