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Case: CA 026191
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IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 26191
v.	:	T.C. NO. 12CR3299
CLINTON RICHARDSON	:	(Criminal Appeal from Common Pleas Court)
Defendant-Appellant	:	

. . . . . .

OPINION

Rendered on the 4th day of March, 2015.

. . . . . .

TIFFANY ALLEN, Atty. Reg. No. 0089369, Assistant Prosecuting Attorney, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

KRISTIN L. ARNOLD, Atty. Reg. No. 0088794, 1502 Liberty Tower, 120 W. Second Street, Dayton, Ohio 45402
Attorney for Defendant-Appellant

. . . . . .

FROELICH, P.J.

{¶ 1} Clinton Richardson was convicted after a bench trial in the Montgomery County Court of Common Pleas of operating a vehicle while under the influence of drugs or alcohol (prior felony OVI within 20 years/test refusal), a third-degree felony, and endangering children, a first-degree misdemeanor. Richardson claims that his

convictions were based on insufficient evidence and were against the manifest weight of the evidence. For the following reasons, the trial court's judgment will be vacated.

I. Factual and Procedural History

{¶ 2} According to the State's evidence, at approximately 4:30 p.m. on October 31, 2012, Richardson rear-ended Deborah Leopold's vehicle as she waited at a traffic light to turn left from Third Street onto Wayne Avenue in Dayton. Richardson had not been driving fast, and there was no damage to Leopold's vehicle. When Leopold got out of her vehicle to talk with Richardson, she noticed that Richardson's speech was "very slurred and pretty much incomprehensible" and that he did not make eye contact. He also "fumbled" with his wallet and dropped all of his cards on the street while looking for his insurance information. Leopold did not notice any odors of an alcoholic beverage or see any open containers or drugs in Richardson's truck. She did notice that Richardson had a small child in the back seat, and she was concerned about Richardson's ability to drive. She called the police.

{¶ 3} Dayton Police Officer Jonathan Miniard and his partner responded to the accident. Miniard approached Richardson in his vehicle and observed Richardson with "both hands on the steering wheel kind of slumped forward staring ahead." It took Richardson a moment to register the officer's presence. Miniard noticed a burnt smell, and he learned that Richardson had tried to light a cigarette and it singed the side of his hair. Richardson's truck was still running, so Officer Miniard asked Richardson to turn it off. Richardson "couldn't figure out how to put it back into park;" Officer Miniard did that for him and turned off the vehicle.

{¶ 4} Officer Miniard asked Richardson to exit his vehicle. When he got out, he

slid out of the driver's seat and was unsteady. The officer escorted Richardson to the front of his cruiser. Miniard asked Richardson if he had drunk anything or taken any medication. Richardson denied that he had consumed any alcohol, but stated that he was on pain medication. When asked if he had taken any, Richardson responded, "Yeah." Miniard noticed that Richardson had slurred speech, seemed to have difficulty understanding questions, and gave incoherent answers. Richardson told Miniard that he had to get his son home.

{¶ 5} Officer Miniard testified that he had been involved in numerous OVI investigations in his 14 years as a Dayton police officer and that he had taken training and refresher courses on OVI detection. Miniard decided to administer field sobriety tests on Richardson, and he conducted the horizontal gaze nystagmus (HGN) test, the walk and turn test, and the one-leg stand test. Miniard noticed a 45 degree angle of nystagmus and slight jerking in Richardson's eyes during the HGN test, which indicated impairment. Richardson also had difficulty paying attention during the test. On the walk and turn test, Richardson exhibited seven out of eight "clues" indicating possible impairment. Officer Miniard marked three out of a possible four clues for impairment on the one-leg stand test. Miniard concluded that Richardson was under the influence of "some type of possibly narcotics," and he placed Richardson under arrest.

{¶ 6} Officer Miniard read Richardson BMV 2255 and asked him (Richardson) if he would submit to a blood test. Richardson refused. No chemical tests were performed. Richardson never indicated to Officer Miniard that he was having a medical emergency, and he did not ask for medical treatment; Richardson had reported to the officer that he had a bad back and problems with his neck prior to the accident. Miniard

transported Richardson to jail.

{¶ 7} The parties stipulated at trial that Richardson was previously convicted of felony OVI in *State v. Richardson*, Warren C.P. No. 2006 CR 23305.

{¶ 8} On January 28, 2013, Richardson was indicted for OVI, in violation of R.C. 4511.19(A)(2), and endangering children, in violation of R.C. 2919.22(C)(1). R.C. 4511.19(A)(2) provides:

> No person who, within twenty years of the conduct described in division (A)(2)(a) of this section, previously has been convicted of or pleaded guilty to a violation of this division, a violation of division (A)(1) or (B) of this section, or any other equivalent offense shall do both of the following:
>
> (a) Operate any vehicle, streetcar, or trackless trolley within this state while under the influence of alcohol, a drug of abuse, or a combination of them.
>
> (b) Subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as described in division (A)(2)(a) of this section, being asked by a law enforcement officer to submit to a chemical test or tests under [R.C. 4511.191], and being advised by the officer in accordance with [R.C. 4511.192] of the consequences of the person's refusal or submission to the test or tests, refuse to submit to the test or tests.

Because Richardson had a prior felony OVI conviction, the OVI was charged as a third-degree felony. R.C. 2919.22(C)(1) prohibits operating a vehicle in violation of R.C. 4511.19 with a child in the vehicle.

{¶ 9} Richardson subsequently moved to suppress the statements he made to

the police. After a hearing, the trial court ruled that the statements Richardson made after exiting his car and prior to being placed in the cruiser were admissible. However, the trial court suppressed the statements Richardson made in the cruiser prior to being given *Miranda* warnings and, because he did not voluntarily waive his *Miranda* rights, all statements made afterward.

{¶ 10} Richardson waived a jury trial, and the matter was tried to the court. The State offered the testimony of Ms. Leopold and Officer Miniard, as summarized above. Richardson did not make a Crim.R. 29(A) motion at the end of the State's case. Richardson then testified on his own behalf, and presented the testimony of Dr. Charles Russell; after questioning regarding his qualifications, the trial court found Dr. Russell to be an expert in chemical dependency.

{¶ 11} Richardson stated at trial that he has suffered numerous broken bones (including both femurs, hip, elbow, vertebrae, and wrist) and other injuries and had been to two different pain clinics in the past three years; for several years, he received a prescription for hydrocodone acetaminophen. In October 2012, he generally took three pills per day. He testified that he had run out of medication on October 29, 2012 (two days before the accident), was suffering from hydrocodone withdrawal at the time of the accident, and that he had not consumed alcohol or drugs. He testified that he was trying to go to the hospital at the time of the accident.

{¶ 12} Dr. Russell testified that Richardson was opiate tolerant on October 31, 2012, and that he was taking medication with 325 mg of acetaminophen and 10 mg of hydrocodone, three times a day. Dr. Russell described the symptoms of opiate withdrawal, and stated that the symptoms Richardson described were consistent with

withdrawal. Dr. Russell concluded that "there's a decent possibility that he was withdrawing from opiates, but I wouldn't call that a reasonable degree of medical certainty."

{¶ 13} Upon consideration of the evidence, the trial court found Richardson guilty of both offenses. The trial court sentenced Richardson to one year in prison for OVI, of which 120 days were mandatory, and to six months in jail for endangering children, to be served concurrently. Richardson was required to attend and complete mandatory drug and alcohol treatment. The trial court further ordered a lifetime suspension of Richardson's driver's license and that his 1998 Dodge Ram truck be forfeited to the Dayton Police Department.

{¶ 14} Richardson appeals from his convictions, claiming that his convictions were against the manifest weight of the evidence and based on insufficient evidence. Although Richardson did not request a judgment of acquittal at trial, his failure to file a timely Crim.R. 29(A) motion does not waive his argument on appeal concerning the sufficiency of the evidence. *State v. Jones*, 91 Ohio St.3d 335, 346, 744 N.E.2d 1163 (2001); *State v. Stoner*, 2d Dist. Clark No. 2008 CA 83, 2009-Ohio-2073, ¶ 22.

{¶ 15} "A sufficiency of the evidence argument disputes whether the State has presented adequate evidence on each element of the offense to allow the case to go to the jury or sustain the verdict as a matter of law." *State v. Wilson*, 2d Dist. Montgomery No. 22581, 2009-Ohio-525, ¶ 10, citing *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). When reviewing whether the State has presented sufficient evidence to support a conviction, the relevant inquiry is whether any rational finder of fact, after viewing the evidence in a light most favorable to the State, could have found the essential

elements of the crime proven beyond a reasonable doubt. *State v. Dennis*, 79 Ohio St.3d 421, 430, 683 N.E.2d 1096 (1997). A guilty verdict will not be disturbed on appeal unless "reasonable minds could not reach the conclusion reached by the trier-of-fact." *Id.*

{¶ 16} In contrast, "a weight of the evidence argument challenges the believability of the evidence and asks which of the competing inferences suggested by the evidence is more believable or persuasive." *Wilson* at ¶ 12; *see Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, 972 N.E.2d 517, ¶ 19 ("'manifest weight of the evidence' refers to a greater amount of credible evidence and relates to persuasion"). When evaluating whether a conviction is against the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider witness credibility, and determine whether, in resolving conflicts in the evidence, the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *Thompkins*, 78 Ohio St.3d at 387, citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 17} Because the trier of fact sees and hears the witnesses at trial, we must defer to the factfinder's decisions whether, and to what extent, to credit the testimony of particular witnesses. *State v. Lawson*, 2d Dist. Montgomery No. 16288, 1997 WL 476684 (Aug. 22, 1997). The fact that the evidence is subject to different interpretations does not render the conviction against the manifest weight of the evidence. *Wilson* at ¶ 14. A judgment of conviction should be reversed as being against the manifest weight of the evidence only in exceptional circumstances. *Martin*, 20 Ohio App.3d at 175.

{¶ 18} In *State v. May*, 2d Dist. Montgomery No. 25359, 2014-Ohio-1542, we discussed in detail the evidence that is required to prove a violation of R.C. 4511.19 based on medication. We stated:

> [W]hen a prosecution under R.C. 4511.19(A)(1)(a) is based on driving under the influence of medication, the State must do more than simply present evidence that the defendant has taken the medication and shows signs of impairment. The United States Food and Drug Administration has approved more than a thousand prescription drugs (which are "drugs of abuse" under Ohio law), all of which may have any number of different side effects. Not all side effects involve the impairment of judgment or reflexes. Although some medications may be familiar to some jurors, the various physiological effects of different medications [are] outside the common knowledge of most jurors and many trial judges.
>
> The essence of R.C. 4511.19(A)(1)(a) is to prohibit impaired driving while under the influence. It is certainly not intended to criminalize the operation of a vehicle by a person taking a cholesterol or blood pressure medication, let alone an anti-narcoleptic or ADHD prescription, unless that drug negatively influences the defendant's driving abilities. And in many situations, especially those involving prescription drugs, this can only be proved by direct testimony linking the influence of the drug to the driving. This could be established through the testimony of an expert who is familiar with the potential side effects of the medication, or perhaps of a layperson (such as a friend or family member) who witnessed the effect of the

particular drug on the defendant-driver.

We therefore conclude that, in order to establish a violation of R.C. 4511.19(A)(1)(a) based on medication, the State must also present some evidence (1) of how the particular medication actually affects the defendant, and/or (2) that the particular medication has the potential to impair a person's judgment or reflexes. Without that information, the jury has no means to evaluate whether the defendant's apparent impairment was due to his or her being under the influence of that medication.[1]

We emphasize that the State is not required to support its case under R.C. 4511.19(A)(1)(a) with evidence of the exact amount of alcohol or the drug of abuse that was consumed or ingested by the defendant. It is often the case that, upon initiating a traffic stop, a police officer detects an odor of an alcoholic beverage on the driver and there is no available evidence as to the exact amount that the defendant consumed. However, as noted by the Ohio Supreme Court, "almost any lay witness, without having any special qualifications, can testify as to whether a person was intoxicated." *Columbus v. Mullins*, 162 Ohio St. 419, 421, 123 N.E.2d 422 (1954). In all cases, a jury must determine, based on totality of the evidence, whether the defendant was driving under the influence of alcohol and/or a drug of abuse. (Additional citations omitted.) *May* at ¶ 46-49. *See also, e.g., State v. Husted*, 2014-Ohio-4978, 23 N.E.3d 253 (4th Dist.) (State failed to identify drug that was consumed, nor

[1]This requirement does not extend to violations of R.C. 4511.19(A)(1)(b)-(j), since these are per se violations based on the legislature's implicit determinations that specific concentrations of specific drugs negatively influence driving.

was there evidence of how the unspecified drug affected the defendant or had the potential to impair a person's judgment or reflexes).

{¶ 19} At trial, Officer Miniard and Leopold testified about Richardson's behavior, which reflected that Richardson was impaired at the time of the accident. Miniard testified in detail about the field sobriety tests that he conducted and that Richardson performed poorly on each of those tests. The State also played a small portion of the video from the police cruiser, which reflected that Richardson was slow to respond to questions, inattentive, and needed assistance walking. When asked what was wrong with him, Richardson said that he was "exhausted." Officer Miniard asked Richardson if he were taking any medication; Richardson responded that he was taking "painkillers." Miniard asked if Richardson "was on any painkillers now." Richardson said, "Yeah." Miniard asked how many, but Richardson's response, if any, is not discernible.

{¶ 20} The State thus produced evidence that Richardson's driving was impaired, that he acknowledged that he was on "painkillers," and that he had "taken" some. There was no evidence in the State's case as to what particular drug, medicine, or substance he had taken, when it was taken, or what its potential effects were. Although there was substantial evidence of impairment, there was no evidence linking that impairment to any "drug of abuse."

{¶ 21} The State, knowing Richardson's statements regarding what "painkillers" he had allegedly taken, could have introduced expert testimony on their effect or lay testimony of individuals who had observed the effects on Richardson. Further, even when Richardson refused a blood test, the State could have sought to obtain a blood sample. *See State v. Rawnsley*, 2d Dist. Montgomery No. 24594, 2011-Ohio-5696, ¶ 15

("Without consent, a blood draw requires probable cause and either a warrant, or exigent circumstances justifying a search without a warrant."); R.C. 4511.191 (permitting blood draw, under implied consent, after arrest for OVI and required notices). However, in the absence of evidence of the effects of the painkiller on Richardson specifically or the possible effects on people generally, a Crim.R. 29 motion should have been made by defense counsel and sustained by the trial court.

{¶ 22} It is possible for sufficient evidence to be introduced in the defense case. As stated above, when determining whether there is sufficient evidence to support a conviction, an appellate court considers all of the evidence admitted against the defendant at trial. *See State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, 767 N.E.2d 216, ¶ 80; *State v. Manso*, 9th Dist. Summit No. 26727, 2014-Ohio-1388, ¶ 40, fn. 1 ("when reviewing a Crim.R. 29 motion, this Court examines the sufficiency of only the State's evidence. * * * In contrast, when this Court reviews challenges to the sufficiency of the evidence, it considers all of the evidence admitted at trial.").

{¶ 23} Richardson testified that he sought treatment for severe pain in June 2010 and was prescribed a variety of strong pain medications, including hydrocodone. In March 2012, Richardson saw Dr. Saleh, who prescribed 10 mg hydrocodone and 325 mg acetaminophen; Richardson took six tablets per day. When asked how the medication affected him, Richardson responded, "By this point in time, I had been taking the painkiller medication for so long they no longer had any real side effects, you know, that I felt any kind of drowsiness, dizziness, feelings of euphoria, if you will, anything of that nature that would cloud your judgment. Long ago, I stopped having these side effects. The narcotic painkiller basically just did its job and numbed the pain." Defense counsel asked

Richardson if he suffered from confusion, disorientation, or problems with balancing, walking, or focus while on hydrocodone; Richardson responded that he did not. Richardson continued taking acetaminophen/hydrocodone until October 2012, at which time he was taking three per day. He stated, "[B]y this time, I had been taking narcotic painkillers for, every day for two-and-a-half years so I felt no side effects from those, whatsoever."

{¶ 24} Richardson should have had a supply of medication to last until November 9, but he did not. Richardson could not explain why he ran out of medication early. He denied taking more than prescribed. During his testimony, Richardson described his symptoms of hydrocodone withdrawal. He stated that he had insomnia and had not slept for two nights, he was disoriented, fatigued, weak, sweating, had cold chills, vomiting, and diarrhea. Richardson testified that he suffered from all of those symptoms at the time of the accident. Richardson further testified that he had suffered from withdrawal one prior time in 2010, and he had similar symptoms.

{¶ 25} Dr. Russell's testimony focused on whether Richardson's symptoms constituted symptoms of withdrawal. On cross-examination, the State asked Dr. Russell several questions related to whether Richardson's medical records provided an explanation for Richardson's poor performance on the field sobriety tests. Richardson's medical records generally did not indicate that he suffered from conditions that would affect his performance on the tests. Dr. Russell was not asked about the actual or potential effects of 10 mg of hydrocodone.

{¶ 26} Considering all of the evidence presented at trial, there was insufficient evidence to establish that Richardson's impairment was caused by the ingestion of

hydrocodone/acetaminophen. There was substantial evidence that Richardson was driving while impaired and there was conflicting evidence as to whether Richardson's poor performance on the field sobriety tests could be explained by opiate withdrawal. But there was no testimony that Richardson's medication caused him to have any side effects (he denied that they did), and there was no evidence as to what those side effects typically might be. Richardson testified that he was opiate tolerant and denied having any side effects from his medication; he stated that hydrocodone simply provided pain relief. There was no expert testimony that hydrocodone could impair a person's judgment or reflexes. Richardson asserted that his impairment could have been caused by opiate withdrawal. This evidence, whether believed or not, was not sufficient to establish a nexus between Richardson's impairment and any painkiller he was or was not taking.

{¶ 27} In summary, based on the evidence at trial, the trial court could have reasonably rejected Richardson's claims that he did not ingest hydrocodone/acetaminophen on October 31, 2012, and that his impairment was due to withdrawal. However, in the absence of evidence that Richardson's medication could have caused the impairment he displayed, there was insufficient evidence to convict him.

{¶ 28} Richardson's assignment of error based on sufficiency of the evidence is sustained. His assignment of error based on manifest weight is moot.

{¶ 29} The trial court's judgment will be vacated.

. . . . . .

FAIN, J. concurs.

HALL, J., dissenting:

{¶ 30} The majority cites, and quotes, *State v. May*, 2d Dist. Montgomery No.

25359, 2014-Ohio-1542, for the proposition that to prove driving under the influence of drugs the State must introduce evidence of how the particular drug affects the defendant and that the particular medication has the ability to impair one's judgment. I strongly disagree.

{¶ 31} I concurred in *May* because there was overwhelming evidence that the defendant was under the influence of alcohol, regardless of consideration of any drugs she had taken. I wrote then, and reiterate now:

> * * * I write separately to express my disagreement with the following sentence: "We agree with [appellant] that, when a prosecution under R.C. 4511.19(A)(1)(a) is based on driving under the influence of medication, the State must do more than simply present evidence that the defendant has taken the medication and shows signs of impairment." (supra ¶ 46). And I disagree with the determination that "in order to establish a violation of R.C. 4511.19(A)(1)(a) based on medication, the State must also present some evidence (1) of how the particular medication actually affects the defendant * * * and/or (2) that the particular medication has the potential to impair a person's judgment or reflexes." (supra ¶ 48). Neither comment is necessary to our disposition of this case because we conclude that "[t]he State presented overwhelming evidence that May drove her vehicle while under the influence of alcohol." (supra ¶ 54). With that conclusion, discussion of the evidence required to show impairment by medicine or drugs is dicta. Moreover, I don't agree with either quoted statement. It just depends.
>
> For purposes of this discussion, I recognize that the term

"medication" is used in ¶ 46 and ¶ 48, but the legal standard for sufficiency applies to any "drug of abuse," which includes "any controlled substance, dangerous drug * * *, or over-the-counter medication that, when taken in quantities exceeding the recommended dosage, can result in impairment of judgment or reflexes." R.C. 4506.01(L). In my view, all that is necessary is evidence that the offender consumed a drug and that his or her faculties were appreciably impaired:

> In order to prove that appellant was under the influence of a drug of abuse, appellee was required to prove that appellant's "faculties were appreciably impaired" by the consumption of a drug of abuse. *State v. Lowman* (1992), 82 Ohio App.3d 831, 836. In the prosecution of an offense under this provision, the amount of a substance in the appellant's body is only of secondary interest. *See City of Newark v. Lewis* (1988), 40 Ohio St.3d 100, 104. "It is the behavior of the defendant which is the crucial issue. * * * The test results [of presence of a drug in blood], if probative, are merely considered in addition to all other evidence of impaired driving in a prosecution for this offense."

State v. Dixon, 12th Dist. Clermont No. CA2001-01-012, 2007-Ohio-5189, ¶ 15.

In *Dixon,* the evidence was found to be sufficient where the defendant exhibited clues of impairment on two admissible field-sobriety

tests, he had bloodshot eyes, an officer discovered marijuana on the defendant's person, and laboratory results of a urine sample indicated that the defendant had consumed marijuana. The evidence was sufficient even though no expert evidence was submitted by the State to correlate the amount of metabolite with timing of ingestion or a level of impairment. Other cases supporting this notion include *State v. Dearth,* 4th Dist. Ross No. 09CA3122, 2010–Ohio–1847 (finding that evidence was sufficient where trooper observed defendant drive off the roadway, his eyes were glassy and bloodshot, trooper detected strong odor of burnt marijuana from the vehicle and defendant, and defendant performed badly on various physical-coordination tests) and *State v. Strebler,* 9th Dist Summit No. 23003, 2006–Ohio–5711 (finding sufficient evidence where a lay witness observed the defendant with difficulty walking, fumbling with his keys, mumbled speech and cloudy eyes; deputy encountered the defendant at a local store appearing disoriented with bloodshot eyes and difficulty producing his license; the defendant indicated he was using prescription methadone, produced a prescription bottle, performed badly on field-sobriety tests, and urine tested positive for methadone although there was no determination of what level). We also previously addressed the issue in *State v. Gilleland,* 2d Dist. Champaign No.2004 CA 1, 2005–Ohio–0659. There an officer observed the defendant driving erratically. Gilleland was described as "disoriented and having glassy eyes and a demeanor which indicated he was under the influence of drugs." *Id.* at ¶ 19. "[N]umerous empty or near

empty bottles of prescription drugs" that had been filled that day were found in his car. *Id.* at ¶ 2. Gilleland argued that without a blood test or the performance of field-sobriety tests there was insufficient evidence offered from which a jury could conclude he was guilty. We disagreed. We did not adopt a rule that evidence of the drugs' ability to impair was necessary.

A different result is appropriate where there is no evidence about what, if any, drug, medicine, or substance the defendant consumed no matter how impaired. In *State v. Collins,* 9th Dist. Wayne No. 11CA0027, 2012–Ohio–2236, officers testified at length regarding Collins' impaired condition and gave their respective opinions that he was under the influence of *some* sort of illegal narcotic or drug. But there was no evidence that he had ingested any particular drug, medicine, or substance. Accordingly, the court found the evidence insufficient.

May at ¶ 57-60 (footnote omitted).

{¶ 32} Here, there is no reasonable question that the defendant was substantially impaired. The question is whether it was because he had taken drugs. On direct examination, the officer testified:

[I]asked him had he taken any medication. He advised that he was on pain medication. I asked him if he had taken any. He said yeah.

* * *

Q. And he said he had taken pain medication.

A. Yeah, he was on pain medication.

Q. Okay. And from your conversation with him, the back and forth that you

guys were engaged in, did it seem like he was currently on pain medication?

A. Yes.

(T. at 22).

{¶ 33} In my view, that testimony alone is sufficient for the court to have found Richardson guilty, but it is much more than sufficient to find that a prima facie case has been presented. (The defense did not make a Crim.R. 29 motion for acquittal after the State rested.) But there is more. The defendant testified:

Q. But the two pain medications that you were taking at that point were ibuprofen, about 800 milligram, and hydrocodone, 10-325.

A. Correct.

Q. Okay. So when you said to him, and regardless if you remember it or not, when you said to Officer Miniard you had taken pain medications, would you have been referring to one of 2 those two medications?

A. Yes.

(T. 122-123).

{¶ 34} After a portion of the police video was played, the following exchange occurred:

Q. And you would agree with me that Officer Miniard asked you what you had taken. You mouthed something. We can't really hear it. But his response is did you say Oxycodone and you shook your head yes.

A. He said codone. That's all I heard --

Q: I apologize. Codone. When you shook --

A. He said codone.

Q. -- your head yes to that question.

A. Sure. Hydrocodone.

Q. And he followed that up with how much did you take and you mouthed something and he says 3 milligrams and you shake your head no, correct?

A. Right.

Q. And then you mouth what appears to be the word thirty. And he says 30 milligrams and you shake your head yes.

A. I -- yes. Can I elaborate?

Q. No.

(T. 130).

{¶ 35} Upon redirect the defendant then claimed that he was so disoriented that he could not clearly understand the officer's questions. (T. 132-133). All of this evidence was more than sufficient for the trial court to have found the defendant guilty. I would further note that the defendant's evidence—that he was incoherent because he was suffering from hydrocodone withdrawal rather than current ingestion—was not only contradictory to his own statements but, in my view, was not worthy of belief. It was, therefore, well within the discretion of the trial court to disregard that excuse.

{¶ 36} On this record, where it is undeniably apparent that the defendant was substantially impaired because he had taken pain killers, more specifically hydrocodone, I do not believe it was necessary to introduce evidence of the pharmaceutical properties of what he ingested to find him guilty of driving under the influence. I would affirm the judgment of the trial court.

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Copies mailed to:

Tiffany Allen
Kristin L. Arnold
Hon. Barbara P. Gorman

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IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
Plaintiff-Appellee	:	C.A. CASE NO. 26191
v.	:	T.C. NO. 12CR3299
CLINTON RICHARDSON	:	**FINAL ENTRY**
Defendant-Appellant	:	

. . . . . .

Pursuant to the opinion of this court rendered on the 4th day of March, 2015, the judgment of the trial court is vacated.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the Clerk of the Montgomery County Court of Appeals shall immediately serve notice of this judgment upon all parties and make a note in the docket of the mailing.

JEFFREY E. FROELICH, Presiding Judge

MIKE FAIN, Judge

MICHAEL T. HALL, Judge

Copies mailed to:

Tiffany Allen
Assistant Prosecuting Attorney
301 W. Third Street, 5th Floor
Dayton, Ohio 45422

Kristin L. Arnold
1502 Liberty Tower
120 W. Second Street
Dayton, Ohio 45402

Hon. Barbara P. Gorman
Common Pleas Court
41 N. Perry Street
Dayton, Ohio 45422