[Cite as *State v. Boyle*, 2012-Ohio-5581.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

STATE OF OHIO,	:	**O P I N I O N**
Plaintiff-Appellee,	:	**CASE NO. 2012-P-0003**
- vs -	:	
DANIEL MALCOLM BOYLE,	:	
Defendant-Appellant.	:	

Criminal Appeal from the Portage County Municipal Court, Ravenna Division, Case No. R2011 CRB 00435.

Judgment: Affirmed.

Victor V. Vigluicci, Portage County Prosecutor, and *Pamela J. Holder*, Assistant Prosecutor, 241 South Chestnut Street, Ravenna, OH 44266 (For Plaintiff-Appellee).

Patricia J. Smith, 9442 State Route 43, Streetsboro, OH 44241 (For Defendant-Appellant).

TIMOTHY P. CANNON, P.J.

{¶1} Appellant, Daniel Malcolm Boyle, appeals the judgment of the Portage County Municipal Court, Ravenna Division, which, after a bench trial, found him guilty of failure to comply with order or signal of a police officer, a misdemeanor of the first degree, in violation of R.C. 2921.331(A). At issue is whether the state presented sufficient evidence to sustain appellant's conviction. For the following reasons, we affirm the trial court's finding of guilt.

{¶2} Appellant was sentenced to 90 days in the Portage County Jail, which was suspended on certain conditions, and a fine of $250. Appellant filed an appeal and, as his first assignment of error, alleges:

{¶3} "The evidence was insufficient to sustain a conviction for Failure to Comply with Police Signal where the appellant safely complied within a reasonable distance and time period and there was no evidence of reckless behavior."

{¶4} An appellate court reviewing the sufficiency of the evidence examines the evidence admitted at trial and determines whether, after viewing the evidence in a light most favorable to the state, the trier of fact could have found all elements of the crime proven beyond a reasonable doubt. *State v. Schlee*, 11th Dist. No. 93-L-082, 1994 Ohio App. LEXIS 5862, *13 (Dec. 23, 1994); *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991). "On review for sufficiency, courts are to assess not whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction." *State v. Thompkins*, 78 Ohio St.3d 380, 390 (1997) (Cook, J., concurring). "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *Thompkins*, at 386.

{¶5} Appellant was charged with a violation of R.C. 2921.331(A), which states: "No person shall fail to comply with any lawful order or direction of any police officer invested with authority to direct, control, or regulate traffic."

{¶6} In *State v. Millik*, 11th Dist. No. 2005-T-0003, 2006-Ohio-202, ¶13, this court agreed with the Tenth Appellate District that the mental state for a violation of R.C. 2921.331 is recklessness.

{¶7} A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result or is likely to be of a certain nature. A person is reckless with respect to circumstances when, with heedless indifference to the consequences, he perversely disregards a known risk that such circumstances are likely to exist. R.C. 2901.22(C).

{¶8} Brady Lake Chief of Police David Kinney testified that he was in uniform and in a properly-marked vehicle on March 1, 2011. During this time, Chief Kinney observed a minivan that did not display a front license plate. Chief Kinney testified that when he was approximately one car length behind the minivan, he signaled with his lights, siren, and horn. Chief Kinney noted that although the overhead lights and siren were activated and there was nothing impeding the driver's view of the overhead lights, the minivan did not pull over for approximately 500 feet. Instead, the minivan continued to travel within the residential speed limit, and it eventually pulled into appellant's driveway. Although Chief Kinney admitted that initially there was not a safe place to pull over because the road was narrow, the right side berm widens and there was a large gravel area where the minivan could have pulled over safely.

{¶9} Appellant also testified. He stated that he observed a police cruiser with its lights activated behind him, but he chose to continue to drive to his driveway. Appellant testified that he did not stop on the side of the road or the gravel area because of the snow; appellant admitted to traveling the "whole 561 feet."

{¶10} In finding appellant guilty, the trial court stated, in part:

{¶11} [T]aking your word as true, Mr. Boyle, you knew that the police officer was behind you with his siren going and his lights on about 561 feet from your house. That's what you testified to.

{¶12} [I]f you got a police officer behind you, you don't get to choose to go to your driveway under the law. You stop. If it's safe to stop, you stop.

{¶13} There's been no evidence presented that it was not safe to stop along that route, so I will find you guilty by proof beyond a reasonable doubt.

{¶14} On appeal, appellant does not challenge the validity of the stop nor does he challenge the authority of Chief Kinney to give a lawful order. Instead, appellant argues the state provided insufficient evidence to demonstrate that he acted recklessly. Appellant asserts he complied with all traffic regulations during the time Chief Kinney followed him—he stopped at the stop sign and traveled the posted speed limit. Appellant maintains that he "in no way drove with heedless indifference."

{¶15} The state is not required to prove that appellant "*drove*" *or operated his vehicle* with "heedless indifference" but that appellant, with heedless indifference to the consequences, perversely disregarded a known lawful order of a police officer. Here, appellant acted recklessly when he continued to ignore the lawful order for approximately 561 feet despite being aware that Chief Kinney was pursuing him in his police cruiser with its lights and siren activated. Additionally, we note the record reveals that appellant was aware Chief Kinney was attempting to effectuate a traffic stop because, instead of complying with the Chief's orders, appellant took a picture of the

Chief's vehicle through his rearview mirror. By continuing to drive when there was evidence of a safe place to pull over, appellant not only recklessly, but intentionally, disregarded a lawful order from a police officer. *State v. Millik*, 2006-Ohio-202, ¶17.

{¶16} When viewed in a light most favorable to the prosecution, a reasonable person could find appellant guilty of failing to comply with an order or signal of a police officer. Consequently, there was sufficient evidence to sustain appellant's conviction. Appellant's first assignment of error is without merit.

{¶17} Under his second assignment of error, appellant alleges:

{¶18} "The trial court erred when it failed to consider the specific statute of Failure to Yield to Emergency Vehicle and found the appellant guilty of the more general statute Failure to Comply."

{¶19} Under this assignment of error, appellant challenges his conviction by arguing that absent specific legislative intent to the contrary, a specific statute takes precedence over a general statute. Appellant maintains the trial court failed to consider the specific statute that more directly addressed the instant offense—right-of-way of public safety or coroner's vehicle, a violation of R.C. 4511.45. Appellant claims the instant factual pattern is addressed under R.C. 4511.45, not under R.C. 2921.331(A), as the evidence was insufficient to demonstrate the mens rea of recklessness. Appellant notes that he observed Chief Kinney's vehicle; he did not commit any traffic violation during Chief Kinney's pursuit of appellant's vehicle; and he could not pull over without impeding traffic on the narrow roadway.

{¶20} Appellant cites to R.C. 1.51, which states:

> If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

{¶21} If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail.

{¶22} "R.C. 1.51 comes into play only when a general and a special provision constitute allied offenses of similar import and additionally do not constitute crimes committed separately or with a separate animus for each crime." *State v. Chippendale*, 52 Ohio St.3d 118, 120 (1990).

{¶23} R.C. 4511.45(A)(1) governs a driver's duty to yield the right-of-way when a public safety or coroner's vehicle is within 500 feet of the driver's vehicle. Conversely, R.C. 2921.331(A) governs an individual's duty to comply with a lawful order or direction of a police officer. The elements of the two offenses are not similar and do not define allied offenses. Yielding to an emergency vehicle imposes a different duty on a driver than stopping when ordered to do so. Furthermore, as we discussed in appellant's first assigned error, the evidence is sufficient to demonstrate that appellant acted recklessly.

{¶24} Appellant's second assignment of error is without merit.

{¶25} The judgment of the Portage County Municipal Court, Ravenna Division, is hereby affirmed.

CYNTHIA WESTCOTT RICE, J.,
MARY JANE TRAPP, J.,
concur.