

IN THE SUPREME COURT OF OHIO

CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO,	)	<b>07-1863</b>  Case No. 2008-0408  On Appeal from the Cuyahoga County (Cleveland), Ohio Court of Appeals, Eighth Appellate District Case No. 06-CA-088242
	)	
Plaintiff/Appellant,	)	
	)	
v.	)	
	)	
VINCENT QUINONES,	)	
	)	
Defendant/Appellee.	)	
	)	

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**MERIT BRIEF OF RAYMOND J. WOHL, CLERK OF COURT OF THE BEREA  
MUNICIPAL COURT, AND THE CITY OF BEREA AS *AMICUS CURIAE*  
IN SUPPORT OF THE CITY OF MIDDLEBURG HEIGHTS**

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SUPREME COURT OF OHIO

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## I. STATEMENT OF FACTS

This case arises from a traffic citation issued to Vincent Quinones by Middleburg Heights Police Officer Raymond Bulka. Quinones was cited for:

- operating a motor vehicle while under the influence of alcohol or drugs (“OMVI”), a violation of Middleburg Heights Ordinance (“MHO”) §434.01(a)(1);
- continuous lanes/weaving, a violation of MHO §432.08(a);
- speeding, a violation of MHO §434.03(b)(2); and
- failure to wear a seat belt, a violation of MHO §438.275(b)(1).

As the Clerk of Court, Wohl is charged with, among other things, the responsibility to prepare and maintain a general index, a docket, and other records that the court may require. In addition, as Clerk of Court, Wohl is required to receive, collect, and issue receipts for all costs, fees, fines, bail, and other moneys payable to the office or to any officer of the court.

Upon the filing of the citation against Quinones, the Clerk of Court, through its deputy clerks, entered the citation information for all four charges into the Berea Municipal Court computerized case management system, which then generated an incident report. The incident report is visually cross checked against the citation for accuracy. After the incident report is generated and visually cross checked, a case jacket for each charge was generated. Thus, in Quinones case, four case jackets were generated. Thereafter, the Clerk of Court, again through its deputy clerks, entered into the docket and on each case jacket the relevant records which pertained to the case and to each of the four charges.

After Quinones was found guilty of all four charges, the Clerk of Court assessed the court costs against Quinones pursuant to the sentencing entry and the schedule of court costs previously established pursuant to an existing Court Order and Journal Entry. *See* Computerized Docket, assessments, submitted with Motion to Supplement the Record. Quinones was assessed

basic court costs on a “per charge” basis and he was assessed court costs for the State’s general revenue fund and victim’s of crime fund only once.

Quinones took an appeal to the Cuyahoga County Court of Appeals, Eighth Appellate District, wherein he argued that the trial court’s imposition of court costs for each offense was excessive and violates his right to fair punishment. The Court of Appeals, after examining various state statutes and certain Ohio Attorney General Opinions, held that court costs should be assessed for each case and not each offense.

This appeal follows.

## II. ARGUMENTS IN SUPPORT OF PROPOSITION OF LAW

**Proposition of Law No. 1: The statutory language of R.C. §1901.26 allows local court costs imposed under that statute to be imposed on a “per charge” rather than “per case” basis.**

**Proposition of Law No. 2: Court costs may be charged on a “per charge” basis if authorized by statute.**

Ohio has a complex system for assessing and collecting fines and court costs in misdemeanor cases. It has been stated that there appears to be no less than 308 references in the Ohio revised code to the authority of a judge to assess court costs and fines. “[C]osts are taxed against certain litigants for the purpose of lightening the burden on taxpayers financing the court system.” *State v. Threatt* (2006), 108 Ohio St.3d 277, 2006-Ohio-905, at 15, citing *Strattman v. Studt* (1969), 20 Ohio St.2d 95, 102. “[A]lthough costs in criminal cases are assessed at sentencing and are included in the sentencing entry, costs are not punishment, but are more akin to a civil judgment for money.” *Id.*

In *Threatt*, supra, this Court explained the process of assessing court costs as follows:

{¶ 19} In all criminal cases, costs must be included in the sentencing entry. R.C. 2947.23(A). The clerk of courts is responsible for generating an itemized bill of the court costs. R.C. 2949.14. However, even if the itemized bill is ready at the

time of sentencing, "the specific amount due is generally not put into a judgment entry." *State v. Glosser*, 157 Ohio App.3d 588, 2004-Ohio-2966, 813 N.E.2d 1, ¶ 27 (Edwards, J., concurring). Therefore, a typical sentencing entry, like the one that sentenced Threatt, assesses only unspecified costs, with the itemized bill to be generated at a later date.

\*\*\*

{¶ 21} Pursuant to R.C. 2947.23, it is undisputed that trial courts have authority to assess costs against convicted criminal defendants. When a court assesses unspecified costs, the only issue to be resolved is the calculation of those costs and creation of the bill. Calculating a bill for the costs in a criminal case is merely a ministerial task. Therefore, we hold that failing to specify the amount of costs assessed in a sentencing entry does not defeat the finality of the sentencing entry as to costs. See *State v. Slater*, Scioto App. No. 01CA2806, 2002-Ohio-5343, 2002 WL 31194337, ¶ 5, fn. 3.

Costs must be assessed against all defendants. R.C. 2947.23; *State v. Clevenger* (2007), 114 Ohio St.3d 258, 2007-Ohio-4006; *State v. White* (2004), 103 Ohio St.3d 580, 2004-Ohio-5989 at ¶ 8. R.C. §1901.26 allows Berea Municipal Court to impose local court costs on a "per charge" rather than a "per case" basis. *State of Ohio ex rel. Dayton Law Library Association v. White*, 163 Ohio App.3d 118, 126 (Ohio App. 2<sup>nd</sup> Dist. 2005) ("It is equally true that these statutes authorize these fees to be imposed on the filing of each 'criminal cause' or cause of action."), *affirmed*, 110 Ohio St.3d 335 (2006). R.C. §1901.26(B)(1) states that:

"[t]he municipal court...may charge a fee...on the filing of each criminal cause..."

R.C. §1901.26(B)(2)(a) defines "criminal cause" as follows:

"Criminal cause" means a charge alleging the violation of a statute or ordinance, or subsection of a statute or ordinance, that requires a separate finding of fact or a separate plea before disposition and of which the defendant may be found guilty, whether filed as part of a multiple charge on a single summons, citation, or complaint or as a separate charge on a single summons, citation or complaint." (Emphasis added.)

As this Court explained in *Library Association v. White*, *supra* at 340:

Our paramount concern is legislative intent in interpreting R.C. 1901.26 and 1901.261. *State ex rel. United States Steel Corp. v. Zaleski*, 98 Ohio St.3d 395, 2003-Ohio-1630, 786 N.E.2d 39, ¶ 12. To determine this intent, we read words and phrases in context according to the rules of grammar and common usage. R.C. 1.42. If, as the municipal court clerk contends, these provisions patently and unambiguously require the county to pay the specified court costs for unsuccessful state-law prosecutions in municipal court, we must apply the statutes as written instead of resorting to further interpretation. See, e.g., *State ex rel. Canales-Flores v. Lucas Cty. Bd. of Elections*, 108 Ohio St.3d 129, 2005-Ohio-5642, 841 N.E.2d 757, ¶ 28, quoting *BedRoc Ltd., LLC v. United States* (2004), 541 U.S. 176, 183, 124 S.Ct. 1587, 158 L.Ed.2d 338 ("our inquiry begins with the statutory text, and ends there as well if the text is unambiguous").

R.C. §1901.26 court costs have been set by formal Court Order and Journal Entry signed by the Municipal Court Judge, pursuant to the statutory provisions. See Berea Municipal Court Journal Entry dated September 16, 2005. Local court costs are properly and reasonably assessed on a "per charge" basis when one considers the fact that additional case maintenance is required for multiple charge citations under the Rules of Superintendence for the Courts of Ohio ("Superintendence Rules").

Rule 1 of the Superintendence Rules states as follows:

**RULE 1. Applicability; Authority; Citation.**

**(A) Applicability.** Except where otherwise provided, these Rules of Superintendence for the courts of Ohio are applicable to all courts of appeal, courts of common pleas, municipal courts, and county courts in this state. (Emphasis added.)

Rule 2 of the current Superintendence Rules states as follows:

**"RULE 2. Definitions.**

As used in these rules:

**(A) "Case"** means a notice of appeal, petition, or complaint filed in the court of appeals and any of the following when filed in the court of common pleas, municipal court, and county court:

(2) A criminal indictment, complaint, or other charging instrument that charges a defendant with one or more violations of the law arising from the same act, transaction, or series of acts or transactions;

(B) "Court" means a court of appeals, court of common pleas, municipal court, or county court."(Emphasis added.)

While the Commentary to the Superintendence Rule 2 makes it clear that it is not intended to be used for purposes of statutory interpretation, the rules clearly impacts the internal operations of the courts. In fact, the specific example used in the Commentary directly addresses the issue of using the Superintendence Rules for purposes of interpreting a statute regarding the imposition of court costs. The Commentary for Rule 2 states as follows:

"This rule contains definitions of several terms used throughout the Rules of Superintendence. Because the Rules of Superintendence relate primarily to the internal operation of Ohio courts, these definitions are not intended to apply to questions of statutory interpretation. For example, the definition of "case" is designed as a benchmark for statistical reporting purposes that will allow for some uniform measure of the workload of the courts. The definition is not designed to address statutory issues such as the proper assessment of court costs or filing fees in civil and criminal cases. Reference should be made to Rule 37(A)(4), Rule 43, and the Court Statistical Reporting Section's implementation manual for further information pertaining to the definition of "case."  
(Emphasis added.)

The Superintendence Rules demonstrate that separate charges are considered separate cases and that the numbering of cases is simply a matter of administrative convenience. As noted above, the Commentary to Superintendence Rule 2 discourages the use of the rules for purposes of interpreting statutes with respect to the assessment of court costs. However, Superintendence Rules 37 and 43, cited in the above Commentary for Superintendence Rule2, provide further illumination of this issue. Those rules demonstrate the distinction between offenses charged and the numbering of cases.

Rule 37 states in relevant part:

**“RULE 37. Reports and Information.**

**(A) Report forms; responsibility for submission.** Judges of the courts of appeals, courts of common pleas, municipal courts, and county courts shall submit to the Court Statistical Reporting Section of the Supreme Court the following report forms in the manner specified in this division no later than the fifteenth day after the close of the reporting period.

**(3) Municipal and county courts.** The following reports shall be prepared and submitted monthly:

(a) Each administrative judge shall submit a completed Administrative Judge Report which shall be a report of all cases not individually assigned.

(b) Each judge shall submit a completed Individual Judge Report, which shall be a report of all cases assigned to the individual judge. The report shall be submitted through the administrative judge and shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

(c) Each judge sitting by assignment of the Chief Justice shall submit a report of the judge's work. The report shall be submitted through the administrative judge of the division to which the judge is assigned and shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

**(4) The following standards shall apply in completing the statistical reports required by these rules:**

**(c) A criminal case and a traffic case arising from the same act, transaction, or series of acts or transactions shall be considered separate cases.** (Emphasis added.)

Rule 43 states:

**“RULE 43. Case Numbering--Municipal and County Court.**

**(A) Method.** When filed in the clerk's office, cases shall be categorized as civil, criminal, or traffic and serially numbered within each category on an annual basis beginning on the first day of January of each year. Cases shall be identified by year and by reference to the case type designator on the administrative judge report form. Additional identifiers may be added by local court rule.

**(B) Multiple defendants or charges in criminal cases.** (1) In criminal cases, including traffic cases, all defendants shall be assigned separate case numbers.

(2) Where a defendant is charged with a misdemeanor and a traffic offense, the defendant shall be assigned separate case numbers pursuant to Sup. R. 37(A)(4)(c). The category selected for the case number and its case type designator shall be that of the offense having the greatest potential penalty.

(3) Where as a result of the same act, transaction, or series of acts or transactions, a defendant is charged with a felony or felonies and a misdemeanor or misdemeanors, including traffic offenses, the defendant shall be assigned separate case numbers, one for the felony or felonies and one for each other type of offense pursuant to Sup. R. 37(A)(4)(c). The category selected for the case number and its case type designator shall be that of the offense having the greatest potential penalty.” (Emphasis added.)

The commentary to Superintendence Rule 43 explains in pertinent part how the rule operates in practice:

**“Rule 43(B) Multiple defendants or charges in criminal cases**

Under division (B), each criminal defendant is assigned at least one case number.

Multiple defendants charged with the same offense arising out of the same act or transaction or series of acts or transactions receive separate case numbers. Where there are multiple defendants, they may be charged in a single complaint or each may be charged by separate complaints. In any event, each defendant is assigned a separate case number and a copy of the complaint is placed in the defendant's file.

**Where one defendant is charged with more than one offense arising from the same act or transaction or series of acts or transactions, the defendant will be assigned separate case numbers pursuant to Rule 37(A)(4)(c). If the offenses charged fall in more than one category, e.g., both criminal and traffic, the case number assigned will correspond to the category. If the offenses charged fall into one category, e.g., traffic, but could be listed in more than one column on the Administrative Judge Report, then the case number assigned will be that of the offense which has the greatest potential penalty. For example, a defendant charged with O.M.V.I. and with a traffic offense other than O.M.V.I. would be assigned the case number of the offense having the greatest potential penalty.**

Under Superintendence Rules 37 and 43, the numbering of cases is solely a matter of administrative convenience. Based on the plain language of the Superintendence Rules as well as the commentary, separate offenses charged against a defendant are considered separate cases. In the instant matter, as Quinones was charged with four separate offenses, there were in fact

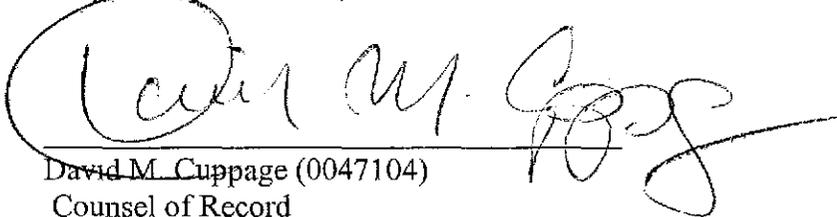
four separate cases for reporting purposes against him in the Berea Municipal Court. Because four separate cases for reporting purposes was required, the Clerk was required to open and maintain four separate case jackets. This additional maintenance required of the Clerk results, or should result, in additional costs to the traffic offender once the traffic offender is convicted on each charge.

For purposes of judicial economy, the additional arguments in support of the propositions of law of the City of Middleburg Heights are adopted herein as if fully rewritten.

### III. CONCLUSION

Based on the foregoing, this Court should reverse the decision of the Eighth District Court of Appeals and hold that the statutory language of R.C. §1901.26 allows local court costs imposed under that statute to be imposed on a “per charge” rather than “per case” basis. This Court should further hold that court costs may be charged on a “per charge” basis if authorized by statute.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David M. Cuppage", is written over a horizontal line. The signature is stylized and includes a large circular flourish on the left side.

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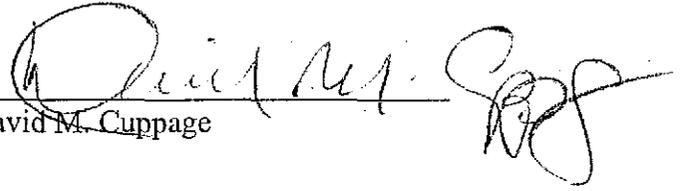
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the City of Berea*

CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief has been served via regular U.S. mail this 14<sup>th</sup> day of March 2008 upon Patrick P. Leneghan, Jr. (0041931), Attorney for Defendant-Appellee, 9500 Maywood Avenue, Cleveland, Ohio 44102-4800, and upon Peter H. Hull, prosecuting attorney for Plaintiff-Appellant, c/o Middleburg Heights City Hall, 15850 Bagley Road, Middleburg Heights, Ohio 44130.

  
\_\_\_\_\_  
David M. Cuppage

IN THE SUPREME COURT OF OHIO

CITY OF MIDDLEBURG HEIGHTS, )  
STATE OF OHIO, )  
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Plaintiff/Appellant, )  
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v. )  
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VINCENT QUINONES, )  
 )  
Defendant/Appellee. )

On Appeal from the  
Cuyahoga County,  
Ohio Court of Appeals, Eighth  
Appellate District  
Case No. 06-CA-088242

**07 - 1863**

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NOTICE OF APPEAL OF PLAINTIFF/APPELLANT  
CITY OF MIDDLEBURG HEIGHTS

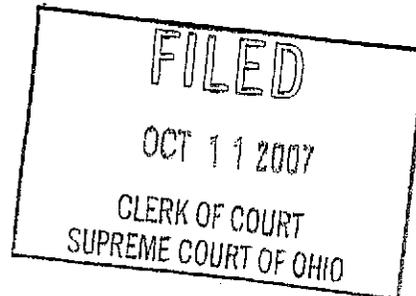
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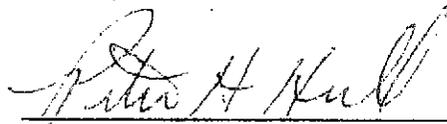


**NOTICE OF APPEAL OF PLAINTIFF/APPELLANT**  
**CITY OF MIDDLEBURG HEIGHTS**

Plaintiff/Appellant, the City of Middleburg Heights, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, journalized in Court of Appeals Case No. 06-CA-088242 on August 29, 2007, a copy of which is attached hereto.

Pursuant to the Rules of Practice of the Supreme Court of Ohio, S.Ct. R. II, Section 1(A)(3), this appeal raises a substantial question of public or great general interest.

Respectfully submitted,



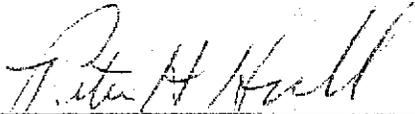
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*Prosecutor & Attorney  
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CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal of Plaintiff/Appellant City of Middleburg Heights has been served via regular U.S. mail this 10<sup>th</sup> day of October, 2007 upon Patrick P. Leneghan, Jr. (0041931), Attorney for Defendant-Appellee, 9500 Maywood Avenue, Cleveland, Ohio 44102-4800.

  
\_\_\_\_\_  
Peter H. Hull

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 88242

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**CITY OF MIDDLEBURG HEIGHTS**

PLAINTIFF-APPELLEE

VS.

**VINCENT QUINONES**

DEFENDANT-APPELLANT

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**JUDGMENT:  
AFFIRMED IN PART, REVERSED IN PART,  
AND REMANDED**

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Criminal Appeal from the  
Berea Municipal Court - Traffic Division  
Case No. CR- 2006 TRC 05644

**BEFORE:** Boyle, J., Cooney, P.J., and McMonagle, J.

**RELEASED:** July 19, 2007

**JOURNALIZED:**

AUG 29 2007

CA06088242

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VOL 542 P00206



BOYLE, MARY JANE, J.:

Defendant-appellant, Vincent Quinones, appeals from a judgment of the Berea Municipal Court, finding him guilty of operating under the influence, continuous lanes of traffic/weaving, speeding, and failure to wear a seat belt, as well as imposing court costs for each offense. After reviewing the evidence, we affirm in part, reverse in part, and remand.

On November 17, 2005, Middleburg Heights Police Officer Raymond Bulka ("Officer Bulka"), issued a citation to Quinones for operating a motor vehicle while under the influence of alcohol or drugs ("OMVT"), in violation of Middleburg Heights Ordinance ("MHO") 434.01(a)(1); continuous lanes/weaving, in violation of MHO 432.08(a); speeding, for traveling fifty-three m.p.h. in a twenty-five m.p.h. zone, in violation of MHO 434.03(b)(2); and failure to wear a seat belt, in violation of MHO 438.275(b)(1). Officer Bulka also filed an Administrative License Suspension Form 2255 with the Ohio Bureau of Motor Vehicles. Quinones entered a plea of not guilty to the charges.

A bench trial commenced on March 2, 2006. The city presented Officer Bulka as its only witness. He testified that on November 17, 2005 at approximately 12:20 a.m., he was on routine patrol on Fowles Road, Middleburg Heights, Ohio. He observed Quinones' vehicle traveling at what he visually

estimated to be around fifty m.p.h in a twenty-five m.p.h. zone. He said that he also noticed that Quinones' vehicle was weaving.

Officer Bulka attempted to catch up with Quinones' vehicle to "pace" it. He stated that his patrol car was equipped with a Gemini radar detector. He used it to check his speedometer reading, but he did not use it to record the speed of Quinones' vehicle. He testified that he was certified to operate a Gemini radar detector. He also indicated that he tested it at the beginning of his shift that day to make sure it was operating properly, and it was.

Officer Bulka paced Quinones' vehicle for three quarters of a mile. He explained that to pace the vehicle, he tried to keep an equal distance between his vehicle and Quinones', while counting and checking his speed. He estimated the vehicle to be traveling fifty-three m.p.h.

He further testified that while following Quinones on Fowles Road, which is a two-lane road, that "[o]ccasionally he was going on the double yellow lines (inaudible) outside of his lane (inaudible) double yellow line." He indicated that the lines on Fowles Road are clearly marked. He put his cruiser lights on and Quinones immediately pulled over.

When Officer Bulka approached Quinones' vehicle, he asked him for his driver's license, which Quinones gave him. While talking to Quinones, he smelled a strong odor of alcohol coming from the vehicle. He also noticed that

Quinones' eyes were "glassy."<sup>1</sup> He said that he remembered asking Quinones if he had been drinking, but he could not remember what Quinones said. He then asked Quinones to step out of the vehicle "to conduct a battery of field sobriety tests."

Officer Bulka conducted three field sobriety tests; horizontal gaze nystagmus ("HGN"), one-leg stand, and walk-and-turn. He explained that when conducting the HGN test, an officer must look for "involuntary jerking of the eyeballs." There are six clues, three in each eye. The first is to look for "smooth pursuit," to determine if the eyes follow a stimulus smoothly, such as a pen or finger. If the eyes "jump" when following the stimulus, "then it's indicative that [the person has] been drinking."

Officer Bulka then stated, "[t]he next one is a full — I forgot what (inaudible) its all the way out." [sic.] He further explained "[w]hen it's all the way out, and whether or not when they're looking at it, their eyes are bouncing around (inaudible) each side. And then as you come in towards their nose, wherever the — it stops, the closer you are to their nose, the more they've had to drink." According to Officer Bulka, Quinones failed all six clues.<sup>2</sup>

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<sup>1</sup> According to the transcript, Officer Bulka testified that Quinones' eyes were "glassy" and something else, but it was inaudible.

<sup>2</sup> Officer Bulka never testified as to what the third clue was.

Next, Officer Bulka administered the walk-and-turn test to Quinones. He explained that when giving the test, he demonstrates how to perform it. He tells the person to "stand heel to toe, stop, turn around \*\*\* [t]ake nine steps back while keeping your arms out – your arms down towards your side as best as you can and count (inaudible)."

Officer Bulka testified that Quinones was able to walk, heel to toe, during the test. However, Quinones failed the test because he was not able to maintain his balance while listening to the instructions, he began to perform the test before the instructions were completed, he used his arms to balance himself, and lost his balance while walking.

Finally, Officer Bulka administered the one-leg-stand test to Quinones. He explained that he has the person stand in front of him, with his feet together, while he demonstrates the test. The person must "lift either foot off the ground approximately six to eight inches \*\*\* straight out in front of them [sic]." Then, the person must keep his arms down and count by thousandths to thirty-five.

Officer Bulka testified that Quinones failed the one-leg-stand test. Quinones swayed while standing and was not able to keep one foot off the ground for thirty-five seconds. Quinones also put his foot down more than three times and started over.

The city also asked Officer Bulka, "[a]nd when you stopped the vehicle was

the defendant wearing his seat belt?" Officer Bulka replied, "[n]o."

Officer Bulka concluded that Quinones was intoxicated, arrested him, and took him to the police station. He stated that Quinones refused to take the breath test. Quinones signed the Bureau of Motor Vehicles 2255 Form, which indicated that Officer Bulka read him the consequences of refusing to take the breath test and the penalties that could result from refusing to take it.

On cross-examination, Officer Bulka stated that he obtained his radar certification in January 1989, but he did not bring it to trial. He also did not know if his certificate specifically stated that he was qualified to use a Gemini radar detector. In addition, he did not bring any certificates with him to court which showed that he was qualified to conduct field sobriety testing.

Officer Bulka further stated that he used mailboxes, telephone poles, and trees to pace Quinones' vehicle, but he could not estimate the distance between his cruiser and Quinones' vehicle. He also testified that he followed Quinones from the I-71 overpass to South Eastland, but could not say exactly how far that was.

Officer Bulka indicated that he has video equipment in his cruiser, which he manually activated after he began following Quinones. He explained that the video cassette shows his police cruiser following Quinones to the point where he administered the first HGN test. During the HGN test that is shown on the

video, Officer Bulka explained that Quinones was sitting in his vehicle with his neck turned in order to see him. Officer Bulka testified he has never been told that he should not perform a HGN test while the person was sitting in a vehicle with his neck turned. He then agreed that he gave Quinones a second HGN test when he got him out the vehicle. Officer Bulka stated that this second HGN test is not on the video cassette because "[t]he tape ran out" and he was not aware of it. The videotape was then played in court.

Officer Bulka was asked if the videotape showed that Quinones had driven left of center. He replied, "[h]e went out the line." When further asked if the tape indicated that, he answered, "[h]e didn't go into the other lane."

He also agreed with the prosecutor that the tape did not show any cars traveling in the other direction when he was following Quinones and that there was one car "traveling in the other direction after [he] stopped [Quinones]." Even after the trial judge disagreed and stated that he thought he saw a car "right at the beginning of the tape," Officer Bulka, when posed the question again, still could not remember if he saw a car at the beginning of the tape, when he began following Quinones.

This court has viewed the video that was admitted into evidence. The tape is approximately four minutes long. It shows Officer Bulka following Quinones for approximately one minute before he effectuated a traffic stop. While he was

following him, Quinones' vehicle touched the center, yellow line at least two times.

On redirect examination, Officer Bulka stated that he has been a police officer for seventeen years and that he successfully completed a three-day course in administering field sobriety tests. He also testified that it had been part of his duties throughout his career to conduct field sobriety tests.

The state then rested. Quinones moved for a Crim.R. 29 acquittal on each of the charges, which the trial court denied. The trial court then found Quinones guilty of all four charges.

On April 28, 2006, Quinones was sentenced to one year of probation and assessed fines and court costs for each offense. The trial court ordered Quinones to serve three days in jail or perform a seventy-two-hour program in lieu of jail. If he opted to serve three days in jail, then he also had to perform the seventy-two-hour program. The court further ordered Quinones to attend two Alcoholic Anonymous ("AA") meetings a week, for sixteen weeks. Additionally, the court revoked his driver's license, retroactive to November 17, 2005. His sentence was stayed pending appeal.

It is from this judgment that Quinones appeals, raising five assignments of error:

"[1.] The Trial Court erred in finding [Quinones] guilty of marked lanes or continuous lines of traffic.

"[2.] The Trial Court erred in finding [Quinones] guilty of speeding.

"[3.] The Trial Court erred in finding [Quinones] guilty of operating a vehicle under the influence of alcohol.

"[4.] The Trial Court erred in finding [Quinones] guilty of failure to wear a seat belt.

"[5.] The Trial Court's imposition of court costs for each offense in one case is excessive."

In Quinones' first four assignments of error, he maintains that the evidence was insufficient to sustain a conviction.

In *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386, the Supreme Court of Ohio explained that sufficiency of the evidence and the weight of the evidence are not synonymous legal concepts. They are "both quantitatively and qualitatively different." *Id.* The high court further explained:

"With respect to sufficiency of the evidence, 'sufficiency' is a term of art meaning that legal standard which is applied to determine whether the case may go to the jury or whether the evidence is legally sufficient to support a jury verdict as a matter of law." *Black's Law Dictionary* (6 Ed. 1990) 1433. See, also, *Crim.R.29(A)* (motion for judgment of acquittal can be granted by the trial court

if the evidence is insufficient to sustain a conviction). In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Robinson* (1955), 162 Ohio St. 486 \*\*\*. In addition, a conviction based on legally insufficient evidence constitutes a denial of due process. *Tibbs v. Florida* (1982), 457 U.S. 31, 45 \*\*\*, citing *Jackson v. Virginia* (1979), 443 U.S. 307 \*\*\*." (Parallel citations omitted) Id. at 386-387.

When determining sufficiency of the evidence, we must consider whether, after viewing the probative evidence in a light most favorable to the prosecution, any rational trier of fact could have found all of the elements of the offense proven beyond a reasonable doubt. *State v. Shaffer*, 11th Dist. No. 2002-P-0133, 2004-Ohio-336, at ¶17. Further, we note that the verdict will not be disturbed on appeal unless the reviewing court finds that reasonable minds could not have arrived at the conclusion reached by the trier of fact. *State v. Dennis* (1997), 79 Ohio St.3d 421, 430.

#### MARKED LANES VIOLATION

In his first assignment of error, Quinones argues that the evidence was not sufficient to convict him of "marked lanes or continuous lines of traffic" in violation of MHO 432.08(a).<sup>3</sup>

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<sup>3</sup> We note that the majority of cases interpreting the analogous Revised Code section of a marked lane violation, R.C. 4511.33(A)(1), address whether the police

The relevant portion of MHO 432.08 provides:

“Whenever any roadway has been divided into two or more clearly marked lanes for traffic, or wherever within the Municipality traffic is lawfully moving in two or more substantially continuous lines in the same direction, the following rules applies:

“(a) A vehicle shall be driven, as nearly as is practicable, entirely within a single lane or line of traffic and shall not be moved from the lane or line until the driver has first ascertained that the movement can be made with safety.”<sup>4</sup>

Quinones relies on *State v. Gullett* (1992), 78 Ohio App.3d 138, for his proposition that “[a] de minimus [sic] marked lanes violation, without other evidence of impairment, does not justify an investigative stop.” He also argues

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officer had articulable, reasonable suspicion or probable cause to stop a defendant, not whether the evidence was sufficient to convict a defendant of a marked lane violation. Nevertheless, these cases are instructive to our analysis in the case at bar.

<sup>4</sup> MHO 433.08(a) is nearly identical to R.C. 4511.33(A)(1), except that the Revised Code section includes “trackless trolley.” R.C. 4511.33(A)(1) provides: “A vehicle or trackless trolley shall be driven \*\*\*.” Thus, we will use cases interpreting R.C. 4511.33(A)(1) in our analysis.

We further note that R.C. 4511.33, “Rules for driving in marked lanes,” is “patterned after Section 11-309(a) of the Uniform Vehicle Code authored by the National Committee on Uniform Traffic Laws and Ordinances.” *State v. Phillips*, 4th Dist. No. 8-04-25, 2006-Ohio-6338, at ¶40. Unif. Vehicle Code §11-309(a) (2000) states:

“Whenever any roadway has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

“(a) A vehicle shall be driven, as nearly as practicable, entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety.” *Phillips* at ¶40.

that "*Gullett* further holds that any de minimus [sic] marked lanes violation is not sufficient to sustain a conviction." We sustain Quinones' first assignment of error, but for different reasons, as explained in the following analysis.

*Gullett*, as well as other early Ohio cases, "held that minor weaving over a lane line with no evidence to show how long or how far the driver so traveled would not in itself justify a stop, particularly when no other traffic is present and the driver was not speeding or otherwise driving erratically." *State v. Clark*, 6th Dist. No. S-03-039, 2004-Ohio-2774, at ¶ 23. See, also, *State v. Drogi* (1994), 96 Ohio App.3d 466 (held that insubstantial drifts across lane lines do not give rise to a reasonable and articulable suspicion sufficient to make a traffic stop).

However, subsequent cases from the United States Supreme Court in *Whren v. United States* (1996), 517 U.S. 806 and the Ohio Supreme Court, three weeks later in *Dayton v. Erickson* (1996), 76 Ohio St.3d 3, called *Gullett* and similar cases into question. *Clark* at ¶24. In *Clark*, the Sixth District, quoting the Ohio Supreme Court, stated:

"where an officer has an articulable reasonable suspicion or probable cause to stop a motorist for any criminal violation, *including a minor traffic violation*, the stop is constitutionally valid regardless of the officer's underlying subjective intent or motivation for stopping the vehicle in question." (Emphasis sic.) *Clark* at ¶24, quoting *Erickson* at 11-12.

The Sixth District court further explained at ¶25-26:

“Since *Erickson*, Ohio appellate courts have similarly held that any minor traffic offense justifies stopping the driver. See, e.g., *State v. Hodge*, 147 Ohio App. 3d 550, 2002-Ohio-3053, at ¶27 (overruling *Drogi*) and cases cited therein. *Hodge*, like the instant case, also involved a violation of R.C. 4511.33. Criticizing its previous cases in which it tried to discern, on a case-by-case basis, whether drifting out of a lane was substantial enough to justify stopping a car, the court in *Hodge* stated:

“In each instance we are in effect second-guessing whether a violation rose to the level of being “enough” of a violation for reasonable suspicion to make the stop. Pursuant to *Whren* and *Erickson*, we must recognize that a violation of the law is exactly that - a violation. Trial courts determine whether any violation occurred, not the extent of the violation. Based upon the foregoing analysis, we explicitly overrule *Drogi*, as it is contrary to the subsequent decisions of *Whren* and *Erickson*.”

In addition to the Sixth District in *Clark* and the Seventh District in *Hodge*, other appellate districts also determined that *Gullett* and its progeny were effectively overruled by *Whren* and *Erickson*. See *State v. Lopez*, 166 Ohio App.3d 337, 2006-Ohio-2091, citing *Hodge* (First District); *State v. Spillers* (Mar. 24, 2000), 2d Dist. No. 1504, 2000 Ohio App. LEXIS 1151; *McComb v. Andrews*

(Mar. 22, 2000), 3d Dist. No. 5-99-41, 2000 Ohio App. LEXIS 1134; *State v. Williams* (June 18, 2001), 12th Dist. No. CA2000-11-029, 2001 Ohio App. LEXIS 2684.

In a recent fifty-seven page opinion, the Third District extensively reviewed the legislative history of R.C. 4511.33(A)(1), Ohio courts' interpretation of the statute, as well as other states' interpretation of it (since it is based upon the Uniform Traffic Code), the effect of *Whren* and *Erickson* on the statute (which we have already briefly discussed), case law prior to and after these two landmark cases, and why it decided to overrule its prior precedent and adopt its first interpretation of the statute, which is "a two-prong interpretation" of the provision.<sup>5</sup> *Phillips*, supra, at ¶49-50.

The *Phillips* court quoted "the Tenth District[s] concisely stated" opinion in *State v. East* (June 28, 1994), 10th Dist. Nos. 93APC09-1307 and 93APC09-1308, 1994 Ohio App. LEXIS 2834:

"R.C. 4511.33(A) does not proscribe all movements across lane lines. Rather, it apparently is intended to require, as nearly as 'practicable,' that a driver maintain his vehicle in one lane of travel, and if a change of lanes is to be

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<sup>5</sup> "Section C" of the *Phillips*' decision, the relevant portion of the opinion to the case at bar, is labeled: "R.C. 4511.33(A) - Marked Lanes Violation" and is thirty-two pages long. See *Id.* at ¶37-73.

made, the driver first must ascertain that it can be made with safety. As a result, a driver's simply crossing a lane line in itself is insufficient to establish a prima facie violation of R.C. 4511.33(A); the evidence must address additional conditions of practicality and safety, for which the state bears the burden of proof." *Phillips* at ¶ 49.

The *Phillips* court explained that it still stood behind its decisions which have held "that any violation of a traffic law, including de minimis traffic violations, give police officers the ability to make a constitutional stop of a motorist \*\*\*." *Id.* at ¶ 65. However, under its two-prong interpretation of R.C. 4511.33(A), a police officer is required to "witness (1) a motorist not driving his or her vehicle within a single lane or line of travel as nearly as is practicable; and (2) a motorist not first ascertaining that it is safe to move out of that lane or line of travel before doing so \*\*\*." (Emphasis sic.) *Id.* The court noted that it "recognized this standard might be burdensome for both police officers and prosecutors," but believed that the Legislature did not intend for motorists to be "perfect" drivers, but rather "reasonable" drivers.<sup>6</sup> *Id.*

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<sup>6</sup> We point out that the *Phillips* court explicitly limited its decision to cases where the motorist crosses only the right edge (white) line, commonly known as the fog line, on a divided two-lane roadway. *Id.* at ¶ 50. However, we believe that the reasoning is applicable to the case at bar.

The *Phillips* court further supported its interpretation of R.C. 4511.33(A) by adopting an “updated definition” of “practicable.” It stated at ¶70:

“The current version of Black’s Law Dictionary comports with the Ohio Supreme Court’s definition of practicable. Black’s Law Dictionary (8 Ed. 2004) defines practicable as ‘reasonably capable of being accomplished; feasible.’ See *State ex rel. Fast & Co. v. Indus. Comm.* (1964), 176 Ohio St. 199, 201 \*\*\*. (\*\*\* capable of being put into practice or accomplished’.) This definition has also been adopted by the Sixth District in *State v. Noss* (Nov. 30, 2000), 6th Dist. No. WD-00-016, 2000 Ohio App. LEXIS 5579. In *Noss*, the Sixth District defined ‘practicable’ as “capable of being put into practice or of being done or accomplished: FEASIBLE (\*\*\*).” *Id.* Therefore, if we were to insert the definition, currently supported by the Ohio Supreme Court and Black’s Law Dictionary, into the statute in place of the word ‘practicable,’ R.C. 4511.33(A)(1) would read: ‘A vehicle or trackless trolley shall be driven, as nearly as reasonably capable of being accomplished, entirely within a single lane or line of traffic (\*\*\*).’”

Quoting the oft-cited concurring opinion of Judge Harsha in *Nelsonville v. Woodrum* (Nov. 20, 2001), 4th Dist. No. 00CA50, 2001 Ohio App. LEXIS 6062, the *Phillips* court further remarked that: “de minimis weaving and/or crossing of the marked lanes does not always justify a traffic stop based upon either the

*Terry* standard or probable cause[, because] of the “as nearly as practicable” language of R.C. 4511.33(A).’ \*\*\* Judge Harsha concludes and we agree, ‘In other words, I construe that language to be the legislature’s recognition that every *de minimis* crossing of marked lanes is not a traffic violation.’ *Id.* (emphasis added). This interpretation, coupled with the second prong requiring that movements outside of the lane or line of travel shall not be completed without first ascertaining that doing so may be completed safely, reinforces our belief that crossing the right white edge line is not a violation of R.C. 4511.33(A) *per se.*” *Phillips* at ¶73.

The Ninth District has reached the same conclusion in *State v. Barner*, 9th Dist. No. 04CA0004-M, 2004-Ohio-5950. It held, “[i]t is clear from a plain reading of the statute that in order to sustain a conviction pursuant to R.C. 4511.33(A), the State must put forth evidence that the driver of a vehicle moving either between lanes of traffic or completely out of a lane of traffic failed to ascertain the safety of such movement prior to making the movement.” *Id.* at ¶14. The court explained that the record in the case showed that “the State never asked its own witness, Officer McKenna, if he witnessed Appellant leave his lane of traffic without first ascertaining whether or not such movement could be done with safety. Furthermore, the State also never asked Appellant if he left his lane of traffic without first ascertaining whether or not such movement could

be done with safety. As a result, the record is devoid of any evidence that Appellant left his lane of traffic without first ascertaining whether or not such movement could be done with safety." *Id.* The court concluded that, "[b]ecause there was no evidence presented on an essential element of the offense, the trial court had no evidence to weigh on this element of the offense when determining whether or not Appellant was guilty of failure to drive within a marked lane." *Id.* at ¶15.

We agree with the Third District's well-reasoned decision in *Phillips* and the Ninth District's decision in *Barner*. R.C. 4511.33(A) requires that a motorist drive *as nearly as practicable* within his lane or line of travel *and* not move from that lane or line of travel *until the motorist has first determined that it can be done with safety*.

Although the issue in the case sub judice is whether there was sufficient evidence to convict, we are compelled to point out that our decision does not stand for the proposition that movement within one lane will never justify *articulable, reasonable suspicion* to effectuate a *Terry* stop (investigative stop).<sup>7</sup>

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<sup>7</sup>There is no law in Ohio prohibiting per se weaving within one lane. However, at least one appellate district has upheld a local ordinance with such provisions. *Hodge*, supra, at ¶59, citing *Cuyahoga Falls v. Morris* (Aug. 19, 1998), 9th Dist. No. 18861, 1998 Ohio App. LEXIS 3762, and *State v. Carver* (Feb. 4, 1998), 9th Dist. No. 2673-M, 1998 Ohio App. LEXIS 345.

Furthermore, we emphasize that any de minimis violation of R.C. 4511.33(A) would be sufficient *probable cause* to warrant a traffic stop. However, it must be just that - a violation. Every de minimis touching or crossing of marked lanes is not a traffic violation. *Phillips*, supra, quoting *Woodrum*, supra (Judge Harsha's concurring opinion). In addition, there must be some evidence regarding the safety prong of the statute.

Turning to the case at bar, we conclude that the city failed to submit sufficient evidence on either of the essential elements of R.C. 4511.33(A). Regarding the first element, the practicable prong, the testimony established that Quinones "occasionally" drove on the double yellow line for approximately three-quarters of a mile. However, Officer Bulka admitted on cross-examination that Quinones did not "go into the other lane." We have independently verified that the videotape does not show Quinones crossing over the yellow line into the other lane. He did touch the yellow line twice as far as this court could tell, but he did not leave his lane of traffic. Moreover, he did not swing back into his lane, or weave back and forth in an unsafe manner.

As for the second element, the safety prong, the city did not present any evidence as to whether Quinones left his lane of traffic without first ascertaining whether it was safe to do so. As we indicated, Officer Bulka testified that Quinones never went left of center into the lane of oncoming traffic.

On cross-examination, however, Officer Bulka could not recall if a car was traveling in the opposite direction when he was following Quinones. The videotape shows one car traveling in the opposite direction at the beginning of the tape, but Quinones does not travel into the car's lane of traffic or even touch the yellow line at that point.

Thus, the city failed to present sufficient evidence on either of the essential elements of the marked lane ordinance. As such, Quinones' first assignment of error is well taken.

#### SPEEDING VIOLATION

In his second assignment of error Quinones asserts that based upon the sufficiency of the evidence, the trial court erred in finding him guilty of speeding in violation of MHO 434.03(b)(2). Specifically, Quinones argues that Officer Bulka's visual estimation of his speed was not sufficient and that Officer Bulka's pacing was not reliable, and therefore not sufficient to convict him.

MHO 434.03, entitled maximum speed limits; assured clear distance ahead, states:

"[i]t is prima facie lawful, in the absence of a lower limit declared pursuant to this section by the Director of Transportation or local authorities, for the operator of a motor vehicle to operate the same at a speed not exceeding the following:

“(b)(2) twenty-five miles per hour in all other portions of the Municipality, except on the state routes outside business districts, through highways outside business districts, and alleys.”

We agree with Quinones that an arresting officer’s visual estimates of speed alone are insufficient to convict persons of speeding beyond a reasonable doubt. See *Cleveland v. Wilson*, 8th Dist. No. 87047, 2006-Ohio-1947, at ¶7. However, as Quinones himself points out, that was not the only evidence presented. Officer Bulka testified that he paced Quinones’ vehicle to determine his speed. Many Ohio courts, including this district, have found that pacing a car is an acceptable manner for determining speed. *State v. Horn*, 7th Dist. No. 04BE31, 2005-Ohio-2930, at ¶18; *Middleburg Heights v. Campbell*, 8th Dist. No. 87593, 2006-Ohio-6582, at ¶17.

In the instant case, Officer Bulka testified that he paced Quinones’ vehicle by first verifying that his own speedometer was accurate. He checked his own speedometer reading against the Gemini radar detector. He also explained that he conducted the Gemini radar unit’s self-calibration at the beginning of his shift, and the unit was operating properly. He stated that he paced Quinones’ vehicle for approximately three quarters of a mile, keeping his vehicle an equal distance from Quinones by counting and using mailboxes, telephone poles, and trees. He then estimated Quinones’ speed to be fifty-three m.p.h.

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After viewing the evidence in a light most favorable to the prosecution, we conclude the evidence was sufficient for a reasonable trier of fact to convict Quinones beyond a reasonable doubt of speeding. As such, Quinones' second assignment of error is overruled.

#### OMVI VIOLATION

In his third assignment of error, Quinones argues that the evidence was not sufficient to convict him of operating a motor vehicle under the influence of alcohol in violation of MHO 434.01(a)(1), which provides: "No person shall operate any vehicle within this Municipality if \*\*\* the person is under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse."

Quinones maintains that Officer Bulka did not administer the field sobriety tests under the strict compliance standard set forth in *State v. Homan* (2000), 89 Ohio St.3d 421.

We note at the outset that Quinones bases his entire argument on a case that is no longer good law. It is now well established that the strict compliance standard established in *Homan* was rendered invalid by the General Assembly in 2002. *State v. Boczar*, 113 Ohio St.3d 148, 2007-Ohio-1251, at ¶10-11. The General Assembly amended R.C. 4511.19(D)(4)(b) in Am.Sub.S.B. 163 to require only substantial compliance. *Id.* at ¶11-12. Recently, the Supreme Court of Ohio

unanimously upheld the constitutionality of R.C. 4511.19(D)(4)(b) in *Boczar*, syllabus.

Nevertheless, even assuming the results of the field sobriety tests should have been excluded under the proper substantial compliance standard, an officer's observations regarding a defendant's performance on field sobriety tests is admissible as lay evidence of intoxication. *State v. Schmitt*, 101 Ohio St.3d 79, 2004-Ohio-37, at ¶12-15. "The manner in which a defendant performs these tests may easily reveal to the average lay person whether the individual is intoxicated." *Id.* at ¶14. The Supreme Court reasoned, "[w]e see no reason to treat an officer's testimony regarding the defendant's performance on a nonscientific field sobriety test any differently from his testimony addressing other indicia of intoxication, such as slurred speech, bloodshot eyes, and odor of alcohol." *Id.*

The high court further reasoned, "[u]nlike actual test results, which may be tainted, the officer's testimony is based upon his or her firsthand observation of the defendant's conduct and appearance. Such testimony is being offered to assist the [trier of fact] in determining a fact in issue, i.e., whether a defendant was driving while intoxicated. Moreover, defense counsel [has] the opportunity to cross-examine the officer to point out any inaccuracies and weaknesses. We

conclude that an officer's observations in these circumstances are permissible lay testimony under Evid.R. 701." Id. at ¶ 15.

In the case sub judice, even assuming Officer Bulka did not substantially comply with NHTSA standards, and the test results of the field sobriety tests should have been excluded, his observations regarding Quinones' performance of these tests were admissible and could be considered by the trier of fact.

Officer Bulka testified that he had nearly seventeen years of experience in law enforcement. He further indicated that he had dealt with intoxicated people many times. Officer Bulka testified that Quinones was speeding, had occasionally driven on the yellow line, that his vehicle smelled of alcohol, and that Quinones had glassy eyes. Furthermore, Quinones failed all six HGN clues, was not able to maintain his balance during the walk-and-turn test, swayed while standing during the one-leg test, and could not hold his foot up during the test. Moreover, Quinones refused to take a breath test, which can also be considered evidence of intoxication. See *South Dakota v. Neville* (1983), 459 U.S. 553; *Columbus v. Maxey* (1988), 39 Ohio App.3d 171. Thus, in a light most favorable to the prosecution, and after viewing the totality of the facts and circumstances, we conclude that there was sufficient evidence presented to convict Quinones of OMVI beyond a reasonable doubt.

Accordingly, Quinones' third assignment of error is overruled.

SEATBELT VIOLATION

In his fourth assignment of error, Quinones argues that the trial court erred in finding him guilty of failure to wear a seat belt in violation of MHO 438.275(b)(1). Quinones maintains that the evidence was insufficient because Officer Bulka observed him with his seatbelt off only after he ceased operating the vehicle.

MHO 438.275(a)(1) defines occupant restraining devices as “a seat belt, shoulder belt, harness, or other safety device for restraining a person who is an operator of or passenger in an automobile and that satisfies the minimum Federal vehicle safety standards established by the United States Department of Transportation.” MHO 438.275(b)(1) provides that “no person shall \*\*\* operate an automobile on any street or highway unless he or she is wearing all of the available elements of a properly adjusted occupant restraining device.”

This court has held that in order to establish a seat belt violation, the state is required to show that the appellant operated his vehicle on a street or highway without wearing all the elements of his properly adjusted occupant restraining device. *Cleveland v. Tate* (May 17, 2001), 8th Dist. No. 78789, 2001 Ohio App. LEXIS 2183, at 3-4, citing *Newburgh Heights v. Halasah* (1999), 133 Ohio App. 3d 640, 647.

In the instant case, the only evidence presented regarding the seat belt violation was when the city asked Officer Bulka, “[a]nd when you stopped the vehicle was the defendant wearing his seat belt?” Officer Bulka replied, “[n]o.” Thus, we agree with Quinones that the city did not establish that he operated his vehicle without wearing his seat belt. As such, the evidence was not sufficient beyond a reasonable doubt to convict him of a seat belt violation.

Accordingly, Quinones’ fourth assignment of error is well taken.

### COURT COSTS

In his fifth assignment of error, Quinones contends that the trial court’s imposition of court costs for each offense is excessive and violates his right to fair punishment. Quinones asserts that he was cited with only one ticket, and his case had only one case number for all four counts. Thus, he maintains that any conviction should result in one court cost being assessed, not four. For the following reasons, we agree.

Ohio has a complex system for assessing and collecting fines and costs in misdemeanor cases, and it differs from jurisdiction to jurisdiction. Ohio Criminal Sentencing Commission Staff Report, *A Decade of Sentencing Reform* (Mar. 2007), 30. Further, there appears to be a dearth of case law interpreting the statutes regarding court costs. *State v. Powers* (1996), 117 Ohio App.3d 124, 128.

"[C]osts are taxed against certain litigants for the purpose of lightening the burden on taxpayers financing the court system." *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, at ¶ 15, citing *Strattman v. Studt* (1969), 20 Ohio St.2d 95, 102. "[A]lthough costs in criminal cases are assessed at sentencing and are included in the sentencing entry, costs are not punishment, but are more akin to a civil judgment for money." *Id.*

As stated in *State ex rel. Commrs. of Franklin Cty. v. Guilbert* (1907), 77 Ohio St. 333, 338-39:

"Costs, in the sense the word is generally used in this state, may be defined as being the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action or prosecution and which the statutes authorize to be taxed and included in the judgment or sentence. The word does not have a fixed legal signification. As originally used it meant an allowance to a party for expenses incurred in prosecuting or defending a suit. Costs did not necessarily cover all of the expenses and they were distinguishable from fees and disbursements. They are allowed only by authority of statute."

R.C. 2947.23, judgment for costs and jury fees, provides:

"(A)(1) In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution and render a judgment against the defendant for such costs. \*\*\*\*"

R.C. 1901.26(A)(1)(a) requires the municipal court "to establish a schedule of fees and costs to be taxed in any civil or criminal action or proceeding."

There do not appear to be any cases directly on point that interpret the phrase found in R.C. 2947.23, "[i]n all criminal cases \*\*\*." However, there are two 1991 Ohio Attorney General Opinions that addressed the meaning of "case" in similar statutes, R.C. 2743.70 and 2949.091, and are instructive for our analysis in the case at bar.<sup>8</sup>

In 1991 Ohio Atty.Gen.Ops. No. 91-022, the Attorney General opined in the syllabus that, "[t]he court costs imposed by R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1) are to be charged per case, and not per offense."

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<sup>8</sup> R.C. 2743.70 (addressing additional costs in the court of claims) and R.C. 2949.091 set forth provisions concerning the imposition of additional court costs and bail against nonindigent persons. R.C. 2743.70 provides:

"(A)(1) The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender:

"(a) Thirty dollars, if the offense is a felony;

"(b) Nine dollars, if the offense is a misdemeanor.

"The court shall not waive the payment of the thirty or nine dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. \*\*\*"

R.C. 2949.091(A)(1) similarly provides:

"The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the sum of fifteen dollars as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender. \*\*\* The court shall not waive the payment of the additional fifteen dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender."

The Attorney General reasoned:

“An examination of the language of R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1) clearly reveals that a court shall impose the specific sum of money, mandated by these sections, ‘as costs in the case.’ The language of R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1), thus, unambiguously discloses that the General Assembly’s intention in enacting these sections was to provide for the imposition of a specific sum of money as costs in any case in which a person is convicted of or pleads guilty \*\*\*. [N]either R.C. 2743.70 nor R.C. 2949.091 sets forth a definition for the term ‘case.’ Terms not statutorily defined are to be accorded their common or ordinary meaning. R.C. 1.42 \*\*\*. Black’s Law Dictionary 215 (6th Ed. 1990) defines the term ‘case’ as ‘an aggregate of facts which furnishes occasion for the exercise of the jurisdiction of a court of justice.’ It is clear, therefore, that the costs mandated in R.C. 2743.70 and R.C. 2949.091 are to be imposed when an aggregate of facts furnishing a court the opportunity to exercise its jurisdiction results in a person being convicted of or pleading guilty to any offense \*\*\*.” Id. at 4-5.

The Attorney General further considered that “prior to and subsequent to the enactment of R.C. 2743.70 and R.C. 2949.091, it has been the continual practice in Ohio for offenses to be joined in one case for purposes of facilitating the administration of justice.” Id. at 5. “Aware of this common practice, the

General Assembly made no attempt, through the language of R.C. 2743.70 and R.C. 2949.091, to indicate that the costs mandated by these sections were conditioned upon the number of offenses of which a person was convicted or to which he plead guilty in a single case. Rather, language set forth in these sections indicates the contrary." Id. at 8.

Five months later, in 1991 Ohio Atty.Gen.Ops. No. 91-039, the Attorney General opined that, "[i]f an individual is charged with more than one misdemeanor arising from the same act or transaction or series of acts or transactions, and a municipal court or a county court assigns a single case number with respect to the prosecution of these misdemeanors, while simultaneously distinguishing between each misdemeanor charged within that case number by attaching an additional identifier, each misdemeanor charged within that case number is not considered a 'case' for purposes of assessing the court costs mandated by R.C. 2743.70 and R.C. 2949.091." Id. at syllabus.

In this opinion, the Attorney General reaffirmed his position in 1991 Ohio Atty.Gen.Ops. No. 91-022 and also took into consideration the Rules of Superintendence for Municipal Courts and County Courts. He stated:

"Under M.C. Sup. R. 12(E), municipal courts and county courts may only assign one case number in situations in which an individual is charged with more than one offense arising from the same act, transaction, or series of acts or

transactions. \*\*\* Supreme Court of Ohio, The Supreme Court of Ohio Rules of Superintendence Implementation Manual 225 (January 1, 1990). \*\*\*." Thus, "[i]t is apparent from the foregoing that the Ohio Supreme Court has determined that when an individual is charged with more than one misdemeanor arising from the same act, transaction, or series of acts or transactions, a municipal court or county court may only assign one case number to that criminal prosecution. Consequently, all the misdemeanors charged within that criminal prosecution are part of one case." *Id.* at 9.

It is our view that the Attorney General's reasoning with respect to assessing additional costs is instructive in the case at bar. When applying the plain language of the R.C. 2947.23, "[i]n all criminal cases[,]" it is our view that court costs should be assessed for each case and not for each offense. As such, Quinones' fifth assignment of error is well taken.

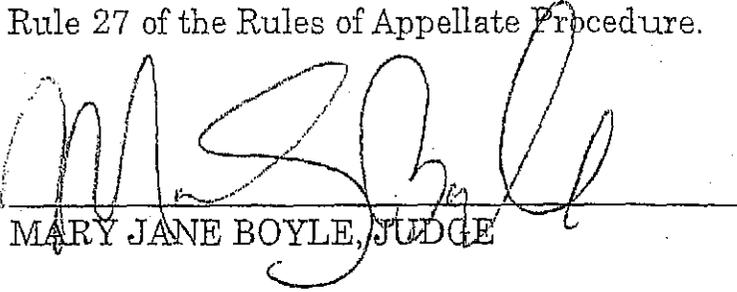
Thus, Quinones' second and third assignments of error challenging his speeding and OMVI convictions are affirmed. His marked lanes and seat belt violations are reversed, and the case is remanded for imposition of only one set of court costs. The judgment of the Berea Municipal Court is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the Berea Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



MARY JANE BOYLE, JUDGE

COLLEEN CONWAY COONEY, P.J., and  
CHRISTINE T. McMONAGLE, J., CONCUR

Viol. Date: 11/17/05

VINCENT S QUINONES  
8431 BERNICE DR  
STRONGSVILLE OH 44136  
DOB: 03/22/76  
4.238-1101  
434.01A1 DUI (M1)

# PROBATION

Operator Lic. (LABEL AFFIXED HERE) State Enclosed  
 RR215834 OH YES  
 Plates Affiant  
 DAA5150 PTL. RAYMOND BULKA  
 12/14/05 NON-WAIVERABLE

Atty: Patrick P. Lenehan (6041931) Phone: 651-4600  TICKET  
 WAIVED

BOND: CASH SURETY 10% PERSONAL Bond No. \_\_\_\_\_

Bond Co. \_\_\_\_\_ Receipt No. \_\_\_\_\_

Condition Bond  Bond Con't \_\_\_\_\_ J/M  
 Date \_\_\_\_\_

INSURANCE:  PROVEN  NOT PROVEN

ARRAIGNMENT: (\_\_\_/\_\_\_/\_\_\_)  CONTINUE SO DEFENDANT  
 CAN OBTAIN COUNSEL,

PLEA: Mayors Court RESET TO: (\_\_\_/\_\_\_/\_\_\_)

GUILTY  NOT GUILTY  NO CONTEST  FOUND GUILTY

WSP  NO WSP  PT  TRIAL  PH  PSI J/M

WAIVE PH BOGJ  SENTENCE NOW OVER  FINE ONLY, \$ \_\_\_\_\_

CHANGE PLEA:  GUILTY  NO CONTEST-Consent guilty, waive defects

FG (\_\_\_/\_\_\_/\_\_\_)  SENTENCE NOW OVER  PSI

DEFER SENTENCE TO \_\_\_\_\_ 4-10-06 J/M

FINE ONLY \$ \_\_\_\_\_ + COSTS.

VEHICLE:  \_\_\_ DAY IMMOBILIZATION PERIOD.

AFTER HEARING,  RELEASE VEHICLE TO:  
 \_\_\_\_\_ DEFENDANT \_\_\_\_\_ HOME \_\_\_\_\_ INNOCENT OWNER

CASE DISMISSED (\_\_\_/\_\_\_/\_\_\_)

COST PAID BY:  CITY/ STATE  DEFENDANT

AFTER HEARING,  APPEAL DENIED, OCCUPATION DRIVING GRANTED.

ALS TERMINATED

OTHER, \_\_\_\_\_ J/M

WARRANT:

CAPIAS (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M  COLLECT BOND (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M

N/A WARR (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M  NA/COMPACT (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M

MO WARR (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M  OTHER/ADD'L (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M

FORFEIT BOND (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M

*JAN 24 2006 set for TRAIL after*

*30 days v*

*TR 3-2-06 2:30*

*MAR 02 2006 Case called for*

*TRIAL: Trial had*

*3/2/06 P Ray Bulka, pprca*

*no to dismiss, Bulka 29 denied*

*Det. Wilbur A. admitted*

*Arrests. FG-PSI*

WAIVER OF ATTORNEY  
 I, the above named Defendant herein, having been fully advised of the right to obtain Counsel, and if indigent, to the right to have an attorney appointed, do hereby waive such right in Open Court, in accordance with Ohio Rules of Criminal Procedure (Rule 22 and Rule 44 B & C) and this waiver applies equally to all related cases.

Date \_\_\_\_\_ Defendant \_\_\_\_\_

WAIVER OF TIME *SENT 4-28-06 1:30*  
 I, the above named Defendant herein, having been fully advised in open court of my right to trial upon the charge before this Court within \_\_\_\_\_ days after my arrest or the service of summons pursuant to the provisions of the Ohio Revised Code Sec. 2945.71, and with full knowledge of same, do hereby waive such right and consent to the Berea Municipal Court's setting this matter for trial at said court's convenience and this waiver applies equally to all related cases.

Date \_\_\_\_\_ Defendant \_\_\_\_\_

Witness to each signature above:

*100<sup>th</sup> Appeal 06-34724*

Date	Fine	Costs	Total
	<i>565</i>	<i>588</i>	<i>1153-</i>
Date	Rec't. No.	Amt. Paid	Balance

JOURNAL ENTRY

Defendant Name QUINONES, VINCENT  
CASE # 05 TRC 05644 1-4  
CHG: DUI (REE)

FILED  
BEREA MUNICIPAL COURT  
MAY 24 2006  
RAYMOND J. WOHL  
CLERK OF COURT

Defendant is sentenced to pay Fines, Court Costs, Probation Costs, PSI Costs and The Cost of Programs and/or Treatment prescribed by Probation.

\$ 400 Fine

- Defendant is given \_\_\_\_\_ days to pay F/C
- Suspend Fine/Costs  \_\_\_\_\_ hrs. CSW in lieu of F/C

In compliance with O.R.C. 2929.22 (E), the Fine and Imprisonment are Imposed as:

- Specially adapted to deterrence of the offense or the correction of the offender.
- The offense has proximately resulted in the physical harm to the person or property of another.
- The offense was committed for hire or for purpose of gain.
- In compliance with O.R.C. 2929.22 (F), the court finds the total fines do not put an undue hardship on Defendant or his/ her dependents and does not affect his/ her ability to make restitution, and that Defendant is able to pay.

3 days jail; suspend all but \_\_\_\_\_ days jail

- 3.6 days EMHA per 1 day jail after \_\_\_\_\_ days served
- In no event to serve less than \_\_\_\_\_ days
- DDS  8 hour  7.2 hour *M.A.A.*
- Alcohol Treatment per O.R.C. 3793.02
- CSW alternative authorized at 10 hours per day of jail.
- Credit \_\_\_\_\_ days served at \_\_\_\_\_

Drivers License suspended for \_\_\_\_\_ / 1 yrs. / mon.

Start 4/17/05 End \_\_\_\_\_  
*Class*

After 15 days, Driving Privileges with Proof of Insurance.

- To, From & For Work  AA/ NA Meetings
- To/ From Probation  Medical Purposes
- School/ College  Other: Child care

Driving privileges effective only after all fines/ costs paid.

- Alcohol Ignition Interlock, to be reviewed after 6 mos. in use.
- Interlock Not Required On Employers Vehicle For Work
- Intensive  Basic  Monitored  Probation for 1 yrs

Conditions:  Restitution is ordered as determined by Probation  
 Victim/Defendant demand OH-set OH for \_\_\_\_\_

After OH, Mag./Judge/determines Restitution \$ \_\_\_\_\_

Restitution payment \_\_\_\_\_

Do not repeat the same or related offense Alcohol  
 AA per week for 16 weeks.

Reinstate O.L. within \_\_\_\_\_ days/months or  per Probation

Maintain Valid O.L.

Comply/complete all programs/treatment ordered by P.O.

Take and pass random drug tests ordered by P.O.

Other conditions \_\_\_\_\_

Defendant advised that failure to comply with all conditions of probation will result in the imposition of the maximum penalties allowed under the charge Defendant pled to.

Vehicle immobilized for \_\_\_\_\_ days. Effective \_\_\_\_\_

After hearing, upon Prosecutor request and after due notice to Defendant, vehicle forfeited to \_\_\_\_\_

M.O. Hearing Date \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

Dated 4/28/06 *[Signature]*  
Judge/Magistrate

Do Motion \_\_\_\_\_ ( / / )

4/28/06 STAY SENT pend appeal  
Appeal cert - DO  
5/30/06

05TRC05644-2-4 MH12493 MIDDLEBURG HTS

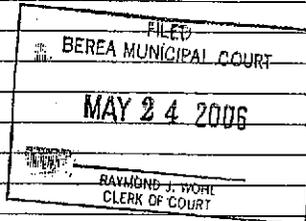
Viol. Date: 11/17/05

VINCENT S QUINONES  
8431 BERNICE DR  
STRONGSVILLE OH 44136  
DOB: 03/22/76

432.08A CONT. LANES/WEAIVING (M4)

Operator Lic. (LABEL AFFIXED HERE) State Enclosed  
RR215834 OH YES  
Plates Affiant  
DAA5150 PTL. RAYMOND BULKA  
Court Date 12/14/05 NON-WAIVERABLE

PI 1-26-06 9:00  
TR 3-2-06 2:30  
3/2/06 Case called Trial had PCL  
SENT 4-28-06 1:30



Att: PAT LENEHAN Phone: 651-4600  TICKET WAIVED

BOND: CASH SURETY 10% PERSONAL \$ \_\_\_\_\_ Bond No. \_\_\_\_\_

Bond Co. \_\_\_\_\_ Receipt No. \_\_\_\_\_

Condition Bond \_\_\_\_\_  Bond Con't \_\_\_\_\_ J/M  
Date \_\_\_\_\_

INSURANCE:  PROVEN  NOT PROVEN

ARRAIGNMENT: (\_\_\_/\_\_\_/\_\_\_)  CONTINUE SO DEFENDANT  
CAN OBTAIN COUNSEL,  
RESET TO: (\_\_\_/\_\_\_/\_\_\_)

PLEA:

GUILTY  NOT GUILTY  NO CONTEST  FOUND GUILTY

WSP  NO WSP  PT  TRIAL  PH  PSI J/M

WAVE PH BOGJ  SENTENCE NOW OVER  FINE ONLY, \$ \_\_\_\_\_

CHANGE PLEA:  GUILTY  NO CONTEST-Consent guilty, waive defects

FG (\_\_\_/\_\_\_/\_\_\_)  SENTENCE NOW OVER  PSI

DEFER SENTENCE TO \_\_\_\_\_

FINE ONLY \$ 25 + COSTS 4/28/06 Stay Pen'd

VEHICLE:  \_\_\_\_\_ DAY IMMOBILIZATION PERIOD.

AFTER HEARING,  RELEASE VEHICLE TO:  
\_\_\_\_\_ DEFENDANT \_\_\_\_\_ HOME \_\_\_\_\_ INNOCENT OWNER

CASE DISMISSED (\_\_\_/\_\_\_/\_\_\_)

COST PAID BY:  CITY/ STATE  DEFENDANT

AFTER HEARING,  APPEAL DENIED, OCCUPATION DRIVING GRANTED.  
 ALS TERMINATED  
 OTHER, \_\_\_\_\_ J/M

WARRANT:

CAPIAS (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M  COLLECT BOND (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M

N/A WARR (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M  NA/COMPACT (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M

MO WARR (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M  OTHER/ADD'L (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M

FORFEIT BOND (\_\_\_/\_\_\_/\_\_\_) \_\_\_\_\_ J/M

WAIVER OF ATTORNEY

I, the above named Defendant herein, having been fully advised of the right to obtain Counsel, and if indigent, to the right to have an attorney appointed, do hereby waive such right in Open Court, in accordance with Ohio Rules of Criminal Procedure (Rule 22 and Rule 44 B & C) and this waiver applies equally to all related cases.

Date \_\_\_\_\_

Defendant \_\_\_\_\_

WAIVER OF TIME

I, the above named Defendant herein, having been fully advised in open court of my right to trial upon the charge before this Court within \_\_\_\_\_ days after my arrest or the service of summons pursuant to the provisions of the Ohio Revised Code Sec. 2945.71, and with full knowledge of same, do hereby waive such right and consent to the Berea Municipal Court's setting this matter for trial at said court's convenience and this waiver applies equally to all related cases.

Date \_\_\_\_\_

Defendant \_\_\_\_\_

Witness to each signature above: \_\_\_\_\_

Date	Fine	Costs	Total
Date	Rec't. No.	Amt. Paid	Balance
			<u>See 1</u>

JOURNAL ENTRY

Defendant Name QUINONES, VINCENT

CASE # 05 TRC 05644 2-4

CHG: CONT. LANES

Defendant is sentenced to pay Fines, Court Costs, Probation Costs, PSI Costs and The Cost of Programs and/or Treatment prescribed by Probation.

\$ \_\_\_\_\_ Fine

Defendant is given \_\_\_\_\_ days to pay F/C

Suspend Fine/Costs  \_\_\_\_\_ hrs. CSW in lieu of F/C

In compliance with O.R.C. 2929.22 (E), the Fine and Imprisonment are imposed as:

Specially adapted to deterrence of the offense or the correction of the offender.

The offense has proximately resulted in the physical harm to the person or property of another.

The offense was committed for hire or for purpose of gain.

In compliance with O.R.C. 2929.22 (F), the court finds the total fines do not put an undue hardship on Defendant or his/ her dependents and does not affect his/ her ability to make restitution, and that Defendant is able to pay.

\_\_\_\_\_ days jail; suspend all but \_\_\_\_\_ days jail

3.6 days EMHA per 1 day jail after \_\_\_\_\_ days served

In no event to serve less than \_\_\_\_\_ days

DDS  8 hour  72 hour

Alcohol Treatment per O.R.C. 3793.02

CSW alternative authorized at 10 hours per day of jail.

Credit \_\_\_\_\_ days served at \_\_\_\_\_

Drivers License suspended for \_\_\_\_\_ yrs./ mon.

Start \_\_\_\_\_ End \_\_\_\_\_

After \_\_\_\_\_ days, Driving Privileges with Proof of Insurance.

To, From & For Work  AA/ NA Meetings

To/ From Probation  Medical Purposes

School/ College  Other: \_\_\_\_\_

Driving privileges effective only after all fines/ costs paid.

Alcohol Ignition Interlock, to be reviewed after 6 mos. in use.

Interlock Not Required On Employers Vehicle For Work

Intensive  Basic  Monitored  Probation for \_\_\_\_\_ yrs

Conditions:  Restitution is ordered as determined by Probation

Victim/Defendant demand OH-set OH for \_\_\_\_\_

After OH, Mag./Judge/determines Restitution \$ \_\_\_\_\_

Restitution payment \_\_\_\_\_

Do not repeat the same or related offense \_\_\_\_\_

\_\_\_\_\_ AA per week for \_\_\_\_\_ weeks.

Reinstate O.L. within \_\_\_\_\_ days/months or  per Probation

Maintain Valid O.L.

Comply/complete all programs/treatment ordered by P.O.

Take and pass random drug tests ordered by P.O.

Other conditions \_\_\_\_\_

Defendant advised that failure to comply with all conditions of probation will result in the imposition of the maximum penalties allowed under the charge Defendant pled to.

Vehicle immobilized for \_\_\_\_\_ days. Effective \_\_\_\_\_

After hearing, upon Prosecutor request and after due notice to Defendant, vehicle forfeited to \_\_\_\_\_

M.O. Hearing Date \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

Dated \_\_\_\_\_

Judge/Magistrate \_\_\_\_\_

Do Motion \_\_\_\_\_ (\_\_\_\_/\_\_\_\_/\_\_\_\_)

\_\_\_\_\_ (\_\_\_\_/\_\_\_\_/\_\_\_\_)

MIDDLEBURG HEIGHTS MAYOR'S COURT, CUYAHOGA COUNTY, OHIO

BEREA MUNICIPAL COURT  
 CUYAHOGA COUNTY JUVENILE COURT

TICKET NO. **MH124193**

STATE OF OHIO

CITY OF MIDDLEBURG HEIGHTS

CASE NO. \_\_\_\_\_

NAME VINCENT S QUINONES

STREET 9481 BERNICE DR

CITY, STATE MIDDLETOWN, OHIO ZIP 44149

LICENSE ISSUED MO. 5 YR. 05 EXPIRES BIRTHDATE 20 09 STATE OHIO

SSN 900-70-2725 D.O.B.: MO. 3 DAY 22 YR. 70

RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	FINANCIAL RESPONSIBILITY PROOF SHOWN
<u>M</u>	<u>M</u>	<u>5'7</u>	<u>170</u>	<u>BLK</u>	<u>BRN</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

LICENSE NO. RR 215834

Lic. Class D DOT # \_\_\_\_\_  Does Not Apply

TO DEFENDANT COMPLAINT

ON TUES 11-17-05 AT 0820 M. YOU OPERATED/PARKED/WALKED/A

Pass  Comm  Cycle  Over 26001  Bus  Mop. Mal.

VEHICLE: YR. 2005 MAKE CHRY BODY TYPE 300 4DR

COLOR Black LIC. DAO 5750 STATE OHIO

UPON A PUBLIC HIGHWAY, NAMELY STATE ROUTE 161 DIRECTION OF TRAVEL  E  W  S  N

IN CUYAHOGA COUNTY (No. 18) AND STATE OF OHIO, IN THE CITY OF MIDDLEBURG HEIGHTS / AND COMMITTED THE FOLLOWING OFFENSE:

<input checked="" type="checkbox"/> SPEED: <u>53</u> MPH in <u>25</u> MPH zone	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Over limits <input type="checkbox"/> Unreas cond. <input type="checkbox"/> ACDA	<u>434.2562</u>
<input type="checkbox"/> Radar <input type="checkbox"/> Air <input type="checkbox"/> VASCAR <input checked="" type="checkbox"/> Pace <input type="checkbox"/> Laser <input type="checkbox"/> Stationary <input type="checkbox"/> Moving	
<input checked="" type="checkbox"/> OMVI: <input checked="" type="checkbox"/> Under the influence of alcohol/drug of abuse	<input type="checkbox"/> ORC <input checked="" type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Prohibited blood alcohol concentration BAC	<u>0.101</u>
<input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Urine <input checked="" type="checkbox"/> Refused	
DRIVER LICENSE: <input type="checkbox"/> None <input type="checkbox"/> Revoked <input type="checkbox"/> Suspended	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Expired: <input type="checkbox"/> 6 mos. or less <input type="checkbox"/> Over 6 months	
Suspension Type _____	
<input checked="" type="checkbox"/> SAFETY BELT - Failure to wear	<input type="checkbox"/> ORC <input checked="" type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input checked="" type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Child Restraint	<u>428.2254</u>
OTHER OFFENSE _____	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<u>CONTINUOUS CONTACT</u>	<u>432.084</u>
OTHER OFFENSE _____	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> DRIVER LICENSE HELD <input type="checkbox"/> VEHICLE SEIZED STATISTICAL CODE _____	
PAVEMENT: <input type="checkbox"/> Dry <input type="checkbox"/> Wet <input checked="" type="checkbox"/> Snow <input type="checkbox"/> Icy	
VISIBILITY: <input checked="" type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Dusk <input checked="" type="checkbox"/> Night	
WEATHER: <input type="checkbox"/> Rain <input checked="" type="checkbox"/> Snow <input type="checkbox"/> Fog <input type="checkbox"/> No Adverse	
TRAFFIC: <input type="checkbox"/> Heavy <input type="checkbox"/> Moderate <input checked="" type="checkbox"/> Light <input type="checkbox"/> None	
AREA: <input type="checkbox"/> Business <input type="checkbox"/> Rural <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industry <input type="checkbox"/> School	
CRASH: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Almost Caused <input type="checkbox"/> Injury <input type="checkbox"/> Non-Injury <input type="checkbox"/> Fatal	
<input type="checkbox"/> Crash Report Number: _____	
REMARKS _____	
ACCOMPANYING CRIMINAL CHARGE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No TOTAL # OFFENSES <u>4</u>	

TO DEFENDANT: SUMMONS  PERSONAL APPEARANCE REQUIRED

You are summoned and ordered to appear at  
MIDDLEBURG HEIGHTS MAYOR'S COURT,  
MIDDLEBURG HEIGHTS CITY HALL (1870)  
15700 EAST BAGLEY ROAD MIDDLEBURG HEIGHTS, OHIO 44130  
 BEREA MUNICIPAL COURT, 11 BEREA COMMONS,  
BEREA, OHIO 44017  
 CUYAHOGA COUNTY JUVENILE COURT, 1910 CARNEGIE AVENUE,  
CLEVELAND, OHIO 44115  
This summons served personally on the defendant on \_\_\_\_\_  
This issuing-charging law enforcement officer states under the penalties of perjury and falsification  
that he has read the above complaint and that it is true.

COURT DATE	7 A.M.
11 23 05	
MONTH DAY YEAR	P.M.

IF YOU FAIL TO APPEAR AT THIS TIME AND PLACE YOU MAY BE ARRESTED.  
11-17-05

STP  
Issuing-Charging Law Enforcement Officer

70	93		
Badge No.	Unit	Zone	

FACE OF COURT RECORD

COURT RECORD

RESIDENT ADDRESS SIGNATURE CO. RES. PHONE MH 124193

05TRC05644-3-4 MH12493 MIDDLEBURG HTS

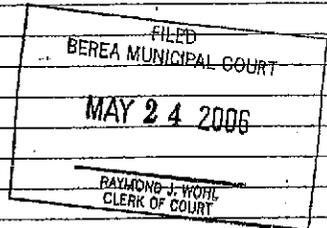
Viol. Date: 11/17/05

VINCENT S QUINONES  
8431 BERNICE DR  
STRONGSVILLE OH 44136  
DOB: 03/22/76

434.03 SPEED 53/25 (M4)

Operator Lic. (LABEL AFFIXED HERE) State Enclosed  
RR215834 OH YES  
Plates Affiant  
Court Date DAA5150 PTL. RAYMOND BULKA  
12/14/05 NON-WAIVERABLE

TR 3-2-06 2:30  
3/2/06 case called Trial had Fg PSE  
54-28-00 130



Atty: PAT LENEHAN Phone: 651-4600  TICKET WAIVED  
BOND: CASH SURETY 10% PERSONAL \$ \_\_\_\_\_ Bond No. \_\_\_\_\_  
Bond Co. \_\_\_\_\_ Receipt No. \_\_\_\_\_  
Condition Bond \_\_\_\_\_  Bond Con't \_\_\_\_\_ J/M  
Date \_\_\_\_\_

INSURANCE:  PROVEN  NOT PROVEN

ARRAIGNMENT: (\_\_\_/\_\_\_/\_\_\_)  CONTINUE SO DEFENDANT  
CAN OBTAIN COUNSEL,  
PLEA: RESET TO: (\_\_\_/\_\_\_/\_\_\_)

GUILTY  NOT GUILTY  NO CONTEST  FOUND GUILTY  
 WSP  NO WSP  PT  TRIAL  PH  PSI J/M  
 WAIVE PH BOGJ  SENTENCE NOW OVER  FINE ONLY, \$ \_\_\_\_\_

CHANGE PLEA:  GUILTY  NO CONTEST-Consent guilty, waive defects  
 FG (\_\_\_/\_\_\_/\_\_\_)  SENTENCE NOW OVER  PSI  
 DEFER SENTENCE TO \_\_\_\_\_  
FINE ONLY \$ 60 + COSTS. 5M Pending J/M  
4/28/06

VEHICLE:  \_\_\_ DAY IMMOBILIZATION PERIOD.  
AFTER HEARING,  RELEASE VEHICLE TO:  
\_\_\_ DEFENDANT \_\_\_ HOME \_\_\_ INNOCENT OWNER  
 CASE DISMISSED (\_\_\_/\_\_\_/\_\_\_)  
COST PAID BY:  CITY/ STATE  DEFENDANT  
AFTER HEARING,  APPEAL DENIED, OCCUPATION DRIVING GRANTED.  
 ALS TERMINATED  
 OTHER, \_\_\_\_\_ J/M

WARRANT:  
 CAPIAS (\_\_\_/\_\_\_/\_\_\_) \_\_\_ J/M  COLLECT BOND (\_\_\_/\_\_\_/\_\_\_) \_\_\_ J/M  
 N/A WARR (\_\_\_/\_\_\_/\_\_\_) \_\_\_ J/M  NA/COMPACT (\_\_\_/\_\_\_/\_\_\_) \_\_\_ J/M  
 MO WARR (\_\_\_/\_\_\_/\_\_\_) \_\_\_ J/M  OTHER/ADD'L (\_\_\_/\_\_\_/\_\_\_) \_\_\_ J/M  
 FORFEIT BOND (\_\_\_/\_\_\_/\_\_\_) \_\_\_ J/M

WAIVER OF ATTORNEY  
I, the above named Defendant herein, having been fully advised of the right to obtain Counsel, and if indigent, to the right to have an attorney appointed, do hereby waive such right in Open Court, in accordance with Ohio Rules of Criminal Procedure (Rule 22 and Rule 44 B & C) and this waiver applies equally to all related cases.

\_\_\_\_\_ Date \_\_\_\_\_ Defendant \_\_\_\_\_

WAIVER OF TIME  
I, the above named Defendant herein, having been fully advised in open court of my right to trial upon the charge before this Court within \_\_\_\_\_ days after my arrest or the service of summons pursuant to the provisions of the Ohio Revised Code Sec. 2945.71, and with full knowledge of same, do hereby waive such right and consent to the Berea Municipal Court's setting this matter for trial at said court's convenience and this waiver applies equally to all related cases.

\_\_\_\_\_ Date \_\_\_\_\_ Defendant \_\_\_\_\_

Witness to each signature above:

Date	Fine	Costs	Total
Date	Rec't. No.	Amt. Paid	Balance
			<u>See 01</u>

JOURNAL ENTRY

Defendant Name QUINONES, VINCENT  
CASE # OSTRC 05644 3-4  
CHG: SPEED 53/25

Defendant is sentenced to pay Fines, Court Costs, Probation Costs, PSI Costs and The Cost of Programs and/or Treatment prescribed by Probation.

- \$ \_\_\_\_\_ Fine
  - Defendant is given \_\_\_\_\_ days to pay F/C
  - Suspend Fine/Costs     \_\_\_\_\_ hrs. CSW In lieu of F/C

In compliance with O.R.C. 2929.22 (E), the Fine and Imprisonment are imposed as:

- Specially adapted to deterrence of the offense or the correction of the offender.
- The offense has proximately resulted in the physical harm to the person or property of another.
- The offense was committed for hire or for purpose of gain.
- In compliance with O.R.C. 2929.22 (F), the court finds the total fines do not put an undue hardship on Defendant or his/ her dependents and does not affect his/ her ability to make restitution, and that Defendant is able to pay.
- \_\_\_\_\_ days jail; suspend all but \_\_\_\_\_ days jail
  - 3.6 days EMHA per 1 day jail after \_\_\_\_\_ days served
  - In no event to serve less than \_\_\_\_\_ days
  - DDS             8 hour             72 hour
  - Alcohol Treatment per O.R.C. 3793.02
  - CSW alternative authorized at 10 hours per day of jail.
  - Credit \_\_\_\_\_ days served at \_\_\_\_\_
- Drivers License suspended for \_\_\_\_\_ yrs./ mon.

Start \_\_\_\_\_ End \_\_\_\_\_

- After \_\_\_\_\_ days, Driving Privileges with Proof of Insurance.
  - To, From & For Work     AA/ NA Meetings
  - To/ From Probation       Medical Purposes
  - School/ College         Other: \_\_\_\_\_

Driving privileges effective only after all fines/ costs paid.

- Alcohol Ignition Interlock, to be reviewed after 6 mos. In use.
- Interlock Not Required On Employers Vehicle For Work
- Intensive Conditions:     Basic     Monitored     Probation for \_\_\_\_\_ yrs
  - Restitution is ordered as determined by Probation
  - Victim/Defendant demand OH-set OH for \_\_\_\_\_

- After OH, Mag./Judge/determines Restitution \$ \_\_\_\_\_
- Restitution payment \_\_\_\_\_
- Do not repeat the same or related offense \_\_\_\_\_
- \_\_\_\_\_ AA per week for \_\_\_\_\_ weeks.

- Reinstate O.L. within \_\_\_\_\_ days/months or  per Probation
- Maintain Valid O.L.
- Comply/completes all programs/treatment ordered by P.O.
- Take and pass random drug tests ordered by P.O.

Other conditions \_\_\_\_\_

Defendant advised that failure to comply with all conditions of probation will result in the imposition of the maximum penalties allowed under the charge Defendant pled to.

- Vehicle immobilized for \_\_\_\_\_ days. Effective \_\_\_\_\_
- After hearing, upon Prosecutor request and after due notice to Defendant, vehicle forfeited to \_\_\_\_\_
- M.O. Hearing Date \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

Dated \_\_\_\_\_ Judge/Magistrate \_\_\_\_\_

Do Motion \_\_\_\_\_ (\_\_\_\_/\_\_\_\_/\_\_\_\_)  
\_\_\_\_\_ (\_\_\_\_/\_\_\_\_/\_\_\_\_)

MIDDLEBURG HEIGHTS MAYOR'S COURT, CUYAHOGA COUNTY, OHIO

BEREA MUNICIPAL COURT  
 CUYAHOGA COUNTY JUVENILE COURT

TICKET NO. **MH 124193**

STATE OF OHIO  
 CITY OF MIDDLEBURG HEIGHTS

CASE NO. \_\_\_\_\_

NAME VINCENT S QUINONES  
 STREET 8481 BELMONT DR  
 CITY, STATE STRONGSVILLE, OHIO ZIP 44149  
 LICENSE ISSUED MO. 5 YR. 05 EXPIRES BIRTHDATE 20 08 STATE OHIO  
 SSN 800-70-2725 D.O.B.: MO. 3 DAY 22 YR. 70

RACE	SEX	HEIGHT	WEIGHT	HAIR	EYES	FINANCIAL RESPONSIBILITY PROOF SHOWN
<u>W</u>	<u>M</u>	<u>5'7</u>	<u>170</u>	<u>BLK</u>	<u>BRN</u>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

LICENSE NO. CR 215834  
 Lic. Class A DOT # \_\_\_\_\_  Does Not Apply

TO DEFENDANT: COMPLAINT  
 ON THURS 11-7-05 AT 0120 M. YOU OPERATED/PARKED/WALKED/A  
 Pass  Comm  Cycle  Over 26001  Bus  Trk. Mal.  
 VEHICLE: YR. 2005 MAKE CADILLAC BODY TYPE SEDAN  
 COLOR BLACK LIC. OHIO 5758 STATE OHIO  
 UPON A PUBLIC HIGHWAY, NAMELY STATE ROUTE 100  
 AT 6557000 DIRECTION OF TRAVEL  E  N  S  W  W  
 IN CUYAHOGA COUNTY (No. 18) AND STATE OF OHIO, IN THE CITY OF MIDDLEBURG HEIGHTS,  
 AND COMMITTED THE FOLLOWING OFFENSE:

<input checked="" type="checkbox"/> SPEED: <u>53</u> MPH in <u>25</u> MPH zone <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P. <u>434.0562</u>
<input type="checkbox"/> Radar <input type="checkbox"/> Air <input type="checkbox"/> VASCAR <input type="checkbox"/> Laser <input type="checkbox"/> Stationary <input type="checkbox"/> Moving
<input checked="" type="checkbox"/> OMVI: <input checked="" type="checkbox"/> Under the influence of alcohol/drug of abuse <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P. <u>434.01A1</u>
<input type="checkbox"/> Prohibited blood alcohol concentration _____ BAC <input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Urine <input checked="" type="checkbox"/> Refused
DRIVER LICENSE: <input type="checkbox"/> None <input type="checkbox"/> Revoked <input type="checkbox"/> Suspended <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Expired: <input type="checkbox"/> 6 mos. or less <input type="checkbox"/> Over 6 months Suspension Type _____
<input checked="" type="checkbox"/> SAFETY BELT - Failure to wear <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P. <u>438.2954</u>
<input type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Child Restraint
OTHER OFFENSE _____ <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P. <u>432.08A</u>
<u>CONTINUOUS LINES</u>
OTHER OFFENSE _____ <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> DRIVER LICENSE HELD <input type="checkbox"/> VEHICLE SEIZED STATISTICAL CODE _____
PAVEMENT: <input type="checkbox"/> Dry <input type="checkbox"/> Wet <input type="checkbox"/> Snow <input type="checkbox"/> Icy
VISIBILITY: <input checked="" type="checkbox"/> Clear <input type="checkbox"/> Cloudy <input type="checkbox"/> Dusk <input type="checkbox"/> Night
WEATHER: <input type="checkbox"/> Rain <input checked="" type="checkbox"/> Snow <input type="checkbox"/> Fog <input type="checkbox"/> No Adverse
TRAFFIC: <input type="checkbox"/> Heavy <input type="checkbox"/> Moderate <input checked="" type="checkbox"/> Light <input type="checkbox"/> None
AREA: <input type="checkbox"/> Business <input type="checkbox"/> Rural <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industry <input type="checkbox"/> School
CRASH: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Almost Caused <input type="checkbox"/> Injury <input type="checkbox"/> Non-Injury <input type="checkbox"/> Fatal <input type="checkbox"/> Crash Report Number: _____
REMARKS _____
ACCOMPANYING CRIMINAL CHARGE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No TOTAL # OFFENSES <u>4</u>

TO DEFENDANT: SUMMONS  PERSONAL APPEARANCE REQUIRED  
 You are summoned and ordered to appear at:  
 MIDDLEBURG HEIGHTS MAYOR'S COURT, MIDDLEBURG HEIGHTS CITY HALL (1870)  
 15700 EAST BAGLEY ROAD MIDDLEBURG HEIGHTS, OHIO 44130  
 BEREA MUNICIPAL COURT, 11 BEREA COMMONS, BEREA, OHIO 44017  
 CUYAHOGA COUNTY JUVENILE COURT, 1910 CARNEGIE AVENUE, CLEVELAND, OHIO 44115  
 COURT DATE 11-17-05 YEAR 05 MONTH 11 DAY 17 P.M. 7 A.M.  
 IF YOU FAIL TO APPEAR AT THIS TIME AND PLACE YOU MAY BE ARRESTED.  
 This summons served personally on the defendant on 11-17-05 20  
 This issuing-charging law enforcement officer states under the penalties of perjury and falsification that he has read the above complaint and that it is true.  
 Issuing-Charging Law Enforcement Officer [Signature] Badge No. 710 Unit 93 Zone \_\_\_\_\_  
 FACE OF COURT RECORD COURT RECORD

ESSENTIAL ADDRESS SIGNATURE CO. RES. PHONE ( ) MH 124193

BEREA MUNICIPAL COURT—CRIMINAL AND TRAFFIC DIVISION

05TRC05644-4-4 MH12493 MIDDLEBURG HTS

Viol. Date: 11/17/05

VINCENT S QUINONES  
8431 BERNICE DR  
STRONGSVILLE OH 44136

DOB: 03/22/76

438.275 SEAT BELT-FAILURE TO WEAR (MM)

Operator Lic. (LABEL AFFIXED HERE) State Enclosed  
RR215834 OH YES  
Plates Affiant  
Court Date DAA5150 PTL. RAYMOND BULKA  
12/14/05 NON-WAIVERABLE

TICKET  
WAIVED

Atty: PAT LENEHAN Phone: 651-4600

BOND: CASH SURETY 10% PERSONAL \$ \_\_\_\_\_ Bond No. \_\_\_\_\_

Bond Co. \_\_\_\_\_ Receipt No. \_\_\_\_\_

Condition Bond \_\_\_\_\_  Bond Con't \_\_\_\_\_ J/M  
Date \_\_\_\_\_

INSURANCE:  PROVEN  NOT PROVEN

ARRAIGNMENT: ( \_\_\_/\_\_\_/\_\_\_ )  CONTINUE SO DEFENDANT  
CAN OBTAIN COUNSEL,

PLEA: RESET TO: ( \_\_\_/\_\_\_/\_\_\_ )

GUILTY  NOT GUILTY  NO CONTEST  FOUND GUILTY

WSP  NO WSP  PT  TRIAL  PH  PSI J/M

WAVE PH BOGJ  SENTENCE NOW OVER  FINE ONLY, \$ \_\_\_\_\_

CHANGE PLEA:  GUILTY  NO CONTEST-Consent guilty, waive defects

FG ( \_\_\_/\_\_\_/\_\_\_ )  SENTENCE NOW OVER  PSI

DEFER SENTENCE TO \_\_\_\_\_

FINE ONLY \$ 30 + COSTS 4/28/06 STAY Pled approved J/M

VEHICLE:  \_\_\_ DAY IMMOBILIZATION PERIOD.

AFTER HEARING,  RELEASE VEHICLE TO:  
\_\_\_\_\_ DEFENDANT \_\_\_\_\_ HOME \_\_\_\_\_ INNOCENT OWNER

CASE DISMISSED ( \_\_\_/\_\_\_/\_\_\_ )

COST PAID BY:  CITY/ STATE  DEFENDANT

AFTER HEARING,  APPEAL DENIED, OCCUPATION DRIVING GRANTED.  
 ALS TERMINATED  
 OTHER, \_\_\_\_\_ J/M

WARRANT:

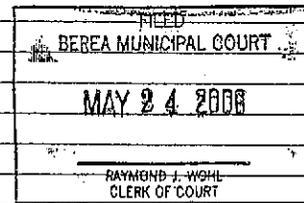
CAPIAS ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ J/M  COLLECT BOND ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ J/M

N/A WARR ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ J/M  NA/COMPACT ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ J/M

MO WARR ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ J/M  OTHER/ADD'L ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ J/M

FORFEIT BOND ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ J/M

PT 1-26-06 9:00  
TR 3-2-06 2:30  
3/2/06 case called, trial had F6 P5  
54-28-06 1:30



WAIVER OF ATTORNEY

I, the above named Defendant herein, having been fully advised of the right to obtain Counsel, and if indigent, to the right to have an attorney appointed, do hereby waive such right in Open Court, in accordance with Ohio Rules of Criminal Procedure (Rule 22 and Rule 44 B & C) and this waiver applies equally to all related cases.

Date \_\_\_\_\_ Defendant \_\_\_\_\_

WAIVER OF TIME

I, the above named Defendant herein, having been fully advised in open court of my right to trial upon the charge before this Court within \_\_\_\_\_ days after my arrest or the service of summons pursuant to the provisions of the Ohio Revised Code Sec. 2945.71, and with full knowledge of same, do hereby waive such right and consent to the Berea Municipal Court's setting this matter for trial at said court's convenience and this waiver applies equally to all related cases.

Date \_\_\_\_\_ Defendant \_\_\_\_\_

Witness to each signature above:

Date	Fine	Costs	Total
Date	Rec't. No.	Amt. Paid	Balance

JOURNAL ENTRY

Defendant Name QUINONES, VINCENT  
CASE # OSTRC051644 4-4  
CHG: SEAT BELT

PRESENT

After \_\_\_ days, Driving Privileges with Proof of Insurance.

To, From & For Work  AA/ NA Meetings

To/ From Probation  Medical Purposes

School/ College  Other: \_\_\_\_\_

Driving privileges effective only after all fines/ costs paid.

Alcohol Ignition Interlock, to be reviewed after 6 mos. in use.

Interlock Not Required On Employers Vehicle For Work

Intensive  Basic  Monitored  Probation for \_\_\_ yrs

Conditions:  Restitution is ordered as determined by Probation

Victim/Defendant demand OH-set OH for \_\_\_\_\_

After OH, Mag./Judge/determines Restitution \$ \_\_\_\_\_

Restitution payment \_\_\_\_\_

Do not repeat the same or related offense \_\_\_\_\_

\_\_\_ AA per week for \_\_\_ weeks.

Reinstate O.L. within \_\_\_ days/months or  per Probation

Maintain Valid O.L.

Comply/complete all programs/treatment ordered by P.O.

Take and pass random drug tests ordered by P.O.

Other conditions \_\_\_\_\_

Defendant advised that failure to comply with all conditions of probation will result in the imposition of the maximum penalties allowed under the charge Defendant pled to.

Defendant is sentenced to pay Fines, Court Costs, Probation Costs, PSI Costs and The Cost of Programs and/or Treatment prescribed by Probation.

\$ \_\_\_\_\_ Fine

Defendant is given \_\_\_ days to pay F/C

Suspend Fine/Costs  \_\_\_ hrs. CSW in lieu of F/C

In compliance with O.R.C. 2929.22 (E), the Fine and Imprisonment are imposed as:

Specially adapted to deterrence of the offense or the correction of the offender.

The offense has proximately resulted in the physical harm to the person or property of another.

The offense was committed for hire or for purpose of gain.

In compliance with O.R.C. 2929.22 (F), the court finds the total fines do not put an undue hardship on Defendant or his/ her dependents and does not affect his/ her ability to make restitution, and that Defendant is able to pay.

\_\_\_ days jail; suspend all but \_\_\_ days jail

3.6 days EMHA per 1 day jail after \_\_\_ days served

In no event to serve less than \_\_\_ days

DDS  8 hour  72 hour

Alcohol Treatment per O.R.C. 3793.02

CSW alternative authorized at 10 hours per day of jail.

Credit \_\_\_ days served at \_\_\_\_\_

Drivers License suspended for \_\_\_ yrs./ mon.

Start \_\_\_\_\_ End \_\_\_\_\_

Vehicle immobilized for \_\_\_ days. Effective \_\_\_\_\_

After hearing, upon Prosecutor request and after due notice to Defendant, vehicle forfeited to \_\_\_\_\_

M.O. Hearing Date \_\_\_\_\_ at \_\_\_\_\_ a.m./p.m.

Dated \_\_\_\_\_

Judge/Magistrate \_\_\_\_\_

Do Motion \_\_\_\_\_ (\_\_\_\_/\_\_\_\_/\_\_\_\_)

\_\_\_\_\_ (\_\_\_\_/\_\_\_\_/\_\_\_\_)

BEREA MUNICIPAL COURT  
 CUYAHOGA COUNTY JUVENILE COURT

TICKET NO. **MH 124193**

STATE OF OHIO  
 CITY OF MIDDLEBURG HEIGHTS

CASE NO. \_\_\_\_\_

NAME VINCENT S QUINONES

STREET 8431 BERNICE DR

CITY, STATE STAMPSVILLE, OHIO ZIP 44149

LICENSE ISSUED MO. 5 YR. 05 EXPIRES BIRTHDATE 20 09 STATE OHIO

SSN 800-70-2725 D.O.B.: MO 3 DAY 22 YR. 70

RACE W SEX M HEIGHT 5'7 WEIGHT 170 HAIR BRN EYES BRN FINANCIAL RESPONSIBILITY PROOF SHOWN  Yes  No

LICENSE NO. RR 215834

Lic. Class D DOT # \_\_\_\_\_  Does Not Apply

TO DEFENDANT: COMPLAINT

ON JAN 11 11:17 2005 AT 0220 M. YOU OPERATED/PARKED/WALKED/A

Pass  Comm  Cycle  Over 25001  Bus  Hvy. Mat.

VEHICLE: YR. 2005 MAKE CHEV BODY TYPE 300 W/4

COLOR BLK LIC. RR 215834 STATE OHIO

UPON A PUBLIC HIGHWAY, NAMED STATE ROUTE 163

AT STATE ROUTE 163 DIRECTION OF TRAVEL  E  N  S  W

IN CUYAHOGA COUNTY (No. 18) AND STATE OF OHIO, IN THE CITY OF MIDDLEBURG HEIGHTS /

AND COMMITTED THE FOLLOWING OFFENSE:

SPEED: 53 MPH in 25 MPH zone  ORC  ORD  T.P. 434.0502

OMVI:  Under the influence of alcohol/drug of abuse  ORC  ORD  T.P. 131.01A1

DRIVER LICENSE:  None  Revoked  Suspended  ORC  ORD  T.P.

SAFETY BELT - Failure to wear  ORC  ORD  T.P. 428.2754

OTHER OFFENSE CONTINUOUS CARNES  ORC  ORD  T.P. 432.08A

DRIVER LICENSE HELD  VEHICLE SEIZED STATISTICAL CODE \_\_\_\_\_

PAVEMENT:  Dry  Wet  Snow  Icy

VISIBILITY:  Clear  Cloudy  Dusk  Night

WEATHER:  Rain  Snow  Fog  No Adverse

TRAFFIC:  Heavy  Moderate  None

AREA:  Business  Rural  Residential  Industry  School

CRASH:  Yes  No  Almost Caused  Injury  Non-Injury  Fatal

REMARKS \_\_\_\_\_

ACCOMPANYING CRIMINAL CHARGE  Yes  No TOTAL # OFFENSES 4

TO DEFENDANT: SUMMONS  PERSONAL APPEARANCE REQUIRED

You are summoned and ordered to appear at:  
MIDDLEBURG HEIGHTS MAYOR'S COURT  
MIDDLEBURG HEIGHTS CITY HALL (187D)  
15700 EAST BAGLEY ROAD MIDDLEBURG HEIGHTS, OHIO 44130  
 BEREA MUNICIPAL COURT, 11 BEREA COMMONS, BEREA, OHIO 44017  
 CUYAHOGA COUNTY JUVENILE COURT, 1510 CARNegie AVENUE, CLEVELAND, OHIO 44115  
This summons served personally on the defendant on \_\_\_\_\_ 20\_\_\_\_  
The issuing-charging law enforcement officer states under the penalties of perjury and falsification that he has read the above complaint and that it is true.

COURT DATE 11 23 2005 7 A.M.  
MONTH DAY YEAR P.M.

IF YOU FAIL TO APPEAR AT THIS TIME AND PLACE YOU MAY BE ARRESTED.

[Signature]  
Issuing-Charging Law Enforcement Officer

710 93  
Badge No. Unit Zone

FACE OF COURT RECORD

COURT RECORD

SIGNATURE \_\_\_\_\_ CO. RES \_\_\_\_\_ PHONE \_\_\_\_\_ MH 124193

## 1901.26 Costs.

(A) Subject to division (E) of this section, costs in a municipal court shall be fixed and taxed as follows:

(1)(a) The municipal court shall require an advance deposit for the filing of any new civil action or proceeding when required by division (C) of this section, and in all other cases, by rule, shall establish a schedule of fees and costs to be taxed in any civil or criminal action or proceeding.

(b)(i) The legislative authority of a municipal corporation may by ordinance establish a schedule of fees to be taxed as costs in any civil, criminal, or traffic action or proceeding in a municipal court for the performance by officers or other employees of the municipal corporation's police department or marshal's office of any of the services specified in sections 311.17 and 509.15 of the Revised Code. No fee in the schedule shall be higher than the fee specified in section 311.17 of the Revised Code for the performance of the same service by the sheriff. If a fee established in the schedule conflicts with a fee for the same service established in another section of the Revised Code or a rule of court, the fee established in the other section of the Revised Code or the rule of court shall apply.

(ii) When an officer or employee of a municipal police department or marshal's office performs in a civil, criminal, or traffic action or proceeding in a municipal court a service specified in section 311.17 or 509.15 of the Revised Code for which a taxable fee has been established under this or any other section of the Revised Code, the applicable legal fees and any other extraordinary expenses, including overtime, provided for the service shall be taxed as costs in the case. The clerk of the court shall pay those legal fees and other expenses, when collected, into the general fund of the municipal corporation that employs the officer or employee.

(iii) If a bailiff of a municipal court performs in a civil, criminal, or traffic action or proceeding in that court a service specified in section 311.17 or 509.15 of the Revised Code for which a taxable fee has been established under this section or any other section of the Revised Code, the fee for the service is the same and is taxable to the same extent as if the service had been performed by an officer or employee of the police department or marshal's office of the municipal corporation in which the court is located. The clerk of that court shall pay the fee, when collected, into the general fund of the entity or entities that fund the bailiff's salary, in the same prorated amount as the salary is funded.

(iv) Division (A)(1)(b) of this section does not authorize or require any officer or employee of a police department or marshal's office of a municipal corporation or any bailiff of a municipal court to perform any service not otherwise authorized by law.

(2) The municipal court, by rule, may require an advance deposit for the filing of any civil action or proceeding and publication fees as provided in section 2701.09 of the Revised Code. The court may waive the requirement for advance deposit upon affidavit or other evidence that a party is unable to make the required deposit.

(3) When a jury trial is demanded in any civil action or proceeding, the party making the demand may be required to make an advance deposit as fixed by rule of court, unless, upon affidavit or other evidence, the court concludes that the party is unable to make the required deposit. If a jury is called, the fees of a jury shall be taxed as costs.

(4) In any civil or criminal action or proceeding, witnesses' fees shall be fixed in accordance with sections 2335.06 and 2335.08 of the Revised Code.

(5) A reasonable charge for driving, towing, carting, storing, keeping, and preserving motor vehicles and other personal property recovered or seized in any proceeding may be taxed as part of the costs in a trial of the cause, in an amount that shall be fixed by rule of court.

(6) Chattel property seized under any writ or process issued by the court shall be preserved pending final disposition for the benefit of all persons interested and may be placed in storage when necessary or proper for that preservation. The custodian of any chattel property so stored shall not be required to part with the possession of the property until a reasonable charge, to be fixed by the court, is paid.

(7) The municipal court, as it determines, may refund all deposits and advance payments of fees and costs, including those for jurors and summoning jurors, when they have been paid by the losing party.

(8) Charges for the publication of legal notices required by statute or order of court may be taxed as part of the costs, as provided by section 7.13 of the Revised Code.

(B)(1) The municipal court may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession.

If the municipal court offers a special program or service in cases of a specific type, the municipal court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service. The municipal court shall adjust the special assessment periodically, but not retroactively, so that the amount assessed in those cases does not exceed the actual cost of providing the service or program.

All moneys collected under division (B) of this section shall be paid to the county treasurer if the court is a county-operated municipal court or to the city treasurer if the court is not a county-operated municipal court for deposit into either a general special projects fund or a fund established for a specific special project. Moneys from a fund of that nature shall be disbursed upon an order of the court in an amount no greater than the actual cost to the court of a project. If a specific fund is terminated because of the discontinuance of a program or service established under division (B) of this section, the municipal court may order that moneys remaining in the fund be transferred to an account established under this division for a similar purpose.

(2) As used in division (B) of this section:

(a) "Criminal cause" means a charge alleging the violation of a statute or ordinance, or subsection of a statute or ordinance, that requires a separate finding of fact or a separate plea before disposition and of which the defendant may be found guilty, whether filed as part of a multiple charge on a single summons, citation, or complaint or as a separate charge on a single summons, citation, or complaint. "Criminal cause" does not include separate violations of the same statute or ordinance, or subsection of the same statute or ordinance, unless each charge is filed on a separate summons, citation, or complaint.

(b) "Civil action or proceeding" means any civil litigation that must be determined by judgment entry.

(C) The municipal court shall collect in all its divisions except the small claims division the sum of fifteen dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state. The municipal court shall collect in its small claims division the sum of seven dollars as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state. This division does not apply to any execution on a judgment, proceeding in aid of execution, or other post-judgment proceeding arising out of a civil action. The filing fees required to be collected under this division shall be in addition to any other court costs imposed in the action or proceeding and shall be collected at the time of the filing of the action or proceeding. The court shall not waive the payment of the additional filing fees in a new civil action or proceeding unless the court waives the advanced payment of all filing fees in the action or proceeding. All such moneys shall be transmitted on the first business day of each month by the clerk of the court to the treasurer of state. The moneys then shall be deposited by the treasurer of state to the credit of the legal aid fund established under section 120.52 of the Revised Code.

The court may retain up to one per cent of the moneys it collects under this division to cover administrative costs, including the hiring of any additional personnel necessary to implement this division.

(D) In the Cleveland municipal court, reasonable charges for investigating titles of real estate to be sold or disposed of under any writ or process of the court may be taxed as part of the costs.

(E) Under the circumstances described in sections 2969.21 to 2969.27 of the Revised Code, the clerk of the municipal court shall charge the fees and perform the other duties specified in those sections.

Effective Date: 09-05-2001; 10-01-05; 02-27-2006

## **2743.70 Additional court costs and bail for reparations fund.**

(A)(1) The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender:

- (a) Thirty dollars, if the offense is a felony;
- (b) Nine dollars, if the offense is a misdemeanor.

The court shall not waive the payment of the thirty or nine dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender. All such moneys shall be transmitted on the first business day of each month by the clerk of the court to the treasurer of state and deposited by the treasurer in the reparations fund.

(2) The juvenile court in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, shall impose the following sum as costs in the case in addition to any other court costs that the court is required or permitted by law to impose upon the delinquent child or juvenile traffic offender:

- (a) Thirty dollars, if the act, if committed by an adult, would be a felony;
- (b) Nine dollars, if the act, if committed by an adult, would be a misdemeanor.

The thirty or nine dollars court costs shall be collected in all cases unless the court determines the juvenile is indigent and waives the payment of all court costs, or enters an order on its journal stating that it has determined that the juvenile is indigent, that no other court costs are to be taxed in the case, and that the payment of the thirty or nine dollars court costs is waived. All such moneys collected during a month shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state and deposited by the treasurer in the reparations fund.

(B) Whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail pursuant to sections 2937.22 to 2937.46 of the Revised Code, Criminal Rule 46, or Traffic Rule 4, the court shall add to the amount of the bail the thirty or nine dollars required to be paid by division (A)(1) of this section. The thirty or nine dollars shall be retained by the clerk of the court until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the thirty or nine dollars to the treasurer of state, who shall deposit it in the reparations fund. If the person is found not guilty or the charges are dismissed, the clerk shall return the thirty or nine dollars to the person.

(C) No person shall be placed or held in jail for failing to pay the additional thirty or nine dollars court costs or bail that are required to be paid by this section.

(D) As used in this section:

(1) "Moving violation" means any violation of any statute or ordinance, other than section 4513.263 of the Revised Code or an ordinance that is substantially equivalent to that section, that regulates the operation of

vehicles, streetcars, or trackless trolleys on highways or streets or that regulates size or load limitations, or fitness requirements of vehicles. "Moving violation" does not include the violation of any statute or ordinance that regulates pedestrians or the parking of vehicles.

(2) "Bail" means cash, a check, a money order, a credit card, or any other form of money that is posted by or for an offender pursuant to sections 2937.22 to 2937.46 of the Revised Code, Criminal Rule 46, or Traffic Rule 4 to prevent the offender from being placed or held in a detention facility, as defined in section 2921.01 of the Revised Code.

Effective Date: 07-22-1998

## **2947.23 Costs and jury fees - community service to pay judgment.**

(A)(1) In all criminal cases, including violations of ordinances, the judge or magistrate shall include in the sentence the costs of prosecution and render a judgment against the defendant for such costs. At the time the judge or magistrate imposes sentence, the judge or magistrate shall notify the defendant of both of the following:

(a) If the defendant fails to pay that judgment or fails to timely make payments towards that judgment under a payment schedule approved by the court, the court may order the defendant to perform community service in an amount of not more than forty hours per month until the judgment is paid or until the court is satisfied that the defendant is in compliance with the approved payment schedule.

(b) If the court orders the defendant to perform the community service, the defendant will receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed will reduce the judgment by that amount.

(2) The following shall apply in all criminal cases:

(a) If a jury has been sworn at the trial of a case, the fees of the jurors shall be included in the costs, which shall be paid to the public treasury from which the jurors were paid.

(b) If a jury has not been sworn at the trial of a case because of a defendant's failure to appear without good cause, the costs incurred in summoning jurors for that particular trial may be included in the costs of prosecution. If the costs incurred in summoning jurors are assessed against the defendant, those costs shall be paid to the public treasury from which the jurors were paid.

(B) If a judge or magistrate has reason to believe that a defendant has failed to pay the judgment described in division (A) of this section or has failed to timely make payments towards that judgment under a payment schedule approved by the judge or magistrate, the judge or magistrate shall hold a hearing to determine whether to order the offender to perform community service for that failure. The judge or magistrate shall notify both the defendant and the prosecuting attorney of the place, time, and date of the hearing and shall give each an opportunity to present evidence. If, after the hearing, the judge or magistrate determines that the defendant has failed to pay the judgment or to timely make payments under the payment schedule and that imposition of community service for the failure is appropriate, the judge or magistrate may order the offender to perform community service in an amount of not more than forty hours per month until the judgment is paid or until the judge or magistrate is satisfied that the offender is in compliance with the approved payment schedule. If the judge or magistrate orders the defendant to perform community service under this division, the defendant shall receive credit upon the judgment at the specified hourly credit rate per hour of community service performed, and each hour of community service performed shall reduce the judgment by that amount. Except for the credit and reduction provided in this division, ordering an offender to perform community service under this division does not lessen the amount of the judgment and does not preclude the state from taking any other action to execute the judgment.

(C) As used in this section, "specified hourly credit rate" means the wage rate that is specified in 26 U.S.C.A. 206 (a)(1) under the federal Fair Labor Standards Act of 1938, that then is in effect, and that an employer subject to

that provision must pay per hour to each of the employer's employees who is subject to that provision.

Effective Date: 03-24-2003; 05-18-2005

## **2949.091 Additional court costs - additional bail.**

(A)(1) The court, in which any person is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, shall impose the sum of fifteen dollars as costs in the case in addition to any other court costs that the court is required by law to impose upon the offender. All such moneys collected during a month shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state and deposited by the treasurer of state into the general revenue fund. The court shall not waive the payment of the additional fifteen dollars court costs, unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

(2) The juvenile court, in which a child is found to be a delinquent child or a juvenile traffic offender for an act which, if committed by an adult, would be an offense other than a traffic offense that is not a moving violation, shall impose the sum of fifteen dollars as costs in the case in addition to any other court costs that the court is required or permitted by law to impose upon the delinquent child or juvenile traffic offender. All such moneys collected during a month shall be transmitted on or before the twentieth day of the following month by the clerk of the court to the treasurer of state and deposited by the treasurer of state into the general revenue fund. The fifteen dollars court costs shall be collected in all cases unless the court determines the juvenile is indigent and waives the payment of all court costs, or enters an order on its journal stating that it has determined that the juvenile is indigent, that no other court costs are to be taxed in the case, and that the payment of the fifteen dollars court costs is waived.

(B) Whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail, the court shall add to the amount of the bail the fifteen dollars required to be paid by division (A)(1) of this section. The fifteen dollars shall be retained by the clerk of the court until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the fifteen dollars on or before the twentieth day of the month following the month in which the person was convicted, pleaded guilty, or forfeited bail to the treasurer of state, who shall deposit it into the general revenue fund. If the person is found not guilty or the charges are dismissed, the clerk shall return the fifteen dollars to the person.

(C) No person shall be placed or held in a detention facility for failing to pay the additional fifteen dollars court costs or bail that are required to be paid by this section.

(D) As used in this section:

(1) "Moving violation" and "bail" have the same meanings as in section 2743.70 of the Revised Code.

(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

Effective Date: 09-26-2003

**RULE 1. Applicability; Authority; Citation.**

(A) **Applicability.** Except where otherwise provided, these Rules of Superintendence for the courts of Ohio are applicable to all courts of appeal, courts of common pleas, municipal courts, and county courts in this state.

(B) **Authority.** These rules are promulgated pursuant to Article IV, Section 5(A)(1) of the Ohio Constitution.

(C) **Citation.** These rules shall be known as the Rules of Superintendence for the Courts of Ohio and shall be cited as "Sup. R. \_\_."

**Commentary (July 1, 1997)**

Rule 1 is patterned after Rule 1 of the Rules of Superintendence for Courts of Common Pleas and has been revised to reflect the adoption of uniform superintendence rules. The Rules of Superintendence for the Courts of Ohio are intended to apply to all trial and appellate courts, except the Court of Claims, unless a rule clearly is intended to apply only to a specific court or division of a court.

**RULE 2. Definitions.**

As used in these rules:

(A) "Case" means a notice of appeal, petition, or complaint filed in the court of appeals and any of the following when filed in the court of common pleas, municipal court, and county court:

(1) A civil complaint, petition, or administrative appeal;

(2) A criminal indictment, complaint, or other charging instrument that charges a defendant with one or more violations of the law arising from the same act, transaction, or series of acts or transactions;

(3) A petition, complaint, or other instrument alleging that a child is delinquent, unruly, or a juvenile traffic offender based on conduct arising out of the same act, transaction, or series of acts or transactions or a petition alleging that a child is dependent, neglected, or abused;

(4) An estate, trust, guardianship, petition for adoption or other miscellaneous matter as defined in Sup. R. 50.

(B) "Court" means a court of appeals, court of common pleas, municipal court, or county court.

(C) "Division" means the general, domestic relations, juvenile, or probate division of the court of common pleas, any combination of the general, domestic relations, juvenile, or probate divisions of the court of common pleas, or the environmental or housing divisions of the municipal court.

**Commentary (July 1, 1997)**

This rule contains definitions of several terms used throughout the Rules of Superintendence. Because the Rules of Superintendence relate primarily to the internal operation of Ohio courts, these definitions are not intended to apply to questions of statutory interpretation. For example, the definition of "case" is designed as a benchmark for statistical reporting purposes that will allow for some uniform measure of the workload of the courts. The definition is not designed to address statutory issues such as the proper assessment of court costs or filing fees in civil and criminal cases. Reference should be made to Rule 37(A)(4), Rule 43, and the Court Statistical Reporting Section's implementation manual for further information pertaining to the definition of "case."

**RULE 37. Reports and Information.**

**(A) Report forms; responsibility for submission.** Judges of the courts of appeals, courts of common pleas, municipal courts, and county courts shall submit to the Court Statistical Reporting Section of the Supreme Court the following report forms in the manner specified in this division no later than the fifteenth day after the close of the reporting period.

**(1) Courts of appeal.** The following reports shall be prepared and submitted quarterly:

(a) The presiding or administrative judge in each appellate district shall prepare and submit a Presiding Judge Report of the status of all pending cases in his or her court.

(b) Each judge of a court of appeals shall prepare and submit an Appellate Judge Report of his or her work. The report shall be submitted through the presiding or administrative judge and shall contain the signatures of the reporting judge, the presiding or administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

**(2) Courts of common pleas.** The following reports shall be prepared and submitted monthly, except that Form C shall be prepared and submitted quarterly:

(a) Each judge of a general, domestic relations, or juvenile division and each judge temporarily assigned to a division by the presiding judge is responsible for a report of the judge's work in that division. In a multi-judge general, domestic relations, or juvenile division, the reports shall be submitted through the administrative judge. In a multi-judge probate division, the judges shall sign and submit one report of the work in that division. The reports shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

(b) Each judge sitting by assignment of the Chief Justice shall submit a report of the judge's work. The reports shall be submitted through the administrative judge of the division to which the judge is assigned and shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

**(3) Municipal and county courts.** The following reports shall be prepared and submitted monthly:

(a) Each administrative judge shall submit a completed Administrative Judge Report which shall be a report of all cases not individually assigned.

(b) Each judge shall submit a completed Individual Judge Report, which shall be a report of all cases assigned to the individual judge. The report shall be submitted through the administrative judge and shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

(c) Each judge sitting by assignment of the Chief Justice shall submit a report of the judge's work. The report shall be submitted through the administrative judge of the division to which the judge is assigned and shall contain the signatures of the reporting judge, the administrative judge, and the preparer, if other than the reporting judge, attesting to the accuracy of the report.

(4) The following standards shall apply in completing the statistical reports required by these rules:

(a) In domestic relations cases, motions filed prior or subsequent to a final decree of divorce or dissolution shall be considered part of the original case and reported under the original case number;

(b) A motion filed in delinquency and unruly cases shall be considered part of the case in which the motion is filed unless the motion is considered a separate delinquency case under division (B) of section 2151.02 of the Revised Code;

(c) A criminal case and a traffic case arising from the same act, transaction, or series of acts or transactions shall be considered separate cases.

**(B) Reports public record when filed.** All reports specified by these rules shall be public records. All judges and clerks shall cooperate with the Court Statistical Reporting Section to ensure the accuracy of the reports.

**(C) Chief Justice of the Supreme Court; requests for additional information.** The Chief Justice of the Supreme Court may require additional information concerning the disposition of cases and the management of the courts in order to discharge the constitutional and statutory duties. All judges, clerks, and other officers of all courts shall furnish the Chief Justice with any information requested by the Chief Justice.

#### **Commentary (July 1, 1997)**

The 1997 amendments consolidate in a single rule all requirements for completing and filing court statistical reports. These requirements formerly were contained in C.A. Sup. R. 2, C.P. Sup. R. 5, and M.C. Sup. R. 12. The requirements of an annual physical case inventory and a new judge case inventory have been placed in a new Rule 38.

#### **Rule 37(A)(1) Courts of appeal**

The presiding judge of each appellate district is required to prepare and submit a Presiding Judge Report of the status of all pending cases in his or her court and is responsible for the completion of an Appellate Judge Report of the work of all assigned judges. The rule also requires each appellate judge to submit a report of the judge's work. The Appellate Judge Report shall be submitted through the presiding judge. Presiding and Appellate Judge Reports are to be filed on a quarterly basis.

### **Rule 37(A)(2) Courts of common pleas**

In the general division of the court of common pleas, each judge is required to submit a monthly report on Form A. In a domestic relations division, each judge is required to submit a monthly report on Form B. In a probate division, a quarterly report of all work of the division is required using Form C. In a juvenile division, each judge is required to submit a monthly report on Form D.

Judges sitting by assignment of the Chief Justice of the Supreme Court and judges temporarily assigned from another division of the court shall submit a report of their work in the division to which they have been assigned. The report shall be submitted only to the originally assigned judge and the information shall be included on the originally assigned judge's report, which is sent to the Court Statistical Reporting Section by the administrative judge. An assigned judge may be an active or retired judge.

Under Rule 4(B)(3), the administrative judge may require reports from each judge as are necessary to discharge the overall responsibility for the administration, docket, and calendar of the court.

Certain common pleas court case categories include "benchmark" time guidelines adopted in 1996. The "benchmark" guidelines are not mandatory, but are intended to assist courts and judges in measuring the effectiveness of their case management programs and programs toward compliance with the time guidelines contained on the report forms. "Benchmark" time guidelines are referenced in the Rules of Superintendence Implementation Manual.

### **Rule 37(A)(3) Municipal and county courts**

Under Rule 4(B)(3), the administrative judge may require reports from each judge as are necessary to discharge the overall responsibility for the administration, docket, and calendar of the court. Rule 38 sets out the duties of the administrative judge with respect to the preparation of reports.

The Administrative Judge Report pertains to cases pending on the docket of the court which have not been individually assigned pursuant to Rule 36. The preparation of this report and the review of cases required by Rule 40 are the principal tools that the administrative judge uses to discharge the responsibilities under Rule 4.

The timely and accurate preparation of the Individual Judge Report and the review of cases required by Rule 40 provide the information necessary for the individual judge to discharge the judge's duties.

Rule 37(A)(3) applies to all judges in multi-judge courts. Each judge is responsible for preparing a report on those cases that have been individually assigned pursuant to Rule 36(C). The Individual Judge Report form is submitted through the administrative judge. The administrative judge checks the report for accuracy and signs it. The signatures of the reporting

judge, the administrative judge, and the preparer, if other than the reporting judge, attest to the accuracy of the report.

All judges of single judge courts must prepare and submit both the Administrative Judge Report and the Individual Judge Report. The Administrative Judge Report contains those cases that would not be subject to individual assignment pursuant to Rule 36(C) in a multi-judge court. The Individual Judge Report will contain cases that satisfy the individual assignment criteria of Rule 36(C).

In a single judge court, separation of the cases for report purposes is necessary to make the statistics reflect the nature of the court's work. Without this separation the court could not effectively use the information generated by the report and decisions relating to the need for additional judicial resources could not be intelligently made.

Each assigned judge must submit a report of his or her work. The report is submitted through the administrative judge to assist the administrative judge in fulfilling the administrative judge's responsibility for case and docket control.

For purposes of this reporting requirement, an assigned judge may be an active or retired judge. Additionally, assigned judges, as well as acting judges, report their work in accordance with the instructions regarding the Visiting Judge column.

**Rule 37(B) Reports public record when filed.**

All statistical report forms are public record and are compiled in the annual Ohio Court Summary published by the Supreme Court.

**Rule 37(C) Chief Justice of the Supreme Court; requests for additional information.**

Under Article IV, Section 5(A)(1) of the Constitution of the State of Ohio, the Chief Justice of the Supreme Court exercises general superintendence power over all courts of the state. In order to facilitate the exercise of this constitutional authority, each judge, clerk, and other court officers shall provide the Chief Justice with any information requested concerning the disposition of cases and the management of the courts.

**RULE 43. Case Numbering--Municipal and County Court.**

(A) **Method.** When filed in the clerk's office, cases shall be categorized as civil, criminal, or traffic and serially numbered within each category on an annual basis beginning on the first day of January of each year. Cases shall be identified by year and by reference to the case type designator on the administrative judge report form. Additional identifiers may be added by local court rule.

(B) **Multiple defendants or charges in criminal cases.** (1) In criminal cases, including traffic cases, all defendants shall be assigned separate case numbers.

(2) Where a defendant is charged with a misdemeanor and a traffic offense, the defendant shall be assigned separate case numbers pursuant to Sup. R. 37(A)(4)(c). The category selected for the case number and its case type designator shall be that of the offense having the greatest potential penalty.

(3) Where as a result of the same act, transaction, or series of acts or transactions, a defendant is charged with a felony or felonies and a misdemeanor or misdemeanors, including traffic offenses, the defendant shall be assigned separate case numbers, one for the felony or felonies and one for each other type of offense pursuant to Sup. R. 37(A)(4)(c). The category selected for the case number and its case type designator shall be that of the offense having the greatest potential penalty.

**Commentary (July 1, 1997)**

Rule 43 is analogous to former M.C. Sup. R. 12(E).

**Rule 43(A) Method**

This division provides the basis for the case numbering system to be used by all courts to which these rules are applicable. The rule states the following minimum requirements:

- (a) All cases must be categorized as civil, criminal, or traffic;
- (b) All cases must be serially numbered within one of the three categories listed above on an annual basis;
- (c) All cases must be identified by year;
- (d) All cases must be identified with the appropriate alphabetic case type designator from the Administrative Judge Report.

The civil case category is used for Personal Injury and Property Damage cases, Contracts cases, F.E.D. cases, Other Civil cases and Small Claims cases. The criminal case category is

used for Felony cases and non-traffic Misdemeanor cases. The traffic case category is used for O.M.V.I. cases and for all Other Traffic cases. Definitions of these case types are contained in the comment concerning preparation of the Administrative Judge Report.

The numbering system can be explained by example. If the first case filed in 2000 is a felony, its case number would be 00-CR-A-00001. The "00" is the year reference. The "CR" is the criminal case category reference. The "A" is the reference to the case type column on the Administrative Judge Report. The "00001" is the serial number for 2000 within the criminal case category. If the second case filed is a non-traffic misdemeanor, it would be numbered 00-CR-B-00002. If the third case filed is a driving under the influence case, it would be numbered 00-TR-C-00001.

(Note that this is the first serial number for 2000 in the traffic category.) If the fourth case filed is an Other Traffic case, it would be numbered 00-TR-D-00002. If the fifth case filed is a Personal Injury or Property Damage case, it would be numbered 00-CV-E-00001.

There are certain circumstances in which a case has been reported in one column on the Administrative Judge Report and the need subsequently arises for the case to be moved to another column.

Since the case designation on the Administrative Judge Report corresponds to the alphabetic designator segment of the case number, the alphabetic designator in the case number must be changed to reflect the change made on the Administrative Judge Report. This is the only segment of the case number which should ever be altered once a number is assigned. The combination of the year, category, and serial number form a unique number to identify a particular case. No matter what the alphabetic designator is, there should never be more than one case which has the same combination of year, category, and serial number. Thus, the alteration of the alphabetic designator segment cannot effect the uniqueness of the number.

The changes in the report and case number can be illustrated by the following example: Assume that a Small Claims case is filed. It is assigned the number 00-CV-I-00006. It is reported as filed on the Administrative Judge Report and is shown as pending at the end of the report period. After the close of the report period the defendant files a counterclaim on a contract which exceeds the jurisdiction of the small claims division. The following action would be taken pursuant to the case numbering rule and the monthly report form requirements:

(a) The case would be listed as terminated by transfer on line 7 of Column I, Administrative Judge Report;

(b) The case would be shown as transferred in on line 3 of Column F, Administrative Judge Report;

(c) The case number would be changed from 00-CV-I-00006 to 00-CV-F-00006;

(d) The case would be shown as terminated by transfer to an individual judge on line 7, Column F, Administrative Judge Report; and,

(e) The case would be shown as a new case filed on line 2, Column F, Individual Judge Report.

The last sentence of Rule 43(A) provides that courts may add additional identifiers to suit their needs. For example, an identifier for the judge to whom the case is assigned, or an identifier for the degree of misdemeanor charged, may be added.

#### **Rule 43(B) Multiple defendants or charges in criminal cases**

Under division (B), each criminal defendant is assigned at least one case number.

Multiple defendants charged with the same offense arising out of the same act or transaction or series of acts or transactions receive separate case numbers. Where there are multiple defendants, they may be charged in a single complaint or each may be charged by separate complaints. In any event, each defendant is assigned a separate case number and a copy of the complaint is placed in the defendant's file.

Where one defendant is charged with more than one offense arising from the same act or transaction or series of acts or transactions, the defendant will be assigned separate case numbers pursuant to Rule 37(A)(4)(c). If the offenses charged fall in more than one category, *e.g.*, both criminal and traffic, the case number assigned will correspond to the category. If the offenses charged fall into one category, *e.g.*, traffic, but could be listed in more than one column on the Administrative Judge Report, then the case number assigned will be that of the offense which has the greatest potential penalty. For example, a defendant charged with O.M.V.I. and with a traffic offense other than O.M.V.I. would be assigned the case number of the offense having the greatest potential penalty.

Where a defendant is charged with more than one offense arising out of the same act or transaction or series of acts or transactions and one or more but not all of the offenses charged are felonies, case numbers for each offense type are assigned. One number is for the felony or felonies, and the other numbers are for each of the non-felony offense types. For example, a multi-count indictment that includes two felonies, two misdemeanors, and two traffic offenses would result in the assignment of three case numbers. In determining what number to assign to the non-felony offenses, the normal rule described above in this Comment is applied.

The criminal case numbering rule is illustrated by the following example. Assume that a defendant is charged with aggravated assault under section 2903.12(A)(2) of the Revised Code, disorderly conduct under section 2917.11(B)(2) of the Revised Code, menacing under section 2903.22(A) of the Revised Code, and driving under the influence of alcohol under section 4511.19 of the Revised Code. Three case numbers are assigned to this defendant as follows:

00-CR-A-00895.

Charge: Aggravated assault, R.C. 2903.12(A)(2)

00-CR-B-000896.

Charge: Disorderly conduct, R.C. 2917.11(B)(2),  
Menacing, R.C. 2903.22(A)

00-TR-C-001334.

Charges: Operating a motor vehicle under the influence of alcohol, R.C. 4511.19

The first case number is for the offense of aggravated assault, which is a felony. The rule states that a felony charged against a defendant will always receive a case number separate from any non-felony offenses charged which occur from the same act or transaction or series of acts or transactions. The "CR" indicates that the case is in the criminal category and the "A" indicates that the case is reported in the Felonies column of the Administrative judge Report.

The second case number is for all the other criminal offenses. The third case number is for all the traffic offenses. The case number assigned is determined by comparing the potential penalties for the offenses charged. The case number is assigned based upon the offenses charged. In the example given, the offenses are as follows:

Driving under the influence of alcohol - imprisonment for six months. R.C. 2929.21(B)(1)

Disorderly conduct - fine of not more than \$100. R.C. 2929.21(D)

Menacing - imprisonment for thirty days. R.C. 2929.21(B)(4)

In the example, the case number assigned is 00-TRC-001334 and 00-CR-B-000896. The "TR" represents the Traffic category and the "C" represents the O.M.V.I. column on the Administrative Judge Report. The "CR" represents the Criminal category and the "B" represents the misdemeanor column on the Administrative Judge Report. Regardless of the number of offenses, there will never be more than three case numbers for a defendant stemming from one incident.

Rule 43(B) is designed to make the case numbering system consistent with the reporting requirements established by Rule 37(A)(3). If this rule is utilized properly, less bookkeeping will be needed to complete the review of pending cases required by Rule 40, and the record keeping necessary under the individual assignment system will be simplified.