

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

State of Ohio

Court of Appeals No. E-11-052

Appellee

Trial Court No. TRD 1100974

v.

Irwin P. Miner

DECISION AND JUDGMENT

Appellant

Decided: June 22, 2012

* * * * *

Kevin J. Baxter, Erie County Prosecuting Attorney,
Mary Ann Barylski, Assistant Prosecuting Attorney, and
Nicholas Smith, Assistant Prosecuting Attorney, for appellee.

Rick L. Ferrara, for appellant.

* * * * *

SINGER, P.J.

{¶1} Appellant appeals a conviction for operating an unsafe vehicle entered on a finding of guilty following a bench trial before the Erie County Municipal Court. Because we find sufficient evidence to support appellant's conviction, we affirm.

{¶2} On February 22, 2011, Ohio State Highway Patrol Trooper Brian Hann came upon a damaged van along the eastbound lane of the Ohio Turnpike. The van's windshield was smashed. There was ice inside the vehicle. The van's driver had minor cuts on his face.

{¶3} As Trooper Hann was aiding the driver, he was advised via radio that a witness who had seen the ice fall onto the van had called dispatch and provided a description and license number of the truck which was the ice's source.

{¶4} Some thirty miles east, Trooper John Williams heard the radio call and stopped a truck meeting the description that had been broadcast. The driver was appellant, Irwin Miner.

{¶5} Appellant told Trooper Williams that he noticed ice fall from his truck twice that day, but denied that he saw either piece strike another vehicle. Trooper Williams issued appellant a citation for a violation of R.C. 4513.02, operating an unsafe vehicle, a minor misdemeanor.

{¶6} Appellant pled not guilty and the matter proceeded to a bench trial. At trial, both troopers testified to the events leading to the citation. Neither the owner of the damaged van, nor the witness who called dispatch testified. Following trial, the court found appellant guilty and fined him \$50 and costs. This appeal followed.

{¶7} Appellant sets forth the following three assignments of error:

Assignment of error No. one: Appellant was denied a fair trial because police officers failed to inspect his vehicle before issuing a citation under RC §4513.02, making conviction against the manifest weight of the evidence.

Assignment of error No. two: Insufficient evidence supported appellant's conviction.

Assignment of error No. three: The trial court and state violated appellant's right to confront its [sic] accusers, allowing testimonial hearsay evidence to support a conviction.

{¶8} All of appellant's assignments of error relate to the evidentiary basis of his conviction and will be discussed together.

{¶9} In material part, R.C. 4513.02 provides:

(A) No person shall drive or move, or cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which is in such unsafe condition as to endanger any person.

(B) When directed by any state highway patrol trooper, the operator of any motor vehicle shall stop and submit such motor

vehicle to an inspection under division (B)(1) or (2) of this section, as appropriate, and such tests as are necessary.

(1) Any motor vehicle not subject to inspection by the public utilities commission shall be inspected and tested to determine whether it is unsafe or not equipped as required by law, or that its equipment is not in proper adjustment or repair, or in violation of the equipment provisions of [R.C.] Chapter 4513 * * *.

(2) Any motor vehicle subject to inspection by the public utilities commission shall be inspected and tested in accordance with rules adopted by the commission.

{¶10} In his first assignment of error, appellant insists that, pursuant to R.C. 4513.02(B), the investigating officer had a statutory duty to inspect his truck when he stopped it. Because the trooper did not conduct such an inspection, appellant argues, the investigation was improper and there was insufficient evidence to support his conviction. In his second assignment of error, appellant insists that, because the state failed to call either the driver of the van that was damaged or the witness who saw the incident, there was insufficient evidence to support a conviction for an R.C. 4513.02(A) violation. In his third assignment of error, appellant insists that he was denied his constitutional right to confront witnesses against him by the introduction of testimonial hearsay relative to the damaged van incident.

{¶11} R.C. 4513.02(A) and (B) are separate and discrete provisions. R.C. 4513.02(A) defines an offense, operating an unsafe vehicle. R.C. 4513.02(B) defines the authority of a trooper or an agent of the Public Utilities Commission of Ohio to inspect vehicles to uncover a violation. If an offense is made out without such an inspection, we find nothing in the statute that mandates a superfluous inspection. Such a construction of the law would obtain an absurd result, which is not permitted. *State ex rel. Cooper v. Savord*, 153 Ohio St. 367, 92 N.E.2d 390 (1950), paragraph one of the syllabus. Accordingly, appellant’s first assignment of error is not well-taken.

{¶12} The remainder of appellant’s assignments of error betray a misunderstanding of the offense of which he was convicted. He was not convicted of damaging the windshield of a van. He was convicted of driving a vehicle “which is in such unsafe condition as to endanger any person.”

{¶13} While the van incident and the witness call provided a reason for police attention, evidence of neither was necessary to establish the offense of which he was convicted. The elements of the offense are (1) driving a vehicle, (2) on a highway, (3) which vehicle is in such an unsafe condition, (4) so as to endanger any person.

{¶14} There is no dispute that appellant was driving a vehicle on a highway. “Unsafe” is defined as “[d]angerous; not secure.” Black’s Law Dictionary 1539 (6th Ed.1990). It is within common experience to know that objects in or on a vehicle being driven at highway speeds pose a danger to others if thrown or falling into traffic. When

appellant told Trooper Williams that he knew that two chunks of ice had fallen from his truck onto the roadway, this was an admission of the offense irrespective of whether the ice indeed caused damage or injured anyone. Such an admission is fully admissible, Evid.R. 801(D)(2), and satisfies the third and fourth elements of the offense.

Accordingly, there was sufficient evidence to support appellant's conviction. *See State v. Thompkins*, 78 Ohio St.3d 380, 386-387, 678 N.E.2d 541 (1997). Appellant's second assignment of error is not well-taken.

{¶15} The testimony of the troopers concerning the events leading up to appellant's traffic stop was unnecessary to prove the elements of the offense. Such testimony, therefore, was not offered to prove the truth of any matter asserted and, consequently, is not hearsay; testimonial or otherwise, pursuant to Evid.R. 807(C). Moreover, since this was a trial to the bench, it is presumed that the court was not improperly influenced by the introduction of this testimony. *State v. Doren*, 6th Dist. No. WD-10-044, 2011-Ohio-5903, ¶ 71. Accordingly, appellant's remaining assignment of error is not well-taken.

{¶16} On consideration whereof, the judgment of the Erie County Municipal Court is affirmed. It is ordered that appellant 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.

JUDGE

Stephen A. Yarbrough, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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