

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

STATE OF OHIO,	:	APPEAL NO. C-190241
	:	TRIAL NO. M-19TRD-8122
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
XEZAKIA ROUSE,	:	
	:	
Defendant-Appellant.	:	

We consider this appeal 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.

Following an automobile accident in which defendant-appellant Xezakia Rouse struck a vehicle being driven by Norma Gomez Ramirez from behind, Rouse was cited for violating Springdale Ordinance 72.42 for failing to maintain an assured clear distance ahead. Rouse was found guilty in Springdale Mayor’s Court. He appealed his conviction to the Hamilton County Municipal Court, where he was found guilty following a bench trial. Rouse now appeals the trial court’s judgment, raising eight assignments of error for our review.

In his first assignment of error, Rouse argues that the trial court erred by “not properly addressing the evidence issues.” Rouse appears to argue in this assignment of error that a violation of the rule announced in *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), was committed when the citing officer did not allow Rouse to take pictures of the accident or to speak to Gomez Ramirez at the

scene, thus preventing him from effectively mounting a defense to the citation. But the challenged actions taken by the officer at the scene do not constitute a *Brady* violation, which involves the state's suppression of evidence favorable to the accused where the evidence is material to guilt or punishment. *See State v. Jones*, 1st Dist. Hamilton No. C-180091, 2019-Ohio-4862, ¶ 58.

This assignment of error could also be interpreted as a challenge to the sufficiency and weight of the evidence supporting Rouse's conviction. Rouse was found guilty of violating Springdale Ordinance 72.42(A), which provides that "[n]o person shall operate a motor vehicle at a speed greater or less than is reasonable or proper, having due regard for the traffic, surface, and width of the street or highway and any other conditions, and no person shall drive any motor vehicle in and upon any street or highway at a greater speed than will permit him or her to bring it to a stop within the assured clear distance ahead." Gomez Ramirez testified at the bench trial that her vehicle was struck from behind while she was stopped and waiting for traffic to clear before making a left-hand turn across the roadway. Springdale Police Officer Robers testified that he responded to the scene of the accident and spoke with Rouse. Rouse told Officer Robers that he had looked up while driving and had not seen Gomez Ramirez's car in front of him, and that he had slammed on his brakes and hit the back of her car.

Following our review of the record, after viewing all evidence and reasonable inferences in favor of the state, we find that the trial court could have found all the elements of the offense proved beyond a reasonable doubt. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. And this was not the rare case in which the trier of fact lost its way and committed such a manifest miscarriage of justice in finding Rouse guilty that his conviction must be reversed. *See State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). Rouse's

conviction was supported by both the sufficiency and weight of the evidence. The first assignment of error is overruled.

In his second assignment of error, Rouse argues that the trial court erred in addressing the civil rights issues in this case. Despite phrasing the assignment of error as an error attributable to the trial court, he specifically argues that the state violated his civil rights “in regards to the providing of favorable witnesses” by failing to provide the names of two people who had offered to assist Officer Robers in Spanish translation with Gomez Ramirez at the scene. On this point, Officer Robers testified that he had not taken a statement from these two people because they had not witnessed the accident. We find no error with respect to the issues raised in this assignment of error. The second assignment of error is overruled.

In his third and fourth assignments of error, Rouse challenges the trial court’s failure to dismiss the charge against him. Rouse contends that the charge should have been dismissed because the citing officer failed to complete a proper investigation because he failed to question Gomez Ramirez about her version of the accident. Following our review of the record, we find that the trial court did not err in failing to dismiss the charge against Rouse. The officer’s alleged failure to conduct an adequate or thorough investigation did not provide grounds to dismiss the charge. Rather, that information was relevant to the trial court’s consideration of the sufficiency of the evidence.

Rouse additionally argues that the trial court erred in stating that the proceedings that occurred in the Springdale Mayor’s Court had no bearing on the municipal court trial. The trial court’s statement was not incorrect. As we have held, a “municipal court conducts a trial de novo upon an appeal from a mayor’s court judgment.” *Blue Ash v. Hensley*, 2014-Ohio-3428, 17 N.E.3d 1180, ¶ 16 (1st Dist.). The third and fourth assignments of error are overruled.

In his fifth assignment of error, Rouse argues that the trial court erred in allowing “fruit of the poisonous tree to flourish unchecked.” He specifically argues that the trial court erred in allowing the citing officer to submit “unsubstantiated” evidence because the officer failed to speak with Gomez Ramirez. This assignment of error has no merit. First, this situation does not involve the fruit-of-the-poisonous-tree doctrine. Second, the citing officer did speak with Gomez Ramirez. Gomez Ramirez testified that Officer Robers followed up with her at her home after the accident and asked her about the accident. The fifth assignment of error is overruled.

In his sixth assignment of error, Rouse argues that the trial court erred by allowing the state to “state an inaccuracy on the record” and by allowing the state to be partial to Gomez Ramirez. He contends that because Gomez Ramirez testified that Officer Robers failed to ask her about the accident at the scene, the state was untruthful when it stated during opening statements that Gomez Ramirez had told the officer that she was hit while waiting to make a left-hand turn. We do not find this statement to be inaccurate. As we explained in response to Rouse’s fifth assignment of error, while Officer Robers did not question Gomez Ramirez about the accident at the scene, he did follow up with her at her home after the accident to discuss it. Rouse further argues that the state ignored the fact that Gomez Ramirez committed a crime by driving without a license. But whether Gomez Ramirez possessed a valid driver’s license was not relevant to whether Rouse violated the assured-clear-distance-ahead ordinance. The sixth assignment of error is overruled.

In his seventh assignment of error, Rouse argues that he suffered prejudice when the trial court improperly assisted the state with the rules of evidence. At trial, Officer Robers testified that when investigating the accident, he had worn equipment that recorded his conversation with Rouse. Officer Robers had a copy of the recorded conversation on his cellular phone. The trial court expressed concern about

playing the conversation because it would then have to admit the officer's phone into evidence. After the court expressed its concern, the state asked Officer Robers to summarize the discussion that he had with Rouse. The phone was not admitted into evidence.

The trial court has broad discretion over the admission and exclusion of evidence. *State v. Feller*, 2012-Ohio-6016, 985 N.E.2d 210, ¶ 8 (1st Dist.). We find no abuse of discretion by the trial court in this situation. And Rouse suffered no prejudice because the officer summarized on the record the recorded discussion. *Id.* The seventh assignment of error is overruled.

In his eighth assignment of error, Rouse argues that the trial court erred in not recognizing two separate jurisdictions. He argues that another jurisdiction should have also been involved in the investigation because Gomez Ramirez moved her car from the scene of the accident to a location across the street, which he contends was in Butler County, before Officer Robers arrived to investigate. Rouse failed to raise this argument before the trial court, and has consequently waived all but plain error. *See State v. Pleatman*, 1st Dist. Hamilton No. C-160234, 2016-Ohio-7659, ¶ 16; *State v. Talbert*, 1st Dist. Hamilton No. C-170247, 2019-Ohio-3163, ¶ 15. Rouse, who has provided no legal citation or citation to the record in support of his argument, has failed to demonstrate plain error. The record indicates that the automobile accident took place in Hamilton County. The eighth assignment of error is overruled.

The judgment of the trial court is, accordingly, affirmed.

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

**MOCK, P.J., MYERS and WINKLER, JJ.**

**OHIO FIRST DISTRICT COURT OF APPEALS**

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To the clerk:

Enter upon the journal of the court on March 11, 2020,  
per order of the court \_\_\_\_\_.

Presiding Judge