

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

STATE OF OHIO,	:	APPEAL NO. C-150525
Plaintiff-Appellee,	:	TRIAL NO. B-1304780
vs.	:	<i>JUDGMENT ENTRY.</i>
MIRAZIZ UMAROV,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

This is an appeal from convictions for nonsupport of dependents. A jury found Miraziz Umarov guilty for failing to make child-support payments ordered by the domestic relations court. Mr. Umarov argues that his convictions should be reversed because the state didn't prove that he acted recklessly and because he proved that he was unable to pay the court-ordered support. We disagree and affirm the judgment of the trial court.

Umarov's sole assignment of error is that his convictions for nonsupport of dependents were based on insufficient evidence and against the weight of the evidence. R.C. 2919.21(B) makes it a crime for a person to "fail to provide support as established by a court order to another person whom, by court order or decree, the person is legally obligated to support." The state is required to prove that the defendant acted recklessly. *See State v. Collins*, 89 Ohio St.3d 524, 529-530, 733

N.E.2d 1118 (2000). If the person fails to support a dependent for 26 weeks out of a 104-week period, the offense is a fifth-degree felony. R.C. 2919.21(G)(1).

Mr. Umarov does not contest that he did not make the required payments for at least 26 weeks out of the 104-week period from November 1, 2012, to November 1, 2014. Rather, he maintains that the state did not present evidence that he acted recklessly. One acts recklessly “when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature.” Former R.C. 2901.22(C). Here, the evidence was that Umarov took no action to pay child support for at least 26 weeks. Such evidence was sufficient for the jury to find that Umarov had acted recklessly. *See Collins* at 530. The state adduced substantial, credible evidence from which the jury could have reasonably concluded that the state had proved beyond a reasonable doubt the elements of nonsupport of dependents. *See State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

Mr. Umarov also contends that he proved an affirmative defense to the charges. Under R.C. 2919.21(D), it is an affirmative defense “that the accused was unable to provide * * * the established support but did provide the support that was within the accused’s ability and means.” During the trial, Mr. Umarov explained that, for a few months in 2013, he had been unable to work because he had to spend time tracking down his ex-wife and children after she removed them from Ohio. He also told the jury that his degree in construction management that he had received in his native country of Uzbekistan was not recognized in the United States, and that he was unable to work because he was taking classes to become a home inspector. It was for the jury to assess the credibility of Umarov’s claims that he was unable to pay the court-ordered support. Our review of the entire record fails to persuade us that the jury clearly lost its way and created such a manifest miscarriage of justice that we must reverse his convictions for nonsupport of dependents. *See State v. Thompkins*,

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78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). The sole assignment of error is overruled, and we therefore affirm the judgment of the trial court.

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.

FISCHER, P.J., DEWINE and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on August 10, 2016
per order of the court _____.

Presiding Judge