

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

STATE OF OHIO,	:	APPEAL NO. C-081286
	:	TRIAL NO. 07CRB-36163
Plaintiff-Appellee,	:	
	:	<i>JUDGMENT ENTRY.</i>
vs.	:	
THOMAS R. FERRIS,	:	
	:	
Defendant-Appellant.	:	

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

Defendant-appellant Thomas R. Ferris appeals from his conviction under Cincinnati Municipal Code² 601-99. Following a trial to the bench, the trial court found Ferris guilty for violating Cincinnati Board of Health Regulations 00053-7(I) and (J).

Regulation 00053-7(I) provides that “[i]t shall be unlawful for any person to throw, deposit, store, let fall or permit to accumulate, rubbish, paper, cans, ashes, refuse, garbage or putrescible organic matter, litter, junk, combustible or non-combustible waste, junk vehicles or miscellaneous debris on any lot, yard, shed, roof porch, garage, basement or other place.” And Regulation 00053-7(J) provides that “[t]he owner of lots, yards or other places littered with rubbish, paper, cans, garbage, ashes, refuse or waste matter of any kind shall cause said material to be removed.”

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

² Hereafter “CMC.”

At trial, the evidence established that Ferris lived at 4433 Plainville Road. Robin Anderson, a Senior Sanitarian with the Cincinnati Health Department, testified that the health department had received a complaint alleging that Ferris had allowed a large amount of junk and debris to accumulate in the back yard. Anderson inspected the property and verified the complaint, testifying that the entire yard was filled with junk and debris including, but not limited to, garbage cans, planters, construction debris, furniture, metal shelving, and coolers. These items covered the entire backyard and, in certain spots, were stacked several feet high. Anderson had taken photographs depicting the accumulation, and these were entered into evidence.

After reviewing the evidence and the exhibits, the trial court found Ferris guilty and convicted him. He now raises three assignments of error on appeal.

In his first two, he claims that his conviction was not supported by sufficient evidence and that the trial court erred in overruling his Crim.R. 29 motion for an acquittal.

This court employs the same standard of review for the denial of a motion for an acquittal as we employ when reviewing the sufficiency of the evidence.³ We must determine “whether after viewing the probative evidence and inferences reasonably drawn therefrom in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt.”⁴

Ferris specifically asserts that, although the property was filled with various items, these items were not the type prohibited by the board of health regulations. He cites various definitions contained within the Cincinnati Municipal Code, including

³ *State v. Jordan*, 167 Ohio App.3d 157, 2006-Ohio-2759, 854 N.E.2d 520, ¶49.

⁴ *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

garbage, litter, refuse, and rubbish, to support his contention that the items in his yard were not prohibited by the regulations.

We cannot agree. The photographs depict the accumulation of items so numerous that we can not feasibly list them all. Following our detailed review of these photographs, the health-code regulations, and the various definitions contained within the Cincinnati Municipal Code and the Ohio Revised Code, we are satisfied that the items depicted are items prohibited by the health-code regulations. The record contains factual support for the trial court's finding that Ferris had violated the board of health regulations.

Ferris's conviction under CMC 601.99 for violations of Regulations 00053-7(I) and (J) was supported by sufficient evidence, and the trial court did not err in overruling his Crim.R. 29 motion for an acquittal. His first two assignments of error are overruled.

In his final assignment of error, Ferris argues that he should not have been criminally prosecuted because the city has already pursued him civilly for the same offense. We disagree.

CMC 1501-1 states that "charging a person with a civil offense is an alternative to criminal prosecution. A person may not be charged with a civil offense if that person has been charged with a misdemeanor for the same offense. A person charged with a civil offense may not be arrested for the commission of the offense." The code defines a "civil offense" as "an offense against the City of Cincinnati set forth in the Cincinnati Municipal Code made subject to a civil fine by [Title XV]."

While the city did pursue Ferris civilly, it was not for the *same offense*. The city had charged Ferris civilly with violating CMC 511-31, which prohibits the storage of

unlicensed or inoperable vehicles in a residence, a Class B civil offense.⁵ In this case, Ferris was convicted of violating CMC 601-99 by failing to comply with Cincinnati Board of Health regulations. Title XV does not contain a comparable civil offense for a violation of any provision in CMC Chapter 601. It would have been legally impossible for the city to have prosecuted Ferris civilly for the same offense.

Ferris argues that the civil and criminal actions were the same because the junk car was one of the items mentioned in the criminal prosecution. But CMC 1501-1 does not prohibit civil and criminal prosecutions for the same *conduct*.⁶ This court has interpreted CMC 1501-1 to mean that “a person may not be charged with a civil offense if that person has been charged with a misdemeanor *for violating the same section of the Cincinnati Municipal Code*.”⁷ Since the civil offenses and the criminal offense were not violations of the same section of the Cincinnati Municipal Code, Ferris’s prosecution was not prohibited by CMC 1501-1. His third assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 2, 2009

per order of the Court _____
Presiding Judge

⁵ CMC 1501-5.

⁶ *State v. Clements*, 1st Dist. No. C-060837, 2007-Ohio-4461, at ¶13.

⁷ *Id.* at ¶7 (emphasis added).