

[Cite as *Tallmadge v. Ragle*, 2015-Ohio-1523.]

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No. 27538

Appellee

v.

APPEAL FROM JUDGMENT
ENTERED IN THE
STOW MUNICIPAL COURT
COUNTY OF SUMMIT, OHIO
CASE No. 2010 TRC 4803

ZACHARY L. RAGLE

Appellant

DECISION AND JOURNAL ENTRY

Dated: April 22, 2015

SCHAFFER, Judge.

{¶1} Defendant-Appellant Zachary L. Ragle appeals from a judgment of conviction and sentence entered by the Stow Municipal Court. For the following reasons, we affirm.

I.

{¶2} On May 29, 2010, Zachary L. Ragle crashed his truck into a tree in Tallmadge, Ohio. Police officers arrived at the scene of the accident and discovered Mr. Ragle unconscious in the vehicle. The police observed a strong odor of an alcohol beverage coming from within the truck and noticed a case of beer on the floor of the truck with two cans missing. Mr. Ragle was taken to the hospital where he consented to a blood draw.

{¶3} The police subsequently arrested Mr. Ragle and cited him with one count of operating a vehicle under the influence of alcohol (“OVI”) in violation of Tallmadge Codified Ordinance 333.01(a)(1)(A), one count of operating a vehicle without reasonable control in violation of T.C.O. 333.08, one count of operating a vehicle with a prohibited blood alcohol

concentration (“BAC”) in violation of T.C.O. 333.01(a)(1)(C), and one count of underage possession or consumption in violation of R.C. 4301.69(E).

{¶4} Mr. Ragle originally pleaded not guilty to all of the charges. He filed a motion to suppress on July 7, 2010. The trial court denied that motion, after which Mr. Ragle changed his plea to no contest on all four charges. On November 2, 2010, the trial court found Mr. Ragle guilty of all charges based upon the prosecutor’s explanation of circumstances surrounding the incident. The trial court merged the BAC offense with the OVI offense and sentenced Mr. Ragle to 180 days in jail, with 174 days suspended upon the conditions that he complete a driver intervention program, serve three days in jail, pay all fines, costs, and restitution, and obey all laws for one year. The trial court also ordered restricted license plates and a one-year driver’s license suspension. The trial court held its sentence in abeyance pending the resolution of Mr. Ragle’s direct appeal.

{¶5} Mr. Ragle appealed, raising two assignments of error. *State v. Ragle*, 9th Dist. Summit No. 25706, 2012-Ohio-4253, ¶ 5. First, he argued that the trial court erred in denying his suppression motion because the State had failed to prove that his blood was drawn and tested in accordance with the requirements as set forth in the Ohio Administrative Code. *Id.* Second, Mr. Ragle argued that the police lacked probable cause to arrest him for OVI. *Id.* This Court issued a decision on November 16, 2011 determining that the suppression issue was moot. *Id.* at ¶ 6. However, on February 3, 2012, this Court granted Mr. Ragle’s application for reconsideration, reinstated his appeal, and vacated our November 16, 2011 decision and journal entry. *Id.* at ¶ 7. On September 19, 2012, this Court issued a decision concluding the trial court did not err in finding that the police had probable cause to arrest Mr. Ragle. *Id.* at ¶ 31. However, we also determined that the trial court erred in failing to suppress the blood testing

results. *Id.* at ¶ 23. This Court thereby vacated Mr. Ragle’s conviction for operating a vehicle with a prohibited BAC and affirmed his three remaining convictions. *Id.* at ¶ 33.

{¶6} On August 8, 2014, Plaintiff-Appellee, the City of Tallmadge, filed a motion to impose sentence on Mr. Ragle. The Stow Municipal Court granted that motion on August 18, 2014 and imposed sentence on September 10, 2014.

{¶7} Mr. Ragle now appeals the September 10, 2014 entry raising one assignment of error for our review.

II.

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRORED [SIC] BY FOLLOWING THIS COURT’S MANDATE TO AFFIRM APPELLANT RAGLE’S OVI CONVICTION AND NOT FOLLOWING THE INTERVENING DECISION BY THE OHIO SUPREME COURT THAT VERIFIES THIS CONVICTION AS AN UNJUST CONVICTION.

{¶8} In his sole assignment of error, Mr. Ragle argues that, when the trial court imposed its sentence on September 10, 2014, it ignored this Court’s 2012 decision suppressing the admissibility of the blood testing results. Specifically, Mr. Ragle contends that without the blood test, the prosecutor’s “explanation of circumstances” that the trial court relied upon during sentencing in November of 2010 was insufficient to support a finding of guilt on the OVI charge.¹ Mr. Ragle also argues that an exception to the law of the case doctrine existed in this case that prevented the trial court from adhering to this Court’s 2012 decision affirming his OVI conviction. We disagree.

¹ R.C. 2937.07 provides, in relevant part, that “[a] plea to a misdemeanor offense of ‘no contest’ or words of similar import shall constitute an admission of the truth of the facts alleged in the complaint and that the judge or magistrate may make a finding of guilty or not guilty from the *explanation of the circumstances* of the offense.” (Emphasis added.) Mr. Ragle pleaded no contest to all charges.

{¶9} The State asserts that the doctrine of res judicata bars Mr. Ragle from bringing this appeal challenging the sufficiency of the prosecutor's explanation of circumstances because the issue was not raised in the trial court or on direct appeal. Under the doctrine of res judicata:

[A] convicted defendant is precluded * * * from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial which resulted in that judgment of conviction or on appeal from that judgment.

Ross v. Innes, 9th Dist. Lorain No. 04CA008533, 2004-Ohio-7168, 7, quoting *State v. Szefcyk*, 77 Ohio St.3d 93, 96 (1996).

{¶10} Here, Mr. Ragle could have raised his arguments concerning the sufficiency of the prosecutor's explanation of circumstances either at his sentencing hearing in 2010 or on direct appeal. He failed to do so. Therefore, Mr. Ragle has exhausted his opportunities to litigate this issue. *See Szefcyk* at 95.

{¶11} Therefore, Mr. Ragle's sole assignment of error is overruled.

III.

{¶12} Mr. Ragle's sole assignment of error is overruled, and the judgment and sentence of the Stow Municipal Court is affirmed.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Stow Municipal Court, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

JULIE SCHAFER
FOR THE COURT

HENSAL, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

ZACHARY L. RAGLE, pro se, Appellant.

MEGAN E. RABER, Director of Law, and JOHN A. SCAVELLI, JR., Assistant Director of Law, for Appellee.