

[Cite as *State v. Haney*, 2009-Ohio-4121.]

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY**

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| STATE OF OHIO | : | |
| | : | Appellate Case No. 08-CA-37 |
| Plaintiff-Appellee | : | |
| | : | Trial Court Case No. 07-TRC-12319 |
| v. | : | |
| | : | (Criminal Appeal from Miami County |
| CLIFFORD T. HANEY | : | Municipal Court) |
| | : | |
| Defendant-Appellant | : | |
| | : | |

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OPINION

Rendered on the 14th day of August, 2009.

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BROGAN, J.

{¶ 1} Clifford Haney appeals from his conviction after a bench trial in the Miami County Municipal Court of operating a motor vehicle while under the influence of alcohol in violation of R.C. 4511.19(A)(1)(a). Haney contends his conviction was

against the manifest weight of the evidence, and the trial court should have granted his motion for acquittal made at the conclusion of the State's case.

{¶ 2} Ohio State Trooper Jeremy Morris stopped Haney's truck at approximately 10:30 p.m. after he observed Haney's truck cross the center line of County Road 25A twice, and after Haney failed to signal a left turn onto Troy-Sidney Road. Upon requesting that Haney produce his driver's license, Morris observed that Haney had some difficulty removing his license from his wallet. Morris smelled a moderate to strong odor of alcohol when Haney stepped out of his truck. When Haney stepped around to the rear of his truck, Morris observed Haney place his left hand on the truck's tailgate to maintain his balance. Morris observed that Haney's eyes were bloodshot and glassy. Morris asked Haney how much alcohol Haney had consumed and Haney replied that he had around two beers.

{¶ 3} Morris tried to administer the horizontal gaze nystagmus test to Haney but because of Haney's inattentive state he was not able to follow the stimulus as instructed. Morris then requested that Haney perform the one-leg stand test, but he had to discontinue the test because he was concerned for Haney's safety due to his poor balance and coordination. Morris then asked Haney if he wanted to complete the walk and turn test, but Haney said he did not think he would. (Tr. 9.) Haney also refused to take the preliminary breath test.

{¶ 4} Morris said he then placed Haney under arrest and secured him in his patrol car. At post headquarters Morris read Haney the BMV 2255 form and requested Haney submit to a urine specimen test because Morris had observed some prescription bottles in Haney's vehicle. Haney told Morris that he had taken

eight Vicodin tablets, Valium and other heart medication that day.

{¶ 5} On cross-examination, Morris admitted that Haney responded to his patrol lights and pulled his truck over appropriately. Morris estimated that Haney was 6'1" to 6'2" tall and approximately 250 pounds. He admitted that it would take a little more than two beers to impair a large man's driving ability and that two beers could produce a mild to strong odor of alcohol about the drinker. (Tr. 14.) Morris admitted his report did not reflect whether he asked Haney if he had any injury or disability which would affect his ability to perform field sobriety tests.

{¶ 6} On redirect examination, Morris testified he always asks the suspect whether he has any injury which would prevent him doing the one-leg stand or walk and turn test , but he did not specifically remember whether he made that inquiry of Haney. He did testify he would not have administered these sobriety tests if Haney had informed him of an injury preventing performance of the tests. (Tr. 19.)

{¶ 7} At the conclusion of Morris' testimony, Haney moved for a judgment of acquittal which was overruled by the trial court.

{¶ 8} Haney's daughter, Tina Lyons, testified her father attended a Labor Day party at her house from four in the afternoon until nine at night, and she never saw him drink any alcohol. (Tr. 22.) She testified she later saw her father at the Piqua Post and he appeared to be sober. (Tr. 24.)

{¶ 9} James Skeens testified Haney came to his house trailer between nine and ten on the night Haney was arrested. He testified Haney stayed for about thirty minutes and did not drink any alcohol. He testified that Haney did not appear to be under the influence of alcohol. (Tr. 29.)

{¶ 10} Haney argues that his conviction is against the manifest weight of the evidence. He argues that Morris' observations of him are consistent with the actions of a 69-year-old man with age related infirmities, including bad knees. He notes the testing produced inconclusive results, and his admission to drinking two beers would not prove he was impaired at the time he was arrested. He also notes that his daughter and his friend never observed any sign he was intoxicated. Haney also argues that the State failed to prove that he had previously been convicted of operating a motor vehicle while under the influence and therefore the sentence imposed by the trial court was inappropriate.

{¶ 11} The State argues that the evidence presented at trial would support Haney's conviction and it was not required to prove Haney's prior convictions because he was charged pursuant to R.C. 4511.19(A)(1)(a).

{¶ 12} In reviewing the record and in weighing all the evidence and all reasonable inferences and considering the credibility of the witnesses and in resolving conflicts in the evidence, we cannot say the trial court lost its way in convicting Haney. The evidence does not weigh heavily against his conviction. *State v. Thompkins*, 78 Ohio St.3d 380, 1997-Ohio-52. Trooper Morris saw Haney's vehicle cross the centerline of the roadway twice. He observed him having difficulty removing his license from his wallet and he smelled a moderate to strong odor of alcohol about Haney. He noted that Haney's eyes were bloodshot and glassy and he had difficulty maintaining his balance. Haney's condition was such that he was unable to perform any of the field sobriety tests. Haney offered no explanation for his inability to do so, and Trooper Morris testified he would have noted in his report

had Haney done so. In sentencing the defendant to six months in jail, the trial court noted that Haney's conviction was his second such offense in six months and his thirteenth in his lifetime. Haney was charged and convicted pursuant to R.C. 4511.19(A)(1)(a) and prior convictions are not elements of the offense. *State v. Allen* (1987), 29 Ohio St.3d 53. The Appellant's first assignment of error is Overruled.

{¶ 13} The State presented sufficient evidence in its case-in-chief to withstand Haney's Crim.R. 29 motion for an acquittal. *State v. Jenks* (1991), 61 Ohio St.3d 259. The Appellant's second assignment of error is also Overruled. The judgment of the trial court is Affirmed.

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DONOVAN, P.J., and FAIN, J., concur.

Copies mailed to:

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