

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NOS. C-170257
		C-170259
Plaintiff-Appellee,	:	TRIAL NOS. 17TRD-5553 A
		17TRD-5553 B
vs.	:	
		<i>JUDGMENT ENTRY.</i>
TYDELL NELSON,	:	
Defendant-Appellant.	:	

We consider these appeals on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Tydell Nelson appeals his convictions for leaving the scene of an accident and failure to maintain reasonable control of his car, in violation of R.C. 4549.021 and 4511.202, respectively. We affirm.

Wanda Allen testified that she heard a “bam.” She looked out of her apartment window and saw that a gray car had crashed into the garage door of another apartment in her building, knocking the bottom garage panels onto a different car that was parked inside the garage. The driver immediately left the scene. Allen testified Nelson was the driver. She recognized Nelson because Nelson had visited her neighbor, Yolanda, on multiple occasions. Additionally, approximately 45 minutes after the accident, Allen drove past Nelson driving the same car Allen had seen crash into her apartment building’s garage.

Nelson testified that he was not the driver of the car involved in the accident. He stated that he drove a green car with tinted windows, not a gray car. Nelson said that he had been paying rent to Yolanda, and had lived in her apartment for a while, but that he and Yolanda had broken up the day of the accident. He submitted into evidence pictures of his car taken shortly after the garage incident that showed his car was not damaged. Nelson's employer, Richard Watson, corroborated Nelson's testimony concerning the lack of damage to Nelson's car on the day of the accident.

In his first assignment of error, Nelson claims his conviction for violating R.C. 4549.021 was against the weight and the sufficiency of the evidence. He first argues that the state failed to prove its case because Nelson lived in the apartment that was damaged, and therefore did not have to report himself to anyone. He cites cases that stand for the proposition that, where the identity of a liable party is known, or where there has been no damage to another party, there is no duty to report an accident. *See State v. Provino*, 175 Ohio App.3d 283, 2007-Ohio-6974, 886 N.E.2d 888 (3d. Dist.) (where a single car accident only caused damage to the car involved, and where the owner of the car knew who the driver was, there was no duty to report); *State v. Hoy*, 10th Dist. Franklin No. 02AP-1197, 2003-Ohio-2482 (no violation where the defendant had stopped after the accident and the victim had been able to obtain identifying information off of the defendant's employee badge). These cases do not apply. Here, Nelson damaged property owned by others, left the scene, and was identified only because Allen looked out of her window and saw Nelson leaving. Nelson's contention that he was not the driver undermines his argument that his identity as the liable party was undeniable.

In the alternative, Nelson contends that his convictions were against the manifest weight of the evidence. They were not. While Nelson presented a version of

events that, if believed, would have exonerated him, there is no indication that the trial court so lost its way in weighing the evidence presented as to cause a manifest miscarriage of justice warranting a reversal. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997), citing *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983). Nelson's first assignment of error is therefore overruled.

In his second assignment of error, Nelson argues that his crimes were allied offenses of similar import and should have merged for sentencing. Nelson is incorrect. The crime of failure to control was complete when Nelson hit the garage door. Failing to report the accident occurred when Nelson left the scene without identifying himself as the liable party. These crimes involved separate conduct, as well as separate harms. *See State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892, paragraphs one, two, and three of the syllabus. Nelson's second assignment of error is overruled.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

The trial court's judgment is affirmed.

MYERS, P.J., MILLER and DETERS, JJ.

To the clerk:

Enter upon the court's journal on March 23, 2018

per order of the court _____.

Presiding Judge