

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

JAMES BARES,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 19 MA 0086

Criminal Appeal from the
Court of Mahoning County Area Court #2 of Mahoning County, Ohio
Case No. 2019 CRB 00749

BEFORE:

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

JUDGMENT:

Reversed and Vacated

Atty. Paul Gains, Prosecutor, and *Atty. Ralph Rivera*, Assistant Prosecutor, Mahoning County Prosecutor's Office, 21 West Boardman Street, 6th Floor, Youngstown, Ohio 44503 for Plaintiff-Appellee, and

Atty. John McNally IV, John A. McNally, III, Co., LPA, 100 Federal Street East, Suite 600, Youngstown, Ohio 44503 for Defendant-Appellant.

Dated:
September 24, 2020

Donofrio, J.

{¶1} Defendant-appellant, James Bares, appeals from a Mahoning County Area Court #2 judgment convicting him of failing to comply with an order or signal of a police officer and reckless operation, following a bench trial.

{¶2} On May 21, 2019 at approximately 11:45 p.m., Boardman Police Officer Daniel Baker observed a Pontiac Trans Am traveling at a high rate of speed. The vehicle turned southbound onto South Avenue from Mathews Road. Officer Baker believed that the vehicle was traveling in excess of the speed limit. He followed the Trans Am, which he reported changed lanes twice at a high rate of speed, cutting off another vehicle to the point the other vehicle had to hit their brakes. Officer Baker then activated his overhead lights and siren when he was about six to seven car lengths behind the Trans Am. Several other vehicles pulled over in response to the lights and siren. The Trans Am made an abrupt turn into Doral Drive (the entrance to a Walmart) and continued into the center of the Walmart parking lot. Officer Baker traveled approximately .6 miles from the time he turned on his siren until the Trans Am came to a complete stop. Officer Baker testified that at no time did the driver speed up once his lights and siren were activated.

{¶3} Once stopped, the driver exited the vehicle. Officer Baker then placed the driver in handcuffs and identified him as appellant. Appellant admitted to Officer Baker that he was driving in excess of the speed limit.

{¶4} The officer issued appellant a summons for operating in willful disregard of safety in violation of R.C. 4511.20. Appellant was later also charged with failure to comply in violation of R.C. 2921.331(B).

{¶5} The case proceeded to a bench trial where the court found appellant guilty of both charges. On the failure to comply conviction, the court sentenced appellant to 90 days in jail with 90 days suspended, 12 months community control, a remedial driving course within 60 days, a six-month driver's license suspension, and a \$250 fine. On the operating in willful disregard of safety conviction, the court fined appellant \$100.

{¶6} Appellant timely filed his notice of appeal on July 15, 2019. On appellant's motion, the trial court stayed his sentence pending this appeal.

{¶7} Appellant now raises a single assignment of error. His assignment of error states:

THE TRIAL COURT ERRED IN DENYING DEFENDANT-APPELLANT'S MOTION FOR ACQUITTAL AS TO THE CHARGE OF VIOLATION OF R.C. 2921.331(A) WHERE THE STATE FAILED TO PRESENT SUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION BY THE TRIAL COURT.

{¶8} Appellant argues there was not sufficient evidence to support his conviction for failure to comply. First, he points out that Officer Baker testified that appellant did not attempt to flee or speed up after he activated his lights and siren. Second, appellant notes that Officer Baker was six to seven car lengths behind him when the officer activated his lights and siren. Appellant does not take issue with his conviction for operating in willful disregard of safety and only challenges his conviction for failure to comply.

{¶9} Sufficiency of the evidence is the legal standard applied to determine whether the case may go to the jury or whether the evidence is legally sufficient as a matter of law to support the verdict. *State v. Smith*, 80 Ohio St.3d 89, 113, 684 N.E.2d 668 (1997). In essence, sufficiency is a test of adequacy. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). 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 a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Smith*, 80 Ohio St.3d at 113.

{¶10} The trial court convicted appellant of violating R.C. 2921.331(B), which provides: "No person shall operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop." Thus, we must determine whether the state presented sufficient evidence to support this conviction.

{¶11} Officer Baker was the sole witness. He testified that at approximately 11:00 p.m. on the day in question, he was stationary in his cruiser at the intersection of Mathews Road at South Avenue, when he observed a Pontiac Trans Am traveling at a high rate of speed. (Tr. 8). He did not have his radar activated but he could tell from experience that the Trans Am was traveling at an excessive speed. (Tr. 8-9). He exited the parking lot to get behind the vehicle to get a speed or “see what it was doing.” (Tr. 9). At that time, he noticed the Trans Am change lanes twice at a high rate of speed, as well as cut off a Jeep, to the point the Jeep’s driver had to hit the brakes. (Tr. 9). He characterized traffic as moderate to heavy that evening. (Tr. 9). After seeing the Trans Am cut off the Jeep, Officer Baker activated his overhead lights and siren. (Tr. 9-10). He stated that after he turned on his lights, he had to speed up to catch up to the Trans Am causing three or four other cars to pull over in response. (Tr. 10). After he was directly behind the Trans Am, the Trans Am made an abrupt turn, with very minimal slowing down, and turned widely onto Doral Drive (which is commonly known as the entrance to Walmart). (Tr. 11). The officer stated that he travelled approximately 0.6 of a mile after he activated his lights and siren until the Trans Am pulled over. (Tr. 13).

{¶12} Officer Baker stated that as he turned in, the driver of the Trans Am exited his vehicle, at which point Officer Baker ordered him to stop, and placed him in handcuffs. (Tr. 11). Officer Baker testified that appellant was the driver of the Trans Am. (Tr. 12).

{¶13} Officer Baker further testified that he believed that the Trans Am may have slowed down after appellant saw him. (Tr. 16). And he agreed that the Trans Am did not speed up after he activated his lights and siren. (Tr. 22). Additionally, the Trans Am did not run any red lights. (Tr. 19-20). Further, he noted that appellant was cooperative. (Tr. 22-23).

{¶14} In this case, there is not sufficient evidence that appellant failed to comply. Officer Baker testified that appellant did not speed up, did not travel through any red lights, and only travelled 0.6 of a mile from where the officer activated his lights and siren. Further, when Officer Baker activated his lights and sirens, he was six to seven car lengths behind appellant. Thus, for the majority of the time between the signal and the stop, Officer Baker was not directly behind appellant signaling him to stop.

{¶15} Plaintiff-appellee, the State of Ohio, suggests that this case is similar to *State v. Henry*, 9th Dist. Summit No. 27758, 2016-Ohio-680. In that case, a police officer was questioning Henry in a parking lot about an unrelated incident. *Id.* at ¶ 4. Henry left the parking lot in his vehicle and the officer followed. *Id.* The officer activated his overhead lights and siren. *Id.* Henry accelerated, weaved in and out of traffic, and “nearly” went through a red light. *Id.* at ¶ 16. Henry then turned right onto another road, away from the officer. *Id.* Once the officer was behind him, Henry travelled approximately 200 yards before pulling over. *Id.*

{¶16} This case, however, is distinguishable from *Henry*. Significantly, the car in *Henry* sped up when the officer activated his lights and siren. Appellant did not speed up when Officer Baker activated his lights and siren. Moreover, Henry was weaving in and out of traffic and “nearly” ran a red light. There was no testimony here that appellant was weaving. And Officer Baker testified that the traffic light appellant travelled through was green. Thus, *Henry* is not comparable to this case.

{¶17} When viewing the evidence in a light most favorable to the prosecution, it cannot be said that appellant *willfully* eluded or fled from Officer Baker when he activated his lights and siren. The officer and the court may have considered appellant’s erratic driving before the lights and siren were activated as part of the pursuit instead of only considering appellant’s behavior after the lawful order to stop.

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

{¶19} For the reasons stated above, the trial court’s judgment is hereby reversed. Appellant’s conviction for failure to comply is vacated.

Waite, P. J., concurs.

Robb, J., concurs.

For the reasons stated in the Opinion rendered herein, the sole assignment of error is sustained and it is the final judgment and order of this Court that the judgment of the Court of Mahoning County Area Court #2 of Mahoning County, Ohio, is reversed. Appellant's conviction for failure to comply is vacated. Costs to be waived.

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.