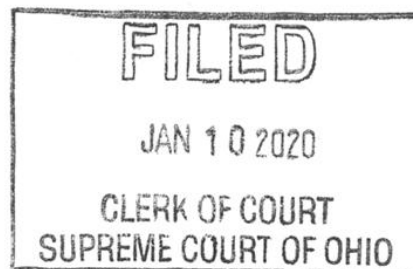


IN THE SUPREME COURT OF OHIO

20-0049

Jim M. Russell, Appellant, Pro Se	:	On Appeal from the Montgomery
2037 Washington Creek Lane	:	County Court of Appeals
Dayton, Ohio 45458	:	Second Appellate District
423-315-0469 / 937-496-5824	:	
madmalcrussell@gmail.com	:	Court of Appeals
VS.	:	Case No. CA 028167
State of Ohio, Appellee	:	
Christopher R. Epley	:	<u>MEMORANDUM IN SUPPORT</u>
Counsel for Appellee	:	<u>OF JURISDICTION</u>
Atty. Reg. No. 0070981	:	<u>JIM M. RUSSELL, APPELLANT</u>
10 W. 2 nd Street, Suite 2400	:	
Dayton, Ohio 45402	:	
(937) 228-7511	:	
Fax (937) 228-8825	:	A Jurisdictional Appeal
chris@chrisepley.com	:	



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IN THE SUPREME COURT OF OHIO

Jim M. Russell : On Appeal from the
Appellant : Montgomery County
v. : Court of Appeals, Second
State of Ohio : Appellate District
Appellee :
: Court of Appeals
: Case No. CA 028167

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JIM M. RUSSELL

Jim M. Russell, Appellant, Pro Se
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EXPLANATION OF WHY THIS IS A CASE OF GREAT GENERAL

INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

1. Appellant’s case challenges the legality of prosecuting violations of Ohio’s Driver’s License Law (R.C. chapter 4507) by commencing said prosecutions of DLL by filing a Uniform Traffic Citation (UTC). The legality of that practice is of great interest to the people of Ohio because said practice has become routine in police and traffic-court jurisdictions throughout Ohio since beginning as long ago as the 1970s. However, the decisive question of the practice’s legality is one of first impression in this Court.

2. In appellant's case both the court of appeals and the trial court ruled that prosecution of a violation of Ohio's Driver's License Law "is a traffic case," by relying on the definition of a traffic case in the Traffic Rules, Traf.R. 2(A). Both courts concluded that DLL cases are thus governed by Ohio's Traffic Rules. (See Appendix #4, CA OPINION, p. 4, and Appendix,# 9, MAGISTRATES ORDER, p.1) Pursuant to the Traffic Rules, an enforcement action is commenced by the filing a UTC, which though often referred to by courts as "the affidavit and complaint in traffic cases," lacks the jurat of a notary required of affidavits in all other cases pursuant to Ohio's statutory laws (R.C. 2319.01, .02, .03, .04, 2935.17 and 2935.19) and case law, including this Court's decision in *Toledo Bar Assn. v. Neller*, 102 Ohio St.3d 1234, 2004-Ohio-2895, among several others.

3. The only exception to the notary requirement for affidavits is the proviso in R.C. 2935.17, the law that authorized the Supreme Court to create the UTC: "Provided, that the supreme court of Ohio, may, by rule, provide for the uniform type and language to be used in any affidavit or complaint to be filed in any court inferior to the court of common pleas *for violations of the motor vehicle and traffic acts and related ordinances...*(emphasis added, ellipsis not germane).

4. Ohio's Driver's License Law is neither a motor vehicle act (R.C. 4501, 4502, 4503, and 4504), nor part of it; nor a traffic act (R.C. 4511), nor part of it; nor a related ordinance. The fact that Chapter 4507 is included in Title 45 in the Revised Code, which is captioned, "Title [45] XLV MOTOR VEHICLES - AERONAUTICS – WATERCRAFT," creates no more relationship to traffic than exists between traffic laws and airports (R.C. 4563), or between motor vehicle laws and laws

governing the operation of ferries (R.C. 4583), all of which laws and many more are included in Title 45. In fact, the DLL was established in 1936, before any motor vehicle law and five years before the traffic act (1941). The three laws were independent sections of the General Code before the O.R.C. was established. R.C. 1.01 states that Title, Chapter and Section headings are not part of any laws. Nevertheless, the court of appeals saw a relationship between traffic laws and Ohio's Driver's License Law because of their mutual—and unrelated—inclusion under Title 45. (See Appendix #4, OPINION, pp. 4-5)

5. As the appellate court correctly stated in its OPINION (Appendix #4, p. 4), "Generally, to commence a criminal action, a sworn affidavit charging an offense committed is needed, see R.C. 2935.09, the form and substance of which is provided in R.C. 2935.17." Said form and substance are shown in R.C. 2935.17 by way of examples, which demonstrate that the jurat of a notary public is requisite to *sufficient* affidavits. Even more crucial to appellant's argument, Ohio's Driver's License Law (R.C. Chapter 4507) states in pertinent part, "For the purpose of enforcing this chapter...An action arising under this section *shall be commenced by the filing of an affidavit*, and the right of trial by jury is preserved..."—(R.C. 4507.15, emphasis added, omissions by ellipses not relevant.) By refusing to recognize Ohio law as the governing authority in Driver's License Law cases, and by failing to reverse the trial court's flawed judgment, the court of appeals put its stamp of approval on Ohio courts negating Ohio law by means of the Traffic Rules. With its erroneous decision in appellant's case, the appellate court converted its erroneous ruling into a flawed precedent in Ohio's Second Judicial District. (See: *State v. Russell*, 2019-Ohio-3397)

6. Contrary to the appellate court's analysis and decisions, Ohio's Traffic Laws, R.C. 4511, captioned "Traffic Laws – Operation of Motor Vehicles" make no mention of driver's licenses. Furthermore, Ohio's Traffic Law, R.C. Chapter 4511, states: "Predicate motor vehicle or traffic offense means any of the following: (1) A violation of section..."—R.C. 4511.01 (III)(1). There then follows a long list of sections of the Revised Code, all of which are sections of R.C. 4511, none of which are violations of R.C. 4507, driver's license laws.

7. Thus, the Traffic Law in the Revised Code itself proves the Traffic Rules are not authorized to govern Driver's License Law prosecutions. Traffic Rule 1(A)'s language also precludes use of the Rules in Driver's License Law prosecutions, because it states in pertinent part, "Applicability. These rules prescribe the procedure to be followed in all courts of this state *in traffic cases...*" [emphasis added] Failing to mention Driver's License Law cases, this Rule in effect prohibits prosecuting License-Law cases by the Traffic Rules pursuant to the legal maxim of statutory construction, *expressio unius est exclusio alterius*, (explicit mention of one thing is to the exclusion of another).

8. Traffic Rule 3(C) further supports relator's argument, stating in pertinent part: "The Ohio Uniform Traffic Ticket shall be used *in all moving traffic cases...*" [emphasis added] In *State v. Lorenzo* (op. cit.), referring to the Driver's License Law, 11th District Court P.J. Ford opined that the DLL "is administrative in nature and does not concern the actual operation of a motor vehicle." Logically, the possession or non-possession of a driver's license can have no bearing or effect whatsoever on the movement or use of a motor vehicle.

9. Appellee, the State of Ohio, by commencing appellant's prosecution in Vandalia Municipal Court without filing a legally required accusation supported by a *sufficient* affidavit in accordance with Ohio statutory law, was thus proceeding without lawful jurisdiction. This violates appellant's constitutional right to procedural due process of law by denying him the benefit of favorable provisions of Ohio law (viz., R.C. 4507.15's requirement that, "An action arising under this section shall be commenced by the filing of an affidavit, and the right of trial by jury is preserved.") and Ohio's Criminal Rules, Crim.R. 3, which requires that all criminal complaints be notarized, Appellant is entitled to these protective provisions by Ohio's Organic Laws (viz., the U.S. Constitution, the Ohio Constitution, the Northwest Ordinance and the Declaration of Independence.).

10. In addition, conscience-shocking misconduct by officials of the trial court in filing falsified and perjured documents into the record while on appeal (see Appendix #5, #6, #7, and #8), of which conduct the 2nd District Court was aware (see the CA's docket for appellant's case, DECISION & ENTRY, 1/15/2019) violated appellant's right to due process of law.

STATEMENT OF THE CASE AND FACTS

11. On April 12, 2018, appellant was accused by a Vandalia police officer of driving without a license in violation of the city's driver-license ordinance, which mirrors Ohio's Driver's License Law, with which it may not conflict pursuant to the Constitution of Ohio, Art. XVIII, Sec. 3. (Note: All further references here to driver's license law are to Ohio's Driver's License Law, which is a general law, rather than the Vandalia ordinance.) The charging document was a UTC, which was not verified by a notary. Appellant refused to enter a plea, and both orally during his

arraignment and in writing filed immediately thereafter, challenged the court's jurisdiction, making essentially the same arguments made here, that a UTC is not a valid affidavit or complaint to charge violations of Ohio's Driver's License Law pursuant to the dictates of Ohio law (R.C. 4507.15), which mandates an affidavit to commence a prosecution of a violation of DLL.

12. Appellant's challenge to jurisdiction in the trial court was overruled by Magistrate Cumming. The magistrate declared, "The instant case is clearly a 'traffic case,' as defined in Ohio Traffic Rule 2(A)." (Appendix #9, p. 1)

13. Appellant's timely motion for a jury trial was denied by Judge Beck. A trial was conducted by Magistrate Armanini. Appellant was convicted of violating Vandalia driver's license ordinance. The court imposed a fine of \$1000 plus costs with all but \$50 of the fine conditionally suspended.

14. Appellant appealed. The district court affirmed the trial court's judgment. Appellant filed a timely Application for Reconsideration (Appendix #2) citing two obvious errors the court of appeals made in reaching its judgment as reflected in its Opinion of August 23, 2019 (Appendix #4). The appellate court ignored appellant's Application and announced the case was closed. Appellant then sought a writ of procedendo in this Court (Case No. 2019-1606). Upon receiving appellant's complaint in procedendo, the appellate court belatedly ruled, denying appellant's Application for Reconsideration, repeating the same two obvious errors in its denial (Appendix #1). Appellant applied to dismiss his procedendo case as moot and then filed this Jurisdictional Appeal in this Court.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

1st PROPOSITION OF LAW: “Ohio’s Driver’s License Law is not a traffic law as that term is used in the Revised Code or in the Ohio Traffic Rules.”

15. Violations of Ohio’s Driver’s License Law are to be commenced as mandated by R.C. 4507.15 and proceed pursuant to the Ohio Criminal Rules.

16. The Ohio law authorizing the Supreme Court to promulgate Traffic Rules (R.C. 2937.46) states in pertinent part: “The supreme court of Ohio, in the interest of uniformity of procedure in the various courts and for the purpose of promoting prompt and efficient disposition of *cases arising under the traffic laws* of this state and related ordinances, may make uniform rules for practice and procedure in courts inferior to the court of common pleas *not inconsistent with the provisions of Chapter 2937. of the Revised Code.*” (emphasis added)

17. Regarding 2937.46’s mention of “traffic laws” exclusively, John Marshall’s words in *Marbury v. Madison*, 1 Cranch 137, 174 (1803), pertain with equal force here, to wit: “Affirmative words are often, in their operation, negative of other than those affirmed, and in this case the negative or exclusive sense must be given them...” Consequently, the only laws to which the Traffic Rules pertain are those “arising under the traffic laws.” And as this Court has said, “The General Assembly is presumed to have known that its designation of one limitation [or law!] would be construed to exclude other limitations [or laws!].” —*Hoops v. United Tel. Co. of Ohio*, 50 Ohio St. 3rd, 97, 101 (1990). So, R.C. 2937.46 must be construed to exclude laws arising under the Driver’s License Law.

18. It is important to recognize that Ohio's Driver's License Law, its Uniform Traffic Law and its Motor Vehicle Law are independent of each other and were adopted by the General Assembly on different occasions separated by as many as five years. It is wrong to conclude, as the appellate court did in reaching its decision, that the much earlier enacted (1936 vs. 1941) Driver's License Law somehow became a part or related to the much later enacted Uniform Traffic Law merely because they were included in the same Title (45) of the Revised Code—along with laws pertaining to aeronautics, watercraft, navigation and Christmas trees, particularly since the Revised Code clearly states, "'Revised Code' Title, Chapter, and section headings and marginal General Code section numbers do not constitute any part of the law as contained in the 'Revised Code.'"—R.C. 1.01 The distinction between the Driver's License Law and the Uniform Traffic Law was pointed out in *State v. Ferguson*, 96 O.App. 297, 301 (1954); *State v. McCoy*, 94 O. App. 165, 167 (1953); *State v. Lorenzo*, Case No. 13-108, 11th Dist., Lake County, Ohio App., LEXIS 18 (1989); and by the Ohio Attorney General in *Opinions of the Ohio Attorney General*, 1943-5971, p. 197.

19. The appellate court's reasoning in reaching its judgment is also obviously wrong because it results in depriving appellant of several specific rights to due process afforded by Ohio's Driver's License Law. The Revised Code (1.01) also states: "The enactment of the Revised Code shall not be construed to affect a right or liability accrued or incurred under any section of the General Code..." Appellant clearly was deprived of his right to provisions accrued under Ohio's Driver's License Law by the appellate court's decision..

20. The Traffic Rules are not authorized for the disposition of cases arising under Ohio's Driver's License Law because the Rules are inconsistent with R.C. 2937.02(A) and 2937.02(A)(1), which refer and require an affidavit in criminal prosecutions. R.C. 2937.46 prohibits such inconsistency.

21. In reaching their erroneous judgments, both the trial court and the court of appeals concluded that the prosecution of appellant for violating Ohio's driver's license law was "a traffic case," bottoming their conclusion on a definition of "traffic case" found in Traffic Rule 2. However, it is illogical to discover in a definition of a traffic case found in the Traffic Rules the authority to apply the Rules to cases not authorized by the law authorizing the creation of those Rules. Rules written pursuant to authority granted by law cannot by those rules expand nor contravene the authority nor limits that are included in the law of their creation.

22. In criminal prosecution in Ohio municipal courts, in order for the court to quicken its subject-matter jurisdiction and obtain personal jurisdiction of a defendant, a "sufficient" accusation by a "sufficient" affidavit or a "sufficient" complaint must first be filed, without which the court lacks jurisdiction and its proceedings are void. "There can be no trial, conviction nor punishment for a crime without a formal and sufficient accusation...[A]n accusation in a particular mode or form is expressly required by constitutional or statutory provisions, or by both, and these provisions must of course be followed." *Stewart v. State*, 41 O.App.351, 353-354 (1932). In *re Disqualification of Pokorny* (1992), 74 Ohio St.3d 1238, 657 N.E.2d 1345, this honorable Court said, "A paper purporting to be an affidavit, but not to have been sworn to before an officer, is not an affidavit"

26. A comment in *State v. Miller*, 47 Ohio App. 3d 113, 114 (1988) discusses very similar circumstances to those of appellant's prosecution in the trial court: "In the absence of a *sufficient* formal accusation, a court acquires no jurisdiction whatever, and if it assumes jurisdiction, a trial and conviction are a nullity. *State v. Brown*, (1981), 2 Ohio App. 3d... The first essential for the attachment of jeopardy is that the court seeking to act in the matter be of competent jurisdiction. *State v. Craig*, (Mar. 12, 1986), Hamilton App. No. C-850444, unreported. The complaint is the jurisdictional instrument of the municipal court. *Id.* In the case *sub judice*, the first trial court was not a court of competent jurisdiction as there was no valid charging instrument before the court."

27. It is s appellant's considered opinion that when the Supreme Court, under the authority granted to it by R.C. section 2935.17, created what became the UTC, the Court never intended nor even imagined it would be used in License-Law cases, because the enabling statute implicitly limited its use to "violations of the motor vehicle and traffic acts and related ordinances." Unfortunately, what couldn't be imagined happened. Inference that relator's belief is correct can be adduced by inspecting early copies of the UTC and comparing them to the current versions of the UTC. In the latter there is a section headed "DRIVERS LICENSE" with several boxes within it that can be checked to designate various violations of the Driver's License Law. However, in earlier versions of the UTC no such box or designations existed. Relator suspects that because of the UTC's relative convenience as compared to preparing an affidavit and having to have it notarized, police officers began using the UTC for Driver's License Law violations by writing the violation into the UTC in a blank space or in a space for "other offenses." When that illicit use went unchallenged and was even erroneously sustained by several trial courts and at least two appellate-courts' decisions it became a routine police

practice. In other words, the current form of the UTC followed the function the UTC was already fulfilling for police officers charging Driver's License Law violations, although the relevant sections of the Revised Code rendering the practice unlawful hadn't changed. Relator has reason to believe that the addition of the DRIVER LICENSE section to the current version of the UTC occurred sometime after 1994 without any authorizing legislation. Additional evidence that the initial UTC was not intended to apply to Driver's License Law violation can be found in an Akron Law Review article, "The Ohio Supreme Court's Traffic Rules: A Beginning of Procedural Rule Making," by James G. France.—2 Akron Law Review 1, Spring, 1968. A comment on p. 8 about the initial version of the UTC is germane: "The Ohio ticket does contain, like the model, a series of ruled blocks, with legends beside them, for indicating by check mark or "x" in each block *a specific moving traffic violation*. "plainly but tersely" described in accordance with statute." (Emphasis added. No blocks for DLL violations!)

Proposition of Law No. 2: **Conduct by trial-court officials that "shocks the conscience" is grounds for reversal.**

28. See. *Chapman v. California*, 386 U.S. 18, 52, n.7, "[C]ertain types of official misbehavior require reversal simply because society cannot tolerate giving final effect to a judgment tainted with such intentional misconduct."

29. See, *Rochin v. California*, 342 U.S. 165, 169 (1952): Justice Frankfurter, in the opinion of the Court, wrote: "However, this Court too has its responsibility. Regard for the requirements of the Due Process Clause 'inescapably imposes upon this Court an exercise of judgment upon the whole course of the proceedings [resulting in a conviction] in order to ascertain whether they

offend those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses.' *Malinski v. New York*, supra, at 416-417. These standards of justice are not authoritatively formulated anywhere as though they were specifics. Due process of law is a summarized constitutional guarantee of respect for those personal immunities, which, as Mr. Justice Cardozo twice wrote for the Court, are 'so rooted in the traditions and conscience of our people as to be ranked as fundamental,' *Snyder v. Massachusetts*, 291 U.S. 97, 105 , or are 'implicit in the concept of ordered liberty.' *Palko v. Connecticut*, 302 U.S. 319, 325.2 " Footnoted to these words is this: "[Footnote 2] What is here summarized was deemed by a majority of the Court, in *Malinski v. New York*, 324 U.S. 401, 412 and 438, to be 'the controlling principles upon which this Court reviews on constitutional grounds a state court conviction for crime.' They have been applied by this Court many times, long before and since the *Malinski* case."

30. The three falsified and/or perjured documents added to the record by trial-court officials while in the hands of the appellate-court clerk are attached. (Appendix #5, #6, and #8) If surely should shock the conscience of those who champion the rule of law to learn that these documents were inserted into the record of a trial-court case to influence the outcome of an appeal of the trial-court's final decision. This was evidently done by the clerk of the trial court, who *surreptitiously* (unbeknownst to appellant) salted the record.

CONCLUSION

31. The judgments of both the trial and appellate courts are so contrary to the dictates of Ohio law, so irrational in their reasoning, and the conduct of trial-court officials so utterly

contemptuous of a "victim" the court supposes it has entrapped in its jurisdiction, cry out for justice by voiding the entire proceeding for want of lawful jurisdiction.

32. Appellant is aware that two other district courts have committed essentially the same errors that the 2nd-district court made in appellant's case, to wit: *State v. Rippl*, 2009 Ohio 159, 8th District for Cuyahoga County; and *State v. Russell*, 1996 Ohio App. LEXIS 806; 1996 W.L. 200515 11th District for Lake County.

33. Wherefore, appellant prays this honorable Court will reverse the August 23, 2019 decision of the Court of Appeals for Montgomery County in *State v. Russell*, CA 08167, declare or have the appellate court order the Vandalia Municipal Court's conviction of appellant declared void for want of jurisdiction, and impose sanctions on the trial court as appropriate.

APPENDIX OF DOCUMENTS (ATTACHED)

- #1. A copy of the Court of Appeal's DECISION AND ENTRY filed November 26, 2019, denying appellant's Application for Reconsideration.
- #2. A copy of Appellant's APPLICATION FOR RECONSIDERATION filed August 30, 2019.
- #3. A copy of the Court of Appeals' FINAL ENTRY affirming the judgment of the trial court, filed on August 23, 2019.
- #4. A copy of the Court of Appeal's OPINION filed August 23, 2019.
- #5. A copy of a 2-page document captioned TRANSCRIPT CRIMINAL DOCKET with a phony affidavit of Vandalia Police Officer Michael Scarpelli (unsigned), and a 2nd page containing a number of false statements attributed to Judge Robert E. Messham, Retired, although unsigned

by him.

#6. A copy of a 2-page document captioned CORRECTED TRANSCRIPT CRIMINAL DOCKET with a phony deposition (affidavit) of Officer Scarpelli (unsigned), and a 2nd page with false statements attributed to Judge Messham, but unsigned.

#7. A copy of a page from the trial court's on-line docket as it appeared on 10/16/2019 showing entry of 04/23/2018 reading "NOT GUILTY PLEA/SET TRIAL...etc.

#8. A copy of the certified-as-true-by-Vandalia-clerk-Karen-Goffina TRANSCRIPT OF DOCKET ENTRIES filed in the Court of Appeals on Nov. 1, 2019, with an entry dated April 23, 2019 reading 'DEFENDANT ENTERED PLEA OF NOT GUILTY/TRIAL SET...etc.

#9. A copy of a 2-page document captioned MAGISTRATE'S ORDER filed May 1, 2018 in the Vandalia municipal court approved by John A. Cumming.

Respectfully submitted,



Jim M. Russell, Appellant, Pro se

CERTIFICATE OF SERVICE

I hereby certify that copies of this MEMORANDUM IN SUPPORT OF JURISDICTION with nine supporting documents) were served upon Chris Epley, Counsel for the State, 10 West 2nd Street, # 2400, Dayton, Ohio 45402, by ordinary USPS mail on January 9, 2020. Documents: #1. CA "Dec. & Entry" 11/26/2019; #2. CA "Application to Reconsider"; #3. CA "Final Entry," 8/23/2019; #4. CA Opinion 8/23/2019; #5. Vandalia Muni 2-page "Transcript Criminal Docket"; #6. Vandalia Muni 2-page "Corrected Transcript Criminal Docket"; #7 Vandalia electronic docket as of 10/16/2019, entry dated 4/23/2018; #8. " Certified Transcript of Docket Entries" dated 1 Nov. 2019.; #9 Vandalia Muni 2-page MAGISTRATES ORDER.

 Jim M. Russell

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2019 NOV 26 AM 10:58~~

~~CLERK OF COURTS
MONTGOMERY CO. OHIO~~



COURT OF APPEALS
2019 NOV 26 AM 10:01

CLERK OF COURTS
MONTGOMERY CO. OHIO

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

JIM M. RUSSELL

Defendant-Appellant

Appellate Case No. 28167

Trial Court Case No. TRD 1803232

DECISION AND ENTRY

Rendered on the 26th of November, 2019

PER CURIAM:

This matter is before the Court on Jim Russell's pro se application for reconsideration of our August 23, 2019 decision affirming his misdemeanor conviction for operating a motor vehicle without an operator's license, a violation of Vandalia Ordinance 436.01, *State v. Russell*, 2d Dist. Montgomery No. 28167, 2019-Ohio-3397.

"App.R. 26 provides a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error or renders an unsupportable decision under the law." *State v. Gillispie*, 2012-Ohio-2942, 985 N.E.2d

Appendix #1

145, ¶ 9 (2d Dist.), quoting *State v. Owens*, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). "The test generally applied to a motion for reconsideration is that it must call the court's attention to obvious errors in a decision or must raise issues that the court either failed to consider or did not fully consider when the original decision was made." *Id.* " 'An application for reconsideration is not designed for use in instances where a party simply disagrees with the conclusions reached and the logic used by an appellate court.' " *Id.*, quoting *State v. Owens*, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). "Neither is a motion for reconsideration an opportunity to raise new arguments that a party neglected to make in earlier proceedings." *Deutsche Bank Natl. Trust Co. v. Greene*, 6th Dist. Erie No. E-10-006, 2011-Ohio-2959, ¶ 2, citing *Walter v. Walter*, 7th Dist. No. 04-JE-27, 2005-Ohio-5632, ¶ 3.

Russell argues that we made two obvious errors, both of which relate to our conclusion that the Ohio Traffic Rules apply to Ohio's driver's license law, R.C. Chapter 4507. In his appeal, Russell argued that the Uniform Traffic Ticket used to charge him was legally insufficient because, he argued, the Traffic Rules do not apply to the driver's license law. In the present application for reconsideration, Russell again argues that the Traffic Rules do not apply to the driver's license law. It is apparent that Russell merely disagrees with our decision on this matter and the logic that we used. He fails to raise an issue that we either did not consider at all or did not fully consider.

Again, in order to prevail on an application for reconsideration, an appellant must demonstrate an obvious error in our decision or that he raised an issue that was either not dealt with or was not fully considered. Mere disagreement with our logic and

conclusions is not enough. Accordingly, Russell's application for reconsideration is denied.

SO ORDERED.



JEFFREY E. FROELICH, Judge



MICHAEL T. HALL, Judge



MICHAEL L. TUCKER, Judge

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Jim M. Russell
2037 Washington Creek Lane
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Hon. Robert E. Messham, Visiting Judge
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245 James Bohanan Memorial Drive
P.O. Box 429
Vandalia, OH 45377

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APPELLANT'S APPLICATION FOR RECONSIDERATION

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MONTGOMERY CO. OHIO
39



COURT OF APPEALS OF OHIO
FOR MONTGOMERY COUNTY
SECOND APPELLATE DISTRICT

STATE OF OHIO
PLAINTIFF/APPELLEE
CHRIS EPLEY,
COUNSEL FOR THE STATE
10 WEST 2ND STREET / SUITE 2400
DAYTON, OHIO 45402
937-228-7511

VS.

JIM M. RUSSELL, PRO SE
DEFENDANT/APPELLANT
2037 WASHINGTON CREEK LANE
DAYTON, OHIO 45458
423-315-0469

CASE NUMBER: CA 028167

TRIAL COURT CASE NO. TRD 1803232

APPELLANT'S APPLICATION FOR
RECONSIDERATION OF THE COURT'S
FINAL JUDGMENT ENTRY OF 8/23/2019

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APPELLANT'S APPLICATION FOR RECONSIDERATION

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ARGUMENT

1 *"App. R. 26, which provides for the filing of an application for reconsideration in this court, includes no guidelines to be used in the determination of whether a decision is to be reconsidered and changed. The test generally applied is whether the motion for reconsideration calls to the attention of the court an obvious error in its decision or raises an issue for our consideration that was either not considered at all or was not fully*

Appendix # 2

APPELLANT'S APPLICATION FOR RECONSIDERATION

considered by us when it should have been."--*Matthews v. Matthews*, 5 Ohio App.3d 140, 143 (1981)

- 2 The Court should reconsider and reverse its initial judgment affirming the judgment of the trial court, declare the trial-court's judgment void for want of jurisdiction, and grant appellant the relief requested in his "Replacement Brief." The Court's opinion reveals two obvious errors crucial to their decision, without which the Court would have had to sustain appellant's appeal.
- 3 The first obvious error: The Court states in their opinion, [paragraph 9], "Generally, to commence a criminal action, a sworn affidavit charging an offense committed is needed, *see* R.C. 2935.09, the form and substance of which is provided in R.C. 2935.17." While referencing these sections of the Revised Code, the Court evidently failed to consider another section of the Code particularly germane to the issue of the trial court's want of jurisdiction, and to the Court's decision, specifically R.C. Section 4507.15, which establishes procedural requirements for prosecuting violations of R.C. Chapter 4507, Ohio's Driver's License Law. Because Ohio's Driver's License Law is general law, those requirements also apply to Vадalia's driver's license law pursuant to Article XVIII, Section 3, Ohio Constitution. [viz., "Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, *as are not in conflict with general laws.*" Emphasis added.] R.C. 4507.15 requires that, "*An action arising under this section shall*

APPELLANT'S APPLICATION FOR RECONSIDERATION

be commenced by the filing of an affidavit, and the right of trial by jury is preserved..."

There are no exceptions in the Constitution nor in the Revised Code to the two requirements of section 4507.15, yet nowhere in the Courts' opinion is there any indication that the Court gave due consideration to the stipulated requirements of filing an affidavit and preserving one's right to a trial by jury. Both requirements are integral to the "due process of law" embodied in the 5th and 14th Amendment of the federal Constitution, the filing of a *sufficient* affidavit being prerequisite to an Ohio municipal court's acquisition of jurisdiction. The Court in their opinion [paragraph 9] continues, "But the statute [viz., R.C. 2935.17] contains an exception for violations of the traffic laws: 'Provided, that the supreme court of Ohio, may, by *rule*, provide for the uniform type and language to be used in any affidavit or complaint to be filed in any court inferior to the court of common pleas for violations of the motor vehicle and traffic acts and related ordinances.'" [note: Emphasis on the word "rule" has been added to make the Courts' error emphatically clear.] Ignoring for the moment the fact that Ohio's Driver's License Law is not a traffic law nor a related ordinance, herein lies the crux of the Court's first obvious error. The Court in their opinion and decision are demonstrably relying on the Traffic Rules to negate the legal requirements of section 4507.15 of the Ohio Revised Code, that, "*An action arising under this section shall be commenced by the filing of an affidavit, and the right of trial by jury is preserved...*" This negation cannot stand, for the statute is primary for being derived from the Ohio Constitution,

APPELLANT'S APPLICATION FOR RECONSIDERATION

whereas the Traffic Rules are subsidiary because derived from a statute. Article IV, Section 5(B) of the Ohio Constitution states: "The Supreme Court shall prescribe rules governing practice and procedure in all courts of the state, *which rules shall not abridge, enlarge, or modify any substantive right...*" [emphasis added] Appellant's rights to a *sufficient* affidavit and to a jury trial are substantive rights conferred by Ohio law and protected by the due process requirements of the *organic* laws of Ohio: the Ohio Constitution, the Constitution of the United States and the Northwest Ordinance of 1787, Section 14, Article 2.. Furthermore, the stipulation in Art. IV, Section 5(B) of the Ohio Constitution that. "All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect," does not pertain to the Traffic Rules. As pointed out in *Linden v. Bates Truck Line, Inc.* 4 Ohio App. 3d 178, 180 (1982), "[T]he Traffic Rules were adopted by the authority granted by statute; and they do not have the same force or effect as the rules adopted pursuant to Section 5, Article IV of the Ohio Constitution." "Accordingly, the Traffic Rules do not supersede nor take precedence over statutes with which the Rules appear to 'conflict.'"—*Toledo v. Fogel*, 20 Ohio App. 3d 146, 148 (Ohio Ct. App. 1985) The Court's stated dependence on the Traffic Rules for their decision is therefore obviously nugatory

- 4 Paragraph 10 of the Court's opinion reveals a second obvious error. The Court states, "The statutes governing motor vehicles are found in Title 45 of the Revised Code. This title contains statutes governing driver's licenses in R.C. Chapter 4507 and the operation

Appendix # 2

APPELLANT'S APPLICATION FOR RECONSIDERATION

of a motor vehicle in R.C. Chapter 4511. Russell argues that the driver's license law does not govern the 'operation and use of vehicles.' We disagree." Herein lies the Court's second obvious error. Chapter 1, Section 1.01 of the Revised Code states, "Title, Chapter, and section headings and marginal General Code section numbers do not constitute any part of the law as contained in the 'Revised Code.'" Ohio's Driver's License Law was adopted in 1936, five years before the Ohio Uniform Traffic Act in 1941, and before Ohio's Motor Vehicle Law. Before the Ohio's General Code was revised and various sections were assembled into titles, chapters and sections of the Revised Code, these three laws were separate section of the General Code. Quite obviously, the earlier enacted Driver's License Law could not possibly be part of the later-enacted Motor Vehicle or Traffic Acts. When the Revised Code was assembled and renumbered, several related, vaguely related and completely unrelated laws were assembled under Title 45, including such diverse laws as those pertaining to motor vehicles, aeronautics, airports, navigation, watercraft, Christmas trees and the licensing of drivers. Title 45 is captioned: "Title [45] XLV MOTOR VEHICLES - AERONAUTICS - WATERCRAFT" While the Court is correct in maintaining Ohio's Driver's License Law requires a person to have a valid driver's license to "operate and use a motor vehicle," it is Ohio Uniform Traffic Laws, Chapter 4511, captioned "TRAFFIC LAWS - OPERATION OF MOTOR VEHICLES," which alone governs the operation of motor vehicles. In his briefs, appellant provided a number of valid legal authorities—district court cases and an opinion of the Ohio

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APPELLANT'S APPLICATION FOR RECONSIDERATION

Attorney General--substantiating the vast distinction between Traffic Laws and Driver's License Laws, whereas the Court in their opinion cite erroneous *obiter dicta* in *Cleveland v. Austin* and an error-filled opinion in *State v. Russell* (1996), which appellant analyzed and thoroughly negated any authority the *Russell* court's opinion might otherwise be given during oral argument in this case, to which analysis the attorney for the state pointedly did not respond nor object when invited to do so by a member of the Court.

This Court may not legitimately conflate the Driver's License Law into a Traffic Law by any logical form of legal analysis. Appellant directs the Court's attention to Title I,

Section 1.47 of the Revised Code; captioned, "**Presumptions in enactment of statutes.**"

In enacting a statute, it is presumed that: (A) Compliance with the constitutions of the state and of the United States is intended; (B) *The entire statute is intended to be effective*; (C) *A just and reasonable result is intended*; (D) A result feasible of execution is intended." [Emphasis added] (B) and (C) are particularly pertinent here, and appellant believes it is this Court's duty to see that their intent is applied to R.C. 4507.15 in all of its provisions to achieve justice in this case. Unless the Court reconsiders and reverses its decision, it may effectively be telling appellant and other Ohioans that Ohio Law, R.C. 4507.15, doesn't mean what it says, that this Court has nullified some of its provisions.

5 If the Court upon reconsideration dispenses justice in this case and nullifies the trial court's decidedly erroneous judgment, they will have created a conflict between this 2nd

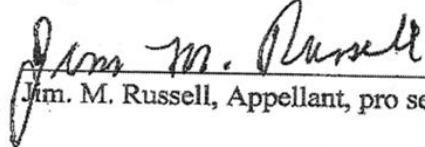
APPELLANT'S APPLICATION FOR RECONSIDERATION

District Court's decision herein and earlier decisions of the 8th district in *State v. Rippl*, 2009 Ohio 1599) and the 11th district in *State v. Russell*, and thereby the Supreme Court of Ohio will have its long-awaited and decades-belated opportunity to weigh in on these conflicts, which evolved from the Supreme Court's promulgation of the Traffic Rules, and to some extent when the General Code was reorganized and replaced by the Revised Code. Appellant is rationally confident the Supreme Court with much at stake in this matter would prefer to finally determine this issue rather than have it decided in the federal district courts, which, btw, generally have a better understanding of the legal theory of jurisdiction of courts of limited jurisdiction than do Ohio municipal courts.

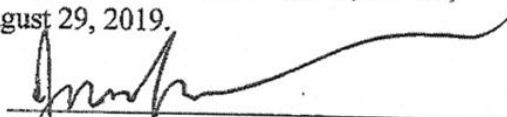
CONCLUSION

For all of the foregoing reasons the Court should nullify the decision of the trial court for want of jurisdiction and grant appellant the relief he has requested here and in his replacement brief.

Respectfully submitted,


Jim. M. Russell, Appellant, pro se

I hereby certify a copy of this APPELLANT'S APPLICATION FOR RECONSIDERATION was served upon Chris Epley, Attorney for Plaintiff-Appellee, 10 West 2nd Street, # 2400, Dayton, Ohio 45402, by ordinary USPS mail on August 29, 2019.


Jim M. Russell

Case: CA 028167
003374755
DR: CROWE

COURT

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39

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO

Plaintiff-Appellee

v.

JIM M. RUSSELL

Defendant-Appellant

Appellate Case No. 28167

Trial Court Case No. TRD 1803232

FINAL ENTRY

D

Pursuant to the opinion of this court rendered on the 23rd day
of August, 2019, the judgment of the trial court is affirmed.

Costs to be paid as stated in App.R. 24.

Pursuant to Ohio App.R. 30(A), it is hereby ordered that the clerk of the
Court of Appeals shall immediately serve notice of this judgment upon all parties and make
a note in the docket of the mailing.

Jeff E. Frozlich
JEFFREY E. FROZLICH, Judge

Appendix # 3


MICHAEL T. HALL, Judge


MICHAEL L. TUCKER, Judge

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Case: CA 828167



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CLERK OF COURTS
MONTGOMERY CO. OHIO
39

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

v.

JIM M. RUSSELL

Defendant-Appellant

Appellate Case No. 28167

Trial Court Case No. TRD 1803232

(Criminal Appeal from
Municipal Court)

.....
OPINION

Rendered on the 23rd day of August, 2019.
.....

CHRISTOPHER B. EPLEY, Atty. Reg. No. 0070981, 10 West Second Street, Suite 2400,
Dayton, Ohio 45402

Attorney for Plaintiff-Appellee

JIM M. RUSSELL, 2037 Washington Creek Lane, Dayton, Ohio 45458

Defendant-Appellant, Pro Se
.....

HALL, J.

Appendix # 4

{¶ 1} Jim M. Russell appeals pro se from the municipal court's judgment finding that he violated a municipal traffic ordinance. We affirm.

I. Facts and Procedural History

{¶ 2} On April 12, 2018, Russell was driving in the City of Vandalia and was involved in a traffic accident. A Vandalia police officer responded and found minor damage to the vehicle, which did not meet the threshold for a formal traffic accident report. Russell admitted to the officer that he did not have an Ohio driver's license, and the officer charged Russell with a violation of Vandalia Ordinance 436.01, operating a motor vehicle without an operator's license, an unclassified misdemeanor.

{¶ 3} Russell was arraigned on April 23 before a Vandalia Municipal Court magistrate and pleaded not guilty. He filed a motion to dismiss the charge for lack of jurisdiction, which the magistrate overruled. A trial was held before the magistrate the following month. Before the trial started, Russell orally renewed his motion to dismiss for lack of jurisdiction, which the magistrate again overruled. The only witness was the police officer who charged Russell. Russell did not testify and did not cross-examine the officer. The magistrate found Russell guilty and fined him \$1,000 with \$950 suspended, plus court costs.

{¶ 4} Russell filed objections to the magistrate's decision. He then filed a motion to dismiss for lack of jurisdiction with the municipal court judge. On September 5, the court overruled both the objections and the motion to dismiss, adopted the magistrate's decision, and entered a final judgment. A couple of weeks later, Russell filed a motion to "arrest" the court's judgment and dismiss the complaint for lack of jurisdiction. The court overruled the motion.

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{¶ 5} Russell appeals.

II. Analysis

{¶ 6} Russell assigns three errors to the September 5 judgment. In the first two, he contends that the municipal court lacked jurisdiction. In the third assignment of error, Russell contends that his arraignment was invalid.

A. The jurisdiction of the municipal court

{¶ 7} The first and second assignments of error respectively allege:

The trial court erred in not dismissing the case below for want of jurisdiction *in personam* upon appellant's DEMAND (MOTION) TO DISMISS, because a legally sufficient complaint or affidavit had not been filed as required by Ohio Driver's License Law and the Ohio Rules of Criminal Procedure. The Uniform Traffic Citation (hereinafter UTC), which was filed, is insufficient to charge a violation of Ohio's Driver's License Law.

The trial court erred in prosecuting appellant without having subject-matter jurisdiction pursuant to Ohio law, as explained above, except no motion to dismiss was made for want of subject-matter jurisdiction, nor is it necessary, for when a court lacks subject-matter jurisdiction it can do no more than dismiss.

{¶ 8} Russell contends that the Ohio Uniform Traffic Ticket cannot be used for a violation of R.C. Chapter 4507, Ohio's driver's license law. He argues that the authority to promulgate the Ohio Uniform Traffic Rules, under R.C. 2935.17 and 2937.46, does not apply to violations of the driver's license law. Therefore Russell concludes that the Uniform Traffic Ticket charging him with operating a motor vehicle without an operator's

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license was insufficient, because it did not include a jurat, that is, a sworn certification of the charging officer's signature.

{¶ 9} Generally, to commence a criminal action, a sworn affidavit charging an offense committed is needed, see R.C. 2935.09, the form and substance of which is provided in R.C. 2935.17. But the statute contains an exception for violations of traffic laws: "Provided, that the supreme court of Ohio, may, by rule, provide for the uniform type and language to be used in any affidavit or complaint to be filed in any court inferior to the court of common pleas for violations of the motor vehicle and traffic acts and related ordinances * * *." See also R.C. 2937.46(A) ("The supreme court of Ohio, in the interest of uniformity of procedure in the various courts and for the purpose of promoting prompt and efficient disposition of cases arising under the traffic laws of this state and related ordinances, may make uniform rules for practice and procedure in courts inferior to the court of common pleas not inconsistent with the provisions of Chapter 2937. of the Revised Code * * *"). Thus the Supreme Court of Ohio has the authority to promulgate different rules for charging violations of "the motor vehicle and traffic acts and related ordinances." The Court has promulgated the Ohio Traffic Rules and applied them to "traffic cases." Traf.R. 1(A). The Traffic Rules pertinently define a "traffic case" as "any proceeding * * * that involves one or more violations of a law, ordinance, or regulation governing the operation and use of vehicles." Traf.R. 2(A).

{¶ 10} The statutes governing motor vehicles are found in Title 45 of the Revised Code. This title contains statutes governing driver's licenses in R.C. Chapter 4507 and the operation of a motor vehicle in R.C. Chapter 4511. Russell argues that the driver's license law does not govern "the operation and use of vehicles." We disagree. The

ordinance that Russell was charged with violating, Vandalia Ordinance 436.01, prohibits the same basic conduct that the driver's license law prohibits in R.C. 4507.02(A)(1), namely, operating a motor vehicle without a valid driver's license. Obviously, to violate either the ordinance or the law, a person must operate and use a motor vehicle. See R.C. 4511.01(HHH) (pertinently defining "operate" as "to cause or have caused movement of a vehicle"). Therefore this case involves a violation of an ordinance "governing the operation and use of vehicles," making it a traffic case to which the Traffic Rules apply.

{¶ 11} Because the Traffic Rules apply, the Uniform Traffic Ticket was sufficient to charge Russell. The rules contain no requirement that a Uniform Traffic Ticket be sworn to by the issuing officer. See Traf.R. 3(E) (stating the duties of the officer); 1975 Staff Note, Traf.R. 3(E) ("[T]he rule [division (E)] is notable because it, along with the ticket, does away with the need to have the ticket sworn to. The officer merely completes and signs the ticket. His unsworn signature is sufficient since it is made under the penalties for falsification."); Lang, Gotherman & Babbit, *Local Government Law – Municipal*, Section 28:40 (Updated Ed. Aug. 2018) ("The Ohio Uniform Traffic Ticket issued under penalties of perjury and falsification is a valid complaint, although it is not sworn to by the issuing officer."). See also *City of Cleveland v. Austin*, 55 Ohio App.2d 215, 223, 380 N.E.2d 1357 (8th Dist. 1978) ("It [the ticket] does not require that the officer swear to the veracity of the complaint before an appropriate authority. However, all Ohio Uniform Traffic Tickets are subject to the following caveat: 'The issuing-charging law enforcement officer states that under the penalties of perjury and falsification that he has read the above complaint and that it is true.' Thus, all law enforcement officers continue to attest to the accuracy of the ticket to protect the interests of the motorists."); *State v. Russell*,

11th Dist. Lake No. 95-L-135, 1996 WL 200575, *2 (Mar. 1, 1996) (quoting *Austin's* analysis and finding it persuasive).

{¶ 12} A Uniform Traffic Ticket serves as a complaint and summons and invokes the jurisdiction of a municipal court. Traf.R. 3(A); *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 12. Here, we conclude that the Vandalia Municipal Court had jurisdiction over Russell for committing a traffic offense within the city's boundaries. The record shows that Russell was personally served with an Ohio Uniform Traffic Ticket for violating Vandalia Ordinance 436.01, operating a motor vehicle without an operator's license. Consequently the Vandalia Municipal Court had both subject-matter jurisdiction and personal jurisdiction over Russell. *Compare State v. Matthews*, 2d Dist. Greene No. 2015-CA-73, 2016-Ohio-5055, ¶ 4 (holding that municipal court had subject-matter and personal jurisdiction over defendant for violating state traffic law prohibiting the operation of a motor vehicle without an operator's license). Therefore the municipal court properly exercised jurisdiction.

{¶ 13} The first and second assignments of error are overruled.

B. The arraignment

{¶ 14} The third assignment of error alleges:

Appellant was never read the complaint against him during his so-called arraignment thus no valid arraignment was conducted as required by Ohio law.

{¶ 15} As an initial matter, we note that Russell did not properly object to the magistrate's alleged failure to read the complaint. His failure to raise the issue in the trial court constitutes a waiver of the error claimed. *State v. Comen*, 50 Ohio St.3d 206, 211,

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553 N.E.2d 640 (1990). Generally, an appellate court will not consider any error which a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court. *State v. Barker*, 149 Ohio St.3d 1, 2016-Ohio-2708, 73 N.E.3d 365, ¶ 64, quoting *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 15; *State v. Terrell*, 2017-Ohio-7097, 95 N.E.3d 870, ¶ 67 (2d Dist.). Nevertheless, we will briefly address the issue that Russell raises.

{¶ 16} According to the Ohio Traffic Rules, “[a]rraignment shall be conducted in open court and shall consist of reading the complaint to the defendant, or stating to him the substance of the charge, and calling on him to plead thereto.” Traf.R. 8(B). At Russell’s arraignment, the magistrate told Russell that he had been charged with having no operator’s license. The magistrate then explained the offense to him: “That is an Unclassified Misdemeanor, carries a maximum fine of a Thousand Dollars (\$1,000.00) or five hundred hours of community service, plus courts costs plus two points if convicted. You understand? Alright, indicating yes.” (Tr. 2).

{¶ 17} Contrary to Russell’s assertion, the magistrate was not required to read the complaint. The magistrate complied with the law by explaining the substance of the charge, and Russell indicated that he understood. Also, the record contains the traffic ticket, which lists the offense as no driver’s license in violation of Vandalia Ordinance 436.01 and which is signed by Russell. Moreover, any error that the magistrate might have committed is not grounds for reversal. Russell has not shown how the magistrate’s actions affected his substantial rights, see Crim.R. 52(A), that is, how he was prejudiced.

Appendix #4

{¶ 18} The third assignment of error is overruled.

iii. Conclusion

{¶ 19} We have overruled all of the assignments of error presented. The municipal court's judgment is affirmed.

.....

FROELICH, J. and TUCKER, J., concur.

Copies sent to:

Christopher B. Epley
Jim M. Russell
Hon. Robert E. Messham, Visiting Judge

TRANSCRIPT
CRIMINAL DOCKET

STATE OF OHIO
(State Case - Ordinance Case)
No. CRB1801083
VANDALIA MUNICIPAL COURT
VANDALIA, OHIO

STATE OF OHIO

vs

JIM M. RUSSELL

ATTORNEY: NONE

On Complaint of the Vandalia Police Department

Charge: No Operator's License

Defendant pleaded Not Guilty on April 23, 2018

NO OPERATOR'S LICENSE

Pleaded Not Guilty to charge of No Operator's License (Vandalia City Code 436.01) on April 23, 2018/Trial set for May 17, 2018/Trial held May 17, 2018 before Magistrate Armanini/Defendant was found Guilty of No Operator's License (Vandalia City Code 436.01), assessed court cost in the amount of \$115.00 and a fine of \$50.00 (\$1000.00 with \$950.00 fine suspended) on condition defendant has no offenses of driving without a valid operator's license or privileges for (2) years/Magistrate's Decision filed May 31, 2018/Final Appealable Order upholding the Magistrate's Decision of guilty to the charge of No Operator's License was filed September 5, 2018.

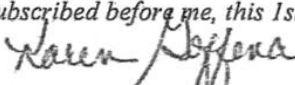
Affidavit - (Complaint) charging offense filed as follows:

The State of Ohio, Montgomery County, ss.

VANDALIA MUNICIPAL COURT,
VANDALIA, OHIO

Officer Michael Scarpelli of the Vandalia Police Department, who being duly sworn according to law, deposes and says, that on or about 12th day of April, 2018 in the City of Vandalia, County of Montgomery and State of Ohio, the defendant did to wit: commit therein offense of No Operator's License as defined in City of Vandalia Section 436.01, contrary to the form of the statute (in violation of City of Vandalia Section 436.01 in such case made and provided and against the peace and dignity of the State of Ohio.

Sworn to and subscribed before me, this 1st day of November 2018.


Karen S. Goffena, Clerk of Courts


Tanawanda Condy, Deputy Clerk of Courts

The (1) offense charged being an unclassified misdemeanor (UM); having reasonable grounds to believe that the accused will appear upon a summons

Summons issued directed to the Bailiff

Summons returned and filed

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FILED

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VANDALIA MUNICIPAL COURT

Pleaded Not Guilty to charge of No Operator's License (Vandalia City Code 436.01) on April 23, 2018/Order of Reference Pursuant to Administrative Entry of May 7, 2007, the case was set for Trial for May 17, 2018/Trial held May 17, 2018 before Magistrate Joseph Armanini/Defendant found Guilty of No Operator's License (Vandalia City Code 436.01), assessed court cost in the amount of \$115.00 and a fine of \$50.00 (\$1000.00 with \$950.00 suspended) on condition defendant has no offenses of driving without a valid operator's license or driving privileges within 2 years/Magistrate's Decision filed May 31, 2018/Defendant filed objections to the Magistrate's Decision on June 13, 2018/State's Reply to Defendant's Objections to Magistrate's Decision filed by Prosecutor Caldwell on June 19, 2018/On July 2, 2018 a Decision and Entry was filed by Judge Cynthia Heck recusing herself from the case due to a conflict of interest/Case assigned to Judge Robert E. Messham effective July 11, 2017 by the Supreme Court of State of Ohio/Final Appealable Order upholding the Magistrate's Decision of guilty to the charge of No Operator's License was filed September 5, 2018.

The Accused in writing subscribed by him/her and filed, waived a jury and submitted to be tried by the Judge.

Pre-Trial had. Witnesses sworn and examined on behalf of the State of Ohio, to-wit:

State of Ohio, to-wit:

and for Defendant, to-wit:

Thereupon the Court orders and decrees as follows:

This day the accused was brought before the Court in the custody of the Bailiff. The Court inquired into the complaint in the presence of the accused, and having heard the testimony, evidence and arguments; it appears to the Court that

¹no offense has been committed, and that there is no probable cause to believe the accused guilty, it is ordered that he/she be and is hereby discharged from custody.

²the offense charged has been committed and that there is probable cause to believe the accused guilty, it is ordered that he/she enter into a recognizance, with good and sufficient surety, in the amount of _____ Dollars, deemed reasonable for his/her appearance before the Court of Common Pleas of Montgomery County, Ohio, on the first day of the next term thereof, to answer said charge; and for want of such recognizance that he/she be committed to the jail of said County until discharged by the due course of law.

³Said Defendant is guilty as charged in the complaint and does adjudge and sentence that said Defendant is indigent and unable to pay the costs of prosecution, taxed at court costs and fine and that costs are paid, or secured to be paid, or he/she is otherwise legally discharged; he/she to receive credit upon such fine and costs at the rate of \$5.00 per day for each day's imprisonment.

⁴Said accused in writing subscribed by him/her and filed before—during the examination waived a jury and submitted to be tried by the Judge.

Recognizance given as required.

Fine and Costs paid and Defendant discharged.

Commitment issued to said Bailiff.

Commitment returned and filed.

Execution issued to said Bailiff.

Execution returned endorsed:

Bound by their own recognizance the following witnesses, to appear and testify before the Court of Common Pleas, to-wit:

Judge Robert E. Messham, Retired

By Assignment of the Ohio
Supreme Court

1. If the accused is bound over, or convicted, efface this paragraph, otherwise it remains and the remaining entries will be effaced.
2. If the accused is not bound over, but is convicted, efface this and the preceding paragraph.
3. If the accused is convicted, efface the two preceding paragraphs.
4. Efface this sentence if a jury is not waived

Appendix #5, p. 2

CORRECTED
TRANSCRIPT
CRIMINAL DOCKET

STATE OF OHIO
(State Case - Ordinance Case)
No. TRD1803232
VANDALIA MUNICIPAL COURT
VANDALIA, OHIO

Appellate # CA28167

STATE OF OHIO

vs

JIM M. RUSSELL

ATTORNEY: NONE

On Complaint VPD103234 of the Vandalia Police Department

Charge: No Operator's License

Plea of Not Guilty on April 23, 2017

NO OPERATOR'S LICENSE

Not Guilty entered to the charge of No Operator's License (Vandalia City Code 436.01) on April 23, 2018/Trial set for May 17, 2018/Trial Held may 17, 2018 before Magistrate Armanini/Defendant was found Guilty of no Operator's License (Vandalia City Code 436.01), assessed court cost in the amount of 4115.00 and a fine of \$50.00 (\$1,000 with \$950.00 fine suspended) on condition defendant has no offenses of driving without a valid operator's license or privileges for (2) years/Magistrate's Decision filed May 31, 2018/Final Appealable Order upholding the Magistrate's Decision of Guilty to the charge of No Operator's License was filed September 5, 2018.

ASSIGNED JUDGE ROBERT E. MESSHAM, RETIRED

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2019 FEB -8 AM 8:27
VANDALIA MUNICIPAL COURT

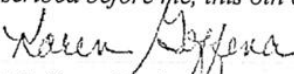
Affidavit - (Complaint) charging offense filed as follows:

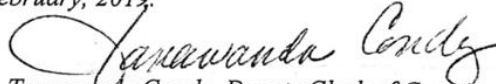
The State of Ohio, Montgomery County, ss.

VANDALIA MUNICIPAL COURT,
VANDALIA, OHIO

Office Michael Scarpelli of the Vandalia Police Department, who being duly sworn according to law, deposes and says, that on or about 12th day of April, 2018 in the City of Vandalia, County of Montgomery and State of Ohio, the defendant did to wit: commit therein offense of No Operator's License as defined in City of Vandalia Section 436.01, contrary to the form of the statute (in violation of City of Vandalia Section 436.01-No Operator's License) in such case made and provided and against the peace and dignity of the State of Ohio.

Sworn to and subscribed before me, this 8th day of February, 2019.


Karen S. Goffena, Clerk of Courts


Tanawanda Condy, Deputy Clerk of Courts

The (4) offenses charged being a misdemeanor in the first degree (M1); having reasonable grounds to believe that the accused will appear upon a summons

Summons issued directed to the Bailiff

Summons returned and filed

Appendix # 6, p.1

Plea of Not Guilty to charge of no Op. or's License (Vandalia City Code 436.01) on . . . l 23, 2018/Order of Reference Pursuant to Administrative Entry of may 7, 2007, the case was set for Trial for May 17, 2018/Trial held May 17, 2018 before Magistrate Joseph Armanini/Defendant found Guilty of No Operator's License (Vandalia City Code 436.01), assessed court cost in the amount of 4115.00 and a fine of \$50.00 (\$1,000.00 with \$950.00 suspended) on condition defendant has no offenses of driving without a valid operator's license or driving privileges within 2 years/Magistrate's Decision filed may 31, 2018/Defendant filed objections to the Magistrate's Decision on June 13, 2018/State's Reply to Defendant's Objections to Magistrate's Decision filed by Prosecutor Caldwell on June 19, 2018/On July 2, 2018 a Decision and Entry was filed by Judge Cynthia Heck recusing herself from the case due to a conflict of interest/Case assigned to Judge Robert E. Messham effective July 11, 2018 by the Supreme Court of State of Ohio/Final Appealable order upholding Magistrate's Decision of guilty to the charge of No Operator's License was filed September 5, 2018.

The Accused in writing subscribed by him/her and filed, waived a jury and submitted to be tried by the Judge.

Pre-Trial had. Witnesses sworn and examined on behalf of the State of Ohio, to-wit:

State of Ohio, to-wit:

and for Defendant, to-wit:

Thereupon the Court orders and decrees as follows:

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²the offense charged has been committed and that there is probable cause to believe the accused guilty, it is ordered that he/she enter into a recognizance, with good and sufficient surety, in the amount of Dollars, deemed reasonable for his/her appearance before the Court of Common Pleas of Montgomery County, Ohio, on the first day of the next term thereof, to answer said charge; and for want of such recognizance that he/she be committed to the jail of said County until discharged by the due course of law.

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Execution returned endorsed:

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Judge Robert E. Messham, Retired

By Assignment of the Ohio
Supreme Court

1. If the accused is bound over, or convicted, efface this paragraph, otherwise it remains and the remaining entries will be effaced.
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3. If the accused id convicted, efface the two preceding paragraphs.
4. Efface this sentence if a jury is not waived

Appendix #6, p2

- MAGISTRATE'S ORDER MAILED O/M TO DEFENDANT; HAND DELIVERED TO PROSECUTOR

04/26/2018

- FILE TO MAGISTRATE CUMMING
- PRAECIPE AND SUMMONS FOR WITNESSES

04/24/2018

- FILE TO PROSECUTOR CALDWELL

04/23/2018

- DEMAND FOR DISMISSAL FOR LACK OF JURISDICTION; BRIEF IN SUPPORT OF DISMISSAL DEMAND
- NOT GUILTY PLEA/SET TRIAL/ORDER OF REFERENCE PURSUANT TO ADMINISTRATIVE ENTRY OF MAY 7, 2007

04/16/2018

- CASE SET FOR A ARRAIGNMENT ON 04/19/2018 AT 8:30 AM
- CASE WAS FILED WITH COURT
- HEARING-04/23/2018 8:30 AM - ARRAIGN CONT'D

[Vandalia Municipal Court - Home]

[Record Search]

[Attorney Hearing Schedule]

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Copy of the Court's on-line electronic document made on October 16, 2019 docket

IN THE MUNICIPAL COURT OF THE CITY OF VANDALIA

CASE NO. TRD1803232



VANDALIA MUNICIPAL COURT
2018 NOV -1 PM 3:32

FILED

STATE OF OHIO

Plaintiff,

-vs-

JIM M. RUSSELL

Defendant.

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*
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*
*

CA 28167

TRANSCRIPT OF DOCKET
ENTRIES

April 12, 2018	Defendant cited with No Operator's License (Vandalia City Code 436.01) by Officer M. Scarpelli of the Vandalia Police Department with an Arraignment date of April 19, 2018.
April 19, 2018	Arraignment date continued to April 23, 2018.
April 23, 2018	Defendant entered plea of Not Guilty/Trial set for May 17, 2018/Order of Reference Pursuant to Administrative Entry of May 7, 2007/Demand for Dismissal for lack of jurisdiction; Brief in Support of Dismissal Demand filed by Defendant.
April 26, 2018	Praecipe and Summons for Witnesses
May 1, 2018	Magistrate's Order-Defendant's Demand for Dismissal for Lack of Jurisdiction is Overruled/Order mailed Ordinary Mail to Defendant-hand delivered to Prosecutor/Subpoena issued to Officer Scarpelli-Vandalia Police Department
May 2, 2018	Subpoena returned
May 7, 2018	Defendant's Motion for Appointment of Counsel; Defendant's Demand for Trial by Jury
May 8, 2018	Decision and Entry denying Motion for Appointment of Counsel and denying Jury Demand.
May 11, 2018	Copies of case file sent to defendant certified mail following 2 nd District Court of Appeals Writ of Mandamus Action
May 17, 2018	Trial held before Magistrate Joseph Armanini/Defendant was found Guilty of No Operator's License (Vandalia City Code 436.01); court costs assessed in the amount of \$115.00 and a fine of \$50.00 (\$1000.00 fine with \$950.00 suspended) on condition defendant has no offenses of driving without a valid operator's license or driving privileges within 2 years.
May 18, 2018	Case under advisement by Magistrate Armanini

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2018 NOV -5 AM 11:31
VANDALIA MUNICIPAL COURT

Appendix #8

May 31, 2018	Magistrate's Decision filed/Objections to be filed no later than June 14, 2018.
June 13, 2018	Objections to the Magistrate's Decision filed by the defendant.
June 14, 2018	Email from Defendant to correct defendant's date to Objections to Magistrate's Decision filed June 13, 2018-objections were filed with May 31, 2017 on defendant's objections.
June 19, 2018	State's Reply to the Defendant's Objections to Magistrate's Decision filed by Prosecutor David Caldwell.
June 27, 2018	Defendant's Request for Transcript of Trial heard by Magistrate Armanini on May 17, 2017/Relator's Affidavit of Inability to Prepay fees due to indigency filed.
June 29, 2018	Audio recording of trial proceedings held on May 17, 2017 mailed to defendant.
July 2, 2018	Decision and Entry of Recusal by Judge Cynthia Heck due to Conflict of Interest.
July 11, 2018	Case assigned to Judge Robert E. Messham (Retired) by The Supreme Court of the State of Ohio effective July 11, 2018.
July 25, 2018	Defendant's request for copy of Judge Heck's Decision and Entry for Recusal filed by Defendant/copy mailed to defendant by ordinary mail.
August 21, 2018	Defendant's Motion to Dismiss for Want of Jurisdiction; Defendant's Brief in Support of Motion to Dismiss for Want of Jurisdiction filed
September 5, 2018	Decision and Entry Overruling Defendant's Appeal of Magistrate's Decision/Final Appealable Order upholding the Magistrate's Decision of Guilty to the charge of No Operator's License UM assessing court costs in the amount of \$115.00, \$50.00 fine (\$1000.00 fine with \$950.00 fine suspended) on condition defendant has no offenses for driving without a valid operator's license or driving privileges within 2 years).
September 20, 2018	Defendant's Motion to Arrest the Court's Judgment with a Brief in Support filed.
September 21, 2018	Court costs and fine in the amount of \$168.00 paid in full by the defendant receipt number 220050.
September 27, 2018	Decision and Entry - Defendant's Motion to Arrest the Court's Judgment not well taken-Motion Overruled/Copy mailed to defendant by Ordinary Mail with certificate of mailing.
October 3, 2018	Defendant's/Appellant's Docketing Statement: No Transcript is Required filed by defendant.

October 4, 2018	Defendant's Notice of Appeal filed by defendant.
October 5, 2018	Defendant's Notice of Appeal mailed to Montgomery County Court of Appeals by Ordinary Mail with proof of certificate of mailing.
October 11, 2018	Letter mailed to Defendant by Ordinary Mail with proof of certificate of mailing for \$25.00 appeal court filing fee to be paid by October 16, 2018/Notice of Appeal resent to Clerk of Courts at Appeals Court Ordinary Mail with proof of certificate of mailing.
October 25, 2018	Defendant's Motion to Proceed to Appeal without Prepayment of fees; Defendant Appellant's Affidavit of inability to prepay fees due to indigency filed.
October 31, 2018	Decision and Entry finding defendant indigent and unable to pay costs associated with Appeal.
October 31, 2018	Defendant's Notice of Appeal copied to Chris Epley, Attorney.
November 1, 2018	Journal Entry/Transcript of Docket Statement/Transcript of Docket Entries filed.
November 2, 2018	Journal Entry, Transcript of Criminal Docket, Transcript of Docket Entries and case file hand delivered by Vandalia Municipal Court Bailiff to Clerk of Courts Court-Montgomery County Court of Appeals-Second Appellate District.

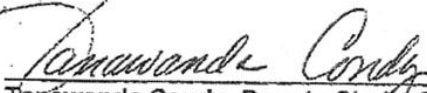
STATE OF OHIO

I, Karen S. Goffena, Clerk of the Vandalia Municipal Court, do hereby certify that the above is a true transcript of the docket entries of said Court, in the above-titled case

CITY OF VANDALIA)
COUNTY OF MONTGOMERY)

Attest my hand and the seal of this Court on this 1st day November 2018.


Karen S. Goffena
Clerk of Courts

BY: 
Tanawanda Condry, Deputy Clerk of Courts
Vandalia Municipal Court

FILED
2018 MY -1 PM 1:15
VANDALIA MUNICIPAL COURT

IN THE MUNICIPAL COURT OF VANDALIA, OHIO
TRAFFIC DIVISION

STATE OF OHIO : CASE NO. TRD 1803232
CITY OF VANDALIA :
 :
 Plaintiff, :
 :
 vs. : MAGISTRATE'S ORDER
 :
 JIM M. RUSSELL :
 :
 Defendant. :

This matter is before the Court upon the "Demand for Dismissal for Lack of Jurisdiction" filed by the Defendant on April 23, 2018. The Defendant is charged with a violation of §436.01 of the Codified Ordinances of Vandalia, Ohio, Operating a Motor Vehicle with No Driver's license, an unclassified misdemeanor.

In his "Demand for Dismissal," the Defendant argues that the charges against him should be dismissed because the Uniform Traffic Ticket which was served upon him at the time he was stopped is not sworn to before a person authorized to administer oaths. In so arguing, the Defendant relies on Ohio Criminal Rule 3, which provides that a complaint charging a crime "shall be made upon oath before any person authorized by law to administer oaths."

The Defendant's reliance upon Ohio Criminal Rule 3 is misplaced. The instant case is clearly a "traffic case," as defined in Ohio Traffic Rule 2(A). The Ohio Criminal Rules, and specifically Ohio Criminal Rule 3, do not apply to traffic cases, which are governed by the Ohio Traffic Rules. Ohio Criminal Rule 1(C)(3).

Appendix #9

Cover Page

IN THE SUPREME COURT OF OHIO

Jim M. Russell, Appellant, Pro Se
1037 Washington Creek Lane
Canton, Ohio 45458
315-0469 / 937-496-5824
malcrussell@gmail.com

On Appeal from the Montgomery
County Court of Appeals
Second Appellate District

VS.

Court of Appeals
Case No. CA 028167

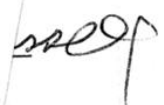
of Ohio, Appellee
Sher R. Epley
Attorney for Appellee
No. 0070981
10000 Street, Suite 2400
Cincinnati, Ohio 45402
Tel: 513-8825
www.sherlaw.com

NOTICE OF APPEAL OF
JIM M. RUSSELL, APPELLANT

A Jurisdictional Appeal



Attorney for



FILED
2018 MY -1 PM 1:15
VANDALIA MUNICIPAL COURT

IN THE MUNICIPAL COURT OF VANDALIA, OHIO
TRAFFIC DIVISION

STATE OF OHIO : CASE NO. TRD 1803232
CITY OF VANDALIA :
 :
 Plaintiff, :
 :
 vs. : MAGISTRATE'S ORDER
 :
 JIM M. RUSSELL :
 :
 Defendant. :

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The Defendant's reliance upon Ohio Criminal Rule 3 is misplaced. The instant case is clearly a "traffic case," as defined in Ohio Traffic Rule 2(A). The Ohio Criminal Rules, and specifically Ohio Criminal Rule 3, do not apply to traffic cases, which are governed by the Ohio Traffic Rules. Ohio Criminal Rule 1(C)(3).

Appendix #9