

IN THE SUPREME COURT OF OHIO

Michael W. Stuber
Appellant,
v.
State Of Ohio
Appellee.

* Case No. 06-1773
* On Appeal from the Allen
* County Court of Appeals,
* Third Appellate District
* Court of Appeals
* Case No. 1-05-53
*

MOTION FOR RECONSIDERATION TO GRANT JURISDICTION OF APPELLANT,
MICHAEL W. STUBER, PURSUANT TO S.CT.PRAC.R.XI, §2(A)(1)

Michael W. Stuber
P.O. Box 59
Harrod, Ohio 45850-0059
c/o (419) 648-9814

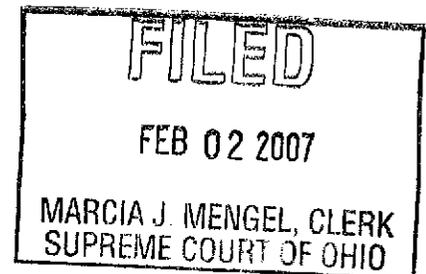
COUNSEL FOR APPELLANT, MICHAEL W. STUBER

David Geiger
109 North Union Street
Lima, Ohio 45801
(419) 221-5230

COUNSEL FOR APPELLEE, STATE OF OHIO

Anthony L. Geiger (0006150)
209 N. Main Street, 6th Floor
Lima, Ohio 45801
(419) 221-5183

ALLEGED COUNSEL FOR APPELLEE, STATE OF OHIO



MOTION FOR RECONSIDERATION

I. INTRODUCTION

On October 8, 2004, Appellant was followed into a restaurant parking lot by Deputy Sheriff William Joseph, for the sole purpose of checking to see if Appellant had a valid Driver License. Deputy Joseph did not have his cruiser lights on, nor did he stop Appellant for a Traffic Violation. This practice of Due Process violation was detailed in State v. Orr (1998), Case No. 98 TRD 11821, Dayton, Ohio, Municipal Court (Unreported), therein citing Delaware v. Prouse (1979), 440 U.S. 648, 662, 663. The main thrust of Deputy Joseph's actions were to meet quota, and to enrich the City and County coffers, from where he draws his paycheck.

II. STATEMENT OF THE FACTS

Appellant was arrested and incarcerated on October 8, 2004 on the charge of Failure to Reinstate License, in violation of R.C. 4510.21(A). Appellant posted Bond and, prior to his Arraignment on October 15, 2004 in the Lima Municipal Court, Appellant filed a Pre-Plea Motion to Dismiss, pursuant to Traf.R. 11(B) and (C). At Arraignment, Appellant was handed a piece of paper, approximately 2½" wide by 4" long, that contained a totally different charge on it, under the guise of being an "Amended Complaint". The charge thereon was Driving under an FRA Suspension, in violation of R.C. 4510.16(A). The Trial Judge overruled Appellant's Motion without even reading it at arraignment.

Appellant hired Private Counsel, that proved to be ineffective, wherein said Counsel entered a No Contest Plea to the "Amended" charge on April 7, 2005. Appellant filed a Motion For Arrest of Judgment on April 12, 2005, which was heard and denied on July 12, 2005. However, the Trial Court noted that it made an error in sentencing, and stated that unless Appellant wanted to vacate that sentence, the judgment would stand. Appellant did not respond.

On April 18, 2005 Appellant received Notice that Appellant was to be retried on July 22, 2005, four days later! Appellant personally went to the the Court thinking this was an error. After being told that Appellant would not be given a continuance to obtain Counsel, since his previous Counsel had withdrawn due to Appellant filing a Motion For Arrest of Judgment, and that no Public Defender would be appointed, although Appellant qualified, Appellant was forced to make a Plea before a Trial Judge he once sued and whom has a personal vendetta against Appellant. Appellant was scheduled to be out of the area on July 22, 2005 and requested a continuance, only to be told, "No. And if you don't show up on July 22, 2005, a warrant for your arrest will be issued." Even though Appellant was entitled to more than four (4) days Notice, pursuant to the Criminal Rules, Appellant was denied the same. Appellant then filed his Appeal in this matter, since he was forced,, by threat to accept a Plea that was not his true intent, because the Judge and Prosecutor were both threatening Appellant with the loss of his Liberty forthwith. The Plea was not made voluntarily, and prior "No Contest" Pleas were figured into sentencing.

LAW AND ARGUMENT

In Swift v. Tyson (1842), 41 U.S. 12,13, in his opinion for the majority, Justice Story stated, "the laws of a state are more usually understood to mean the rules and enactments promulgated by the legislative authority thereof, or long-established customs having the force of laws". Appellee cites Case Law, otherwise known as opinions rendered in other cases, and not promulgated by the legislative authority thereof, that would negate Traf.R. 10(B)(2), which has been promulgated by the legislative authority thereof, pursuant to Sup.R. 1(A),(B), and the Preface thereto. The Rules Governing the Courts of Ohio have been promulgated pursuant to Article IV, Section 5(A)(1) of the Ohio Constitution.

As such, Traf.R. 3(B),(C) and Crim.R. 7(D) should not be negated by the prosecutor's 2½" by 4" piece of paper, thereon stating a totally different charge than the Original Complaint, but should comply with the State's promulgated Rules. Likewise, pursuant to 19 O Jur, IMMUNITY FROM SERVICE OF PROCESS, §3.24, Appellant was immune from being served any claimed "Amended" charge while at Arraignment., wherein it states: "...immunity will be granted to parties, witnesses and attorneys as long as their visit to the forum is not motivated by unrelated personal business". Hammons v. Superior Ct. (1923), 63 Cal. App. 700."Further, immunity applies to attendance at a trial or related matters ...". See Russell v. Landau (1954), 127 Cal. App.2d 682 and Chase nat. Bank v. Turner (1936), 199 N.E. 636. Additionally, "Ohio recognizes and follows the general rule that personal service obtained upon a defendant who is induced to come within the jurisdiction of a court through trickery, fraud, or artifice is an abuse of process and will be set aside upon proper application." 62 Am. Jur.2d, PROCESS §54; 76 O Jur 2d, PROCESS, §53 @ 320-321. Appellant was induced to come within the jurisdiction of the Lima Municipal Court through trickery, fraud or artifice by Deputy William Joseph profiling Appellant for quota, stopping him only to see if he possessed a valid Driver License. State v. Orr (supra).

There are three (3) factors to be considered in determining what procedures are required by the due process clause: 1) The private interest affected; 2) The risk of error created by the state's chosen procedure; and 3) The countervailing governmental interest supporting the use of the challenged procedures. See Matthews v. Elridge (1976), 424 U.S. 319, 335; Lasiter v. Department of Social Services (1981), 452 U.S. 18, 27-31; and North Georgia Finishing, Inc. v. Di-chem, Inc. (1975), 419 U.S. 601.

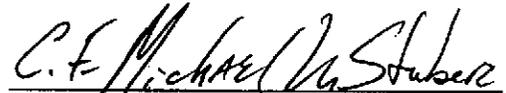
This matter was outright an abuse of Police Powers, and was illegal by the standard set in State v. Orr (supra), and in Delaware v. Prouse (supra),

as it was done in BAD FAITH, and for the intentional purpose of enriching unlawfully the City and County, to ensure there are monies to pay Deputy William Joseph and other non-producing leaches of our Society.

III. CONCLUSION

For the foregoing reasons, this Court must reconsider the issues raised and accept Jurisdiction to hear this matter upon its merits, to prevent a gross Miscarriage of Justice resulting from the arbitrarily applied Rules of Procedure Governing the Courts of Ohio that have been duly promulgated by the authority of Article IV, Section 5(A)(1) of the Constitution of Ohio, and to not allow unlegislated, unpromulgated Case Opinions be the rule in place of the law.

Respectfully submitted,



Michael W. Stuber
Appellant
P.O. Box 59
Harrod, Ohio 45850-0059

PROOF OF SERVICE

I hereby certify that I have served a copy of the foregoing upon the following by regular U.S. Mail, on or about this 2nd day of February, 2007:

David Geiger
109 North Union Street
Lima, Ohio 45801
COUNSEL FOR APPELLEE

Anthony L. Geiger (#0006150)
209 North Main Street
Lima, Ohio 45801
ALLEGED COUNSEL FOR APPELLEE



Michael W. Stuber
Appellant