[Cite as *Cleveland v. Tisdale*, 2015-Ohio-1017.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 101376

CITY OF CLEVELAND

PLAINTIFF-APPELLEE

vs.

VENIS TISDALE

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cleveland Municipal Court
Case No. 2014TRD014428

BEFORE: Celebrezze, A.J., McCormack, J., and Stewart, J.

RELEASED AND JOURNALIZED: March 19, 2015

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FRANK D. CELEBREZZE, JR., A.J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1.

{¶2} Defendant-appellant, Venis Tisdale, appeals the judgment of the Cleveland Municipal Court finding him guilty of failing to control his vehicle in violation of Cleveland Codified Ordinances ("CCO") 431.34(a), a minor misdemeanor. For the reasons that follow, we affirm the lower court's judgment.

I. Procedural and Factual History

{¶3} On March 12, 2014, appellant was cited for failing to control his vehicle, in violation of CCO 431.34(a), and following too closely in violation of CCO 431.09. On March 26, 2014, appellant was arraigned and entered a plea of not guilty.

{¶4} At a bench trial on April 9, 2014, Cleveland Police Officer Michael Schwebs testified that on March 12, 2014, he was dispatched to the area of Martin Luther King Jr. Drive and Ambleside Drive to assist motorists involved in automobile accidents. When Officer Schwebs arrived at the scene, he observed two separate automobile accidents. According to Officer Schwebs, "there was a three-car accident which had an injury, and then there was [appellant's] accident which involved two vehicles."

{¶5} Officer Schwebs testified he inspected appellant's vehicle and found damage to the "front right" portion of his vehicle. The other vehicle involved in the accident had damage to the "rear center" of its bumper. Thereafter, Officer Schwebs had a conversation with appellant at the scene of the accident. According to Officer Schwebs, appellant stated that his vehicle slid because of the icy weather conditions and that he was unable to brake before striking "the end" of the other vehicle.

{¶6} Following Officer Schwebs's testimony, the trial court permitted appellant to make a statement on his own behalf. Appellant stated that he was driving approximately five miles per hour around a curve on Martin Luther King Jr. Drive when he "hit a piece of ice" and began to slide. Appellant stated, " I just slid over there, and I tried to turn the wheel back to the right, and it won't go right. I slid right into the back of their car."

{¶7} At the conclusion of trial, appellant was found guilty of failure to control and not guilty of following too closely. Appellant was ordered to pay a $75 fine plus court costs. On April 10, 2014, appellant made a partial payment of $50 towards his fine.

{¶8} Appellant now appeals, pro se, raising five assignments of error for review.[1]

> I. The judge erred in finding the appellant guilty of failure to control, due to the weather conditions and the condition that the roads were in on March 12, 2014.
>
> II. Whether or not the police report was false and fabricated by the police officer(s), and based upon the fabricated/false police report the judge found the appellant guilty, and charged him with failure to control, O.R.C. 431.24A, and as well as with following too closely O.R.C. 431.09, when she stated in ope court that she was dismissing the following too closely, and charging him with failure to control but on the courts journal entry it has him charged with both. The appellant is wanting all charges cleared.
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> III. Whether the judges ruling was the correct ruling seeing that the police report was false and fabricated by the police officer(s) to charge him with the whole entire accident(s).
>
> IV. Whether the police officer(s) did charge the appellant with (2) both of the accident(s) that happened on that day of March 12, 2014.
>
> V. Whether any of the other driver(s) were charged in the (1st) first accident for their accident and given any citation(s) for what had caused them to have their accident, and appeared in a court to answer to their charges.

II. Law and Analysis

{¶9} We interpret appellant's pro se assignments of error as arguments that the trial court's judgment was not supported by sufficient evidence.

{¶10} Our review of the sufficiency of evidence to support a criminal conviction is governed by *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), which requires a court of appeals to determine whether "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*; *see also McDaniel v. Brown*, 558 U.S. 120, 130 S.Ct. 665, 673, 175 L.Ed.2d 582 (2010) (reaffirming this standard); *State v. Fry*, 125 Ohio St.3d 163, 2010-Ohio-1017, 926 N.E.2d 1239, ¶ 146; *State v. Clay*, 187 Ohio App.3d 633, 2010-Ohio-2720, 933 N.E.2d 296, ¶ 68 (5th Dist.).

{¶11} CCO 431.34(a) provides:

> No person shall operate a motor vehicle or motorcycle upon any street or highway without exercising reasonable and ordinary control over such vehicle.

{¶12} Initially, appellant urges this court to adopt the position that the elements of the charged offense were not proven simply because Officer Schwebs was not at the scene of the accident at the time it occurred. Appellant asserts that because Officer Schwebs did not personally witness the accident, his police report relied on second-hand "fabrications or lies" and, therefore, he should not have been permitted to testify as to whether appellant failed to control his vehicle. Appellant's assertion is not well-founded.

{¶13} Officer Schwebs testified that appellant admitted at the scene of the accident that he was driving down the icy road, applied his brakes, and slid until he struck the back of the other vehicle. Further, appellant stated at trial that he "slid right into the back of their car." In our

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[1]The assignments of error are verbatim per the pro se appellant's brief.

opinion, the fact that Officer Schwebs did not see the accident as it was occurring is immaterial because Officer Schwebs did observe, soon after the crash occurred, the icy road condition, the layout of the road, the damage to the rear of the other vehicle and the damage to the front of appellant's vehicle. This information, taken together with the admission of appellant, was sufficient to indicate that appellant lost control of his vehicle. *See Mentor v. Brancatelli*, 11th Dist. Lake No. 97-L-011, 1997 Ohio App. LEXIS 5439, *4 (Dec. 5, 1997).

{¶14} Appellant further contends that the trial court's judgment was inappropriate because the accident was caused by the icy weather conditions and not his inability to control his vehicle. However, "the operator of a motor vehicle is responsible for keeping his vehicle under control * * * irrespective of the condition of the road." *Oechsle v. Hart*, 12 Ohio St.2d 29, 34, 231 N.E.2d 306 (1967). Thus, skidding upon an icy roadway is a circumstance within the power of motorists to prevent and is not a circumstance that would preclude a failure to control conviction. *See id.*

{¶15} Finally, despite appellant's position to the contrary, there is nothing in the record to suggest that the city of Cleveland held appellant responsible for the unrelated three-car accident that occurred prior to appellant's accident. Moreover, whether the operators involved in the unrelated accident were cited for their conduct is immaterial to the trial court's determination of appellant's guilt in this matter.

{¶16} Appellant's pro se assignments of error are overruled.

III. Conclusion

{¶17} Based on the foregoing, we find that a reasonable trier of fact could conclude that appellant failed to operate his motor vehicle without exercising reasonable and ordinary care over such vehicle.

{¶18} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Cleveland Municipal Court to carry this judgment into execution. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., ADMINISTRATIVE JUDGE

TIM McCORMACK, J., and
MELODY J. STEWART, J., CONCUR