IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

LAKE COUNTY, OHIO

CITY OF WILLOUGHBY,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2011-L-116**
- vs -	:	
CHANDRAKA J. KASABWALA,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Willoughby Municipal Court, Case No. 11 TRC 03475.

Judgment: Affirmed.

Richard J. Perez, City of Willoughby Prosecutor, City of Willoughby, One Public Square, Willoughby, OH 44094 (For Plaintiff-Appellee).

Paul H. Hentemann, Northmark Office Building, 35000 Kaiser Court, #305, Willoughby, OH 44094-4280 (For Defendant-Appellant).

CYNTHIA WESTCOTT RICE, J.

{¶1} The instant matter is submitted to this court on the record and the briefs of the parties. Chandraka J. Kasabwala, appellant herein, appeals from the judgment of the Willoughby Municipal Court convicting him of operating a vehicle while intoxicated ("OVI"). We affirm.

{¶2} On January 15, 2011, at approximately 2:30 a.m., Bryan Posey was driving eastbound on Route 2 through Willoughby when he and his two passengers came upon an immobilized minivan ostensibly involved in an accident. Posey, an Army

combat engineer enrolled in a local police academy, stopped his vehicle to provide assistance to any potentially injured individuals while one of his passengers called 911. Posey inspected the van, but found no one in the vehicle. Posey further investigated the surrounding area and, approximately 20 meters from the wreck, he discovered an unresponsive male, later identified as appellant, laying face-down in the snow.

{¶3} While assessing appellant, Posey noticed that a teenage boy had appeared. According to Posey, the boy seemed "jittery" but had no outward signs of injury or harm. The young man told Posey he was at his house when he heard a "loud bang." The boy indicated he lived near the highway, but did not specifically state the location of his home. After hearing the noise, the boy claimed he walked toward the interstate and noticed the wreck. The boy asked Posey, "What should we do? What should we do?" Posey explained that emergency workers were on the way, and they should not touch the injured man. The boy told Posey he did not have a driver's license and questioned whether he should remain on scene.

{¶4} Posey stated he had initial suspicions that the young man was involved in the accident. Because the boy lacked any apparent physical injury and did not appear to know appellant, however, Posey testified it was more likely he was merely a concerned bystander. The boy was never identified and, by the time emergency personnel arrived, he had left the scene.

{¶5} After officers and an emergency team arrived, appellant was transported to Cleveland Metro Hospital where he remained for some time recovering from his injuries. Blood tests revealed that, on the night of the accident, appellant had a

prohibited blood alcohol concentration of .241. He was later cited for OVI, a safety-belt violation, reckless operation, and failure to control.

{¶6} Approximately one week before trial, defense counsel filed a "motion suggesting mental incapacity to stand trial." In the motion, counsel asserted appellant was suffering from "organic brain syndrome," which caused him to suffer "total amnesia" relating to the circumstances of the accident. Attached to the motion was a copy of a medical document listing various diagnoses, one of which was "Organic brain synd." The document, however, did not set forth the name of the patient to which the purported diagnoses pertained. Counsel also attached several photocopies from what appear to be medical textbooks or dictionaries identifying the definition and symptoms of organic brain syndrome.

{¶7} A hearing was held on the motion at which counsel claimed he was seeking a continuance of the trial "until such time as my client's memory is restored." Counsel did not, however, submit any evidence to suggest when, if ever, appellant's memory might improve. Moreover, even though counsel stated appellant's doctor had "indicated" that appellant suffered from organic brain syndrome, counsel did not submit any specific evidence to support this statement. Aside from appellant's testimony that he could not remember the accident, the only information tending to establish the purported diagnosis was the non-specific, unverified documentation attached to the "motion suggesting mental incapacity to stand trial."

{¶8} After appellant testified to his lack of memory regarding the circumstances of the accident, defense counsel underscored that appellant understood the nature of the proceedings and why he was being charged. However, counsel claimed that, as a

result of appellant's amnesia, he was unable to meaningfully assist in his defense. After hearing appellant's testimony regarding his lack of memory, the trial court overruled the motion for continuance and the matter proceeded to trial.

{¶9} At trial, in addition to Posey, the city called Charles Krejsa, a Willoughby Police Officer and accident reconstructionist. Officer Krejsa testified he had been working with the accident investigation unit of the Willoughby Police Department since 1999, and has received specialized training in accident reconstruction and occupant kinematics (the movement of vehicle occupants in the course of an accident) from multiple courses and institutions. The officer testified he has assisted other agencies in accident reconstruction and has previously testified as an accident reconstructionist. According to Officer Krejsa, he is considered by his peers as an expert in the field of accident reconstruction. No objection was leveled by the defense regarding the officer's qualifications as an expert in the field of accident reconstruction.

{¶10} Officer Krejsa testified that, upon his arrival at the scene, there were no eyewitnesses to interview, but he observed appellant unconscious 56 feet away from the wrecked vehicle, which was registered to appellant's wife. Officer Krejsa inspected the interior and exterior of the vehicle. According to Officer Krejsa, the damage indicated the van had rolled, causing appellant to be thrown from the car. The officer noted that the steering wheel was pushed up and to the left; the driver's interior panel was bowed outward; the driver's seat was slightly left; and the driver's side window was broken, and the door bowed out. Alternatively, there was no notable interior damage to the passenger side of the vehicle. The officer also testified there were no footprints near or around the perimeter of the crash scene indicating there had been another

passenger that had exited the vehicle. Given these observations, in conjunction with evidence demonstrating that the great balance of appellant's injuries occurred to his left side, the officer opined that appellant was driving the vehicle without passenger(s) when the force of the crash ejected him from the driver's side window.

{¶11} Defense counsel objected to the officer's conclusion, arguing it was based merely on speculation. The trial court overruled the objection, concluding the prosecution had provided an adequate foundation for the officer to advance his expert opinion. After hearing the evidence, the trial court overruled defense counsel's Crim.R. 29 motion and found appellant guilty. From the bench, the trial court made the following points:

> **{¶12}** Officer Krejsa had provided sufficient documentation of his training, background and course material * * * that qualified him as an expert to testify with regard to his opinion as to who was operating the vehicle, and he did that through the expert testimony and also through a determination of physical evidence. The expert testimony concluding was, you know, connecting the location of the physical injuries to the location of the apparent obstructions in the vehicle, the door handle, the steering wheel and things of that sort, coordinating those; and then there's the physical evidence of what was discovered at the scene in terms of no additional footprints, the fact that it - - versus no other injured person or no other person apparent to be driving.

{¶13} After sentencing, appellant filed the instant appeal, alleging two assignments of error. For his first assigned error, he asserts:

{¶14} "The trial court, in denying defendant-appellant's motion suggesting mental amnesia to stand trial, committed error."

{¶15} Under this assignment of error, appellant contends he was deprived of a fair trial when the trial court overruled his motion for a continuance based upon his alleged amnesia. Appellant argues the purported mental incapacity made it impossible for the court to conclude, beyond a reasonable doubt, appellant knew "the nature of the act and that it was wrong." We do not agree.

{¶16} Initially, when defense counsel moved for a continuance, he premised his request on the restoration of appellant's memory. However, not only was appellant's alleged diagnosis a matter unsupported by independent medical evidence, defense counsel failed to provide the court with a documented prognosis tending to show when, if ever, appellant's memory might be restored. The request was inherently open-ended and suggested the court award appellant an indefinite continuance. Given these points, the court did not act unreasonably in overruling appellant's motion to continue the case "until such time as [his] memory is restored[.]"

{¶17} Appellant also argues the trial court erred in overruling his motion because there was adequate evidence that appellant was not competent to stand trial. R.C. 2945.37(G) provides:

{¶18} A defendant is presumed to be competent to stand trial. If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant's present mental condition, the defendant

> is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the court shall find the defendant incompetent to stand trial[.]

{¶19} First of all, the motion upon which the pretrial hearing was based was captioned "motion *suggesting* mental incapacity to stand trial." (Emphasis added.) While the "suggestion" of mental incapacity, in conjunction with the photocopied medical documents were sufficient to bring the issue before the court for hearing, the court possessed only appellant's self-serving testimony and counsel's "suggestion" that appellant actually lacked capacity to stand trial. Because the court had neither specific medical confirmation of appellant's actual condition nor any information detailing the effects of the condition, we hold it did not act unreasonably in overruling the motion.

{¶20} Moreover, even assuming appellant had submitted medical evidence that confirmed his alleged medical condition, that evidence, by itself, would still be insufficient to overcome the presumption of competency. In Ohio, "amnesia alone is not sufficient to render the accused incompetent to stand trial." *State v. Brooks*, 25 Ohio St.3d 144, 151 (1986). *See also State v. DeMarco*, 11th Dist. No. 2007-L-130, 2008-Ohio-3511, ¶16.

{¶21} Here, the record fails to disclose appellant suffered from any additional or aggravating mental deficit that would have undermined his ability to assist in his defense. At the hearing, defense counsel emphasized appellant's lack of memory was the only issue prompting his motion suggesting mental incapacity. Appellant's conduct supports defense counsel's representation; to wit, prior to and during trial, appellant was

alert, lucid, and communicative. Moreover, counsel stated on record that appellant was aware of the nature of the proceedings and why he was being charged. Given these points, it is clear that appellant was able to consult with his attorney in a rational and meaningful way towards the end of assisting in a reasonable defense against the charges. Thus, appellant's lack of memory of the accident, on its own, was not enough to render him incompetent to stand trial.

{¶22} For the foregoing reasons, appellant's first assignment of error is without merit.

{¶23} For his second assignment of error, appellant alleges:

{¶24} "The prosecution failed to prove its case beyond a reasonable doubt."

{¶25} Under this assignment of error, appellant asserts Officer Krejsa's training and experience did not provide a sufficient basis to qualify him as an expert. Appellant further asserts that the officer's conclusions were not drawn from reliable evidence and should be discounted. If this court accepts appellant's position regarding the officer's testimony, he maintains the city failed to introduce sufficient evidence to prove appellant was the operator of the vehicle when the accident occurred. We do not agree.

{¶26} To qualify as an expert, "a witness must demonstrate some knowledge on a particular subject superior to that possessed by an ordinary [fact finder.]" *Scott v. Yates*, 71 Ohio St.3d 219, 221 (1994). Further, Evid.R. 702 provides:

{¶27} A witness may testify as an expert if all of the following apply:

{¶28} (A) The witness' testimony either relates to matters beyond the knowledge or experience possessed by lay persons or dispels a misconception common among lay persons;

{¶29} (B) The witness is qualified as an expert by specialized knowledge, skill, experience, training, or education regarding the subject matter of the testimony;

{¶30} (C) The witness' testimony is based on reliable scientific, technical, or other specialized information. To the extent that the testimony reports the result of procedure, test, or experiment, the testimony is reliable only if all of the following apply:

{¶31} (1) The theory upon which the procedure, test, or experiment is based is objectively verifiable or is validly derived from widely accepted knowledge, facts, or principles;

{¶32} (2) The design of the procedure, test, or experiment reliably implements the theory;

{¶33} (3) The particular procedure, test, or experiment was conducted in a way that will yield an accurate result.

{¶34} In this case, Officer Krejsa testified he has specialized training in accident reconstruction and occupant kinematics from Northwestern University and IPTM (the Institute of Police Technology and Management). He further testified he has 632 additional accident training hours specifically related to motor vehicle accident reconstruction. And the officer testified he is regarded as an expert in accident reconstruction in his profession.

{¶35} To aid him in drawing an informed conclusion regarding the circumstances of the case sub judice, Office Krejsa testified he employed his training in occupant kinematics. According to the officer, occupant kinematics uses fundamental principles of

physics to analyze the placement and movement of occupants in a vehicle that occur during a motor vehicle accident. According to the officer, the empirical evidence of an occupant's movements, e.g., the interior damage to the vehicle and the injuries to the occupant, can assist in determining his or her placement in a vehicle and, as a result, assists in reconstructing the circumstances of the accident. With these points in mind, the officer testified:

> **{¶36}** Through our training and course study we were able to determine that - - try to place damage to the vehicle to objects inside the vehicle. So in this case [appellant] was the only, we were able to determine, was the only object inside the vehicle. His injuries are related to specific damage within the vehicle.
>
> **{¶37}** When I'm saying that, is that he has rib injuries; it is consistent with an unrestrained driver from the force of the crash causing - - with contact with the steering wheel, the movement in that direction. It also corresponds with how the vehicle was moving at the time.
>
> **{¶38}** In this case [appellant] was moving in a clockwise direction initially; which at that point is forcing him in that direction as well. He is an object in that vehicle and he is acted upon the same way.
>
> **{¶39}** So his movements in the vehicle is related to the direction of how the vehicle was traveling. Just because the vehicle starts to turn in a direction clockwise, he initially is still continuing in that initial direction until acted upon by an opposite force, which in this case would be the steering wheel. And so he continues to turn, and even

to the point of where it rolls, his body is now acting upon the door and causing the vehicle door to bow out; and that is causing injuries to himself that corresponds with the injuries to the shoulder, to the legs.

{¶40} So all this stuff related together, by putting it together, about how the vehicle is traveling, how he is reacting to the vehicle traveling, and his contact with the objects within the vehicle led us to determine he was ejected from the driver's side window of the 2002 Honda Odyssey. (All errors in original.)

{¶41} Although defense counsel objected to Officer Krejsa's specific opinion on the ultimate issue of whether appellant was operating the vehicle at the time of the accident, he did not object to the validity of the officer's qualifications or his testimony relating to his status as an expert in his field. Counsel's failure to specifically object to Officer Krejsa's status as an expert in accident reconstruction waives all but plain error on appeal. *Hummel v. Suglia*, 11th Dist. No. 2002-L-104, 2003-Ohio-5226, ¶58, citing *State v. Ritchie*, 9th Dist. No. 95CA006211, 1997 Ohio App. LEXIS 1277, *8 (Apr. 2, 1997). Notwithstanding the lack of an objection, the trial court expressly determined that Officer Krejsa's training, experience, and knowledge was adequate to qualify him as an accident reconstruction expert and render an opinion regarding whether appellant was operating the vehicle at the time of the accident. We hold the trial court did not commit plain error in drawing this conclusion.

{¶42} The officer's specialized training as an accident reconstructionist, particularly his background in occupant kinematics, can be reasonably viewed as

specialized knowledge beyond the general ken of a lay person. See Evid.R. 702(A) and (B). Moreover, by applying basic physics to both the van's observable damage as well as appellant's verified injuries, the officer was able to formulate an opinion, supported by objective evidence, that appellant was driving the vehicle, without a passenger, at the time of the accident. See Evid.R. 702(C), generally. For these reasons, we conclude the officer met the requisite criteria for testifying as an expert.

{¶43} Moreover, the primary issue in this case was whether appellant was operating the vehicle at the time of the accident. The officer's testimony clearly assisted the trier of fact in understanding and evaluating the evidence as well as determining the fact in issue. We therefore also hold the trial court did not err when it overruled defense counsel's motion to strike Officer Krejsa's testimony. See Staff Note to Evid.R. 704 ("Opinion testimony on an ultimate issue is admissible if it assists the trier of fact * * *.")

{¶44} Given our holding that Officer Krejsa's testimony was properly admitted, there was sufficient, credible evidence before the court to convict appellant of OVI beyond a reasonable doubt. To wit, the city submitted evidence that appellant had a blood alcohol percentage of .241; over three times the legal limit. And, the evidence demonstrated that, prior to being ejected from the driver's side window, appellant was operating the vehicle. The trial court did not err in convicting appellant of OVI.

{¶45} Appellant's second assignment of error is not well taken.

{¶46} For the reasons discussed above, the judgment of the Willoughby Municipal Court is affirmed.

TIMOTHY P. CANNON, P.J.,

MARY JANE TRAPP, J.,

concur.