[Cite as *Parma v. Block*, 2010-Ohio-2341.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 92891

CITY OF PARMA

PLAINTIFF-APPELLEE

vs.

NICHOLAS S. BLOCK

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Parma Municipal Court
Case No. 08 TRD 05325

BEFORE: Sweeney, J., Stewart, P.J., and Boyle, J.

RELEASED: May 27, 2010

JOURNALIZED:

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief per App.R. 26(A), or a motion for consideration en banc with supporting brief per Loc.App.R. 25.1(B)(2), is filed within ten days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. 2.2(A)(1).

JAMES J. SWEENEY, J.:

{¶ 1} Defendant-appellant, Nicholas S. Block ("defendant"), appeals from his conviction in the Parma Municipal Court for reckless operation, a misdemeanor of the first degree. Defendant maintains that the trial court erred by denying his motion to dismiss and because he believes his conviction was based upon insufficient evidence. For the reasons that follow, we affirm.

{¶ 2} On September 16, 2008, a Parma police officer issued defendant an Ohio Uniform Traffic Ticket for a violation of Codified Ordinances 333.02 and specifying "reckless operation on street or highway."

{¶ 3} The matter proceeded to trial. The first witness was Raymond, who is defendant's friend. Raymond testified that on September 16, 2008, he was driving behind defendant's car, following him to a residence. Another individual named Anthony was in defendant's car at that time. Raymond failed to yield at one stop sign, and as will be explained, for which he paid a fine. Raymond recalled that he considered not stopping at another stop sign at West 54th Street but oncoming traffic prevented him from running it. By that time, he could no longer see defendant's car. Having lost sight of defendant's vehicle and being unable to contact him by phone, Raymond decided to go to defendant's house under the assumption that defendant would be there.

{¶ 4} Raymond testified that he was pretty sure he saw defendant's vehicle stop at a stop sign.

{¶ 5} After Raymond stopped at defendant's house, the police car pulled in front of him with lights activated. Although defendant's vehicle was parked in his

driveway, defendant was nowhere in sight. Raymond gave a written statement to police stating that he ran the stop sign in an effort to keep up with defendant's vehicle. When asked if defendant also ran that stop sign, Raymond said, "I would say yeah, he ran the stop sign." Raymond was unaware of any other stop sign violations by defendant and indicated that it was dark outside.

{¶ 6} Under cross-examination, Raymond said defendant was driving faster than he was driving and faster than the speed limit.

{¶ 7} Raymond said he only stopped at one stop sign while driving on Thornton Avenue between Ridge Road and West 54th Street. He then conceded that if there were three stop signs between that distance, he must have run other stop signs, which he did not see because he was trying to follow defendant.

{¶ 8} The City next examined the Parma police officer who issued defendant's ticket (the "Officer"). The Officer, on patrol in a marked vehicle, observed two vehicles traveling at high rates of speed on Thornton Ave. The Officer followed. Both vehicles failed to stop at the next two stop signs (Allanwood and Dartworth) and never slowed down. The vehicles continued at approximately 45 mph or greater until reaching West 54th Street. The posted speed limit in this location is 25 mph. Defendant's vehicle failed again to yield at the stop sign and turned southbound out of the Officer's sight, while the second car stopped due to traffic. The Officer located both vehicles on Wellington. The Officer testified that the vehicles presented a safety hazard for the traveling public.

{¶ 9} The Officer stopped Raymond's vehicle and approached it. The Officer advised Raymond of the reason for the stop and Raymond identified defendant as the driver of the first vehicle. Defendant's car was parked in the driveway and the engine was still warm. The Officer was able to identify this vehicle as the one involved in the recent traffic violations he had observed because it was a unique vehicle, including its purple color, and a suspension modification that lowered it closer to the ground. The Officer verified that defendant owned the subject vehicle. Raymond gave a statement to the Officer.

{¶ 10} Two police officers approached defendant's home and were greeted by an "uncooperative male," who said defendant was not home. Police then obtained a warrant for defendant for reckless operation. The warrant and complaint each charged that defendant "did knowingly operate a vehicle on any street or highway in willful or wanton disregard of the safety of persons or property, at to-wit: westbound on Thornton Avenue from Wareham to West 54th Street in violation of Parma Codified Ordinance 333.02 — Reckless Operation (M1) * * *." The next day, the Officer observed another traffic violation involving this vehicle, which resulted in defendant's arrest on the outstanding warrant.

{¶ 11} After the City rested, the defendant was called to the stand. Defendant, although represented by counsel throughout trial, presented a "Motion to Dismiss" the case that was prepared by his mother, who is not an attorney. Defendant read from the document and sought dismissal, in sum, under R.C. 2935.10(E) alleging the warrant did not state the "substance of the charge" against

him and complaining that he did not receive a copy of it until he requested it on October 1, 2008. The motion was denied. Although defense counsel attempted to call defendant as a witness, defendant chose not to testify.

{¶ 12} The court found defendant guilty of reckless operation and imposed a sentence, of which defendant served ten days in jail before his release.

{¶ 13} Defendant now appeals, asserting three assignments of error for our review, which we will discuss in order and together where it is appropriate for discussion.

{¶ 14} "I. The trial court erred in denying defendant-appellant's motion to dismiss."

{¶ 15} In this assignment of error, defendant complains that the "charging documents" did not specifically inform him of which acts constituted reckless operation of his vehicle and relies exclusively on *City of Cleveland v. Bates*, Cuyahoga App. No. 90212, 2008-Ohio-3679. In response, the City argues that the Uniform Traffic Ticket issued in this matter properly charged defendant because it advised him of the nature of the offense, "reckless operation on street or highway," and identified the local ordinance, 333.02.

{¶ 16} To the extent *Bates* provides otherwise, we clarify that Crim.R. 3 does not apply in cases covered by the Ohio Uniform Traffic Rules. *City of Cleveland v. Austin* (1978), 55 Ohio App.2d 215, 380 N.E.2d 1357, citing Crim.R. 1(C)(3); see, also, *City of Barberton v. O'Connor* (1985), 17 Ohio St.3d 218, 478 N.E.2d 803. In *Austin*, we held that "the ticket requires only a description of the offense together

with a reference to the law that defines the alleged violation." *Austin*, 55 Ohio App.2d 215, 218. "'Such a requirement can be fulfilled by stating the commonly used name of the offense and that statute or ordinance violated.* * *'" Id., quoting *Swisse v. City of Sheridan* (Wyo. 1977), 561 P.2d 712, 713-14.

{¶ 17} The Ohio Supreme Court held in *Barberton* that a Uniform Traffic Ticket properly charges an offense by describing the nature of the offense and making reference to the ordinance that gives rise to the offense. *Barberton*, 17 Ohio St.3d 218, paragraph one of the syllabus. This is true "even if the defendant has to make some reasonable inquiry in order to know exactly what offense is charged." Id., paragraph two of the syllabus.

{¶ 18} In this case, the Uniform Traffic Ticket advised defendant he was being charged with "reckless operation on street or highway" and that he violated ordinance 333.02.[1] Under the controlling precedent, this is sufficient to properly charge an offense in matters covered by the Ohio Traffic Rules and the municipal court did not err by denying defendant's motion to dismiss. Id.

{¶ 19} Assignment of Error I is overruled.

{¶ 20} "II. There was insufficient evidence to find defendant-appellant guilty of a third degree misdemeanor.

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[1]We also note that the facts in *Bates* included an apparent discrepancy between the defendant's copy of his ticket and the other two copies, which included additional notations by the officer.

{¶ 21} "III. The trial court erred and/or abused its discretion in finding defendant-appellant guilty of a third degree misdemeanor."

{¶ 22} Defendant prefaces his arguments under these assignments of error with his mistaken belief that he was convicted of a third degree misdemeanor. The record, specifically the judgment of conviction, explicitly reflects that defendant was convicted of reckless operation, *a first degree misdemeanor*. (R. 26, emphasis added.)

{¶ 23} Parma Codified Ordinance 333.02(e) provides "whoever violates Division (a) or (b) of this section is guilty of a misdemeanor of the first degree and shall be subject to penalty provided in Section 303.99(a)."

{¶ 24} Parma Codified Ordinances 333.02(a) provides:

{¶ 25} "(a) No person shall operate a vehicle on any street or highway in willful or wanton disregard of the safety of persons or property."

{¶ 26} There is sufficient evidence in the record that would support defendant's conviction under the above-quoted provision. There was no need to introduce evidence of prior convictions in order to sustain his conviction, which constitutes to a misdemeanor of the first degree.

{¶ 27} Assignment of Error II is overruled.

{¶ 28} Defendant relies upon R.C. 2945.75(A)(2) to support his contention that his conviction should be reduced to a minor misdemeanor. Specifically, he maintains that the guilty verdict did not state either the degree of the offense or any additional elements that would elevate the seriousness of the offense. At trial, the

court simply found defendant guilty of reckless operation and did not state the degree of the offense at that time. However, the court's judgment entry clearly reflects that defendant was charged with a violation of Parma Ordinance "333.02 reckless operation M-1 - defendant plead no[t] guilty; found guilty * * *." (R.26.) This is sufficient in a bench trial to satisfy the requirements of R.C. 2945.75(A)(2). See *State v. Sutton*, Cuyahoga App. No. 90172, 2008-Ohio-3677, ¶60 ("Had the trial been a bench trial, the trial court's notation of "F4" [in the journal entry] would have been sufficient [to state the degree of the offense as required by law].")

{¶ 29} Assignment of Error III is overruled.

Judgment affirmed.

It is ordered that appellee recover from appellant its costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Parma Municipal Court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

JAMES J. SWEENEY, JUDGE

MARY J. BOYLE, J., CONCURS;
MELODY J. STEWART, P.J., CONCURS

IN JUDGMENT ONLY