

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
CLERMONT COUNTY

STATE OF OHIO,	:	CASE NO. CA2015-02-017
Plaintiff-Appellee,	:	
	:	<u>OPINION</u>
- vs -	:	7/27/2015
	:	
TYLER McGLOTHIN,	:	
Defendant-Appellant.	:	

CRIMINAL APPEAL FROM CLERMONT COUNTY MUNICIPAL COURT  
Case No. 2014 TRD 19566

D. Vincent Faris, Clermont County Prosecuting Attorney, Nicholas Horton, 76 South Riverside Drive, 2nd Floor, Batavia, Ohio 45103, for plaintiff-appellee

Gary A. Rosenhoffer, 313 E. Main Street, Batavia, Ohio 45103, for defendant-appellant

**M. POWELL, P.J.**

{¶ 1} Defendant-appellant, Tyler McGlothlin, appeals his conviction in the Clermont County Municipal Court for failure to proceed cautiously past a red light while driving an ambulance.

{¶ 2} On September 8, 2014, appellant was cited for failure to obey a signal light in violation of R.C. 4511.13. The citation stemmed from a collision between appellant and

Jeffrey Ruggles which occurred at the intersection of State Route 32 and Bauer Road in Clermont County, Ohio. Appellant pled not guilty to the charge and a bench trial was held before a magistrate on November 4, 2014.

{¶ 3} On the day of the trial, the original citation was dismissed and a new complaint was filed charging appellant with violating R.C. 4511.03. The complaint alleged that appellant was operating "an emergency vehicle," and that as he was responding to an emergency call and upon approaching a red light, he "fail[ed] to slow down as necessary for safety to traffic and failed to proceed cautiously past such red signal light with due regard for the safety of all persons using the street or highway." Appellant did not object to the new charge and did not move for a continuance.<sup>1</sup> Appellant, Ruggles, a state trooper dispatched to the scene of the accident, and four motorists testified at trial.

{¶ 4} Bauer Road is a generally north-south roadway with three lanes of travel, one southbound lane, one northbound lane, and a turn-only center lane in each direction. At its intersection with Bauer Road, State Route 32 is an east-west, four-lane divided highway with a 55 m.p.h. speed limit. A grassy median separates the two westbound lanes from the two eastbound lanes. In addition, State Route 32 has a westbound left-turn only lane, an eastbound left-turn only lane, and an eastbound right-turn only lane. Traffic at the intersection is controlled on every lane of State Route 32 and Bauer Road by a traffic light.

{¶ 5} On the evening of September 18, 2014, appellant was operating a private ambulance westbound on State Route 32. The ambulance's emergency lights and siren were activated as appellant was transporting a patient. As he was approaching the intersection against a red light, appellant was traveling at a speed of 60 to 65 m.p.h.

---

1. Following the filing of the new charge on the day of the trial, appellant's counsel told the magistrate that appellant was again pleading not guilty, they were ready for trial, and that "whether it was under the former charge or the present charge[,] the legal standard is the same and that's due regard[.]"

Meanwhile, Ruggles was operating his vehicle southbound on Bauer Road. Ruggles testified he stopped at the intersection as he had a red light, sat at the red light for about three to four minutes, and proceeded through the intersection once the light turned green. The front of Ruggles' vehicle struck the right rear passenger side of the ambulance as the ambulance was traveling through the intersection through a red light. Ruggles testified he never saw the ambulance or heard its siren before the collision. Testimony at trial indicates that traffic was stopped in all directions as the ambulance approached the intersection. Ruggles was not issued a citation.

{¶ 6} On November 4, 2014, the magistrate found appellant guilty of violating R.C. 4511.03. Appellant filed objections to the magistrate's decision. Appellant challenged his conviction on the grounds (1) he was operating a public safety vehicle, and not an emergency vehicle as charged in the complaint, (2) the evidence was conflicting as to whether he was favored with a green light, and (3) Ruggles failed to yield to the ambulance in violation of R.C. 4511.45.

{¶ 7} On January 16, 2015, the trial court overruled appellant's objections. With regard to the vehicle appellant was operating at the time of the collision, the trial court found that "the language in the complaint identifying the vehicle \* \* \* as an emergency vehicle rather than a public safety vehicle is simply a scrivener's error." Consequently, the trial court amended the complaint under Crim.R. 7(D) "to allege Defendant was operating a public safety vehicle." The trial court found that "this amendment is consistent with the undisputed evidence presented, does not change the name or identity of the offense charged, and did not mislead or prejudice Defendant in the presentation of his defense."

{¶ 8} The trial court also adopted the magistrate's decision finding appellant guilty of violating R.C. 4511.03, as follows:

While [defendant] did slow down some as he entered the

intersection, the Court does not find he slowed down sufficiently to exercise due regard for the safety of others. Given the size of the intersection, the multiple lanes of travel entering the intersection from every direction, and the red light he was facing, [defendant] failed to slow sufficiently to ensure he could clear the intersection safely. As a result, he was involved in a collision with Mr. Ruggles, who entered the intersection on a green light.

\* \* \*

The defense correctly notes that R.C. § 4511.45 requires other drivers to yield the right of way to a public safety vehicle with lights and siren activated. \* \* \* However, civil liability is not the issue before this Court. The undisputed evidence in this case is that Mr. Ruggles did not see the ambulance approaching because there were vehicles in the turn lane blocking his view of traffic approaching the intersection westbound on State Route 32. The size of the intersection, [the] number of lanes in each direction, and the heavy traffic all increase the likelihood that a public safety vehicle may not be seen or heard, and that the driver of the public safety vehicle may not see vehicles entering the intersection pursuant to a green light. Thus, due regard requires the driver of the public safety vehicle to slow down sufficiently to enable him to safely react to these occurrences. [Defendant] failed to do so in this case.

{¶ 9} Appellant appeals and raises two assignments of error which will be addressed together.

{¶ 10} Assignment of Error No. 1:

{¶ 11} THE FINDING OF GUILT IS CONTRARY TO LAW.

{¶ 12} Assignment of Error No. 2:

{¶ 13} THE EVIDENCE PRESENTED IS INSUFFICIENT AS A MATTER OF LAW AND/OR AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE FOR PURPOSE OF SUSTAINING CONVICTION.

{¶ 14} Appellant challenges his conviction for failure to proceed cautiously past a red light on the grounds that (1) the state failed to prove he was operating an emergency vehicle as charged in the complaint, (2) the trial court erred in amending the complaint to allege he was operating a public safety vehicle, (3) he should have been charged with violating R.C.

4511.45 instead of R.C. 4511.03, and (4) the evidence is undisputed the collision was Ruggles' fault in failing to yield to appellant's ambulance.

{¶ 15} Appellant was convicted of violating R.C. 4511.03(A), which states:

The driver of any emergency vehicle or public safety vehicle, when responding to an emergency call, upon approaching a red or stop signal or any stop sign shall slow down as necessary for safety to traffic, but may proceed cautiously past such red or stop sign or signal with due regard for the safety of all persons using the street or highway.

{¶ 16} Appellant was charged with violating R.C. 4511.03 "as the driver of an emergency vehicle." Appellant argues his conviction is contrary to law because he was operating a public safety vehicle, and not an emergency vehicle. An emergency vehicle "means emergency vehicles of municipal, township, or county departments or public utility corporations \* \* \*, and motor vehicles when commandeered by a police officer." R.C. 4511.01(D). A public safety vehicle, as defined under R.C. 4511.01(E)(1), includes private ambulances.

{¶ 17} At trial, the witnesses all identified the vehicle operated by appellant at the time of the collision as an ambulance. The evidence also included Defense Exhibit 3, a photograph of the ambulance driven by appellant. The state trooper dispatched to the scene of the accident further testified that the vehicle was a private ambulance owned by Eastern Area Specialty Transport. Thus, appellant was operating a public safety vehicle as defined in R.C. 4511.01(E). The trial court subsequently amended the complaint under Crim.R. 7(D) "to allege [appellant] was operating a public safety vehicle." As discussed below, we find that the trial court properly amended the complaint.

{¶ 18} Because the Ohio Traffic Rules direct that "the Rules of Criminal Procedure and the applicable law apply" whenever the Traffic Rules fail to provide specific procedures, Crim.R. 7(D) governs amendment of traffic ticket complaints. *State v. McFeely*, 11th Dist.

Ashtabula No. 2008-A-0067, 2009-Ohio-1436, ¶ 35; Traf.R. 20. Pursuant to Crim.R. 7(D), a trial court may amend a complaint "at any time before, during, or after a trial \* \* \* provided no change is made in the name or identity of the crime charged." See *also State v. Davis*, 121 Ohio St.3d 239, 2008-Ohio-4537, ¶ 1. Crim.R. 7(D) also allows a complaint to be amended at any time to conform to the evidence presented at trial. *State v. Breedlove*, 12th Dist. Butler No. CA93-12-230, 1994 WL 327593, \*3 (July 11, 1994).

{¶ 19} Whether or not an amendment changes the name or identity of the offense with which one is charged is a matter of law, and therefore we must review this issue de novo. *State v. Craft*, 181 Ohio App.3d 150, 2009-Ohio-675, ¶ 22 (12th Dist.). "Where the 'name' of the crime remains the same, even after amendment, there is no violation of Crim.R. 7(D)." *Id.* at ¶ 23; *Davis*, 2008-Ohio-4537 at ¶ 5. In order to determine whether the identity is changed, we must determine whether the amended complaint changes the "penalty or degree" of the offense. *Craft* at ¶ 24; *Davis* at syllabus.

{¶ 20} The name of the offense clearly did not change as appellant was charged with failure to proceed cautiously past a red light in violation of R.C. 4511.03 both in the November 4, 2014 complaint and the amended complaint. Likewise, the identity of the offense did not change. The penalty of the offense remained the same, a minor misdemeanor. Further, the state was still required to prove that appellant, while responding to an emergency call and upon approaching a red light, failed to both slow down as necessary for safety to traffic and proceed cautiously past the red light with due regard for the safety of all persons using the roadways.

{¶ 21} Having established that the amendment did not change the name or identity of the offense charged, we review the decision of the trial court to allow the amendment under the abuse-of-discretion standard. *Craft*, 2009-Ohio-675 at ¶ 27 (in order to constitute reversible error, appellant must show not only that the trial court abused its discretion, but

also that the amendment hampered or otherwise prejudiced his defense).

{¶ 22} We find the trial court did not abuse its discretion by amending the complaint because appellant was not prejudiced by the alteration. The "purpose of Crim.R. 7(D) is to provide a defendant with notice of the essential facts for which he is charged." *Craft* at ¶ 30. As the trial court noted, given the evidence presented at trial, all concerned knew before the trial began that appellant was driving an ambulance. R.C. 4511.03 is written disjunctively and governs both emergency vehicles and public safety vehicles. Thus, whether appellant's ambulance was an emergency vehicle or a public safety vehicle did not change his obligation to proceed with caution through a red light.

{¶ 23} The amendment simply changed the designation of the vehicle operated by appellant from "emergency vehicle" to "public safety vehicle." Appellant had notice of the nature of the charge against him and was not deprived of a reasonable opportunity to prepare a defense. Appellant does not state how his defense would have changed in view of the amendment. The trial court, therefore, did not abuse its discretion in amending the complaint from "emergency vehicle" to "public safety vehicle" after the trial.

{¶ 24} Appellant also argues he should have been charged with violating R.C. 4511.45 instead of R.C. 4511.03.

{¶ 25} R.C. 4511.45(A) provides that when a motorist becomes aware of an approaching public safety vehicle with activated lights and siren, he or she must yield the right-of-way to that vehicle. However, R.C. 4511.45(B) states that "[t]his section does not relieve the driver of a public safety vehicle \* \* \* from the duty to drive with due regard for the safety of all persons and property upon the highway." Thus, while the driver of a public safety vehicle on an emergency run and with activated lights and siren enjoys a preferential right-of-way status, the driver loses such preferential status if he or she operates the vehicle without due care and regard for the safety of persons or property. See *Canton v. King*, 5th

Dist. Stark No. CA-6966, 1987 WL 13481 (June 15, 1987); *State v. Young*, 50 Ohio App.3d 17 (4th Dist.1988).

{¶ 26} R.C. 4511.45(B) defines the general duty of care to be exercised by the operator of a public safety vehicle responding to an emergency. R.C. 4511.03 defines the duty of care to be exercised by the operator of a public safety vehicle when proceeding through a stop signal while responding to an emergency. R.C. 4511.03 specifically addresses the standard of conduct to apply in the situation presented here and therefore was a proper statute under which to charge appellant.

{¶ 27} Finally, appellant argues his conviction for failure to proceed cautiously past a red light is not supported by sufficient evidence and is against the manifest weight of the evidence because all vehicles on State Route 32 and Bauer Road were stopped as appellant entered the intersection, and Ruggles was clearly at fault in failing to yield to appellant's ambulance. Appellant also argues once again that the state failed to prove he was operating an emergency vehicle as charged in the November 4, 2014 complaint. However, as previously discussed, the complaint was properly amended under Crim.R. 7(D) to allege he was operating a public safety vehicle, and we hereby incorporate our analysis.

{¶ 28} When reviewing the sufficiency of the evidence supporting a criminal conviction, an appellate court's function is to examine the evidence admitted at trial, and upon viewing such evidence in a light most favorable to the prosecution, determine whether "any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus; *State v. Layne*, 12th Dist. Clermont No. CA2009-07-043, 2010-Ohio-2308, ¶ 23.

{¶ 29} When considering whether a judgment is against the manifest weight of the evidence in a bench trial, an appellate court will not reverse a conviction where the trial court could reasonably conclude from substantial evidence that the state has proven the offense



beyond a reasonable doubt. *State v. Godby*, 12th Dist. Butler No. CA2005-03-056, 2006-Ohio-205, ¶ 4, citing *State v. Eskridge*, 38 Ohio St.3d 56, 59 (1988). In conducting its review, an appellate court examines the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses, and determines whether in resolving conflicts in the evidence, the trial court "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Cooper*, 12th Dist. Butler No. CA2010-05-113, 2011-Ohio-1630, ¶ 7.

{¶ 30} In making this analysis, the reviewing court must be mindful that the original trier of fact was in the best position to judge the credibility of witnesses and the weight to be given the evidence. *Id.* at ¶ 7. A determination that a conviction is supported by the manifest weight of the evidence will also be dispositive of the issue of sufficiency. *State v. Church*, 12th Dist. Butler No. CA2011-04-070, 2012-Ohio-3877, ¶ 10.

{¶ 31} R.C. 4511.03 imposes two distinct duties on public safety vehicles proceeding through a stop sign or red light. *Behm v. Cincinnati*, 1st Dist. Hamilton No. C-910865, 1992 WL 336522, \*2 (Nov. 18, 1992). Pursuant to R.C. 4511.03(A), a public safety vehicle "may lawfully proceed past a red traffic signal but only if, on approaching such signal, it slows down as necessary for safety to traffic and only if it proceeds cautiously past such signal with due regard for the safety of all persons using the street or highway." *Parton v. Weilnau*, 169 Ohio St. 145 (1959), paragraph four of the syllabus. "Where a vehicle 'is not proceeding in a lawful manner in approaching or crossing' an intersection, such vehicle loses its preferential status." *Id.* at paragraph three of the syllabus.

{¶ 32} At the time of the collision, appellant was proceeding through the intersection westbound on State Route 32 against the red light and Ruggles was entering the intersection southbound on Bauer Road with the green light. The emergency lights and siren of the ambulance were activated as appellant was transporting a patient. The speed limit on State

Route 32 at that particular intersection is 55 m.p.h. Traffic was stopped in all directions as the ambulance approached the intersection.

{¶ 33} State Trooper Daniel Stephens was dispatched to the scene of the accident. Appellant told him he was driving 60 to 65 m.p.h. at the time of the collision. When the officer asked appellant what he could have done to prevent the collision, appellant replied, "I don't know other than go slower." When the officer asked him what his obligation was as the driver of an ambulance approaching a red light, appellant replied, "Slow down even more than what I did." Trooper Stephens testified that "typically that time of day, [there is] a lot of traffic in that area." He further testified that when driving through this intersection, he personally "always stop[s] and make[s] sure that all traffic is stopped in all directions before I proceed and then pretty much crawl through the intersection."

{¶ 34} Clermont County Deputy Sheriff Aaron Ruck was traveling westbound on State Route 32 at 65 m.p.h. when he noticed the ambulance in his rear view mirror. The ambulance passed the deputy's vehicle approximately half a mile before the intersection. The deputy estimated the ambulance was driving at about 85 m.p.h. at the time. Two to three seconds later, the ambulance and Ruggles' vehicle collided. The deputy testified he did not see the brake lights of the ambulance until right before the collision. He also testified the light on westbound State Route 32 was red from the time the ambulance passed him until the collision.

{¶ 35} Jeffrey Osborne was stopped at a red light in the eastbound left-turn only lane on State Route 32, waiting to turn left onto Bauer Road, when he noticed the ambulance's emergency lights three-quarters of a mile before the intersection. Osborne testified that as the ambulance "came right through the intersection, [it] never varied the speed, never swerved, never braked."

{¶ 36} Holly Downs was traveling westbound on State Route 32 when she noticed the

ambulance in her rear view mirror. Downs testified that after appellant passed her and as he "got up to" the intersection, appellant slowed down, braked, and honked his horn. The ambulance was then hit by Ruggles' vehicle. At the time of the collision, Downs was 100 feet from the intersection. She believed the light for the westbound traffic on State Route 32 was green.

{¶ 37} Michael Cornett, a former ambulance driver and EMT medic, testified on behalf of appellant. Cornett was stopped at a red light in the eastbound right-turn only lane on State Route 32 when he observed the ambulance approach the intersection. Cornett testified the ambulance was already through the intersection when it was hit by Ruggles' vehicle. Cornett testified that although appellant "did take precaution to check the intersection and proceed through," the speed of the ambulance "may have been a little fast, okay, a little faster than I would have." Cornett testified that he personally would have approached the intersection at about 35-40 m.p.h., and that an ambulance driver needs to be "a little more careful" when transporting a patient.

{¶ 38} Ruggles testified he never saw or heard the ambulance before the collision. Ruggles testified his windows were up, his air conditioning was on, and his car radio was playing. Further, his view toward eastbound State Route 32 was blocked by a large pick-up truck waiting to turn left onto eastbound State Route 32. We note that the large pick-up truck would of necessity impede appellant's view of the southbound lane on Bauer Road as he approached and proceeded through the intersection. See *State v. Leggett*, 83 Ohio Law Abs. 400 (7th Dist.1959). Further, unlike Ruggles, Deputy Ruck, Osborne, Downs, and Cornett were all traveling on State Route 32 right before the collision.

{¶ 39} Upon reviewing the foregoing evidence, we find that given the size of the intersection, the multiple lanes of travel entering the intersection from every direction, the red light he was facing, and his rate of speed as he approached the intersection, appellant first

failed to slow down as necessary for safety to traffic, and then failed to proceed cautiously past the red light with due regard for the safety of all persons using State Route 32 and Bauer Road in violation of R.C. 4511.03. While appellant exercised some degree of caution as he approached the intersection, his caution did not rise to the level required by R.C. 4511.03. *Springfield v. Parsons*, 2d Dist. Clark No. 94 CA 22, 1994 WL 527674, \*4 (Sept. 30 1994). "The question is not whether the driver exercised caution, but whether the driver exercised sufficient caution necessary for the safety of all other persons." *Id.* Appellant did not. Consequently, appellant lost his preferential status of right-of-way under R.C. 4511.45. See *State v. Dietz*, 6th Dist. Erie No. E-84-23, 1984 WL 14379 (Sept. 28, 1984).

{¶ 40} As the Seventh Appellate District stated,

we have a picture of an ambulance crashing a red light, which is made lawful by [R.C.] 4511.03. But this section does not give the driver of a [public safety] vehicle carte blanche, because it puts several curbs on that right. \* \* \* But even with that privilege, he also owes a duty of safeguarding not only the subject of his mission \* \* \* from the effects of a delaying accident, but the duty of safeguarding other traffic from such an accident. \* \* \*

In plain English, he is given the privilege of violating the law. But he must use that privilege so that he is not interfering with others' rights. He *must* make sure before crashing that light that no accident is likely to result.

(Emphasis sic.) *Leggett*, 83 Ohio Law Abs. at 401.

{¶ 41} Accordingly, we find that appellant's conviction for failure to proceed cautiously past a red light is not against the manifest weight of the evidence. We also necessarily find that the conviction is supported by sufficient evidence. *Church*, 2012-Ohio-3877 at ¶ 10.

{¶ 42} Appellant's first and second assignments of error are overruled.

{¶ 43} Judgment affirmed.

S. POWELL and RINGLAND, JJ., concur.