[Cite as *Columbus v. D'Andrea,* 2011-Ohio-6132.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-207 (M.C. No. 2010 TRC 189518)
Michael P. D'Andrea,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 29, 2011

Richard C. Pfeiffer, Jr., City Attorney, *Lara N. Baker*, City Prosecutor, and *Melanie R. Tobias*, for appellee.

Dennis W. McNamara, for appellant.

APPEAL from the Franklin County Municipal Court

KLATT, J.

{¶1} Defendant-appellant, Michael P. D'Andrea, appeals from a judgment of conviction and sentence entered by the Franklin County Municipal Court. For the following reasons, we affirm that judgment.

Factual and Procedural Background

{¶2} In the early morning hours of December 1, 2010, police officers stopped appellant driving his car on a freeway in Franklin County, Ohio. As a result of the stop, the officers cited appellant with, among other things, operating a vehicle while impaired in

violation of Columbus City Code 2133.01 (hereinafter "OVI").[1] Appellant eventually entered a guilty plea to one count of OVI.

{¶3} Before sentencing, the trial court held a hearing to determine whether or not appellant had a prior OVI conviction. Pursuant to Columbus City Code 2133.01(G)(1)(b)(i), an offender who previously has been convicted of or pleaded guilty to an OVI violation or other equivalent offense faces enhanced penalties for the current OVI conviction.

{¶4} The city presented two documents to prove that appellant had a prior OVI conviction. The first is a faxed copy of what purports to be the back and front of a Multi-Count Uniform Traffic Ticket issued to appellant on April 7, 1999. The document was certified as a true and correct copy of a "Journal Entry." The front of the ticket charged appellant with one count of OVI in violation of R.C. 4511.19(A) and two other offenses. The ticket also ordered appellant to appear in the Cuyahoga Falls Municipal Court on April 14, 1999. There is also a handwritten notation that the OVI charge was amended on June 1, 1999 to a count of "OMVUAC 4511.19(B)."[2] The front of the ticket has a court case number of 99-TRC-5726 and an indication that criminal charges were also filed.

{¶5} The back of the ticket is difficult to read, but it appears to indicate that appellant entered a not guilty plea on April 14, 1999 and then a no contest plea on June 1, 1999, although it does not state the offense. The back of the ticket also indicates sentencing as a result of the plea and contains an illegible signature in a space designated for a "Judge/Referee/Magistrate" to sign. The top of the back of the ticket

[1] Columbus City Code 2133.01 is the municipal equivalent of R.C. 4511.19. Both codes address the criminal offense of operating a vehicle while under the influence of alcohol and/or drugs.
[2] R.C. 4511.19(B) prohibits operating a vehicle while under the influence and under the age of 21.

also includes the handwritten name "Patrick J. D'Andrea" along with what looks to be a phone number.

{¶6} The second document the city presented is a "Waiver of Rights" form signed by appellant and dated June 1, 1999. The form indicates that appellant entered a no contest plea on June 1, 1999 in case number 99-TRC-5726 to one charge of "OMVUAC" in violation of R.C. 4511.19(B).

{¶7} Appellant argued that the back of the ticket was the only document that could prove his prior conviction, and because that document lacked the requisite elements of a valid judgment entry of conviction, there was no evidence that appellant had a prior OVI conviction. The trial court disagreed and concluded that the documents were sufficient to prove that appellant had a prior OVI conviction. The trial court sentenced appellant accordingly.

{¶8} Appellant appeals and assigns the following error:

> THE TRIAL COURT ERRED WHEN IT DETERMINED THAT APPELLANT HAD A PRIOR CONVICTION FOR PURPOSES OF SENTENCING.

Appellant's Assignment of Error- Proof of Prior OVI Conviction

{¶9} Appellant disputes the trial court's factual determination that he had a previous OVI conviction. We will accept factual findings of the trial court, however, if they are supported by some competent and credible evidence. *State v. Searls* (1997), 118 Ohio App.3d 739, 741.

{¶10} Columbus City Code 2133.01(G)(1)(b)(i) provides for an enhanced penalty for a violation of that statute if an offender "has been convicted of or pleaded guilty to one

(1) violation of [2133.01(A) or (B)] or one (1) other equivalent offense."[3] Appellant does not dispute that a violation of R.C. 4511.19(B) is a qualifying conviction under this provision. Instead, appellant argues that no competent and credible evidence supports the trial court's factual finding that he had such a conviction. He argues that the conviction reflected on the back of the traffic ticket is not a valid judgment of conviction because it does not satisfy the requirements of Crim.R. 32(C). Appellant contends that without evidence of a valid judgment of conviction there is no proof of a prior OVI conviction. Appellant's argument equates the word "conviction" as used in the statute with a "judgment of conviction" as defined by Crim.R. 32(C). However, case law indicates that the statutory reference to a conviction refers only to a determination of guilt, not to the requirements of a formal judgment of conviction.

{¶11} In *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, the Supreme Court of Ohio clarified the requirements of Crim.R. 32(C) and explained that a judgment of conviction is a final appealable order when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court. Id. at syllabus. The *Baker* court, however, noted that the word conviction only refers to a finding of guilt. Id. at ¶11 (citing *State v. Tuomala*, 104 Ohio St.3d 93, 2004-Ohio-6239).

{¶12} Additionally, in a case construing similar statutory language that placed a conviction on equal footing with a guilty plea by requiring proof of either, the Supreme Court of Ohio concluded that the term "conviction" refers only to a determination of guilt and does not include sentencing upon that determination. *State ex rel. Watkins v.*

[3] This provision is in all relevant aspects identical to Ohio's statutory counterpart found in R.C. 4511.19(G)(1)(b) and case law concerning the state statute are useful in this analysis.

Fiorenzo, 71 Ohio St.3d 259, 260, 1994-Ohio-104 (statute which disqualified public official "who is convicted of or pleads guilty to, theft in office" only requires proof of determination of guilt). See also *State v. Polen*, 3d Dist. No. 6-08-14, 2009-Ohio-3313, ¶13-18 (statute permitting a motion to be filed "subsequent to the conviction of the offender or entry of a guilty plea" only requires judicial finding of guilt and not a final judgment of conviction in conformance with Crim.R. 32(C)).

{¶13} More specifically, the Ninth District Court of Appeals has held that a prior determination of guilt, and not a judgment of conviction, is all that is required to prove a prior conviction under R.C. 4511.19(G)(1). See *State v. Monteleone*, 9th Dist. No. 10CA009751, 2010-Ohio-5064, ¶6-10; *State v. McCumbers*, 9th Dist. No. 25169, 2010-Ohio-6129, ¶13. Accordingly, the Ninth District has concluded that compliance with Crim.R. 32(C) is not required to prove a prior OVI conviction under R.C. 4511.19. We agree with that conclusion. But see *State v. Finney*, 6th Dist. No. F-06-009, 2006-Ohio-5770, ¶18 (holding that if the state seeks to prove a prior conviction by a judgment entry, the judgment must comply with Crim.R. 32(C)).

{¶14} Therefore, in order to prove a prior conviction for purposes of Columbus City Code 2133.01(G)(1)(b)(i), the city need only prove that the offender has a previous determination of guilt. Although a judgment of conviction that satisfies the requirements of Crim.R. 32(C) is sufficient to prove a prior conviction, it is not required. R.C. 2945.75(B)(1). *State v. Volpe,* 10th Dist. No. 06AP-1153, 2008-Ohio-1678, ¶51. Other means of proving prior convictions are available to the city. *State v. Brown*, 10th Dist. No. 10AP-836, 2011-Ohio-3159, ¶19. Accordingly, we will review the evidence, including the back of the traffic ticket, to determine whether or not there is competent and credible evidence of appellant's prior OVI conviction.

{¶15} On the front of the traffic ticket, a handwritten note indicates that appellant's OVI charge was amended on June 1, 1999 to a count of "OMVUAC 4511.19(B)." That note has a signature below it. Additionally, the "Waiver of Rights" form that appellant signed indicates that appellant, on June 1, 1999, entered a no contest plea to one count of R.C. 4511.19(B). Finally, on the back of the traffic ticket is a handwritten note: "6-1-99 Plea NC/G" underneath a section entitled "Court Entry." This is competent and credible evidence that appellant entered a no contest plea to a violation of R.C. 4511.19(B).

{¶16} Appellant disputes whether a judge ever made a finding of guilt after the no contest plea because the meaning of the "NC/G" notation on the ticket is unclear and because the signature on the back of the ticket where a "Judge/Referee/Magistrate" would sign is illegible and does not indicate whether a judge actually signed the entry.[4] We disagree. The trial court interpreted the "NC/G" notation to mean that appellant entered a no contest plea (as reflected on the Waiver of Rights form) and was then found guilty by the court. We agree with the trial court's interpretation and appellant offers no other plausible interpretation. We also note that former R.C. 2937.07 provided that the entry of a no contest plea constituted a stipulation that the judge may make a finding of guilt and, if guilty, proceed to sentencing. It appears that this is what occurred. The trial court also concluded that a judge must have signed the document because of the two-month delay between appellant's summons and his no contest plea, indicating a more formal appearance before the court instead of an arraignment type hearing on the date appellant entered his not guilty plea. This, as well as the fact that the signature line

[4] Before 2002, only judges could make determinations of guilt in the traffic court. Traf.R. 14 prohibited magistrates from making determinations of guilt in traffic courts.

contains a signature and a sentence was imposed, is competent and credible evidence that a judge signed the ticket and, accordingly, made a determination of guilt.[5]

{¶17} Appellant's concerns about other portions of the traffic ticket are easily allayed. For example, appellant argues that the back of the ticket was not necessarily the back of the ticket issued to appellant because appellant's name is not on the back of the ticket and neither is the case number.[6] We disagree. All of the information on the back of the ticket, including appellant's original court date, the date of his amended charge and guilty plea, and the fact that a criminal charge was also filed, is consistent with the front of the ticket and the Waiver of Rights form. The ticket is also consistent with the appearance of Ohio's form "Multi-Count Uniform Traffic Ticket." The clerk of courts also certified the document as a true and accurate "Journal Entry." This is competent and credible evidence that the two sides of the document are one ticket. Appellant also takes issue with the name "Patrick J. D'Andrea" on the back of the traffic ticket. However, a comparison of the traffic ticket with Ohio's "Multi-Count Uniform Traffic Ticket" form in the Ohio Traffic Rules indicates that this name is written in a space available for the name and phone number of the offender's attorney. Also, the other case number on the back of the ticket is the related criminal case for which appellant was released on his own personal recognizance.

{¶18} The trial court's determination that appellant had been previously convicted, i.e., found guilty, of a previous OVI offense is supported by competent and credible evidence. Accordingly, the trial court did not err in sentencing appellant accordingly.

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[5] Traf.R. 14 also prohibits magistrates from imposing sentences.

[6] The copy of appellant's traffic ticket presented to the trial court is a one-sided document with the front of the ticket on the right side and the back of the ticket on the left side.

{¶19} We overrule appellant's assignment of error and affirm the judgment of the Franklin County Municipal Court.

Judgment affirmed.

SADLER and TYACK, JJ., concur.

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