[Cite as *State v. Ducheine*, 2010-Ohio-3122.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

	:	JUDGES:
STATE OF OHIO	:	Julie A. Edwards, P.J.
	:	John W. Wise, J.
Plaintiff-Appellee	:	Patricia A. Delaney, J.
	:	
-vs-	:	Case No. 09 CA 0096
	:	
	:	
JOSEPH DUCHEINE	:	O P I N I O N
Defendant-Appellant		

CHARACTER OF PROCEEDING:	Criminal Appeal from Licking Municipal Court Case No. 2009 TRD 5321
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	June 28, 2010
APPEARANCES:	
For Plaintiff-Appellee	For Defendant-Appellant
TRICIA MOORE 40 West Main Street Newark, Ohio 43055	DARRYL O. PARKER 786 South Front Street Columbus, Ohio 43215

Edwards, P.J.

{¶1} Defendant-appellant, Joseph Ducheine, appeals his conviction and sentence from the Licking County Municipal Court on one count of reckless operation. Plaintiff-appellee is the State of Ohio.

STATEMENT OF THE FACTS AND CASE

{¶2} On May 19, 2009, appellant was cited for reckless operation in violation of R.C. 4511.20, a minor misdemeanor. At his arraignment on May 27, 2009, appellant entered a plea of not guilty to the charge.

{¶3} A bench trial was held on June 17, 2009. At the bench trial, Ohio State Highway Patrol Trooper Thomas Palmer testified that he was on duty on May 19, 2009, from 2:00 p.m. until 10:00 p.m. The Trooper testified that at around 9:00 p.m., he was in uniform in a marked cruiser on State Route 37 in a construction zone "working that area for speed." Transcript at 5. According to Trooper Palmer, his radar indicated that appellant was driving 79 miles per hour in a 45 mile per hour zone.

{¶4} As the Trooper turned to initiate a traffic stop of appellant's vehicle, he observed appellant pass two cars on a double yellow line in the construction zone. When Trooper Palmer stopped appellant's vehicle, appellant told him that "his brother was ill that he was a police officer, he was ill and he was in the hospital, they don't know what's wrong with him, and that's why he was trying to get to him." Transcript at 7. When asked why he cited appellant for reckless operation, the Trooper testified he cited appellant because of his speeding and because appellant passed two cars in a no passing zone.

{¶5} Appellant testified that he learned from his wife that his brother was unconscious in the hospital and that he was heading to the hospital when he was stopped. He testified that was driving 50 miles an hour when he passed the two cars and testified that he crossed the double line because he was in a hurry. Appellant denied that he was speeding.

{¶6} On cross-examination, appellant indicated the he knew that speed limit in the area was 45 miles per hour.

{¶7} The trial court found appellant guilty of the charge of reckless operation. Appellant was ordered to pay a fine of $25.00.

{¶8} Appellant now raises the sole assignment of error on appeal:

{¶9} "THE TRIAL COURT ERRED IN FINDING APPELLANT GUILTY AS APPELLEE FAILED TO ESTABLISH ALL ELEMENTS OF THE OFFENSE."

I

{¶10} Appellant, in his sole assignment of error, argues that his conviction for reckless operation in violation of R.C. 4511.20 is against the sufficiency of the evidence. We disagree.

{¶11} On review for sufficiency, a reviewing court is to examine the evidence at trial to determine whether such evidence, if believed, would support a conviction. *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492. "The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *Jenks* at paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781.

{¶12} Appellant was convicted of reckless operation in violation of R.C. 4511.20. Such section states as follows: "(A) No person shall operate a vehicle, trackless trolley, or streetcar on any street or highway in willful or wanton disregard of the safety of persons or property."

{¶13} The Ohio Supreme Court has held that willful conduct "implies an act done intentionally, designedly, knowingly, or purposely, without justifiable excuse." *State v. Earlenbaugh* (1985), 18 Ohio St.3d 19, 21, 479 N.E.2d 846, citing Black's Law Dictionary (5 Ed. 1979) 1434. Wanton conduct, on the other hand, is defined as "an act done in reckless disregard of the rights of others which evinces a reckless indifference of the consequences to the life, limb, health, reputation, or property of others." Id. at 21-22.

{¶14} Appellant now argues that his conviction was against the sufficiency of the evidence because the State failed to present evidence that appellant acted with disregard to the safety of persons of property. Appellant notes that there was no evidence adduced at the bench trial as to the conditions of the road or whether or not there was any on-coming traffic. Appellant further notes that there was no evidence as to whether or not he almost caused an accident.

{¶15} However, we find that, viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found appellant guilty of reckless operation. Appellant was clocked driving 79 miles per hour in a 45 miles per hour construction zone at night. While appellant denied at trial that he was speeding, he testified that he was driving 50 miles per hour in a 45 miles per hour construction zone. Thus, appellant admitted to driving faster than the speed limit. Moreover, appellant

admitted passing two cars in a no passing zone. Based on the foregoing, we find that there was evidence that appellant showed a "willful or wanton disregard of the safety of persons or property."

{¶16} Appellant's sole assignment of error is, therefore, overruled.

{¶17} Accordingly, the judgment of the Licking County Municipal Court is affirmed.

By: Edwards, P.J.

Wise, J. and

Delaney, J. concur

s/Julie A. Edwards

s/John W. Wise

s/Patricia A. Delaney

JUDGES

JAE/d0331

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IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
JOSEPH DUCHEINE	:	
Defendant-Appellant	:	CASE NO. 09 CA 0096

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Licking County Municipal Court is affirmed. Costs assessed to appellant.

s/Julie A. Edwards

s/John W. Wise

s/Patricia A. Delaney

JUDGES