[Cite as *Fremont v. Sauls*, 2013-Ohio-3952.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

City of Fremont

Appellee

v.

James R. Sauls, III

Appellant

Court of Appeals No. S-13-002

Trial Court No. TRD 1202746

DECISION AND JUDGMENT

Decided: September 13, 2013

* * * * *

Jeremiah S. Ray, for appellant.

* * * * *

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Fremont Municipal Court, Sandusky County, Ohio, which convicted appellant of one count of speeding, in violation of Fremont Municipal Code 333.03(c). For the reasons set forth below, this court affirms the judgment of the trial court.

{¶ 2} Appellant, James R. Sauls, III, sets forth the following three assignments of error:

I. The trial court found appellant guilty by incorrectly conflating two distinct legal standards.

II. The trial court erred in entering a judgment of guilty where there was a lack of sufficient evidence.

III. The verdict finding appellant guilty is against the manifest weight of the evidence.

{¶ 3} The following undisputed facts are relevant to this appeal. On June 12, 2012, Officer Lester Daniels of the Fremont Police Department was on duty during the afternoon shift. Officer Daniels was traveling eastbound over the Miles Newton Bridge. That location is subject to a posted speed limit of 25 m.p.h. Officer Daniels observed appellant traveling westbound over the bridge. Appellant captured the attention of the officer because the officer observed that appellant, "was speeding pretty good." Officer Daniels activated his radar which he had calibrated and found to be fully functional within an hour prior to the incident. Officer Daniels clocked appellant by radar traveling 46 m.p.h. in a 25 m.p.h., 21 m.p.h. in excess of the lawful speed limit.

{¶ 4} Officer Daniels pulled over appellant who was polite and cooperative during the stop. It was the impression of the officer that appellant failed to realize the speeding violation. Appellant was issued a speeding citation. On December 7, 2012, the matter proceeded to a bench trial. Appellant elected to not be present at the hearing with the consent of the parties. Officer Daniels presented detailed testimony establishing the functionality of his radar equipment, the applicable speed limit of 25 m.p.h. at the

location of the offense, and appellant's violation, as reflected by appellant being clocked by radar traveling at 46 m.p.h. at that location in the city of Fremont, Ohio. Appellant was found guilty of speeding in violation of Fremont Municipal Code 333.03(c) and given a $75 fine and ordered to pay $75 in court costs. This appeal ensued.

{¶ 5} We find that the assignments of error are best addressed by first examining appellant's related second and third assignments of error. In the second assignment of error, appellant asserts that the verdict was not supported by sufficient evidence. The term "sufficiency" of the evidence presents a question of law as to whether the evidence is legally adequate to support a verdict as to all elements of the crime. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997). The relevant inquiry is whether after reviewing the evidence in a light most favorable to the prosecution, a rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 6} In the third assignment of error, appellant maintains that the guilty verdict was against the manifest weight of the evidence. A manifest weight challenge questions whether the state has met its burden of persuasion. *State v. Davis*, 6th Dist. Wood No. WD-10-077, 2012-Ohio-1394, ¶ 17. In making this determination, this court sits as a "thirteenth juror" and after reviewing the record, weighing the evidence and reasonable inferences, considering the credibility of witnesses and resolving conflicts in the evidence, we ultimately determine whether the trial court lost its way and created a

manifest miscarriage of justice such that a conviction must be reversed. *Thompkins* at 386.

{¶ 7} We have carefully reviewed the transcript of proceedings in this matter. The record clearly reflects that the lawful speed limit at the relevant location is 25 m.p.h. The record further reflects that on June 12, 2012, Officer Daniels was on duty in the city of Fremont, Ohio and had ensured the proper functioning of his radar equipment shortly before this incident. The record shows that Officer Daniels activated his radar equipment upon observing appellant "speeding pretty good." Lastly, the record shows that appellant was recorded by radar traveling at 46 m.p.h. in a 25 m.p.h. zone.

{¶ 8} Fremont Municipal Code 333.03(c) establishes, "It is prima facie unlawful for any person to exceed any of the speed limitations in subsections (b)(1)A to (b)(6) hereof." As the court stated in *Cleveland v. Keah* (1952), 157 Ohio St. 331, 105 N.E.2d 402,

> Under such phraseology in a statute or ordinance a speed greater than that specified does not establish the commission of an offense or constitute unlawful conduct per se, but establishes only a prima facie case under the particular statute or ordinance. Such a *337 provision is merely a rule of evidence raising a rebuttable presumption which may be overcome by evidence that in the circumstances the speed was neither excessive nor unreasonable. 61 C.J.S. 747, 751, Motor Vehicles, §§ 641, 647. (approved

and followed in *Bellville v. Kieffaber*, 114 Ohio St.3d 124, 2007-Ohio-3763).

{¶ 9} A prima facie case was established. Appellant provided no rebuttal evidence to establish that the speed was neither excessive nor unreasonable. Accordingly, the trial court found appellant guilty of speeding. The record encompasses indisputable, objective evidence that appellant significantly exceeded the applicable speed limitation while driving across the Miles Newton bridge in Fremont. While appellant puts forth several innovative arguments in support of the notion that he was not properly convicted in this matter, we do not concur. We find that ample evidence in the record reflects that a rational trier of fact could find that the evidence satisfied the elements of the crime. Wherefore, we find appellant's second and third assignments of error not well-taken.

{¶ 10} In the first assignment of error, appellant contends that the trial court incorrectly applied legal standards in reaching the disputed verdict. In support, appellant sets forth a novel premise that the city of Fremont speeding ordinances indirectly imply and should be construed as supporting the notion that traveling under 55 m.p.h. in a 25 m.p.h. zone is never unreasonable and thus cannot be found to be illegal despite local ordinances to the contrary. This contention stems from a local speeding ordinance prohibiting anyone from ever exceeding 55 m.p.h. on city streets, thus ostensibly indirectly standing for the notion that traveling under 55 m.p.h. should be construed as reasonable, proper, and lawful.

{¶ 11} On the contrary, we find that the record is devoid of any objective, relevant evidence in support of appellant's premise. It runs counter to the plain and unambiguous language of Fremont Municipal Code 333.03(b)(1) through (b)(6) which sets forth the precise speed limits on non-freeway and non-interstate streets within the city of Fremont. All of these speed limits are set to be 20 m.p.h. to 50 m.p.h., lower than the blanket 55 m.p.h. threshold claimed by appellant.

{¶ 12} In conjunction with this assertion, appellant also opines that the verdict was improper since the trial judge characterized his thoughts by stating, "it would be my intention to find as a matter of law that exceeding the speed limit by 21 m.p.h. in a 25 m.p.h. zone is unreasonable." Appellant attempts to utilize several excerpts as showing that the judge somehow unwittingly reframed the parameters of the local speeding ordinance so as to legalize speeding in a 25 m.p.h. zone, so long as not exceeding 55 m.p.h.

{¶ 13} We have carefully reviewed and considered the entire record of evidence and the related ordinances and do not share in appellant's interpretation and corresponding legal contention. The trial court's various remarks during the speeding trial relied upon by appellant in no way could or did alter the parameters or enforceability of the local speeding laws. Even more significantly, the transcript of the trial, read in the context of its entirety, clearly shows that the trial court was merely responding to the many attempts during the hearing on the part of counsel for appellant to portray going 21

m.p.h. over the speed limit in a 25 m.p.h. zone, nearly double the lawful speed limit, as reasonable. We find appellant's first assignment of error not well-taken.

{¶ 14} Wherefore, we find that substantial justice has been done in this matter. The judgment of the Fremont Municipal Court, Sandusky County, Ohio, is hereby affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment affirmed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J. _____
JUDGE

Thomas J. Osowik, J.
CONCUR. _____
JUDGE

James D. Jensen, J.,
DISSENTS.

JENSEN, J.

{¶ 15} Because I find merit to appellant's first assignment of error, I dissent from the majority decision.

{¶ 16} Fremont Municipal Code 333.03(a) provides that "no person shall operate a motor vehicle at a speed greater or less than is reasonable or proper, having due regard

for the traffic, surface and width of the street or highway and any other conditions * * *." Under (b)(2) of that ordinance, in the area where appellant was stopped by Officer Daniels, it is *prima facie lawful* to operate a motor vehicle at a speed not exceeding 25 m.p.h., and under (c), it is *prima facie unlawful* to exceed that speed. Section (d)(1) makes it per se unreasonable to exceed 55 m.p.h. in a 25 m.p.h. zone.

{¶ 17} The city presented undisputed evidence that appellant was traveling 46 m.p.h.—21 m.p.h. over the posted speed, a prima facie violation of Fremont Municipal Code 333.03(c). The city having met its initial burden, it then became incumbent upon appellant to rebut the city's prima facie case with evidence that his speed was neither excessive nor unreasonable under the circumstances. *Village of Bellville v. Kieffaber*, 114 Ohio St.3d 124, 2007-Ohio-3763, 870 N.E.2d 697, ¶ 21.

{¶ 18} The majority concludes that appellant "provided no rebuttable evidence to establish that the speed was neither excessive nor unreasonable." The majority also concludes that it was proper for the trial court to find that "*as a matter of law* * * *[,] exceeding the speed limit by 21 miles per hour in a 25 mile per hour zone is unreasonable." (Emphasis added.) I disagree on both points.

{¶ 19} First, appellant did present evidence to rebut the city's prima facie case. On cross-examination, appellant elicited the following facts from Officer Daniels as evidence that his speed was neither excessive nor unreasonable:

(1) Appellant was alone;

(2) It was not raining;

(3) Traffic conditions were light, with perhaps one other vehicle on the road;

(4) There were two eastbound lanes and two westbound lanes;

(5) Appellant's was the only vehicle traveling in the westbound lane;

(6) There were no homes in the area;

(7) There were no pedestrians in the area;

(8) The pavement was dry;

(9) Visibility was clear;

(10) There was no crash;

(11) Appellant was not traveling in a manner that was unsafe for the conditions.

{¶ 20} Appellant having presented rebuttal evidence, the issue became one of *fact*. *State v. Neff*, 41 Ohio St.2d 17, 18, 322 N.E.2d 274 (1975) ("What is reasonable and proper under the circumstances [under analogous R.C. 4511.21] is a question of fact.") Thus, when the trial court stated that driving 46 m.p.h. in a 25 m.p.h. zone is unreasonable *as a matter of law*, it applied an incorrect legal standard, essentially applying strict liability instead of the burden-shifting analysis that the ordinance and case law specifically require. *See City of Cleveland v. Keah*, 157 Ohio St. 331, 336, 105 N.E.2d 402 (1952) (referencing analogous ordinance and explaining that "under such phraseology in a statute or ordinance[,] a speed greater than that specified does not establish the commission of an offense or constitute unlawful conduct per se, but establishes only a prima facie case under the particular statute or ordinance.")

{¶ 21} Finally, the majority misstates appellant's argument. Appellant does not argue that a driver can never be convicted of a violation of Fremont Municipal Code 333.03(c) absent evidence that his speed exceeded 55 m.p.h.; rather, he argues that a driver cannot be convicted of a per se violation of Fremont Municipal Code 333.03(c) absent evidence that his speed exceeded 55 m.p.h. Appellant is correct. Because I agree with appellant that the trial court applied the wrong legal standard, I would reverse.