

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF CLEVELAND,	:	
Plaintiff-Appellant,	:	
v.	:	No. 109042
MARSHAUN WILSON,	:	
Defendant-Appellee.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: August 13, 2020

Criminal Appeal from the Cleveland Municipal Court
Case No. 2017CRB008951

Appearances:

Barbara A. Langhenry, Cleveland Director of Law, Karrie Howard and Aqueelah A. Jordan, Chief Prosecutors, and Alisa Boles and Brittany C. Barnes, Assistant City Prosecutors, *for appellee*.

Mark A. Stanton, Cuyahoga County Public Defender, and John T. Martin, Assistant Public Defender, *for appellant*.

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Plaintiff-appellant city of Cleveland (“city”) brings the instant appeal challenging the trial court’s order dismissing the charges against defendant-appellee Marshaun Wilson (“Wilson”). The city argues that the trial court erred by sua sponte

finding that the charging instrument was deficient on its face and dismissing the case prior to trial. After a thorough review of the record and law, we affirm the decision of the trial court.

I. Factual and Procedural History

{¶ 2} On April 25, 2017, Wilson was issued a citation for fare evasion on the Greater Cleveland Regional Transit Authority (“RTA”) in violation of Cleveland Codified Ordinances 605.11, Misconduct Involving a Public Transportation System, a misdemeanor of the fourth degree. The citation further stated “[d]id not have proper proof of payment in a paid fare zone.”

{¶ 3} At his arraignment, Wilson entered a plea of not guilty. The assigned trial judge subsequently held a pretrial hearing, at which time the court announced that the case would be dismissed, noting that “based on the surface of the citation, there are insufficient facts. The mere absence of fare is not sufficient for avoidance, and there is the evasion element that is deficient in the face of the citation.” (Tr. 3.) The city objected to the dismissal.

{¶ 4} In its judgment entry dismissing the case, the trial court stated as follows: “Case dismissed by judge due to failure of sufficient facts for [probable cause] of evasion. Mere absence of fare card is not evasion.”

{¶ 5} It is from this dismissal that the city now appeals. In its sole assignment of error, the city contends that the trial court abused its discretion when it sua sponte dismissed the charge before trial.

II. Law and Analysis

A. Standard of Review

{¶ 6} “The filing of a valid complaint is a necessary prerequisite to a court obtaining subject matter jurisdiction.” *Newburgh Hts. v. Hood*, 8th Dist. Cuyahoga No. 84001, 2004-Ohio-4236, ¶ 5, citing *State v. Kozlowski*, 8th Dist. Cuyahoga No. 69138, 1996 Ohio App. LEXIS 1580 (Apr. 18, 1996), citing *State v. Bishop*, 2d Dist. Clark No. 3070, 1993 Ohio App. LEXIS 5799 (Dec. 3, 1993), and *State v. Miller*, 47 Ohio App.3d 113, 547 N.E.2d 399 (1st Dist.1988). Therefore, the question of whether a complaint is valid is a question of law, and this court’s standard of review is de novo. *Kozlowski* at 3.

B. Sufficiency of Complaint

{¶ 7} Crim.R. 48(B), governing dismissal by the trial court, provides, “[i]f the court over objection of the state dismisses an indictment, information, or complaint, it shall state on the record its findings of fact and reasons for the dismissal.” In *State v. Busch*, 76 Ohio St.3d 613, 669 N.E.2d 1125 (1996), the Supreme Court of Ohio explained that Crim.R. 48(B) “does not limit the reasons for which a trial judge might dismiss a case, and we are convinced that a judge may dismiss a case pursuant to Crim.R. 48(B) if a dismissal serves the interests of justice.” *Id.* at 615.

{¶ 8} In the instant matter, the trial court dismissed the case because it held that the citation given to Wilson was insufficient. The citation contained the complaint, affidavit, and summons. Crim.R. 3 provides that “[t]he complaint is a written statement of the essential facts constituting the offense charged. It shall also

state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths.”

{¶ 9} A complaint sufficiently satisfies Crim.R. 3 when all of the elements constituting the offense charged are sufficiently set forth, and there is no ambiguity. *Parma v. Mentch*, 8th Dist. Cuyahoga No. 101222, 2014-Ohio-5690, ¶ 10, citing *State v. Hoerig*, 181 Ohio App.3d 86, 2009-Ohio-541, 907 N.E.2d 1238, ¶ 14 (3d Dist.), citing *State v. White-Barnes*, 4th Dist. Ross No. 1841, 1992 Ohio App. LEXIS 6261, 5 (Dec. 8, 1992). “A complaint is generally deemed to be sufficient if it charges an offense in the words of the statute or ordinance upon which it is based.” *Mentch* at *id.*, quoting *White-Barnes* at 5.

{¶ 10} “The primary purpose of the charging instrument in a criminal prosecution is to inform the accused of the nature of the offense with which he or she is charged.” *Cleveland v. Simpkins*, 192 Ohio App.3d 808, 2011-Ohio-1249, 950 N.E.2d 982, ¶ 6 (8th Dist.), citing *Akron v. Holland Oil Co.*, 146 Ohio App.3d 298, 765 N.E.2d 979 (9th Dist.2001). The specific facts relied upon to sustain the charge are not required to be recited, but the material elements of the crime must be stated. *Mentch* at ¶ 10, citing *State v. Burgun*, 49 Ohio App.2d 112, 359 N.E.2d 1018 (8th Dist.1976), paragraph one of the syllabus.

{¶ 11} Wilson was charged with violating Cleveland Codified Ordinances 605.11, which states in pertinent part:

- (a) No person shall evade the payment of the known fares of a public transportation system.

* * *

(i) Whoever violates division (a) * * * of this section is guilty of a misdemeanor of the fourth degree.

{¶ 12} The citation states that the offense was Misconduct/Fare Evasion, which is further described as “[d]id not have proper proof of payment in a paid fare zone.” The city argues that the citation was proper because “did not have proof of payment” addresses the evasion element of the ordinance. We disagree.

{¶ 13} As noted by the trial court, failing to possess proof of payment is not the same as evasion of payment. The description of the offense on the citation does not articulate any conduct by Wilson that constituted evading. Accordingly, because the citation does not state a material element of the charge, we find that the charging instrument denied Wilson the opportunity to have reasonable knowledge regarding the nature of the offense, thus denying him the ability to adequately respond to the charges brought against him. Because the citation did not comply with Crim.R. 3, the trial court correctly dismissed the case. The city’s sole assignment of error is overruled.

III. Conclusion

{¶ 14} After thoroughly reviewing the record, we affirm the trial court’s dismissal of the case against Wilson. The citation issued to Wilson was deficient in that it did not set forth the essential element of evading the payment of the public transportation system fare.

{¶ 15} Judgment affirmed.

It is ordered that appellee recover from 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.

FRANK D. CELEBREZZE, JR., JUDGE

ANITA LASTER MAYS, P.J., and
MARY EILEEN KILBANE, J., CONCUR