

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

BRANDON L. MILLER,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 16 MA 0103.

Criminal Appeal from the
Youngstown Municipal Court of Mahoning County, Ohio
Case No. 2016 CRB 843, 2016 CRB 844.

BEFORE:

Gene Donofrio, Cheryl L. Waite, Carol Ann Robb, Judges.

JUDGMENT:

Reversed. Conviction Vacated.

Atty. Dana Lantz, City Prosecutor and Atty. Jeffrey Moliterno, Assistant Prosecutor, 26 South Phelps Street, 4th Floor, Youngstown, Ohio 44503, for Plaintiff-Appellee, and

Atty. Wesley Johnston, P.O. Box 6041, Youngstown, Ohio 44501, for Defendant-Appellant.

Dated:
June 20, 2018

Donofrio, J.

{¶1} Defendant-appellant, Brandon Miller, appeals his convictions in the Youngstown Municipal Court for nine counts of Youngstown Municipal Property Maintenance violations pursuant to 546.04 of Youngstown Codified Ordinances, misdemeanors of the third degree, following a bench trial.

{¶2} Appellant is the owner of real property located at 2028 Pointview Avenue in Youngstown, Ohio. Appellant also resides at this property. On April 20, 2016, appellant was charged with nine violations of the Youngstown Municipal Property Maintenance Code pursuant to Chapter 546 of the Youngstown Codified Ordinances, misdemeanors of the third degree. The violations all occurred at appellant's property.

{¶3} Appellant was arraigned on April 21, 2016 and a bench trial was scheduled for May 13, 2016. Four days before trial, on May 9, 2016, appellant filed a request for a bill of particulars. The trial court postponed the trial in order to allow plaintiff-appellee, the State of Ohio, time to produce a bill of particulars. The state provided the bill of particulars to appellant on May 13, 2016.

{¶4} The trial court rescheduled appellant's trial for June 9, 2016. Three days before the trial, on June 6, 2016, appellant filed a "motion to dismiss/acquit." This motion argued, in part, that the state failed to properly notify appellant of the charges pursuant to Y.C.O 546.06(a). On the date of the bench trial, June 9, 2016, the trial court verbally denied appellant's motion. The trial court memorialized said ruling in a journal entry dated June 9, 2016.

{¶5} At trial, the state called Abigail Beniston, a code enforcement and blight remediation superintendent for the City of Youngstown. Relevant to this appeal, Beniston testified that she could not produce a copy of the notice of violation issued to appellant at trial nor could she testify as to which of appellant's nine violations were in the initial notice.

{¶6} At the end of the state's case, appellant moved again to dismiss the charges on the basis that the state failed to prove that it properly notified him of the violations. The trial court denied this motion.

{¶17} At the conclusion of the trial, the trial court found appellant guilty of all nine violations of Y.C.O. 546.04. The trial court sentenced appellant to 60 days of incarceration on three counts to run concurrently, two years of probation, community service, and a \$100.00 fine for each count. Appellant timely filed this appeal on July 13, 2016. Appellant now raises one assignment of error.

{¶18} Appellant's sole assignment of error states:

THE TRIAL COURT ERRED IN NOT GRANTING DEFENDANT-APPELLANT'S MOTION TO DISMISS/ACQUIT WHEN THE STATE FAILED TO PROVIDE THE REQUIRED ADMINISTRATIVE NOTICE OF THE ALLEGED PROPERTY MAINTENANCE VIOLATIONS.

{¶19} Appellant argues that the state was required by law to provide him administrative notice of the charges. Appellant argues that because the bill of particulars states nothing about administrative notice nor was any copy of administrative notice included in discovery responses from the state, he was not properly notified of the charges against him.

{¶10} Appellant challenges the trial court's judgments denying his motions to dismiss. His arguments challenge the sufficiency of the evidence against him. Sufficiency of the evidence is the legal standard applied to determine whether the evidence is legally sufficient as a matter of law to support the verdict. *State v. Dickson*, 7th Dist. No. 12 CO 50, 2013-Ohio-5293, ¶ 10 citing *State v. Thompkins*, 80 Ohio St.3d 89, 113, 684 N.E.2d 668 (1997). Sufficiency is a test of adequacy. *Id.* Whether the evidence is legally sufficient to sustain a verdict is a question of law. *Id.* In reviewing the record for sufficiency, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements proven beyond a reasonable doubt. *Id.* citing *State v. Goff*, 82 Ohio St.3d 123, 138, 694 N.E.2d 916 (1998).

{¶11} Y.C.O. 546.06(a) states "[w]henver the Code Official or his/her designee determines that there has been a violation of any provision of this code, he or she may give notice to the person or entity responsible therefore and order compliance, as provided herein * * *." Y.C.O. 546.98(a) specifies that any person found in violation of

Chapter 546 can only be charged with the violations after proper notice was given pursuant to Y.C.O. 546.06.

{¶12} Y.C.O. 546.06(a)(1)-(6) states that the notice shall: be in writing on the appropriate form, include a list of violations, refer to the sections and divisions violated, order remedial action which will effect compliance with the provisions of the code, specify a reasonable time in which to comply, and set forth the procedure to appeal the notice and order. Pursuant to Y.C.O. 546.06(b), the notice is considered delivered to the responsible party if it is sent by regular mail to the residence or personally delivered. The notice must also be placed in a conspicuous place in or on the residence.

{¶13} Beniston testified that while she believes the initial notice was sent to appellant in August of 2014, it was not in her possession during trial nor does she know what the contents of said notice were. (Tr. 23, 50). Beniston testified on cross-examination that the software her department utilizes only recorded two administrative orders were issued, one for a violation of protective treatment and one for a violation of handrails, were issued and that the lack of indication of other administrative orders means that none were issued. (Tr. 24, 50). Furthermore, the document Beniston testified from which documented all steps Beniston's department took while investigating appellant's residence was ultimately not admitted into evidence. (Tr. 61-62).

{¶14} Because the trial court excluded proposed exhibit B, the list of actions Beniston's department performed regarding appellant's property, there is no evidence in the record that appellant was personally served or served via U.S. mail the notice of his violations. Moreover, Y.C.O. 546.06(a) mandates that the notice follows six guidelines. There is no evidence that these guidelines were followed. Because there is no evidence that the state complied with the notice requirement of Y.C.O. 546.06(a), appellant's conviction is insufficient as a matter of law.

{¶15} The violations that appellant was charged with carry criminal penalties, including a maximum of 60 days of incarceration. As criminal penalties, the due process that the state must follow, including notifying a person of potential violations, is higher than it would be in other settings, such as an administrative proceeding. The record has no evidence that appellant was properly notified pursuant to Y.C.O. 546.06(a) of the

charges against him.

{¶16} Accordingly, appellant's sole assignment of error has merit and is sustained.

{¶17} For the reasons stated above, the trial court's judgment is hereby reversed and appellant's conviction is hereby vacated.

Waite, J., concurs

Robb, P. J., concurs

For the reasons stated in the Opinion rendered herein, appellant's sole assignment of error has merit and is sustained. It is the final judgment and order of this Court that the judgment of the Youngstown Municipal Court, Mahoning County, Ohio is hereby reversed and appellant's conviction is hereby vacated.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.