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

STATE OF OHIO,	:	APPEAL NO. C-090583 TRIAL NO. 09CRB-18519
Plaintiff-Appellee,	:	*JUDGMENT ENTRY.*
vs.	:	
EDWARD LINDENSCHMIDT,	:	
Defendant-Appellant.	:	

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

Defendant-appellant, Edward Lindenschmidt, appeals a conviction for making loud noises in violation of Cincinnati Municipal Code 910-7. We find no merit in his two assignments of error, and we affirm his conviction.

The record shows that Shelly Hyslop, a resident of the Mt. Adams neighborhood in Cincinnati, was getting ready for bed when she heard loud music coming from the back of her house. She had noticed the music previously that evening, but had tried to ignore it because it had still been early.

Hyslop went into her sons' bedroom and could hear "very loud" music coming from the direction of Longworth's Bar, which was located approximately 100 yards away from her home. She noticed that the windows in the bedroom were shaking from the loud music. Because it was after 11:00 p.m, she called and reported the problem to the police.

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

Officer Andrew Mitchell of the Cincinnati Police Department responded to Hyslop's call. He first drove past Longworth's to listen for the music. He then went to Hyslop's home to speak with her. From inside her home, he could hear the loud music coming from the direction of Longworth's, and he particularly noticed it in the children's room.

Based on what he had heard, Officer Mitchell returned to Longworth's, where he could still hear the music. After he asked to speak to the person in charge, Lindenschmidt came to the door and identified himself as the manager. Officer Mitchell advised Lindenschmidt that the noise from the bar was disturbing the neighborhood. He explained that he could hear the music from inside the complaining party's home and issued him a citation for violating the city's loud-noise ordinance. He stated that he had no discretion and had to issue the citation due to his supervisor's orders.

In his first assignment of error, Lindenschmidt contends that the trial court erred in convicting him of violating the ordinance. He argues that the evidence was insufficient to support the conviction and that the court incorrectly attributed importance to the time being after 11:00 p.m. This assignment of error is not well taken.

Cincinnati Municipal Code 910-7 provides that "[n]o person, firm or corporation shall operate or cause to be operated any whistle, rattle, bell, gong, clapper, hammer, drum, horn, radio, phonograph or other sound-producing or sound-amplifying instrument so as to emit loud and raucous noises or in any other way create noise or sound, or permit the creation of noise or sound in such manner as to disturb the peace and quiet of a neighborhood or as to interfere with the transaction of business or other ordinary pursuits."

Lindenschmidt argues that the fact that the offense occurred after 11:00 p.m. was material to the trial court's decision, even though it was not an element of the offense. Hyslop testified that she believed that the law required that noise had to be reduced after 11:00 p.m. But she also testified that even though she had heard the music earlier, she did not call the police until she was getting ready for bed.

In making its ruling, the trial court referred to Hyslop's testimony, but the record is clear that it did not base its decision on some 11:00 p.m. deadline. Nevertheless, the time of the offense was relevant since loud noise can be more disturbing at bedtime, especially to a parent with small children sleeping. The court specifically noted that the noise was so loud that it rattled the windows in the children's bedroom. Under the circumstances, the evidence supported the finding that the noise disturbed the peace and quiet of the neighborhood and interfered with ordinary pursuits.

Our review of the record shows that a rational trier of fact, after viewing the evidence in a light most favorable to the prosecution, could have found that the state had proved beyond a reasonable doubt all the elements of making loud noises under Cincinnati Municipal Code 910-7. Therefore, the evidence was sufficient to support the conviction,[2] and we overrule Lindenschmidt's first assignment of error.

In his second assignment of error, Lindenschmidt argues that the trial court erred in convicting him of violating the noise ordinance because the police officer gave him a citation without giving him an opportunity to reduce the noise. This assignment of error is not well taken.

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[2] See *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492; *State v. Boggs* (June 25, 1999), 1st Dist. No. C-980640. See, also, *State v. Steinbrunner*, 3rd Dist. No. 10-02-12, 2003-Ohio-1818.

Lindenschmidt relies on *Cincinnati v. Duval*,[3] in which this court reversed a conviction for a violation of a noise ordinance. We held that the evidence did not show that the defendant "knew of the likelihood or possibility of a violation of the ordinance and took no action to prevent it."

Duval is distinguishable from the present case. In that case, the defendant was the president of a corporation that owned and operated a café, and he was not present on the premises when the violation occurred. In this case, Lindenschmidt was present on the property and identified himself as the person in charge.

Cincinnati Municipal Code 910-7 does not require that the person, firm or corporation causing the noise be given an opportunity to rectify the situation before the police may issue a citation. Further, even it did, Lindenschmidt testified that he had received complaints from Hyslop and another neighbor before the incident that resulted in the citation. Under the circumstances, the trial court did not err in convicting Lindenschmidt of violating the noise ordinance. We overrule his second assignment of error and affirm the trial court's judgment.

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

HILDEBRANDT, P.J., DINKELACKER and **MALLORY, JJ.**

To the Clerk:

Enter upon the Journal of the Court on May 26, 2010

per order of the Court _____.
Presiding Judge

[3] (1970), 22 Ohio App.2d 208, 260 N.E.2d 127.