

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

CITY OF CINCINNATI,	:	APPEAL NO. C-080987
Plaintiff-Appellee,	:	TRIAL NO. C-08TRD-42585
vs.	:	<i>JUDGMENT ENTRY.</i>
JOHN H. METZ,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant John Metz appeals the trial court’s judgment convicting him of violating R.C. 4511.68(A)(1), which provides that “no person shall stand or park a * * * vehicle * * * on a sidewalk, except a bicycle.” For the following reasons we affirm.

At the bench trial, Deputy Sheriff Steve Fischesser testified that Metz’s car had been parked on the “sidewalk” at the rear entrance of the Hamilton County Courthouse. Specifically, the deputy testified that the car had been parked at the corner of Court Street and Sycamore Street “over the curb” and near the retaining wall that separated the sidewalk from the courthouse parking spaces. Metz testified that he had parked his car where the deputy had described but disputed that the area

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

was a “sidewalk.” The trial court, upon hearing the deputy’s description of the area where Metz had been parked, stated, “I know exactly where it is.”

The trial court determined that the area where Metz had been parked was a sidewalk and found Metz guilty of violating R.C. 4511.68(A)(1). Metz’s fine was waived, and he was ordered to pay court costs.

On appeal, Metz brings forth three assignments of error.

In his first and second assignments of error, he argues that the trial court erred by denying his Crim.R. 29(A) motion for an acquittal and contests the sufficiency of the evidence underlying his conviction. The standard of review for a sufficiency challenge and a Crim.R. 29(A) challenge is the same.² An appellate court must examine the evidence in a light most favorable to the state and determine whether that evidence could have convinced any rational trier of fact that the essential elements of the crime had been proved beyond a reasonable doubt.³

Here, Metz contends that the city did not prove that he had parked on the sidewalk under the Ohio Revised Code’s definition of “sidewalk.” R.C. 4511.01(FF) defines “sidewalk” as “that portion of a street between the curb lines * * * and the adjacent property lines, intended for the use of pedestrians.” Metz maintains that he was parked on county property and not on the sidewalk. But the deputy who had cited Metz testified that the car was parked on the sidewalk and that the car was up over the “curb,” which by definition is part of the sidewalk. Further, the court stated that it was familiar with the area where Metz had parked and noted that that area was used by pedestrians walking between the Hamilton County Justice Center and the Hamilton County Courthouse. Viewing this evidence in a light most favorable to

² See *State v. Jordan*, 167 Ohio App.3d 157, 2006-Ohio-2759, 854 N.E.2d 520, ¶150.

³ *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

the city, we hold that there was sufficient evidence to find Metz guilty of parking on the sidewalk.

Briefly, we note that we disagree with Metz’s characterization of the deputy’s testimony as “opinion testimony.” The deputy’s testimony that Metz was parked on the sidewalk was a statement of what he had observed that day.

Accordingly, the first and second assignments of error are overruled.

In his third and final assignment of error, Metz argues that the trial court erred by taking “judicial notice of the scene without proper foundation.” We disagree.

Although Metz argues that the trial court took judicial notice of an element of the offense, the record does not reflect this. Instead, the record reveals that the trial court informed the parties, after the deputy had described where Metz had been parked —near the retaining wall at the corner of Sycamore and Court streets — that he “knew exactly where that [was].” The court did not say it was taking judicial notice that that area was a sidewalk. Instead, the trial court relied on the deputy’s testimony that Metz had been parked over the curb and on the sidewalk to conclude that Metz was guilty of violating R.C. 4511.68(A)(1). Because the trial court did not take judicial notice of an element of the offense, the third assignment of error is overruled.

The judgment of the trial court is affirmed.

Further, a certified copy of this Judgment Entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

OHIO FIRST DISTRICT COURT OF APPEALS

To the Clerk:

Enter upon the Journal of the Court on August 12, 2009

per order of the Court _____.
Presiding Judge