

IN THE SUPREME COURT OF OHIO

CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO,	)	Case No. <del>2008-0408</del> <b>07-1863</b>
	)	
Plaintiff/Appellant,	)	
	)	
v.	)	
	)	
VINCENT QUINONES,	)	
	)	
Defendant/Appellee.	)	
	)	

MERIT BRIEF OF PLAINTIFF/APPELLANT

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**TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
TABLE OF AUTHORITIES .....	ii
APPENDIX.....	iv
I. STATEMENT OF FACTS .....	1
II. ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW .....	2
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 .....	2
Proposition of Law No. 2: Court costs may be charged on a “per charge” basis if authorized by statute .....	7
III. CONCLUSION.....	8
CERTIFICATE OF SERVICE .....	9

TABLE OF AUTHORITIES

Page No(s).

**Cases**

*Barth v. Barth*  
(2007), 113 Ohio St.3d 27, 30..... 4

*Hall v. Banc One Mgt. Corp.*  
(2007), 114 Ohio St.3d 484, 487..... 4

*Miami Conservancy Dist. v. Bucher*  
(1949), 87 Ohio App. 390, 396-397..... 6

*Performing Arts School of Metropolitan Toledo, Inc. v. Wilkins*  
(2004), 104 Ohio St.3d 284, 286-287 ..... 3

*Sears v. Weimer*  
(1944), 143 Ohio St. 312..... 4

*State ex rel. Endlich v. Industrial Comm'n of Ohio*  
(1984), 16 Ohio App.3d 309, 312 ..... 5

*State ex rel. Schweinhager v. Underhill*  
(1943), 141 Ohio St. 128, 132..... 5

*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)..... 2

*State v. Clevenger*  
(2007), 114 Ohio St.3d 258, 2007-Ohio-4006 ..... 2

*State v. Threatt*  
(2006), 108 Ohio St.3d 277, 2006-Ohio-905, at 15 ..... 2

*State v. White*  
(2004), 103 Ohio St.3d 580, 2004-Ohio-5989 at ¶ 8 ..... 2

*Strattman v. Studt*  
(1969), 20 Ohio St.2d 95, 102..... 2

**Statutes**

O.R.C. §1.42 ..... 3  
O.R.C. §1901.26(A)(1)(a)..... 1  
O.R.C. §1901.26(B)(2)(a)..... 3, 4  
O.R.C. §2743.70(A)(1)..... 5  
O.R.C. §2949.091(A)(1)..... 5  
O.R.C. §2949.093 ..... 7

**Other Authorities**

Attorney General Opinion No. 2007-030 ..... 5, 7  
Attorney General Opinion No. 91-022 ..... 6, 7  
Attorney General Opinion No. 91-039 ..... 5, 6, 7

**APPENDIX**

Date Stamped Notice of Appeal to the Supreme Court .....1

Judgment of Conviction and Sentencing Entry .....37

Ohio Attorney General Opinions .....48

Constitutional provisions, statutes and ordinances .....64

## I. STATEMENT OF FACTS

This case arises from a traffic citation issued to Vincent Quinones by a Middleburg Heights Police Officer. 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).

Quinones was found guilty of all four charges and was assessed local court costs under R.C. §1901.26 for each charge. (See Journal Entry dated April 28, 2006) Local court costs under R.C. §1901.26 were assessed on a “per charge” basis consistent with the language of the statute. Those state costs imposed pursuant to R.C. §§2743.70 and 2949.091 were assessed only once, again as required by the language of those statutes and consistent with the opinion of the Ohio Attorney General. Quinones appealed his convictions for each offense and also appealed the assessment of all costs which were assessed on a “per charge” basis, arguing that imposition of court costs for each offense is excessive and violates his right to fair punishment.

The Court of Appeals held that all court costs should be assessed on a “per case” rather than a “per offense” or “per charge” basis. The Court of Appeals correctly recognized that R.C. §2947.23 requires the trial judge to include costs in the sentence of traffic cases. The Court of Appeals was also correct when it concluded that R.C. §1901.26(A)(1)(a) requires a municipal court to establish a schedule of fees and costs to be taxed in any civil or criminal action or proceeding. However, the Court of Appeals failed to examine subsection (B) of R.C. §1901.26 as to how such local court costs are to be assessed.

The Court of Appeals instead held that court costs should be assessed for each case and not for each offense. The Court of Appeals reached this conclusion, not by examining the language of R.C. §1901.26, but by examining the Attorney General Opinions regarding assessment of costs under R.C. §§2743.70 and 2949.091.

Although the Court of Appeals also reversed Quinones' convictions for continuous lanes/weaving and the seatbelt violations, those issues are not being presented to this Court. Rather, it is only the Court of Appeals' holding as to how local court costs should be assessed under R.C. §1901.26 that is at issue.

## II. ARGUMENTS IN SUPPORT OF PROPOSITIONS 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.**

"[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.* 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 local court costs to be assessed 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:

“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.” (Emphasis added).

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. “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.” (Emphasis added.)

By the plain language of the statute, one single criminal cause means the alleged violation of a statute or ordinance, even if such charge is filed as part of a multiple charge on a single summons, citation or complaint. Therefore, the separate charges against Quinones, specifically, (1) operating a motor vehicle under the influence of alcohol or drugs (which violates MHO 434.01(a)(1)), (2) continuous lanes/weaving (which violates MHO 432.08(a)), (3) speeding (which violates MHO 434.03(b)(2)), and (4) failure to wear a seat belt (which violates MHO 438.275(b)(1)), are separate criminal causes under R.C. §1901.26.

Under basic principles of statutory construction, words used in a statute are to be given their usual, normal and customary meaning. R.C. §1.42, see also, *Performing Arts School of Metropolitan Toledo, Inc. v. Wilkins* (2004), 104 Ohio St.3d 284, 286-287. Under R.C.

§1901.26(B), a “criminal cause” for purposes of R.C. §1901.26 constitutes any violation of a separate codified ordinance. Further, a separate court cost may be assessed for each independent criminal cause. The four separate charges against Quinones did, in fact, constitute alleged violations of four separate municipal ordinances. Therefore, each charge constituted a separate criminal cause under the definition provided at R.C. §1901.26(B)(2)(a).

As the language of R.C. §1901.26 on this point is plain and unambiguous and conveys a clear and definite meaning, there is no reason for resorting to rules of statutory interpretation. “An unambiguous statute is to be applied, not interpreted.” *Sears v. Weimer* (1944), 143 Ohio St. 312, syllabus ¶5. Applying the language of R.C. §1901.26 to Quinones, the Berea Municipal Court assessed four separate local court costs against him, one for each criminal cause. The Court of Appeals decision effectively replaced the General Assembly’s determination as to how municipal court costs under R.C. §1901.26 may be assessed for the Court of Appeals’ own arbitrary judgment on this point. Construing or interpreting what is already plain is not statutory interpretation but legislation, which is not the function of the courts. *Barth v. Barth* (2007), 113 Ohio St.3d 27, 30 (internal citations omitted).

The Court of Appeals reached its conclusion not by interpreting subsection (B) of R.C. §1901.26, but by simply failing to consider it. There is no mention of R.C. §1901.26(B) in the *Quinones* decision. This was error. A court is “free neither to disregard or delete portions of the statute through interpretation, nor to insert language not present.” *Hall v. Banc One Mgt. Corp.* (2007), 114 Ohio St.3d 484, 487 (internal citations omitted). The Court of Appeals’ focus on R.C. §1901.26(A) without a concurrent examination of R.C. §1901.26(B) resulted in a ruling contrary to the plain meaning of the statute.

In reaching its decision that all court costs are to be assessed on a “per case” rather than a “per charge” basis, the Court of Appeals relied upon Atty. Gen. Op. Nos. 91-022 and 91-039. This too was error. Although Attorney General Opinions are entitled to some degree of consideration, that consideration is limited and should be focused on the specific issue being considered. *State ex rel. Schweinhager v. Underhill* (1943), 141 Ohio St. 128, 132, citing, 37 Ohio Jurisprudence, 700, Section 390 (emphasis added); see also, *State ex rel. Endlich v. Industrial Comm’n of Ohio* (1984), 16 Ohio App.3d 309, 312, citing 50 Ohio Jurisprudence 2d (1961) 256, Statutes, Section 269.

Further, the two Attorney General Opinions relied upon by the Court of Appeals are explicitly limited to a review of court costs imposed pursuant to R.C. §§2743.70(A)(1) and 2949.091(A)(1) and opine that court costs under those two statutes are to be assessed only once per criminal case, rather than per criminal charge. There is nothing in the Attorney General Opinions that would make them in any way applicable to the assessment of court costs under R.C. §1901.26. Further, in Attorney General Opinion No. 2007-030, the Attorney General distinguished court costs imposed pursuant to R.C. §§2743.70(A)(1) and 2949.091(A)(1) from those imposed pursuant to R.C. 2949.093 and opined that costs imposed pursuant to R.C. 2949.093 are to be charged per moving violation adjudicated or otherwise processed by a municipal court in a case when a person is convicted of or pleads guilty to more than one moving violation in a case. It should be noted that the Berea Municipal Court did in fact assess costs under R.C. §§2743.70(A)(1) and 2949.091(A)(1) once. Quinones was charged such court costs only once even though he was charged and convicted of four separate counts.

It was error for the Court of Appeals to examine these two Attorney General Opinions because R.C. §1901.26 is not ambiguous with respect to the assessment of local court costs.

Administrative interpretations of a statute should not be considered to reach a conclusion contrary to the language of the statute itself. *Miami Conservancy Dist. v. Bucher* (1949), 87 Ohio App. 390, 396-397. As demonstrated above, R.C. §1901.26(B) clearly and unambiguously provides that a “criminal cause” for purposes of the statute means any violation of a single statute even if separate charges are brought under the same summons, citation or complaint. There was no need for the Court of Appeals to have examined the Attorney General Opinions on the issue of whether local court costs assessed under R.C. §1901.26 are to be on a “per case” or “per charge” basis as the statute itself specifically answers this issue.

The Court of Appeal’s error in examining Atty. Gen. Op. No. 91-022 and Atty. Gen. Op. No. 91-039 is the “flip side of the coin” to the Court’s error of not examining R.C. §1901.26(B). The Court of Appeals should have examined subsection (B) of R.C. §1901.26, but instead reviewed the two Attorney General Opinions.

This error is compounded by the fact that Atty. Gen. Op. No. 91-039 arrived at its interpretation of R.C. §§2743.70 and 2949.091, in part, by an examination of the Rules of Superintendence for Municipal Courts and County Courts (“Rules of Superintendence for MC/CC”). In its decision, the Court of Appeals also relied upon these Rules of Superintendence for MC/CC. However, the Rules of Superintendence for MC/CC are no longer in effect. The current Rules of Superintendence for the Courts of Ohio (“Superintendence Rules”) took effect July 1, 1997, after the issuance of Attorney General Opinions 91-022 and 91-039 in 1991. The current Superintendence Rules do not support the holding of the Court of Appeals. *See*, Rules of Superintendence 2, 37 and 43, as well as the commentary for each rule. It was therefore error for the Court of Appeals to rely upon the outdated Rules of Superintendence for MC/CC, which

were incorporated into Atty. Gen. Op. No. 91-039 and explicitly referenced by the Court of Appeals in the written *Quinones* decision.

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

Although the *Quinones* Court held that costs are to be imposed on a “per case” basis, further precedent, unavailable to the Eighth District Court of Appeals at the time *Quinones* was released, demonstrates that local court costs may indeed be imposed on a “per violation” basis. The Ohio Attorney General, in a well-researched and reasoned opinion, Attorney General Opinion No. 2007-030, determined that court costs established by a board of county commissioners pursuant to R.C. §2949.093 may be charged on a “per moving violation” basis rather than a “per case” basis.

The Attorney General properly noted that the manner in which court costs are to be imposed is controlled by the specific language of the statute authorizing a court to impose the cost. Atty. Gen. Op. 2007-030, p. 3. R.C. §1901.26 is as one of a number of statutes that authorize such a cost. *Id.* at p. 2. The Attorney General further stated that “it is significant to note that when the General Assembly intends for a court cost to be assessed only once per case, rather than per violation in a case, it has clearly conveyed that intention.” *Id.* at p. 6. Indeed, Atty. Gen. Op. 2007-030 specifically cites to R.C. §§ 2743.70 and 2949.091, the two statutes that were examined by the Court of Appeals in *Quinones*, as examples in which the General Assembly intended costs to be assessed on a “per case” basis. *Id.* It further cites to previous Attorney General Opinion No. 91-022, also relied upon by the Court of Appeals, on this point.

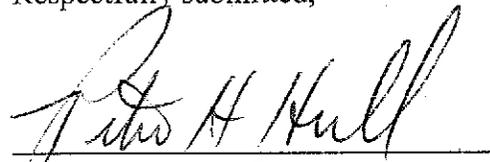
Atty. Gen. Op. No. 2007-030 simply provides further support for the arguments made above regarding statutory construction and interpretation. Specifically, it is the wording of R.C. §1901.26 itself that controls the issue of how local court costs are to be assessed under that

statute, not an interpretation of other statutes such as R.C. §§2743.70 and 2949.091. The Court of Appeals erred when it relied on the Ohio Attorney General Opinions to reach its conclusion when R.C. §1901.26 itself provides the answer. Those court costs assessed under R.C. §1901.26 may be assessed on a “per charge” rather than a “per case” basis.

**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 assessed on a “per charge” basis if authorized by statute.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

A copy of the foregoing Merit Brief has been served via regular U.S. mail this 14<sup>th</sup> day

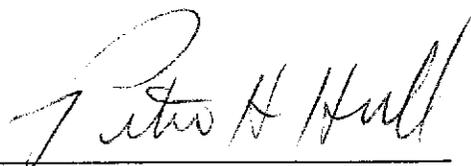
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IN THE SUPREME COURT OF OHIO

CITY OF MIDDLEBURG HEIGHTS,  
STATE OF OHIO,

Plaintiff/Appellant,

v.

VINCENT QUINONES,

Defendant/Appellee.

) On Appeal from the  
) Cuyahoga County,  
) Ohio Court of Appeals, Eighth  
) Appellate District  
) Case No. 06-CA-088242  
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NOTICE OF APPEAL OF PLAINTIFF/APPELLANT  
CITY OF MIDDLEBURG HEIGHTS

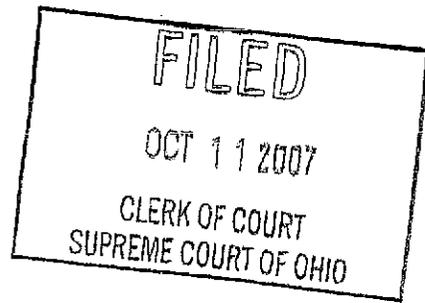
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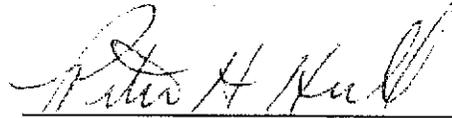


**NOTICE OF APPEAL OF PLAINTIFF/APPELLANT**  
**CITY OF MIDDLEBURG HEIGHTS**

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,



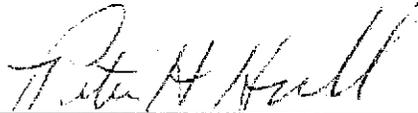
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CERTIFICATE OF SERVICE

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

---

**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

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**FILED AND JOURNALIZED  
PER APP. R. 22(E)**

**AUG 2 9 2007**

**GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.**

**ANNOUNCEMENT OF DECISION  
PER APP. R. 22(B), 22(D) AND 26(A)  
RECEIVED**

**JUL 19 2007**

**GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.**

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N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL  
FOR ALL PARTIES-NOBIS 7/19/07

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 ("OMVI"), 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.

VOL 42 00227

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.

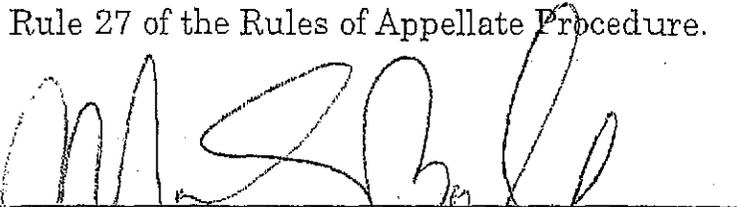
Thus, Quinones' second and third assignments of error challenging his speeding and OMVI convictions are affirmed. His marked lanes and seat belt violations are reversed, and the case is remanded for imposition of only one set of court costs. The judgment of the Berea Municipal Court is affirmed in part,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



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MARY JANE BOYLE, JUDGE

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

05TRC05644-1-4 MH12493 MIDDLEBURG HTS

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  
 Court Date DAA5150 PTL. RAYMOND BULKA  
 12/14/05 NON-WAIVERABLE

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

BOND: CASH SURETY 10% PERSONAL \$500 Bond No. \_\_\_\_\_

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

Condition Bond  Bond Cont' J/M  
Date \_\_\_\_\_

INSURANCE:  PROVEN  NOT PROVEN

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

PLEA: MAYORS COURT  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

1-26-06 4:00  
 JAN 26 2006 set for TRAIL after  
 30 days v  
 TR 3-2-06 2:30  
 APR 02 2006 Case called for  
 TRIAL: Trial had  
 3/2/06 PP Ray Bulka, officer  
 Not dismissed, Bulka 29 denied  
 B. Philip 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 SEUT 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.

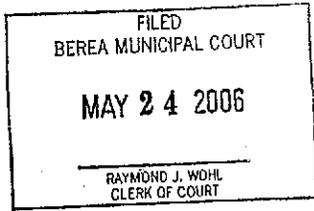
Date \_\_\_\_\_ Defendant \_\_\_\_\_  
 Witness to each signature above:

100.00 Appeal 06-34724

Date	Fine	Costs	Total
	505	588	1153-
Date	Rec't. No.	Amt. Paid	Balance

JOURNAL ENTRY

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



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  12 hour *in jail then M.A.A.D.*
- 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 (vs.) 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

12 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 Judge/Magistrate [Signature]

Do Motion \_\_\_\_\_

4/28/06 STAY SENT pend appra  
Appeal cost \$20  
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/WEAVING (M4)

Operator Lic. (LABEL AFFIXED HERE) State OH Enclosed YES  
RR215834 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

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 \$ 25 + COSTS. 4/28/06 STB/Per 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:

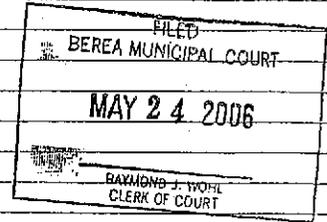
CAPIAS ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ J/M  COLLECT BOND ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ J/M

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  
3/7/06 Case called Trial had PTL  
SENT 4-28-06 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
			<u>See 01</u>



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 8481 BERNICE RD  
 CITY, STATE STAMFORDVILLE, OHIO ZIP 44149  
 LICENSE ISSUED MO. 5 YR. 05 EXPIRES BIRTHDATE 20 09 STATE OHIO  
 SSN 800-70-2723 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>BRN</u>	<u>BLU</u>	

LICENSE NO. RR 215834  Yes  No  
 Lic. Class D DOT # \_\_\_\_\_  Does Not Apply

TO DEFENDANT: COMPLAINT

ON THURS 11-7-05 AT 0220 M. YOU OPERATED/PARKED/WALKED/A  
 Pass  Comm  Cycle  Over 26001  Bus  Mar.  
 VEHICLE: YR. 2005 MAKE CHEV BODY TYPE 300 WXR  
 COLOR BLK LIC. DA-0 5758 STATE OHIO  
 UPON A PUBLIC HIGHWAY, NAMELY RD 1001 RD  
SYSTEM 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:

<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>434.2562</u>
<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>431.01A1</u>
<input checked="" type="checkbox"/> SAFETY BELT - Failure to wear <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P. <u>429.2054</u>
<input type="checkbox"/> OTHER OFFENSE <u>CONTINUOUS COURTS</u> <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P. <u>432.08A</u>
<input type="checkbox"/> OTHER OFFENSE _____ <input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P. _____

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  Light  None  
 AREA:  Business  Rural  Residential  Industry  School  
 CRASH:  Yes  No  Almost Caused  Injury  Non-Injury  Fatal  
 Crash Report Number: \_\_\_\_\_

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 (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 23 YEAR 05 7 A.M.  
 MONTH DAY P.M.

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

This summons served personally on the defendant on 11-7-05 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.

ST. J. BL  
 Issuing-Charging Law Enforcement Officer  
 FACE OF COURT RECORD

<u>70</u>	<u>93</u>		
Badge No.	Unit	Zone	

COURT RECORD

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

Atty: PAT LEWIS 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

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 \$ 100 + COSTS. STAY Pending Appeal 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

PT 1-26-06 9:00  
TR 3-2-06 2:30  
3/2/06 case called Trial had PA PSE  
5428.00 130

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

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
			100

JOURNAL ENTRY

Defendant Name QUINONES, VINCENT

CASE # OSTRC05644 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

3.8 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/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. **MH 124193**

- STATE OF OHIO
- CITY OF MIDDLEBURG HEIGHTS

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

NAME VINCENT S QUINONES  
 STREET 8481 BERNICE DR  
 CITY, STATE STRONGSVILLE, 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. 76

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

LICENSE NO. RD 215834  
 Lic. Class D 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  H.V. Mat.  
 VEHICLE: YR. 2005 MAKE CAD BODY TYPE SED  
 COLOR BLACK LIC. OH 5158 STATE OHIO  
 UPON A PUBLIC HIGHWAY, NAMELY STATE ROUTE 1000  
 AT 61571000 DIRECTION OF TRAVEL  N  S  W  E  
 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 checked="" type="checkbox"/> Unreas cond.	<input type="checkbox"/> ACDA <u>434.0562</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 type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input type="checkbox"/> Prohibited blood alcohol concentration BAC	<u>434.01A1</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 type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input checked="" type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Child Restraint	<u>432.205A</u>
<input checked="" type="checkbox"/> OTHER OFFENSE	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<u>CONTINUOUS LANE</u>	<u>432.08A</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, 1510 CARNegie AVENUE, CLEVELAND, OHIO 44115

COURT DATE 11 23 05 7 A.M.  
 MONTH DAY YEAR P.M.  
 IF YOU FAIL TO APPEAR AT THIS TIME AND PLACE YOU MAY BE ARRESTED.  
11-17 2005

This summons served personally on the defendant on \_\_\_\_\_ 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.

STILLER  
 Issuing-Charging Law Enforcement Officer  
 FACE OF COURT RECORD

<u>70</u>	<u>93</u>		
Beccus No.	Unit	Zone	

**COURT RECORD**

PRESENT ADDRESS SIGNATURE CO. RES. PHONE ( ) 124193

BEREA MUNICIPAL COURT—CRIMINAL AND TRAFFIC DIVISION

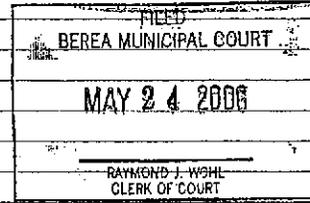
05TRC05644-4-4 MH12493 MIDDLEBURG HTS

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



PT 1-26-06 9:00  
TR 3-2-06 2:30  
3/2/06 case called. Trial had FA PST  
5-4-28-06 1:30

Atty. PAT LEBENTHAN 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 \$ 30 + COSTS 4/28/06 STAY Paid J/M  
*approved*

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

MO WARR ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ J/M  OTHER/ADDL ( \_\_\_/\_\_\_/\_\_\_ ) \_\_\_\_\_ 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

JOURNAL ENTRY

Defendant Name QUINONES, VINCENT  
CASE # OSTRC05644 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 \_\_\_\_\_ (\_\_\_\_/\_\_\_\_/\_\_\_\_)

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

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

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 BESSIE BL

CITY, STATE STAMBULE, 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 <u>W</u>	SEX <u>M</u>	HEIGHT <u>5'7"</u>	WEIGHT <u>170</u>	HAIR <u>Blk</u>	EYES <u>BRO</u>	FINANCIAL RESPONSIBILITY PROOF SHOWN
						<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

LICENSE NO. RR 215834

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

TO DEFENDANT: COMPLAINT

ON THURS 11/7/05 AT 0820 M. YOU OPERATED/PARKED/WALKED/A

Pass  Comm  Cycle  Over 26001  Bus  Hrs. Mat.

VEHICLE: YR. 2005 MAKE CMA BODY TYPE 300

COLOR Blk LIC OH 5750 STATE OHIO

UPON A PUBLIC HIGHWAY, NAMELY ROUTE 5750

AT 5750 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:

<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 checked="" type="checkbox"/> Unreas cond.	<input type="checkbox"/> ACDA <u>434.0562</u>
<input type="checkbox"/> Radar <input type="checkbox"/> Air <input type="checkbox"/> VASCAR <input type="checkbox"/> Pace <input type="checkbox"/> Laser <input type="checkbox"/> Stationary <input type="checkbox"/> Moving	
<input checked="" type="checkbox"/> DMV: <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.
<input type="checkbox"/> Profilled blood alcohol concentration	<input type="checkbox"/> BAC <u>0.11</u>
<input type="checkbox"/> Blood <input type="checkbox"/> Breath <input type="checkbox"/> Urine <input checked="" type="checkbox"/> Refused	
<input type="checkbox"/> 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	
<input checked="" type="checkbox"/> SAFETY BELT - Failure to wear	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<input checked="" type="checkbox"/> Driver <input type="checkbox"/> Passenger <input type="checkbox"/> Child Restraint	<u>420.2754</u>
<input checked="" type="checkbox"/> OTHER OFFENSE	<input type="checkbox"/> ORC <input type="checkbox"/> ORD <input type="checkbox"/> T.P.
<u>CONTINUOUS LANE</u>	<u>432.08A</u>
<input type="checkbox"/> 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: _____	
<input type="checkbox"/> REMARKS	
ACCOMPANYING CRIMINAL CHARGE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	TOTAL # OFFENSES <u>4</u>

TO DEFENDANT: SUMMONS  PERSONAL APPEARANCE REQUIRED

- MIDDLEBURG HEIGHTS MAYOR'S COURT, 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	YEAR	7 A.M.
11	2005	
MONTH	DAY	P.M.
11	07	

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

This summons served personally on the defendant on \_\_\_\_\_ 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.

SP-1 BL  
Issuing-Charging Law Enforcement Officer

710	93		
Badge No.	Unit	Zone	

FACE OF COURT RECORD

COURT RECORD

OAG 91-022

Attorney General

2-116

1. Personal property taken as evidence remains the property of the person legally entitled to its possession prior to its seizure for evidence unless the property is contraband subject to the provisions of R.C. 2933.43, or has been lawfully seized pursuant to R.C. 3719.141, or is forfeited under R.C. 2925.41 through R.C. 2925.45, or has been lawfully seized in relation to a violation of R.C. 2923.32, or the right to the possession of the property is lost under R.C. 2933.41(C) or another provision of state or federal law.
2. Pursuant to R.C. 2933.41(A)(1), each law enforcement agency that has custody of any property that is subject to R.C. 2933.41 shall adopt a written internal control policy that addresses the procedures the agency will follow in disposing of property under R.C. 2933.41.
3. Pursuant to R.C. 2933.41(B), a law enforcement agency that has in its custody property kept for evidence must make reasonable efforts to return the property to the persons entitled to its possession at the earliest possible time that it is no longer needed as evidence, provided that the persons entitled to possession have not lost the right to the possession of the property under R.C. 2933.41(C) or other statutory provision that operates as a forfeiture.
4. Pursuant to R.C. 2933.41(D), unclaimed and forfeited property held as evidence by a law enforcement agency under R.C. 2933.41, may be disposed of only after a court of record that has territorial jurisdiction over the political subdivision in which the law enforcement agency has jurisdiction to engage in law enforcement activities has determined that the unclaimed or forfeited property is no longer needed as evidence.
5. Pursuant to R.C. 2933.26 and R.C. 2933.27, property seized by warrant shall be kept as evidence until the accused is tried or the claimant's right to the property is otherwise ascertained by the court that issued the warrant.
6. Property introduced as evidence in a judicial proceeding and thereby placed in the custody of the court shall be kept by the court or an officer of the court until the court decides the property is no longer needed as evidence.
7. A law enforcement agency that keeps property for evidence may determine, in accordance with its written control policy adopted pursuant to R.C. 2933.41(A)(1), that such property is no longer needed as evidence and may thereafter dispose of it pursuant to R.C. 2933.41, provided that such property is not property seized pursuant to warrant, introduced as evidence in a judicial proceeding, or unclaimed or forfeited.

**OPINION NO. 91-022**

**Syllabus:**

The 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.

**To: Stephanie Tubbs Jones, Cuyahoga County Prosecuting Attorney, Cleveland, Ohio**

**By: Lee Fisher, Attorney General, April 16, 1991**

I have before me your predecessor's request for an opinion regarding the imposition of state mandated court costs. Specifically, your predecessor asked

2-117

1991 Opinions

OAG 91-022

whether the state mandated court costs imposed by R.C. 2743.70 and R.C. 2949.091 are to be charged per offense or per case.

R.C. 2743.70 and R.C. 2949.091, in general, set forth provisions concerning the imposition of additional court costs and bail against nonindigent persons. Among these provisions is R.C. 2743.70(A)(1), which 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 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) Twenty dollars, if the offense is a felony;
- (b) Six dollars, if the offense is a misdemeanor.

The court shall not waive the payment of the twenty or six 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. (Emphasis added.)

Additionally, 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 ten 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 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 of state in the general revenue fund. The court shall not waive the payment of the additional ten 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. (Emphasis added.)

R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1), thus, require a 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, to impose a specific sum of money as costs in the case.<sup>1</sup>

It is a well-established tenet that the paramount purpose in the interpretation of a statute is to determine and effectuate the intention of the General Assembly. *Henry v. Central Nat'l Bank*, 16 Ohio St. 2d 16, 242 N.E.2d 342 (1968) (syllabus, paragraph two). Legislative intention is primarily determined from the language of a statute, *Stewart v. Trumbull County Bd. of Elections*, 34 Ohio St. 2d 129, 130, 296 N.E.2d 676, 677 (1973), and where that intention is plainly and unambiguously set out in the language employed by the General Assembly, resort to other tenets of statutory construction is unnecessary. *Katz v. Department of Liquor Control*, 166 Ohio St. 229, 231, 141 N.E.2d 294, 295 (1957); see R.C. 1.49.

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.

<sup>1</sup> I note that R.C. 2743.70(A)(2) and R.C. 2949.091(A)(2) require a juvenile court to impose a specific sum of money as costs against a child 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. Since your request does not ask about the imposition of the costs of R.C. 2743.70(A) and R.C. 2949.091(A) against delinquent children or juvenile traffic offenders, I express no opinion as to the proper imposition of these costs against delinquent children and juvenile traffic offenders.

OAG 91-022

Attorney General

2-118

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 to any offense other than a traffic offense that is not a moving violation. I note that neither 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; see, e.g., *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983). *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 other than a traffic offense that is not a moving violation. See generally *Bryan Chamber of Commerce v. Board of Tax Appeals*, 5 Ohio App. 2d 195, 200, 214 N.E.2d 812, 815 (Williams County 1966) ("[i]t should be presumed that the Legislature used language contained in the statute advisably and intelligently and expressed its intent by the use of the words found in the statute").

In addition to the foregoing, I note 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. See R.C. 2941.04 ("[a]n indictment or information may charge two or more different offenses connected together in their commission, or different statements of the same offense, or two or more different offenses of the same class of crimes or offenses, under separate counts, and if two or more indictments or informations are filed in such cases the court may order them to be consolidated"); Ohio R. Crim. P. 8(A) ("[t]wo or more offenses may be charged in the same indictment, information or complaint in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct"). See generally *State v. Dumkins*, 10 Ohio App. 3d 72, 72, 460 N.E.2d 688, 690 (Summit County 1983) ("[t]he law favors joinder for public policy reasons, such as: to conserve judicial economy and prosecutorial time; to conserve public funds by avoiding duplication inherent in multiple trials; to diminish the inconvenience to public authorities and witnesses; to promptly bring to trial those accused of a crime; and to minimize the possibility of incongruous results that can occur in successive trials before different juries"). Hence, it is a commonly acknowledged and statutorily recognized practice to consolidate two or more offenses charged against a person into one case.

It, therefore, is readily apparent that the General Assembly was cognizant of the fact that situations would arise in which a person would be convicted of or plead guilty to more than one offense in a case when it enacted R.C. 2743.70 and R.C. 2949.091. See generally *State v. Frostr*, 57 Ohio St. 2d 121, 125, 387 N.E.2d 235, 238 (1979) ("[i]t is axiomatic that it will be assumed that the General Assembly has knowledge of prior legislation when it enacts subsequent legislation"); *In re Estate of Tonsic*, 13 Ohio App. 2d 195, 197, 235 N.E.2d 239, 241 (Summit County 1968) ("[t]he Legislature is presumed to be cognizant of all prior sections of the Code"); *East Ohio Gas Co. v. Akron*, 2 Ohio App. 2d 267, 270, 207 N.E.2d 780, 783 (Summit County 1965) ("[i]n the interpretation of statutes, it is presumed that the Legislature knew the state of the law at the time of enactment, and it must be presumed that the Legislature knew of the so-called pre-emption doctrine as it had been developed over the years in this state"), *aff'd*, 7 Ohio St. 2d 73, 218 N.E.2d 608 (1966).

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. For example, both R.C. 2743.70(C) and R.C. 2949.091(C) limit the costs to be imposed pursuant to R.C. 2743.70 and R.C. 2949.091. R.C. 2743.70(C) states that "[n]o person shall be placed or held in jail for failing to pay the additional twenty or six dollars court costs...that

2-119

1991 Opinions

OAG 91-023

are required to be paid by this section." R.C. 2949.091(C) provides "[n]o person shall be placed or held in a detention facility for failing to pay the additional ten dollars court costs...that are required to be paid by this section." The language of R.C. 2743.70(C) and R.C. 2949.091(C), thus, indicates that the costs imposed by these sections is limited in any case to twenty or six dollars, and ten dollars, respectively. See generally *Brown v. Martinelli*, 66 Ohio St. 2d 45, 50, 419 N.E.2d 1081, 1084 (1981) (it is a "basic presumption in statutory construction that the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose" (quoting *State ex rel. Cleveland Elec. Illum. Co. v. Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756, 759 (1959))).

Based upon the foregoing, it is my opinion, and you are hereby advised that the 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.

### OPINION NO. 91-023

#### Syllabus:

A county does not take title to the real property of a municipal hospital when the county and a municipal corporation enter into an agreement pursuant to R.C. 513.08.

To: P. Randall Knece, Pickaway County Prosecuting Attorney, Circleville, Ohio  
By: Lee Fisher, Attorney General, April 16, 1991

I have before me your request for my predecessor's opinion with respect to the following questions:<sup>1</sup>

- 1) Does a county take title to the real property of a municipal hospital when the county and a municipal corporation enter into an agreement pursuant to R.C. 513.08?
- 2) What entity conveys title to the real property of a municipal hospital in which a county participates pursuant to R.C. 513.08 when such property is sold to a purchaser?

Your letter of request indicated that in 1949 the City of Circleville and the Board of Commissioners of Pickaway County entered into a contract "pursuant to General Code Section 3414-1, the provisions of which are now contained in the Ohio Revised Code Sections 513.08, et seq. Further, the authority and duties of the Board of Hospital Commissioners, as set forth in this contract, were as allowed by General Code Sections 4026 to 4034, inclusive, which are now Ohio Revised Code Sections 749.06 to 749.14."<sup>2</sup>

As a preliminary matter, I note that the provisions of G.C. 3414-1a, 1947 Ohio Laws 411 (Am. S.B. 273, approved June 17, 1947), are substantially similar to those of R.C. 513.08, which provides, in pertinent part, as follows:

[A] board of county commissioners may, in lieu of proceeding to establish, construct, and maintain a...county hospital, enter into an

<sup>1</sup> With your approval, I have reworded your questions for purposes of analysis.

<sup>2</sup> Since you have indicated that the arrangement between the county and the municipal corporation was entered into pursuant to G.C. 3414-1, the relevant provisions of which are contained in R.C. 513.08, I have limited my opinion to a discussion of R.C. 513.08.

OAG 91-039

Attorney General

2-214

requiring the release of prescription records by a pharmacy or pharmacist to members or employees of the Board would, however, have precisely that effect. Thus, I must advise you that, while the State Board of Pharmacy may adopt a rule authorizing the State Medical Board to physically remove prescription records from a pharmacy despite the objections of the pharmacy, the State Medical Board may not adopt and promulgate such a rule pursuant to R.C. 4731.05(A).

Based upon the foregoing, it is my opinion, and you are advised that:

1. R.C. 3719.13 does not confer upon the State Medical Board or its employees the authority to remove prescription records from the custody and control of a pharmacy or pharmacist that is responsible for maintaining those records.
2. 7 Ohio Admin. Code 4729-5-17(H) does not require a pharmacy or pharmacist that is responsible for maintaining drug dispensing or administering records to release such records to the State Medical Board or its employees.
3. The State Medical Board may not, pursuant to R.C. 4731.05(A), adopt and promulgate an administrative rule that purports to confer upon the Board or its employees the authority to remove prescription records from the custody and control of a pharmacy or pharmacist that is responsible for maintaining those records.

thereby find itself subject to criminal prosecution under R.C. 3719.99 for violating the record maintenance provisions of R.C. 3719.05 and R.C. 3719.27, or that a court would be inclined to characterize such conduct on the part of the pharmacy or pharmacist as a failure to comply with the mandates of those provisions. See R.C. 2901.04(A) ("[s]ections of the Revised Code defining offenses or penalties shall be strictly construed against the state, and liberally construed in favor of the accused"); *Leet v. City of Eastlake*, 7 Ohio App. 2d 218, 223, 220 N.E.2d 121, 124 (Lake County 1966) ("a penal statute must be reasonably clear and precise, and a conviction under it can be upheld only if it is within both the spirit and the letter of the statute") (emphasis in original).

**OPINION NO. 91-039**

**Syllabus:**

If 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.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio  
By: Lee Fisher, Attorney General, September 12, 1991

I have before me your request for my opinion concerning the assessment of state mandated court costs. By way of background, your opinion request states that, municipal and county courts are assigning, pursuant to M.C. Sup. R. 12, a single case number where a defendant is charged with more than one misdemeanor. "These

2-215

1991 Opinions

OAG 91-039

courts then attach an additional identifier, such as -A, -B, -C, or -01, -02, -03, for each [misdemeanor charged]." In light of this practice, you ask: If an individual is charged with more than one misdemeanor 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, may each misdemeanor charged within that case number be considered a "case" for purposes of assessing the court costs mandated by R.C. 2743.70 and R.C. 2949.091.

#### Assessment of State Mandated Court Costs

Courts are required, pursuant to R.C. 2743.70 and R.C. 2949.091, to impose additional court costs and bail against nonindigent individuals. Under R.C. 2743.70(A)(1)

[T]he 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) Twenty dollars, if the offense is a felony;
- (b) Six dollars, if the offense is a misdemeanor.

The court shall not waive the payment of the twenty or six 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.

Similarly, R.C. 2949.091(A)(1) 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 eleven 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 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 of state into the general revenue fund. The court shall not waive the payment of the additional eleven 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.

These sections, thus, require a municipal court or county court, in which any individual is convicted of or pleads guilty to any offense other than a traffic offense that is not a moving violation, to assess a specific sum as costs in the case.

In the syllabus of 1991 Op. Att'y Gen. No. 91-022, I concluded 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." See 1982 Op. Att'y Gen. No. 82-050 (syllabus, paragraph two). In so concluding, I noted that

neither 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; see, e.g., *State v. Dorso*, 4 Ohio St. 3d 60, 62, 446 N.E.2d 449, 451 (1983). *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 other than a traffic offense that is not a moving violation.

OAG 91-039

Attorney General

2-216

Op. No. 91-022 at 2-118. Since neither R.C. 2743.70 nor R.C. 2949.091 has been substantially amended,<sup>1</sup> I affirm the conclusion reached in Op. No. 91-022.

**Additional Identifier to each  
Misdemeanor Charged in a Prosecution**

With this background in mind, I turn now to your specific question. Mandatory provisions with regard to the administration of municipal courts and county courts are set forth in the Rules of Superintendence for Municipal Courts and County Courts. See M.C. Sup. R. 1(A) (the Rules of Superintendence for Municipal Courts and County Courts "are applicable to all municipal courts and county courts of this state"). These rules were promulgated by the Ohio Supreme Court in an effort

(1) to expedite the disposition of all matters before the courts of this state, while at the same time safeguarding the unalienable rights of all parties to the just processing of their causes; (2) to standardize record keeping and statistical reporting of caseload and case flow information and to provide [empirical] data to federal, state, and local legislative bodies, and to the general public; and (3) to permit the judicial branch of government to assess, monitor, and evaluate its performance.

Supreme Court of Ohio, *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 6* (January 1, 1990). See generally Ohio Const. art. IV, §5(A)(1) ("[i]n addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the supreme court"); M.C. Sup. R. 1(B) (the Rules of Superintendence for Municipal Courts and County Courts "are promulgated pursuant to Section 5(A)(1) of Article IV of the Constitution of Ohio").

The Rules of Superintendence for Municipal Courts and County Courts, thus, set forth mandatory provisions regarding the standardization of record keeping and statistical reporting of caseload and case flow information. In particular, M.C. Sup. R. 12 delineates provisions concerning the transmission of reports and information to the Ohio Supreme Court. Division (E) of this rule provides:

**(E) Case numbering.**

(1) **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 January 1 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.*

(2) **Multiple defendants or charges in criminal cases....**

*Where a defendant is charged with a misdemeanor and a traffic offense, the defendant shall be assigned one case number. The category selected for the case number and its case type designator shall be that of the offense having the greatest potential penalty.*

*Where, as a result of the same act, transaction, or series of acts or transactions, a defendant is charged with a felony and any misdemeanor or misdemeanors, including traffic offenses, the defendant shall be assigned two case numbers, one for the felony and one for all the other offenses. 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.)*

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

<sup>1</sup> I note R.C. 2949.091 has been amended by Am. Sub. H.B. 298, 119th Gen. A. (1991) (eff. July 26, 1991). The only substantive change contained therein was an increase from ten dollars to eleven dollars in the sum to be imposed as costs in a case.

2-217

1991 Opinions

OAG 91-039

offense arising from the same act, transaction, or series of acts or transactions."<sup>2</sup> Supreme Court of Ohio, *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 225* (January 1, 1990). See generally R. Crim. P. 8(A) ("[t]wo or more offenses may be charged in the same... complaint in a separate count for each offense if the offenses charged... are of the same or similar character, or are based on the same act or transaction, or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan, or are part of a course of criminal conduct").

M.C. Sup. R. 12(E) further provides that municipal courts and county courts may add additional identifiers to a case number. Accord Supreme Court of Ohio, *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 225* (January 1, 1990). Additional identifiers are utilized by courts to augment the information provided by the case number. See Supreme Court of Ohio, *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 225* (January 1, 1990).

It 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. The fact that courts may add an additional identifier to each of the misdemeanors charged within that criminal prosecution, does not make each of the misdemeanors a "case." As indicated above, additional identifiers provide additional information. The Ohio Supreme Court, in its *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 225* (January 1, 1990) has stated that an identifier may be used to identify the judge to whom a case is assigned or to indicate the degree of misdemeanor charged in a case. The Ohio Supreme Court, thus, has indicated that additional identifiers are to be used to provide additional information, rather than to identify and distinguish between different cases within a single case number. Moreover, I have been unable to locate any authority to the effect that additional identifiers are to be used to identify and distinguish between different cases within a single case number.

Therefore, it is my opinion and you are hereby advised that, if 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.

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<sup>2</sup> I note that

[t]here is one exception to the multiple charge rule. 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, two case numbers are assigned. [O]ne number is for the felony or felonies and the other number is for all of the non-felony offenses.

Supreme Court of Ohio, *The Supreme Court of Ohio Rules of Superintendence Implementation Manual 226* (January 1, 1990), see M.C. Sup. R. 12(E)(2).



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September 11, 2007

OPINION NO. 2007-030

The Honorable William D. Mason  
Cuyahoga County Prosecuting Attorney  
Justice Center  
Courts Tower  
1200 Ontario Street  
Cleveland, Ohio 44113

Dear Prosecutor Mason:

You have requested an opinion whether the additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 is to be charged per moving violation adjudicated or otherwise processed by a municipal court in a case or once per case when a person is convicted of or pleads guilty to more than one moving violation in a case.<sup>1</sup> In such a situation, the additional court cost is to be charged per moving violation adjudicated or otherwise processed by the municipal court.

#### Assessment of Court Costs by Courts

In order to answer your question, we must first examine the authority of courts to impose court costs. Court costs are fees and charges required by law to be paid to the courts for services

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<sup>1</sup> In Ohio a person may be charged with one or more moving violations in a case. *See generally* Ohio Sup. R. 2(A)(2) (as used in the Rules of Superintendence for the Courts of Ohio, a "case," means, among other things, a "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" filed in a municipal court); Ohio Traf. R. 2(A) ("'[t]raffic case' means any proceeding, other than a proceeding resulting from a felony indictment, that involves one or more violations of a law, ordinance, or regulation governing the operation and use of vehicles, conduct of pedestrians in relation to vehicles, or weight, dimension, loads or equipment, or vehicles drawn or moved on highways and bridges. 'Traffic case' does not include any proceeding that results in a felony indictment").

provided during the course of a criminal or civil proceeding. As explained in *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d 50, 50-51, 430 N.E.2d 925 (1982):

“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 ... and which the statutes authorize to be taxed and included in the judgment.... 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....” *State, ex rel. Commrs. of Franklin County, v. Guilbert* (1907), 77 Ohio St. 333, 338-339, [83 N.E. 80,] quoted, in part, with approval in *Benda v. Fana* (1967), 10 Ohio St. 2d 259, 262-263[, 227 N.E.2d 197].

*Accord* 1997 Op. Att’y Gen. No. 97-058 at 2-350. *See generally* *Black’s Law Dictionary* 372 (8th ed. 2004) (defining “costs” as “[t]he charges or fees taxed by the court, such as filing fees, jury fees, courthouse fees, and reporter fees. — Also termed *court costs*.... The expenses of litigation, prosecution, or other legal transaction, esp. those allowed in favor of one party against the other”). A court thus may not impose a charge or fee as a court cost unless the authority to do so has been expressly granted to the court. *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d at 51, 430 N.E.2d 925; *see* 2005 Op. Att’y Gen. No. 2005-014 at 2-140 n.7; 1997 Op. Att’y Gen. No. 97-058 at 2-350. *See generally* 1984 Op. Att’y Gen. No. 84-088 at 2-304 (advising that the cost of a breathalyzer test may not properly be taxed against a defendant as a part of the court costs absent specific statutory authorization for imposing such as a court cost).

In Ohio there are numerous statutes authorizing various courts to impose varying charges and fees in specific situations in criminal and civil proceedings. *See, e.g.*, R.C. 311.17 (when a county sheriff performs a service specified in R.C. 311.17, the sheriff shall charge a fee, “which the court or its clerk shall tax in the bill of costs against the judgment debtor or those legally liable therefor for the judgment”); R.C. 1901.26 (authorizing municipal courts and legislative authorities of municipal corporations to establish a schedule of fees to be taxed as costs in civil, criminal, and traffic proceedings); R.C. 2301.24 (“[t]he compensation for transcripts of testimony requested by the prosecuting attorney during trial in criminal cases or by the trial judge, in either civil or criminal cases, and copies of decisions and charges furnished by direction of the court shall be paid from the county treasury, and taxed and collected as costs”); R.C. 2301.25 (costs of transcripts may be taxed as court costs); R.C. 2303.20 (setting forth the fees that a clerk of the court of common pleas may charge in a case); R.C. 2303.201 (setting forth additional fees that a clerk of the court of common pleas may charge in a case); R.C. 2303.21 (expenses of procuring a transcript of a judgment or proceeding or exemplification of a record shall be taxed in the bill of costs); R.C. 2335.02 (compensation of appraisers and arbitrators “shall be taxed in the costs of such cause”); R.C. 2335.05 (witness fees and mileage “shall be taxed in the bill of costs”); R.C. 2335.06 (witness fees and mileage in civil cases are “to be taxed in the bill of costs”); R.C. 2335.08 (witness fees in criminal cases may be taxed as costs); R.C. 2335.09 (interpreter’s fee is to be taxed in the bill of costs); R.C. 2335.11 (fees of magistrates and their officers, witness fees, and interpreter’s fees shall be inserted in the judgment of

conviction); R.C. 2335.28(A) (“in any civil action in a court of common pleas in which a jury is sworn, the fees of the jurors sworn shall be taxed as costs unless” the court determines otherwise); R.C. 2743.70 (authorizing a court to impose an additional court cost in felony and misdemeanor cases); R.C. 2947.06 (fees of psychologist or psychiatrist appointed by a court may be taxed as costs in the case); R.C. 2947.23(A)(2)(a) (“[i]f a jury has been sworn at the trial of a case, the fees of the jurors shall be included in the costs”); R.C. 2949.091 (authorizing a court to impose an additional court cost in criminal cases); R.C. 2949.14 (including in court costs the amount paid “for the arrest and return of the person on the requisition of the governor, or on the request of the governor to the president of the United States, or on the return of the fugitive by a designated agent”).

Because the power to impose a charge or fee as a court cost must be statutorily granted to a court, the specific language of the statute authorizing the court to impose the charge or fee controls how the charge or fee shall be imposed. In other words, the manner in which a court imposes a court cost is determined from the statute authorizing that particular court to impose a specific charge or fee as a court cost. See *Centennial Ins. Co. v. Liberty Mut. Ins. Co.*, 69 Ohio St. 2d at 51, 430 N.E.2d 925 (“[t]oday, we reaffirm the principle that ‘[t]he subject of costs is one entirely of statutory allowance and control’” (quoting *State ex rel. Michaels v. Morse* 165 Ohio St. 599, 607, 138 N.E.2d 660 (1956))); *Sorin v. Bd. of Educ. of Warrensville Heights Sch. Dist.*, 46 Ohio St. 2d 177, 179, 347 N.E.2d 527 (1976) (same as previous parenthetical).

### **County Participation in a Criminal Justice Regional Information System**

Let us now consider your specific question, which asks whether the additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 is to be charged per moving violation adjudicated or otherwise processed by a municipal court in a case or once per case when a person is convicted of or pleads guilty to more than one moving violation in a case. R.C. 2949.093(A) authorizes a board of county commissioners of a county containing at least fifty-five law enforcement agencies to “elect to participate in a criminal justice regional information system,<sup>2</sup> either by creating and maintaining a new criminal justice regional information system or by participating in an existing criminal justice regional information system.”<sup>3</sup> (Footnote added.) Funding for the county’s participation in the system is obtained in the following manner:

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<sup>2</sup> For purposes of R.C. 2949.093, a “criminal justice regional information system” is “a governmental computer system that serves as a cooperative between political subdivisions in a particular region for the purpose of providing a consolidated computerized information system for criminal justice agencies in that region.” R.C. 2949.093(H)(3).

<sup>3</sup> A board of county commissioners may not elect to participate in a criminal justice regional information system unless the board has created in the county treasury a criminal justice regional information fund pursuant to R.C. 305.28. R.C. 2949.093(B). See generally R.C.

A county that elects to participate in a criminal justice regional information system shall obtain revenues to fund its participation by establishing an additional court cost not exceeding five dollars to be imposed for moving violations<sup>4</sup> that occur in that county. The board of county commissioners of that county shall establish the amount of the additional court cost by resolution. The board shall give written notice to all courts located in that county that adjudicate or otherwise process moving violations that occur in that county of the county's election to participate in the system and of the amount of the additional court cost. (Footnote added.)

R.C. 2949.093(C).<sup>5</sup>

When a municipal court receives notice of an additional court cost established by a board of county commissioners pursuant to R.C. 2949.093, the court is required to do the following:

(C) .... Upon receipt of such notice, each recipient court shall impose that amount as an additional court cost for all moving violations the court adjudicates or otherwise processes, in accordance with divisions (D) and (E) of this section.

(D)(1) The court in which any person is convicted of or pleads guilty to any moving violation that occurs in a county that has elected to participate in a criminal justice regional information system shall impose the sum established by the board pursuant to division (C) of this section as costs in the case in addition to

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305.28 (“[i]f a board of county commissioners by resolution elects to participate in a criminal justice regional information system as provided in [R.C. 2949.093], the board also shall create in its county treasury a criminal justice regional information fund”).

<sup>4</sup> As used in R.C. 2949.093, a “moving violation” means

any violation of any statute or ordinance, other than [R.C. 4513.263] 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.

R.C. 2949.093(H)(1).

<sup>5</sup> In accordance with the authority granted to a board of county commissioners under R.C. 2949.093(C), the Cuyahoga County Board of Commissioners has adopted a resolution that requires the courts in the county to impose an additional court cost of five dollars when the courts adjudicate or otherwise process a moving violation that occurs in the county.

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 court cost established by the board pursuant to division (C) of this section unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

All such money collected during a month shall be transmitted on the first business day of the following month by the clerk of the court to the county treasurer of the county in which the court is located and thereafter the county treasurer shall deposit the money in that county's criminal justice regional information fund.

.....  
(E) Whenever a person is charged with any offense that is a moving violation and posts bail, the court shall add to the amount of the bail the set sum required to be paid by division (D)(1) of this section. The clerk of the court shall retain that set sum 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 set sum to the county treasurer, who shall deposit it in the county criminal justice regional information fund. If the person is found not guilty or the charges are dismissed, the clerk shall return the set sum to the person.

R.C. 2949.093.<sup>6</sup>

Moneys collected by a municipal court under R.C. 2949.093 and deposited in the county criminal justice regional information fund are used "to pay the costs [the county] incurs in creating and maintaining a new criminal justice regional information system or to pay the costs [the county] incurs in participating in an existing criminal justice regional information system," unless the board of county commissioners determines that there is a surplus in the fund. R.C. 2949.093(G). If a surplus is declared, the county "may expend the surplus only to pay the costs [the county] incurs in improving the law enforcement computer technology of local law enforcement agencies located in [the] county." R.C. 2949.093(G)(2). *See generally* R.C. 305.28 ("[a]ll money deposited into [a criminal justice regional information] fund shall be used only as provided in [R.C. 2949.093]").

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<sup>6</sup> A person may not be placed or held in a detention facility, as defined in R.C. 2921.01, for failing to pay the additional court cost or bail that is required to be paid by R.C. 2949.093. R.C. 2949.093(F).

### The Additional Court Cost of R.C. 2949.093 Is Charged for All Moving Violations Adjudicated or Otherwise Processed

A review of R.C. 2949.093 discloses that a municipal court is required to impose the additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 "for *all* moving violations the court adjudicates or otherwise processes." R.C. 2949.093(C) (emphasis added). The use of the word "all" plainly and unequivocally indicates that a municipal court must impose the additional court cost established by R.C. 2949.093 whenever the court adjudicates or otherwise processes a moving violation. *See generally Black's Law Dictionary* 74 (6th ed. 1990) (defining the word "all" as "the whole of—used with a singular noun or pronoun, and referring to amount, quantity, extent, duration, quality, or degree. The whole number or sum of—used collectively, with a plural noun or pronoun expressing an aggregate. Every member of individual component of; each one of—used with a plural noun. In this sense, all is used generically and distributively. 'All' refers rather to the aggregate under which the individuals are subsumed than to the individuals themselves"). *See generally also* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). Moreover, no language in R.C. 2949.093 or elsewhere in the Revised Code prohibits a municipal court from imposing the court cost established by a board of county commissioners pursuant to R.C. 2949.093 more than once in a case when the court adjudicates or otherwise processes multiple moving violations in the case.

Finally, it is significant to note that when the General Assembly intends for a court cost to be assessed only once per case, rather than per violation in a case, it has clearly conveyed that intention. For example, R.C. 2743.70 and R.C. 2949.091 require a 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, to impose a specific sum of money "as costs in the case."<sup>7</sup> 1991 Op. Att'y Gen. No.

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<sup>7</sup> R.C. 2743.70(A)(1) provides, in part:

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. (Emphasis added.)

R.C. 2949.091(A)(1) similarly states, as follows:

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. (Emphasis added.)

91-022 examined the language of R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1) and concluded that the court costs imposed by these two statutes are to be charged per case, rather than per offense. In reaching this conclusion, the opinion at 2-118 explained as follows:

The language of R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1) ... 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 to any offense other than a traffic offense that is not a moving violation. I note that neither 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. *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 other than a traffic offense that is not a moving violation.

In addition to the foregoing, I note 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. Hence, it is a commonly acknowledged and statutorily recognized practice to consolidate two or more offenses charged against a person into one case.

*[Even though] the General Assembly was cognizant of the fact that situations would arise in which a person would be convicted of or plead guilty to more than one offense in a case when it enacted R.C. 2743.70 and R.C. 2949.091[,] ... [it] 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 two sections indicates the contrary. (Citations omitted and emphasis added.)*

*See generally* 1982 Op. Att'y Gen. No. 82-050 (syllabus, paragraph two) ("[t]he costs imposed by Section 169 (uncodified) of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) and Section 167 (uncodified) of Am. Sub. H.B. 694, as amended by Section 60 (uncodified) of Am. Sub. H.B. 552, 114th Gen. A. (1981) (eff. Nov. 24, 1981) are to be charged on a per case basis").<sup>8</sup>

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<sup>8</sup> Language substantially similar to that set forth in uncodified sections 169 and 167 of Am. Sub. H.B. 694, 114th Gen. A. (1981) (eff. Nov. 15, 1981) now appears in R.C. 2743.70(A)(1) and R.C. 2949.091(A)(1), respectively.

Unlike R.C. 2743.70 and R.C. 2949.091, the language of R.C. 2949.093 explicitly conditions the imposition of the additional court cost established by a board of county commissioners upon the number of moving violations a municipal court adjudicates or otherwise processes in a case. R.C. 2949.093(C). Thus, the inclusion of language in R.C. 2949.093(C) requiring a municipal court to impose the additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 “for all moving violations the court adjudicates or otherwise processes” evinces that the General Assembly intended for such costs to be charged per moving violation adjudicated or otherwise processed by a court in a case when a person is convicted of or pleads guilty to more than one moving violation in the case. *See generally Metro. Sec. Co. v. Warren State Bank*, 117 Ohio St. 69, 76, 158 N.E. 81 (1927) (“[h]aving used certain language in the one instance and wholly different language in the other, it will rather be presumed that different results were intended”). If the General Assembly had not intended such a result, it would not have used the language it did in R.C. 2949.093(C). *See generally NACCO Indus., Inc. v. Tracy*, 79 Ohio St. 3d 314, 316, 681 N.E.2d 900 (1997) (“Congress is generally presumed to act intentionally and purposely when it includes particular language in one section of a statute but omits it in another”); *State ex rel. Cleveland Elec. Illum. Co. v. City of Euclid*, 169 Ohio St. 476, 479, 159 N.E.2d 756 (1959) (“the General Assembly is not presumed to do a vain or useless thing, and that when language is inserted in a statute it is inserted to accomplish some definite purpose”).

### Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that the additional court cost established by a board of county commissioners pursuant to R.C. 2949.093 is to be charged per moving violation adjudicated or otherwise processed by a municipal court in a case when a person is convicted of or pleads guilty to more than one moving violation in a case.

Respectfully,



MARC DANN  
Attorney General

## **1.42 Common, technical or particular terms.**

Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Effective Date: 01-03-1972

## 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 pro-rated 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

## **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

## **2949.093 Participation in criminal justice regional information system.**

(A) A board of county commissioners of any county containing fifty-five or more law enforcement agencies by resolution may elect to participate in a criminal justice regional information system, either by creating and maintaining a new criminal justice regional information system or by participating in an existing criminal justice regional information system.

(B) A county is not eligible to participate in any criminal justice regional information system unless it creates in its county treasury, pursuant to section 305.28 of the Revised Code, a criminal justice regional information fund.

(C) A county that elects to participate in a criminal justice regional information system shall obtain revenues to fund its participation by establishing an additional court cost not exceeding five dollars to be imposed for moving violations that occur in that county. The board of county commissioners of that county shall establish the amount of the additional court cost by resolution. The board shall give written notice to all courts located in that county that adjudicate or otherwise process moving violations that occur in that county of the county's election to participate in the system and of the amount of the additional court cost. Upon receipt of such notice, each recipient court shall impose that amount as an additional court cost for all moving violations the court adjudicates or otherwise processes, in accordance with divisions (D) and (E) of this section.

(D)(1) The court in which any person is convicted of or pleads guilty to any moving violation that occurs in a county that has elected to participate in a criminal justice regional information system shall impose the sum established by the board pursuant to division (C) of this section 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 court cost established by the board pursuant to division (C) of this section unless the court determines that the offender is indigent and waives the payment of all court costs imposed upon the indigent offender.

All such money collected during a month shall be transmitted on the first business day of the following month by the clerk of the court to the county treasurer of the county in which the court is located and thereafter the county treasurer shall deposit the money in that county's criminal justice regional information fund.

(2) The juvenile court in which a child is found to be a juvenile traffic offender for an act that is a moving violation occurring in a county participating in a criminal justice regional information system shall impose the sum established by the board pursuant to division (C) of this section as costs in the case in addition to any other court costs that the court is required by law to impose upon the juvenile traffic offender. The juvenile court shall not waive the payment of the additional court cost established by the board pursuant to division (C) of this section unless the court determines that the juvenile is indigent and waives the payment of all court costs imposed upon the indigent offender.

All such money collected during a month shall be transmitted on the first business day of the following month by the clerk of the court to the county treasurer of the county in which the juvenile court is located and thereafter the county treasurer shall deposit the money in that county's criminal justice regional information fund.

(E) Whenever a person is charged with any offense that is a moving violation and posts bail, the court shall add to the amount of the bail the set sum required to be paid by division (D)(1) of this section. The clerk of the court shall retain that set sum 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 set sum to the county treasurer, who shall deposit it in the county criminal justice regional information fund. If the person is found not guilty or the charges are dismissed, the clerk shall return the set sum to the person.

(F) No person shall be placed or held in a detention facility as defined in section 2921.01 of the Revised Code for failing to pay the court cost or bail that is required to be paid by this section.

(G)(1) Except as provided in division (G)(2) of this section, all funds collected by a county under this section shall be used by that county only to pay the costs it incurs in creating and maintaining a new criminal justice regional information system or to pay the costs it incurs in participating in an existing criminal justice regional information system.

(2) If the board of county commissioners of a county determines that the funds in that county's criminal justice regional information fund are more than sufficient to satisfy the purpose for which the additional court cost described in division (C) of this section was imposed, the board may declare a surplus in the fund. The county may expend the surplus only to pay the costs it incurs in improving the law enforcement computer technology of local law enforcement agencies located in that county.

(H) 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.

(3) "Criminal justice regional information system" means a governmental computer system that serves as a cooperative between political subdivisions in a particular region for the purpose of providing a consolidated computerized information system for criminal justice agencies in that region.

Effective Date: 09-29-2005