

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

City of Columbus,	:	
	:	
Plaintiff-Appellant,	:	
	:	No. 11AP-602
v.	:	(M.C. No. 2010 TRD 173569)
	:	
Corey Cordova,	:	(REGULAR CALENDAR)
	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on April 24, 2012

Richard C. Pfeiffer, City Attorney, Melanie R. Tobias and Orly Ahroni, for appellant.

Yeura R. Venters, Public Defender, and Allen V. Adair, for appellee.

APPEAL from the Franklin County Municipal Court.

BRYANT, J.

{¶ 1} Plaintiff-appellant, City of Columbus, appeals from a judgment of the Franklin County Municipal Court granting the motion of defendant-appellee, Corey Cordova, to dismiss the charge of driving under suspension in violation of Columbus City Code ("C.C.") 2141.11 set out in the traffic ticket issued to him. The city assigns a single error:

The trial court abused its discretion by denying the city's motion to amend a mistaken code reference on the Ohio

Uniform Traffic Ticket and by dismissing the charge when the ticket gave sufficient notice of the actual offense charged.

Because the trial court erred in granting defendant's motion to dismiss, we reverse.

I. Facts and Procedural History

{¶ 2} On September 28, 2010, defendant was issued a Uniform Traffic Ticket charging him with driving under suspension and failure to yield on a left turn in violation of C.C. 2131.17. In writing the driving under suspension charge, the charging officer checked the box on the ticket for "Driver's License" and the box for "Suspended." (R. 1.) On the line below, the officer wrote "N/C" before the form language requesting the suspension type and "BMV # NC09029838" in the blank space following. In the adjacent space, the officer checked the box signifying a violation of the Columbus Traffic Code and wrote "2141.11." (R. 1.) Defendant entered a not guilty plea to each charge on January 25, 2011, and the matter was scheduled for jury trial on April 21, 2011. On that date, the case was set for a motion hearing on May 11, later continued to June 15, to address defendant's motion to dismiss the driving under suspension charge.

{¶ 3} At the June 15 hearing, defendant contended the driving under suspension charge should be dismissed because the ticket incorrectly referenced C.C. 2141.11, the section that addresses driving under suspension or in violation of a driving restriction. When the city moved to amend the traffic ticket to correct the section citation to C.C. 2141.16, the section directed to suspensions for non-compliance with financial responsibility laws, defendant objected, asserting the amendment would change the nature or identity of the charged offense and therefore was improper under Crim.R. 7(D). The city disagreed, contending the traffic ticket contained sufficient information to notify defendant of the actual charge, making amendment proper under Crim.R. 7(D). After hearing the parties' arguments, the trial court granted defendant's motion. Defendant then entered a no contest plea on the remaining failure-to-yield charge, and the trial court imposed a \$150 fine.

{¶ 4} The city appealed to challenge the trial court's decision to grant defendant's motion to dismiss the driving under suspension charge.

II. Assignment of Error

{¶ 5} The city generally asserts that if a traffic ticket "contains an error in the numerical designation of a charge, a court should permit an amendment of the complaint to reflect the correct code section if the complaint has sufficient information to give a defendant notice of the true nature of the offense." (Appellant's brief, i.) With that premise, the city asserts it should have been allowed to amend the ticket issued to defendant because it "contained sufficient information to give [defendant] notice of the actual offense charged." (Appellant's brief, i.)

{¶ 6} In response, defendant contends, as he did in the trial court, that Crim.R. 7(D) bars the city's proposed amendment because the amendment would change the name or identity of the charged offense. Addressing the city's claim that the ticket contained sufficient indicia of the intended charge, defendant asserts "the abbreviated information included on the ticket only gave appellee notice he was being charged pursuant to the named ordinance." (Appellee's brief, 4.)

III. Applicable Law and Standard of Review

{¶ 7} The purpose of the Ohio Traffic Rules is, in part, to ensure "simplicity and uniformity in procedure." Traf.R. 1(B). As a consequence, "traffic court procedure is not controlled by the stricter, more elaborate rules that govern procedures in more serious cases." *Barberton v. O'Connor*, 17 Ohio St.3d 218, 221 (1985). In traffic cases, the Ohio Uniform Traffic Ticket serves as the complaint and summons. Traf.R. 3(A). To state an offense, a ticket prepared pursuant to Traf.R. 3 " '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.' " *Barberton* at 221, quoting *Cleveland v. Austin*, 55 Ohio App.2d 215, 219 (8th Dist.1978). A Uniform 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." *State v. Toms*, 10th Dist. No. 88AP-443 (Sept. 29, 1988), citing *Barberton* at paragraph two of syllabus.

{¶ 8} The Ohio Traffic Rules do not provide specifically for amending a traffic ticket. They, however, direct that "the Rules of Criminal Procedure and the applicable law apply" whenever "no procedure is specifically prescribed by these [traffic] rules." Traf.R. 20. The rule governing amendments to a traffic ticket thus is Crim.R. 7(D). Crim.R. 7(D)

provides that "[t]he court may at any time before, during, or after a trial amend the indictment, information, complaint, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged."

{¶ 9} Pursuant to Crim.R. 7(D), any amendment resulting in a change in the name or identity of the crime charged is prohibited, regardless of whether the accused can demonstrate prejudice. *State v. Samuel*, 10th Dist. No. 11AP-158, 2011-Ohio-6821, ¶ 15, citing *Columbus v. Bishop*, 10th Dist. No. 08AP-300, 2008-Ohio-6964, ¶ 24, citing *State v. Honeycutt*, 2d Dist. No. 19004, 2002-Ohio-3490. This court further held that no amendment is permitted if the amendment would change the penalty or degree of the offense charged, because such a change alters the identity of the offense for purposes of Crim.R. 7(D). *State v. Williams*, 10th Dist. No. 08AP-719, 2009-Ohio-3237, ¶ 10, citing *State v. Davis*, 121 Ohio St.3d 239, 2008-Ohio-4537, syllabus.

{¶ 10} Nevertheless, this court has distinguished between modifications that change the name or identity of the charge and those that correct certain administrative errors, holding "[a] trial court may, pursuant to Crim.R. 7(D), amend an indictment to correct typographical or clerical errors." *Williams* at ¶ 12, citing *State v. Alexander*, 10th Dist. No. 06AP-647, 2007-Ohio-4177, ¶ 43-44. *See also State v. Moore*, 9th Dist. No. 19544 (Apr. 19, 2000); *State v. Cooper*, 4th Dist. No. 97CA2326 (June 25, 1998) (noting that "[w]here a traffic ticket/complaint clearly sets forth the offense charged, but contains an error in the numerical designation of the statute the defendant is alleged to have violated, so long as the error does not prejudicially mislead the defendant, such error should be subject to amendment under Crim.R. 7(D)"); Crim.R. 7(B).

{¶ 11} "Whether an amendment changes the name or identity of the crime charged is a matter of law." *Cooper*, citing *State v. Jackson*, 78 Ohio App.3d 479 (2d Dist.1992). This court reviews matters of law de novo. *See id.*; *Nicholas v. Hanzel*, 110 Ohio App.3d 591 (4th Dist.1996).

{¶ 12} To ascertain whether a proposed amendment impermissibly alters the underlying nature of the charge, Ohio appellate courts look to the other information set forth in the complaint. *See Cooper*; *Columbus v. Blair*, 10th Dist. No. 86AP-920 (June 23, 1987); *State v. Campbell*, 150 Ohio App.3d 90, 96, 2002-Ohio-6064 (1st Dist.) (deciding

that amending the referenced Revised Code section did not change name or identity of the charge because complaint otherwise "informed defendant of the nature of the offense"); *State v. Gilleland*, 2d Dist. No. 2004 CA 1, 2005-Ohio-659 (deciding trial court was authorized to amend charges against defendant prior to trial by changing mistaken ticket under implied consent statute to statute governing offense of driving while under the influence because defendant's original ticket informed him of the actual charge, notwithstanding the mistaken statutory reference).

{¶ 13} Because a traffic ticket "is designed to inform a defendant of the charge against which he must defend," a reviewing court must evaluate the information in the complaint to ascertain whether the requested change would deprive defendant of a fundamental due process right to be informed of the charge. *State v. Alley*, 11th Dist. No. 2006-P-0070, 2007-Ohio-4483, ¶ 21, citing *Barberton* at 221. Accordingly, where a defendant clearly had notice of the charge and an opportunity to prepare a defense despite the error, courts have determined that correcting a mistaken or omitted code section does not change the name or identity of the subject complaint. See *Bellville v. Kieffaber*, 114 Ohio St.3d 124, 2007-Ohio-3763, ¶ 20 (concluding that where ticket described most pertinent details of offense, even though "the specific statutory subsection was not indicated, [the defendant] had sufficient information to know the nature and cause of the accusation against him and not to be misled in the preparation of his defense"); *State v. Mays*, 104 Ohio App.3d 241, 243 (2d Dist.1995) (deciding "the misnumbering of the ordinance in the complaint did not deprive the complaint of its essential purpose of notifying [defendant] of the offense with which he was charged so as to deprive court of jurisdiction"); *Gilleland*; cf. *Blair* at 3 (noting "[t]he charge upon which defendant was convicted contained an element of which defendant was not given notice, either by the narrative description on the Uniform Traffic Ticket or by the reference to Columbus City Code Section," thus causing a change "in the identity of the crime charged").

{¶ 14} Here, the record reflects that both defendant and his counsel understood the driving under suspension charge to stem from the suspension of defendant's operating privileges for failure to comply with the state financial responsibility requirements in R.C. Chapter 4509. At the June 2011 motion hearing, the trial court

addressed defendant stating, "Mr. Cordova, you know that you're under suspension. The officer went out of his way to let you know exactly what suspension you were under; it's written out on this ticket. If they appeal me, you may come back here and deal with the fact that you were under suspension and very aware of it." Defendant responded: "Yeah, I – I knew." (Tr. 19.)

{¶ 15} In addition, defense counsel at the same hearing indicated a clear understanding of not only the error made but also the intended charge, acknowledging that "since the State would go forward futilely on a driving under suspension of 2141.11, I presume they're surmising they must amend the charge to reflect the correct code section, which in this case would be 2141.16, driving under a financial responsibility suspension." (Tr. 4.) Defendant's attorney acknowledged he researched the BMV number cited on the traffic ticket and "noted the only suspension [defendant] was under was a noncompliance suspension." (Tr. 5-6.) Finally, defendant's attorney stated that, "granted, you could say, I know exactly what he's charged with; I've gone through it and I could have prepared a defense. But I don't think the onus is on the defense counsel to stay, you know, one step ahead and try and determine where the State is going to try and prove, and then create a defense to every possible driving under suspension." (Tr. 17.)

{¶ 16} The comments of defendant and his counsel indicate defendant was able to ascertain, given the information provided in the traffic ticket, both the nature and identity of the intended driving under suspension charge. Indeed, the trial court observed in its written entry that defendant "was clearly aware of the nature of the suspension." (June 15, 2011 Judgment Entry.) Because statements on the record from both defendant and his attorney reveal that defendant was able to ascertain the nature and origin of the pending accusation against him from the information on the traffic ticket, amending the traffic ticket to reflect a violation of C.C. 2141.16 would have only aligned the traffic ticket with the parties' understanding of the intended underlying charge.

{¶ 17} Although a trial court's authority to allow an amendment is discretionary, Ohio appellate courts routinely have held that amendments not otherwise found inappropriate pursuant to Crim.R. 7(D) and due process requirements should be liberally allowed. *See Cleveland Hts. v. Perryman*, 8 Ohio App.3d 443, 446 (8th Dist.1983); *Campbell* at 94 (noting courts should allow liberal amendment of traffic tickets in

particular, because not only do law enforcement officers who lack formal legal training typically prepare them, but such citations are intended to provide a less formal means for the efficient disposition of traffic offenses); *State v. Williams*, 53 Ohio App.3d 1, 5 (10th Dist.1988). Since the traffic ticket at issue, even with a numerical error in reference to the code section, fulfilled its purpose both in notifying defendant of the offense charged and in providing him an opportunity to develop his defense, the trial court erred in refusing to amend the ticket pursuant to Crim.R. 7(D) to reflect the correct code section of the offense with which defendant was charged.

{¶ 18} The city's sole assignment of error is sustained.

IV. Disposition

{¶ 19} Having sustained the city's single assignment of error, we reverse the judgment of the Franklin County Municipal Court and remand with instructions to grant the city's motion to amend the traffic ticket to reflect the correct code section and to conduct further proceedings consistent with this decision.

*Judgment reversed and cause
remanded with instructions.*

BROWN, P.J., and CONNOR, J., concur.
