[Cite as *Cleveland v. Davis*, 2019-Ohio-543.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 107138

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

ANTOINE D. DAVIS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cleveland Municipal Court
2018 TRD 00061

BEFORE: Headen, J., E.T. Gallagher, P.J., and Celebrezze, J.

RELEASED AND JOURNALIZED: February 14, 2019

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RAYMOND C. HEADEN, J.:

{¶1} Defendant-appellant Antoine D. Davis ("Davis") appeals from the judgment of the Cleveland Municipal Court, rendered after a bench trial, finding him guilty of reckless operation of a motor vehicle in violation of Cleveland Codified Ordinances ("C.C.O.") 433.02(A). For the reasons that follow, we affirm.

Procedural and Factual History

{¶2} This appeal stems from one of three municipal court cases arising from events that occurred on November 30, 2017. On that date, officers initiated a traffic stop when Davis made a right turn at a red light at a prohibited time. Davis was ticketed for violating C.C.O. 413.01, obedience to traffic control devices, for the illegal turn; C.C.O. 437.28, using tinted glass and other vision obscuring materials; and C.C.O. 435.09(A), display of license plates, for not displaying a front license plate. Following a bench trial, the court found Davis guilty of making an illegal right turn and not displaying a front license plate, and not guilty of the tinted glass violation. Davis appealed, arguing that his convictions were supported by insufficient evidence. This court affirmed. *Cleveland v. Davis*, 8th Dist. Cuyahoga No. 106780, 2018-Ohio-4706.

{¶3} Immediately after police officers issued Davis a citation for the violations described above on November 30, 2017, an accident occurred across the street from where they had stopped Davis. The officers crossed the street to respond to the accident. While responding to the accident, the officers heard loud music coming from the other side of the street. The officers observed Davis driving down the street with his door open and loud music playing, driving between the traffic lanes. After dealing with the accident, the officers wrote a citation and summons for Davis for reckless operation of a motor vehicle, and filed said summons and citation on November 30, 2017, the date of the incident.

{¶4} On January 8, 2018, a complaint for reckless operation was filed in Cleveland Municipal Court. Davis was served with the summons related to this reckless operation violation on or about January 12, 2018.

{¶5} On January 23, 2018, Davis was arraigned and pleaded not guilty. On February 5, 2018, trial was continued at Davis's request, and Davis stated that he intended to file a motion to dismiss.

{¶6} On March 19, 2018, the court held a trial. At the beginning of the trial, Davis stated that he had filed a motion to dismiss, but neither the court nor the city prosecutor had received this motion. At trial, the city called Officer Michael Chapman ("Officer Chapman") to testify as to the November 30, 2017 incident. Officer Chapman identified Davis as the individual he encountered on that date. Officer Chapman also testified that after issuing Davis a citation for an illegal right turn, failure to display a front license plate, and illegal window tint, he and his partner responded to a traffic accident across the street. While responding, they observed Davis driving between traffic lanes with his door open and music playing loudly. They subsequently wrote a summons for reckless operation of a motor vehicle. Officer Chapman also testified that he wrote a separate summons for a loud music violation.[1]

{¶7} Davis cross-examined Officer Chapman. Officer Chapman stated that he filed the summons for reckless operation with the court on November 30, 2017, and that once it is filed, officers have no control over how it moves through the court system.

{¶8} The court reconvened on April 18, 2018. Davis informed the court that he filed a motion to dismiss following the March 19 trial because his initial attempt to file the motion had

[1] This case was subsequently dismissed.

not been processed due to his failure to sign it. The court found Davis guilty of reckless operation in violation of C.C.O. 433.02(A).

{¶9} Davis appeals, presenting two assignments of error for our review.

Law and Analysis

I. Speedy Trial

{¶10} In his first assignment of error, Davis asserts that the city violated his right to a speedy trial when it failed to bring him to trial within 30 days of the initial citation and summons. Davis states that he went to trial on March 19, 2018, more than 30 days after the November 30, 2017 incident.

{¶11} Both the Sixth Amendment to the United States Constitution and Section 10, Article I, of the Ohio Constitution guarantee the right to a speedy trial. Pursuant to these constitutional guarantees, Ohio has enacted statutes designating specific time requirements for the state to bring an accused to trial. R.C. 2945.71 to 2945.73. R.C. 2945.71(A) states:

> Subject to division (D) of this section, a person against whom a charge is pending in a court not of record, or against whom a charge of minor misdemeanor is pending in a court of record, shall be brought to trial within thirty days after the person's arrest or the service of summons.

Davis's argument here is based on his use of the date of the incident, November 30, 2017, as the date on which speedy trial time began to run. It is unclear whether Davis uses this date because it is the date on which the incident occurred or the date on which he was issued traffic citations for the separate case discussed above. In either case, his argument lacks merit.

{¶12} Based on the language in R.C. 2945.71(A), the relevant date triggering the speedy trial guarantee is the service of summons. Here, Davis was served with the summons on or

about January 12, 2018. His trial was set for February 5, 2018; this trial date was continued at his own request until March 19, 2018.

{¶13} R.C. 2945.72 provides that the time limits delineated in R.C. 2945.71 may be extended, or tolled, only in certain circumstances. One such circumstance, pursuant to R.C. 2945.72(H), is "the period of any continuance granted on the accused's own motion, and the period of any reasonable continuance granted other than upon the accused's own motion." As of February 5, 2018, 24 of the allotted 30 days had run. When Davis filed his motion to continue the trial, time was tolled from February 5, 2018 until March 19, 2018, the date of trial. Therefore, there was no violation of Davis's right to a speedy trial in this case.

{¶14} Davis refers to both the date of the offense and the date of his trial on the initial traffic violations. To the extent he is basing his argument on the date he was charged with the initial traffic violations, this argument is without merit. The Ohio Supreme Court has held that

> "when new and additional charges arise from the same facts as did the original charge and the state knew of such facts at the time of the initial indictment, the time within which trial is to begin on the additional charge is subject to the same statutory limitations period that is applied to the original charge."

State v. Parker, 113 Ohio St.3d 207, 2007-Ohio-1534, 863 N.E.2d 1032, ¶ 18, quoting *State v. Adams*, 43 Ohio St.3d 67, 68, 538 N.E.2d 1025 (1989), quoting *State v. Clay*, 9 Ohio App.3d 216, 216, 459 N.E.2d 609 (11th Dist.1983). Here, Davis was charged with multiple violations of Cleveland city ordinances. Three violations stemmed from the initial traffic stop. The remaining violations, for which he was sent the summons, arose from an entirely separate incident. This is not changed by the fact that the same officer who conducted the traffic stop also wrote the summons, or that the incidents took place on the same day and within a brief period of time. Because the reckless operation violation arose from Davis's conduct after the

traffic violations and corresponding traffic stop, the November 30, 2017 date is irrelevant for speedy trial calculations.

{¶15} Finally, to the extent that Davis may be conflating the right to a speedy trial with the statute of limitations for the offense, any argument regarding the statute of limitations is also without merit. The statute of limitations for a minor misdemeanor is six months. R.C. 2901.13(A)(1)(c). Here, Davis went to trial on the reckless operation charge well within six months of the commission of the offense.

{¶16} Accordingly, his first assignment of error is overruled.

II. Sufficiency of the Evidence

{¶17} In his second assignment of error, Davis argues that his conviction for reckless operation was not supported by sufficient evidence. Specifically, he argues that the city did not establish that he acted in willful or wanton disregard of the safety of persons or property, as required by the statute.

{¶18} A sufficiency challenge requires a court to determine whether the state has met its burden of production at trial and to consider not the credibility of the evidence but whether, if credible, the evidence presented would support a conviction. *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541. 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. *State v. Jenks*, 61 Ohio St.3d 259, 273, 574 N.E.2d 492 (1991), citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979).

{¶19} C.C.O. 433.02(A) provides that "[n]o person shall operate a vehicle, trackless trolley or streetcar on any street or highway in willful or wanton disregard of the safety of persons or property." This language is identical to the language found in R.C. 4511.20.

{¶20} At trial, Officer Chapman testified that he observed Davis with "his door open, loud music playing, and he's driving down the street in between both lanes." He observed this conduct from across the street, where he was responding to a traffic accident that had just occurred. Officer Chapman's testimony is corroborated by his remarks on the citation and summons he filled out that day, referring to Davis having his door open, hanging out of the door, and weaving across lanes.

{¶21} Davis asserts, without explanation, that this testimony is not enough to demonstrate a wanton disregard for the safety of persons or property. We disagree. Either driving between traffic lanes or driving with an open car door could constitute a willful or wanton disregard for the safety of persons. Doing both simultaneously in the vicinity of a traffic accident, then, also demonstrates a willful or wanton disregard for the safety of persons. In light of the evidence presented by the city, in the form of testimony and documentary evidence, Davis's conviction for reckless operation was supported by sufficient evidence. This assignment of error is overruled.

{¶22} Judgment affirmed.

It is ordered that appellee recover of appellant 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 Cleveland Municipal Court to carry this judgment into execution.

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

RAYMOND C. HEADEN, JUDGE

EILEEN T. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR