

[Cite as *State v. Gates*, 2004-Ohio-4637.]

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-VS-

JAMES D. GATES

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.

Hon. Sheila G. Farmer, J.

Hon. John F. Boggins, J.

Case No. 04-COA-006

OPINION

CHARACTER OF PROCEEDING: Criminal appeal from the Ashland Municipal Court, Case No. 03 TRD 11743

JUDGMENT: Affirmed

DATE OF JUDGMENT ENTRY: AUGUST 30, 2004

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

W. DAVID MONTAGUE
Assistant Director of Law
1213 East Main Street
Ashland, Ohio 44805

MICHAEL D. HALL
120 ½ s. Washington Street
2nd Floor, Suite 207
Tiffin, Ohio 44883

Boggins, J.

{¶1} Defendant-appellant James D. Gates appeals his conviction entered by the Ashland Municipal Court on the charge of following another vehicle too closely in violation of R.C. §4511.34.

{¶2} Plaintiff-appellee is the State of Ohio.

{¶3} It should be noted that no Appellee's brief was filed in this case.

STATEMENT OF THE CASE AND FACTS

{¶4} On October 20, 2003, State Highway Patrol Trooper Jeremy L. Burgett of the Ashland Post, initiated a traffic stop of Appellant after observing operating his semi-tractor trailer too closely behind another semi-tractor trailer westbound on U.S. 224.

{¶5} Trooper Burgett issued Appellant a traffic citation for following too closely behind another vehicle, in violation of R.C. §4511.34.

{¶6} Appellant entered a written not guilty plea and the matter was set for trial.

{¶7} On December 18, 2003, a bench trial was held before the Ashland Municipal Court.

{¶8} At the conclusion of the trial, the court found Appellant guilty, imposed a twenty-five dollar (\$25.00) fine, court costs and two points assessed against Appellant's operator's license.

{¶9} It is from the trial court's verdict that appellant appeals, raising the following assignment of error:

ASSIGNMENT OF ERROR

{¶10} "I. THE VERDICT IS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE."

I.

{¶11} In sole assignment of error, Appellant claims that the trial court's finding of guilt was against the manifest weight of the evidence. We disagree.

{¶12} The manifest weight of the evidence standard set forth in *C.E. Morris Co. v. Foley Construction* (1978), 54 Ohio St.2d 279, 376 N.E.2d 578. Accordingly, judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed as being against the manifest weight of the evidence.

{¶13} Appellant was charged with a violation of §4511.34, Space between moving vehicles, which provides as follows:

{¶14} "(A) The operator of a motor vehicle, streetcar, or trackless trolley shall not follow another vehicle, streetcar, or trackless trolley more closely than is reasonable and prudent, having due regard for the speed of such vehicle, streetcar, or trackless trolley, and the traffic upon and the condition of the highway.

{¶15} "The driver of any truck, or motor vehicle drawing another vehicle, when traveling upon a roadway outside a business or residence district shall maintain a sufficient space, whenever conditions permit, between such vehicle and another vehicle ahead so an overtaking motor vehicle may enter and occupy such space without danger. This paragraph does not prevent overtaking and passing nor does it apply to any lane specially designated for use by trucks.

{¶16} "Outside a municipal corporation, the driver of any truck, or motor vehicle when drawing another vehicle, while ascending to the crest of a grade beyond which the driver's view of a roadway is obstructed, shall not follow within three hundred feet of

another truck, or motor vehicle drawing another vehicle. This paragraph shall not apply to any lane specially designated for use by trucks. *** ”

{¶17} Upon review of the transcript in this matter, we find that trial court had before it competent, credible evidence in the form of the Trooper’s eyewitness testimony to the violation.

{¶18} Trooper Burgett testified that he was eastbound on the U.S. 224 when he observed two semi tractor-trailer rigs coming toward him in the eastbound lane. The trooper testified that he estimated the truckers’ speed of as being no less than 50 m.p.h. and the distance between the two vehicles at about one-half of a semi length to one semi length, the length of one semi being eighty (80) feet. (T. at 6-10). The trooper crossed the median, caught up and pulled behind the trailing semi. Trooper Burgett testified that at the point he caught up with the Appellant, he had “backed off” from the tractor trailer in front of him. (T. at 10). Trooper Burgett then pulled over the trailing semi and cited the driver, Appellant James D. Gates, for following too closely, a minor misdemeanor in violation of R.C. §4511.34.

{¶19} Following this testimony, the state asked the court to take judicial notice that the reaction time of an average driver is three-fourths of a second. *State v. Gonzales* (1987), 43 Ohio App.3d 59, 539 N.E.2d 641,

{¶20} Upon cross-examination, the trooper conceded that his speed estimate was visual and that he had not verified his speed estimate with radar or laser devices, although he was running radar at the time. (T. at 13-14).

{¶21} Appellant testified that he was driving about forty (40) miles per hour and that he was well over a tractor-trailer length behind the semi in front of him. (T. at 25).

He testified that a vehicle up ahead of them had turned to the right, causing them to slow down, and that the two semi's were therefore closer together. (T. at 26-27).

{¶22} As we have often emphasized, the trier of fact, as opposed to this Court, is in a far better position to weigh the credibility of witnesses. *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212.

{¶23} Because evidence was presented by which a reasonable finder of fact could have concluded that all the elements of the offense were proven beyond a reasonable doubt, we affirm.

{¶24} Appellant's sole assignment of error is overruled.

{¶25} The decision of the Ashland Municipal Court is affirmed.

By: Boggins, J.
Gwin, P.J. and
Farmer, J. concur

JUDGES

IN THE COURT OF APPEALS FOR ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO
Plaintiff-Appellee

-vs-

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JUDGMENT ENTRY

JAMES D. GATES

Defendant-Appellant

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Case No. 04-COA-006

For the reasons stated in our accompanying Memorandum-Opinion, the conviction of the Ashland Municipal Court is affirmed. Costs assessed to appellant.

JUDGES