

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHARLES A. SHADID, LLC,

Appellant,

v.

CITY OF OKLAHOMA CITY,

Appellee.

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) **NOT FOR PUBLICATION**
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) **No. M 2016-0786**
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FILED
IN COURT OF CRIMINAL APPEALS
STATE OF OKLAHOMA

OCT 26 2017

SUMMARY OPINION

LUMPKIN, PRESIDING JUDGE:

Appellant was convicted following a non-jury trial in the Municipal Court of Record, City of Oklahoma City, State of Oklahoma, of three counts of Permitting Adult Entertainment on Property Zoned as C-4 Without Obtaining a Conditional Use Permit as required by Table 6200.1, Which Regulates Office and Commercial District Uses in Violation of Chapter 59, Section 6200.2(B). The first citation, No. 16-143365937, was issued on May 15, 2015, and the Information was filed on July 29, 2015. The second citation, No. 16-143365973, was issued on May 22, 2015, and the Information was filed on July 29, 2015. The third citation, No. 16-166678596, was issued on November 6, 2015, and the Information was filed on January 26, 2016. The Honorable M. Fred Austin, Municipal Judge, assessed a fine of \$400.00 for each citation. Appellant appeals from the Judgment and Sentence imposed.

On appeal, Appellant raises the following propositions of error:

1. City's zoning ordinances do not prohibit "permitting adult entertainment on property zoned as C-4 without obtaining a conditional use permit" and impose no duty on landlord.

2. No rational trier of fact could find beyond a reasonable doubt that landlord permitted adult entertainment uses to occur without a permit because city presented no evidence of permission.
3. Section 4350.1, which imposes criminal liability on owners of buildings where a violation is placed or exists, unconstitutionally prohibits a status.
4. Section 4350.1, which imposes criminal liability on owners of buildings where a violation is placed or exists, is unconstitutionally vague because the ordinance does not specify what conduct by owners is prohibited.
5. City presented no evidence to show the penal ordinances at issue comply with 11 O.S. § 14-111, and therefore the ordinances are unenforceable in this case.

Appellant's conviction is affirmed.

1.

Oklahoma City Municipal Code Chap. 59, Sec. 59-4350.1 directs:

Persons Subject to Penalty for Violation of Zoning Ordinance. The following persons are each individually guilty of a separate offense against the City:

- A. An owner or owners, including lessees, of any building or premises, or part thereof, where anything in violation of this chapter is placed or shall exist; any person who maintains any violation of this chapter.

Statutes are to be construed according to the plain and ordinary meaning of their language. *Wallace v. State*, 1997 OK CR 18, ¶ 4, 935 P.2d 366. There is no dispute that Appellant owns the property at issue. This ordinance allows both the owner and the lessee to be charged, individually, for any violation of a zoning ordinance. Appellant's first proposition has no merit.

2.

The standard for review, as set forth in *Spuehler v. State*, 1985 OK CR 132, ¶ 7, 709 P.2d 202, is "whether after reviewing the evidence in the light most favorable to the State, a rational trier of fact could have found the existence of the essential elements of the crime beyond a reasonable doubt." Appellant states that his property is leased. The lease is not part of the record before this Court. There is no evidence in this record that Appellant's tenant has authority to seek a zoning variance. As a general rule, ownership is required to change the complexion and use of real property. In this particular case, based upon the evidence, Appellant is the real party in interest. Appellant's testimony shows that he had prior notice in 2011 that use of the property was in violation of the zoning ordinances. As the owner and the real party in interest, Appellant's failure to bring his property into compliance subjects him to the penalty provisions of the Municipal Code. In this case any rational juror could have found the existence of the essential elements of this crime beyond a reasonable doubt.

3.

Appellant argues that Sec. 4350.1 unconstitutionally prohibits the status of being the owner of property. Appellant cites *Hayes v. Municipal Court of Oklahoma City*, 1971 OK CR 274, 487 P.2d 974 (ordinance made a crime out of one's status of poverty or unemployment), and *Profit v. City of Tulsa*, 1980 OK CR 77, 617 P.2d 250 (ordinance made a crime out of otherwise innocent

conduct if performed by a known prostitute or known pimp). Appellee answers that the Ordinance does not prohibit the status of landlord, it makes landlords responsible for the use of the property they own; that it is not the status of the Appellant that is at issue but the fact that the property owned by Appellant is being used in violation of the Oklahoma City Zoning Code. We agree. This proposition of error has no merit.

4.

Appellant argues that there is no conduct that is prohibited or required of property owners before they can be liable for zoning violations occurring on their property. Appellee answers that the conduct prohibited is owning property on which a violation of Chapter 59 exists. Appellee states that “Appellant admits that he was aware that there were allegations of the property being used for the purposes of Adult Entertainment as far back as 2011” and that the Ordinance is very clear that a property owner is responsible for ensuring that the provisions of Chapter 59 are followed on his property – which includes the requirement that a Conditional Use permit be obtained prior to using a property for purposes of Adult Entertainment.

The Ordinance is presumed to be valid and constitutional and the party attacking the statute has the burden of proof to show that it is not. *Carroll v. State*, 1980 OK CR 89, ¶ 4, 620 P.2d 416. An ordinance is void only when it is so vague that men of common intelligence must necessarily guess at its meaning. *Pratt v. State*, 1982 OK CR 31, ¶ 3, 642 P.2d 268. In this case

Appellant has not shown that the ordinance is so vague as to be violative of due process.

5.

Appellant argues that the City presented no evidence of compliance with the requirements to compile and publish penal ordinances to make them enforceable; therefore, the Municipal Court could not take judicial notice of any of the City ordinances. However, Appellant filed a Notice to the Court on May 31, 2017, citing to 11 O.S.2011, § 22-102(A) which directs:

“If a suit is instituted by a municipality, the municipality shall not be required to post bond or to show its compliance with any of the provisions of law as to its organization or publication of ordinances unless the same is controverted by affidavit.”

Further, a certified copy of the ordinance at issue was included in the record as required by Rule 2.2(F), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch.18, App. (2017). This proposition of error has no merit.

DECISION

The Judgment and Sentence in the City of Oklahoma City, State of Oklahoma, Municipal Court of Record, Case Nos. A-16-143365937, A-16-143365973, and A-16-166678596, is **AFFIRMED**. Appellant’s application for oral argument filed in this Court on May 1, 2017, is **DENIED**. Appellant’s request to file “limited supplemental briefing,” filed in this Court on May 31, 2017, is **DENIED**. Pursuant to Rule 3.15, *Rules of the Oklahoma Court of*

Criminal Appeals, Title 22, Ch.18, App. (2017), the **MANDATE** is **ORDERED** issued upon the filing of this decision.

**A MISDEMEANOR APPEAL FROM THE DISTRICT COURT
OF CANADIAN COUNTY, THE HONORABLE BARBARA HATFIELD,
SPECIAL JUDGE**

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OPINION BY: LUMPKIN, PRESIDING JUDGE

LEWIS, V.P.J.: Concur
HUDSON, J.: Concur
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