[Cite as *State v. Piermarini*, 2018-Ohio-5321.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. EMIDIO PIERMARINI Appellant	C.A. Nos. 28854 28931 APPEAL FROM JUDGMENT ENTERED IN THE STOW MUNICIPAL COURT COUNTY OF SUMMIT, OHIO CASE Nos. 2017TRD06317 2017CRB02320

DECISION AND JOURNAL ENTRY

Dated: December 31, 2018

SCHAFER, Presiding Judge.

{¶1} Defendant-Appellant, Emidio Piermarini, appeals from judgments of conviction entered against him in two Stow Municipal Court cases. Piermarini filed a separate appeal for each of those cases, which have been consolidated for our review. For the reasons that follow, we affirm.

I.

{¶2} On July 15, 2017, Piermarini was charged with misconduct at an emergency in violation of R.C. 2917.13, a misdemeanor of the first degree. On that same day, Piermarini received a citation for disorderly conduct in violation of R.C. 2917.11, a minor misdemeanor. The misconduct at an emergency and disorderly conduct charges were both brought under Case No. 2017CRB02320. Also on July 15, 2017, Piermarini received a traffic ticket for reckless

operation in violation of section 333.09 of Cuyahoga Falls Codified Ordinances, in Case No. 2017TRD06317.

{¶3} Piermarini entered an initial plea of not guilty to all three charges. Thereafter, Piermarini entered a plea of no contest to one count of misconduct at an emergency and one count of reckless operation. The trial court held a plea and sentencing hearing on October 16, 2017. Upon accepting the no contest pleas, the trial court merged and dismissed the disorderly conduct charge. After the State presented a recitation of facts on the record, the trial court found Piermarini guilty of misconduct at an emergency, a misdemeanor of the first degree, and reckless operation, a minor misdemeanor, and sentenced Piermarini in accordance with the law.

{¶4} Piermarini has timely appealed the trial court's sentencing entries, and presents two assignments of error for our review.

II.

Assignment of Error I

> **The trial court committed prejudicial error by convicting on no contest plea for violations of misconduct at an emergency and reckless operation where the charges omitted material elements to constitute an offense and thus failed to state any offense.**

{¶5} In his first assignment of error, Piermarini argues that the trial court erred in convicting him after his plea of no contest because the charging instruments—in this matter a complaint and a traffic ticket—failed to charge Piermarini with any offense. Piermarini asserts that the charging instruments must state all essential elements of an offense. The adequacy of the charging document is a question of law, requiring a de novo review. *See State v. Hernon*, 9th Dist. Medina No. 2933-M, 2000 WL 14009, *2 (Dec. 29, 1999).

A. Misconduct at an Emergency

{¶6} As to the charge for misconduct at an emergency, Piermarini contends that the complaint failed to make an allegation of *physical* harm. Therefore, he argues that he was not properly charged with a first-degree misdemeanor violation of R.C. 2917.13.

{¶7} Crim.R. 3 provides, in relevant part, that [t]he complaint is a written statement of the essential facts constituting the offense charged * * * " and "shall also state the numerical designation of the applicable statute or ordinance." "A charging instrument is sufficient to inform the defendant of the crime charged if the language of the charging instrument tracks the language of the statute the defendant is alleged to have violated." *State v. Campbell*, 9th Dist. Medina No. 13CA0013-M, 2014-Ohio-1329, ¶ 9, citing *State v. Smith*, 9th Dist. Summit No. 25069, 2010-Ohio-3983, ¶ 28. The charge need not recite the exact language of the statute, so long as the language is of an equivalent nature. *State v. Summers*, 9th Dist. Summit C.A. No. 14350, 1990 WL 77242, *2 (June 6, 1990), citing *State v. Childers*, 133 Ohio St. 508, 510 (1938), paragraph two of the syllabus.

{¶8} A violation of R.C. 2917.13 is a misdemeanor of the fourth degree unless the violation "creates a risk of physical harm to persons or property," in which case the "misconduct at an emergency is a misdemeanor of the first degree." R.C. 2917.13(C). Piermarini was charged with a first-degree misdemeanor violation of the statute, thereby making the creation of a risk of physical harm to persons or property an element of the crime charged. Although the complaint cited R.C. 2917.13 without reference to a particular subsection, the complaint tracks the language of the statute and informs Piermarini of the manner in which he is alleged to have violated the statute. The complaint avers that Piermarini violated R.C. 2917.13, constituting a

charge of misconduct at an emergency, and states the "essential facts with elements of the charge" as follows:

> Emidio Piermarini did knowingly hamper the lawful operation of a law enforcement officer engaged in his duties or did fail to obey the lawful order of a law enforcement officer engaged in his duties at the scene of or in connection with a fire, accident, disaster, riot or emergency of any kind; and created a significant risk of harm to persons and property to wit: Emidio Piermarini, while driving recklessly in the parking lot of 48 E[.] Bath Rd., nearly struck an ambulance and a firefighter while they were on scene of an accident and hindered police business. This is in violation of [R.C. 2917.13], a Misdemeanor of the First Degree.

{¶9} While the charging complaint did not use the word "physical" in describing the risk of harm Piermarini created, the complaint went further to describe the actual manner in which Piermarini created a risk of physical harm, stating that he: "created a significant risk of harm to persons and property" specifically, Piermarini drove recklessly and "nearly struck an ambulance and a firefighter" at the scene of an accident. Thus, contrary to Piermarini's contention, the complaint does allege physical harm despite not using the phrase "physical harm." The language of the complaint adequately tracked the language of the statute and was sufficient to inform Piermarini of the crime charged. Because he has failed to demonstrate that the complaint was defective, we conclude his argument—that the trial court erred in convicting Piermarini for misconduct at an emergency as a misdemeanor of the first degree—is without merit.

B. <u>Reckless Operation</u>

{¶10} Next, Piermarini claims that the traffic ticket citing him for reckless operation in violation of section 333.09 of the Cuyahoga Falls Codified Ordinances was deficient. Piermarini contends that the complaint, the ticket in this instance, failed to state a subsection or to specify whether he committed the offense on private or public property.

{¶11} The Ohio Traffic Rules prescribe the procedure to be followed in traffic cases and are intended to promote "the fair, impartial, speedy and sure administration of justice, simplicity and uniformity in procedure, and the elimination of unjustifiable expense and delay." Traf.R. 1. In traffic cases, the "Ohio Uniform Traffic Ticket" serves as the complaint and summons. Traf.R. 3. A traffic complaint "simply needs to advise the defendant of the offense with which he is charged, in a manner that can be readily understood by a person making a reasonable attempt to understand." *Bellville v. Kieffaber*, 114 Ohio St.3d 124, 2007-Ohio-3763, ¶ 19, quoting *Barberton v. O'Connor*, 17 Ohio St.3d 218, 221 (1985). A traffic ticket "effectively charges an offense even if the defendant has to make some reasonable inquiry in order to know exactly what offense is charged." *Barberton* at paragraph two of the syllabus.

{¶12} The traffic ticket issued to Piermarini served as the complaint notifying him that he was charged with the offense of "reckless operation" in violation of ordinance section 333.09. Section 333.09 entitled "Reckless Operation On Streets, Public Or Private Property" states that:

> (a) No person shall operate a vehicle on any street or highway without due regard for the safety of persons or property.
>
> (b) No person shall operate a vehicle on any public or private property other than streets or highways, without due regard for the safety of persons or property.
> * * *
>
> (c) Except as otherwise provided in this subsection, whoever violates this section is guilty of a minor misdemeanor. * * *

Piermarini has not developed his argument to establish that the omission of the detail specifying whether the reckless operation occurred on public or private property could render the complaint defective. The ticket can be readily understood to charge Piermarini with a violation of this particular ordinance, based on the conduct indicated on the traffic ticket, and was sufficient to apprise Piermarini of the fact that he was charged with the offense of reckless operation.

Piermarini has failed to articulate a basis for claiming that the trial court erred in convicting him, upon his plea of no contest, for the offense charged in the traffic ticket.

{¶13} Piermarini's first assignment of error is overruled.

Assignment of Error II

> **The trial court committed prejudicial error by convicting on no contest plea for violations of misconduct at an emergency and reckless operation when the explanation of circumstances presented by the prosecution was insufficient to prove every element of the offenses.**

{¶14} In his second assignment of error, Piermarini argues that the explanation of circumstances provided by the State did not support a guilty finding on his no contest plea. We disagree.

{¶15} "A defendant may plead * * *, with the consent of the court, no contest." Crim.R. 11(A). A "plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the * * * information, or complaint * * *." Crim.R. 11(B)(2); *see also* Traf.R. 10 ("The plea of no contest is not an admission of defendant's guilt, but is an admission of the truth of the facts alleged in the complaint * * *.) A court must take the following action on a plea of no contest in misdemeanor cases:

> 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. If the offense to which the accused is entering a plea of "no contest" is a minor misdemeanor, the judge or magistrate is not required to call for an explanation of the circumstances of the offense, and the judge or magistrate may base a finding on the facts alleged in the complaint. If a finding of guilty is made, the judge or magistrate shall impose the sentence or continue the case for sentencing accordingly. * * *

R.C. 2937.07.

{¶16} To comport with R.C. 2937.07 "the record must show that the required explanation [of circumstances] included a statement of facts which supports all the essential

elements of the offense." *State v. Fordenwalt*, 9th Dist. Wayne No. 09CA0021, 2010-Ohio-2810, ¶ 4, quoting *State v. Pangrac*, 9th Dist. Medina No. 1985, 1991 WL 108580, *1 (June 12, 1991). A court may make its finding from the explanation of circumstances by the state. *State v. Waddell*, 71 Ohio St.3d 630, 631, 1995-Ohio-31. This Court reviews de novo a trial court's finding of guilt following a no contest plea. *State v. Korossy*, 6th Dist. Ottawa No. OT-16-025, 2017-Ohio-7275, ¶ 10

{¶17} The transcript of the hearing shows that the State provided the following explanation of the circumstances to the trial court:

> On July 15th of this year in the city of Cuyahoga Falls, Summit County, Ohio in the area of Bath and State Road, Cuyahoga Falls Police and fire department were responding to an accident just outside of Emidio's Party Center. The vehicle had moved into the parking lot of the party center at the - - what would that be, the northwest driveway into the facility.
>
> While they were there the defendant entered the parking lot through that driveway and loudly voiced his displeasure with the police officers in the parking lot blocking the entrance. And then he went into the building.
>
> A short time later he came back out in his car and as he was going around the back of the ambulance Lieutenant Maggie Hobson of the Falls Fire Department was walking around and was nearly hit by the car.
>
> The officers went over to the defendant's vehicle. And Officer Hernandez got in the window and ordered the defendant to turn the vehicle off. He said he would not, put it in reverse, which caused Officer Hernandez to be caught next to the mirror and was being pulled backwards by the vehicle. The officer then pressed his Taser to the defendant's chest advising him to stop the vehicle again in which he did. And then he was charged with the offenses you see here.

A. <u>Misconduct at an Emergency</u>

{¶18} The essence of Piermarini's argument is that the State failed to demonstrate that conduct giving rise to the charge occurred at the scene of an accident or emergency as prohibited by R.C. 2917.13. That statute provides, in pertinent part, that:

> (A) No person shall knowingly do any of the following:

> (1) Hamper the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person, engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind;
>
> (2) Hamper the lawful activities of any emergency facility person who is engaged in the person's duties in an emergency facility;
>
> (3) Fail to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.
>
> * * *
>
> (C) Whoever violates this section is guilty of misconduct at an emergency. Except as otherwise provided in this division, misconduct at an emergency is a misdemeanor of the fourth degree. If a violation of this section creates a risk of physical harm to persons or property, misconduct at an emergency is a misdemeanor of the first degree.

R.C. 2917.13.

{¶19} Upon review, we conclude that the facts submitted by the State were sufficient to establish each element of the offense of misconduct at an emergency. In particular, the State presented facts establishing that the incident occurred with police officers, responders from the fire department, and an ambulance all present at the scene of an accident. Moreover, in entering his plea of no contest, Piermarini admitted to the truth of the facts stated in the complaint. In so doing, Piermarini admitted the fact that he "did fail to obey the lawful order of a law enforcement officer engaged in his duties at the scene of or in connection with a fire, accident, disaster, riot or emergency * * *" and that he "nearly struck an ambulance and a firefighter while they were on scene of an accident and hindered police business." Because of his plea and this admission, Piermarini cannot challenge the fact that this incident occurred at the scene of an accident or emergency, as he now attempts to do by raising the issue for the first time on appeal.

Therefore, we conclude that the trial court did not err in finding Piermarini guilty based on the facts presented in the record.

B. Reckless Operation

{¶20} Cuyahoga Falls Codified Ordinance Section 333.09 prohibits the operation of a vehicle on any street or highway, or on public or private property other than streets or highways, without due regard for the safety of persons or property. The citation does not list a public highway, but indicates that the incident occurred at 48 E. Bath Rd. In his affidavit, Officer Hernandez avers that he personally observed Piermarini "drive recklessly through 48 E. Bath Rd. at a high rate of speed and almost strike an ambulance and a firefighter that was on scene." The explanation of circumstances adequately describes Piermarini's actions of operating a vehicle through a driveway and in a parking lot without due regard for the safety of persons or property, to wit: Lieutenant Hobson was nearly hit by Piermarini's vehicle, and Officer Hernandez was caught next to the mirror and was pulled backwards by the vehicle when Piermarini chose to put the vehicle in reverse rather than turn it off as Officer Hernandez had instructed. Upon these facts, this Court must conclude that the explanation of circumstances establishes each element of the offense, and the trial court did not err in finding Piermarini guilty of this minor misdemeanor upon his plea of no contest.

{¶21} Piermarini's second assignment of error is overruled.

III.

{¶22} Piermarini's assignments of error are overruled. The judgment 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 A. SCHAFER
FOR THE COURT

CARR, J.
TEODOSIO, J.
CONCUR.

APPEARANCES:

MARK H. LUDWIG, Attorney at Law, for Appellant.

GREGORY M. WARD, Assistant Prosecuting Attorney, for Appellee.