

IN THE SUPREME COURT OF OHIO

CITY OF MIDDLEBURG HEIGHTS, STATE OF OHIO,)	Case No. 2007-1863
)	
Plaintiff/Appellant,)	On Appeal from the
)	Cuyahoga County (Cleveland),
v.)	Ohio Court of Appeals, Eighth
)	Appellate District
VINCENT QUINONES,)	Case No. 06-CA-088242
Defendant/Appellee.)	

REPLY BRIEF OF PLAINTIFF/APPELLANT

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I. INTRODUCTION

The Merit Brief of Defendant-Appellee, Vincent Quinones, attempts to blur the distinction between those statutes requiring court costs to be charged on a “per case” basis, such as R.C. §§2743.70 and 2949.091, and those statutes authorizing court costs to be charged on a “per charge” basis, such as R.C. §1901.26. Appellee was not charged court costs under R.C. §§2743.70 and 2949.091 on a “per charge” basis. There is no dispute that Appellee was charged once, and only once, for court costs required to be charged under R.C. §§2743.70 and 2949.091. Those court costs authorized to be charged under §1901.26 were charged on a “per charge” basis.

Appellee further attempts to mislead this Court by arguing that he “was assessed court costs in excess of \$1,200.00, even though the fines imposed of \$565.00 were less than half that amount.¹” From the record as reflected on the case jacket, Appellee was charged court costs in the amount of \$588.00 and fines in the amount of \$565.00, for a total of \$1,153.00.

Appellee defends the Court of Appeals decision through citation to general court costs statutes which simply are not supportive of his position. This Court should look no further than R.C. 1901.26(B).

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.

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

The parties are in agreement that the authority to tax costs is strictly a matter of legislative control and that the plain and unambiguous language of the statute controls. Appellee

¹ The Plain Dealer did indeed report the amount of court costs to be \$1,200.00, apparently after interviewing Attorney Leneghan, Jr. The Plain Dealer and Appellee’s counsel have incorrectly reported the amount of court costs.

does not dispute that the language of R.C. §1901.26 allows local court costs to be imposed on a “per charge” rather than a “per case” basis.

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. Local court costs, therefore, can be imposed on a “per charge” basis.

Appellee argues, however, that because local court costs were not specifically adopted by rule, that he was not placed on notice of the amount and nature of court costs to be assessed. Court costs, however, are authorized by rule of court and adopted by formal Court Order and Journal Entry signed by the Municipal Court Judge. All court costs are prominently displayed on the Clerk of Court's website and in the Clerk of Court's office pursuant to Court rules.

In fact, Loc. R. 5(A) provides:

NO action or proceeding shall be accepted for filing by the Clerk of Court unless there is deposited the sum of money set forth in the **Schedule of Costs** established from time to time by this Court and which schedule shall be posted in a conspicuous place in the Offices of the Clerk of Court. (Emphasis in original.)

The costs attributed to the special projects are stated and identified in the Journal Entries and reported in the Schedule of Costs noted in the local court rules. The Schedule of Costs is posted in a conspicuous place in the Offices of the Clerk of Court. The fact that the Berea Municipal Court chose to adopt these special costs by way of a journal entry as authorized by a rule² and reported on the Schedule of Costs is a distinction without a difference. In fact, a court journal entry should be given more force and effect than a rule as the violation of a court order can result in a contempt citation. R.C. §1901.13(A). Violation of a court rule, on the other hand, cannot result in such a citation.

Finally, it cannot be disputed that all court costs are charged and remain pending upon the filing of the citations and opening of the files. The Berea Municipal Court's computerized docketing system automatically charges costs when a file is opened. Court costs remain pending until a final disposition of the case. Upon conviction and a sentencing entry, the court costs are calculated pursuant to the above referenced Journal Entry and assessed in accordance with the Municipal Court's orders as appearing on the Case Jacket and Docket.

² The entire local rules can be found at:
<http://www.bereamunicipal.org/documents/BEREA%20MUNICIPAL%20COURT%20RULES.pdf>.

The process has been explained and approved by this Court in *State v. Threatt* (2006), 108 Ohio St.3d 277, 2006-Ohio-905, as follows:

{¶ 19} In all criminal cases, costs must be included in the sentencing entry. R.C. 2947.23(A). The clerk of courts is responsible for generating an itemized bill of the court costs. R.C. 2949.14. However, even if the itemized bill is ready at the time of sentencing, "the specific amount due is generally not put into a judgment entry." *State v. Glosser*, 157 Ohio App.3d 588, 2004-Ohio-2966, 813 N.E.2d 1, ¶ 27 (Edwards, J., concurring). Therefore, a typical sentencing entry, like the one that sentenced Threatt, assesses only unspecified costs, with the itemized bill to be generated at a later date.

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

In every criminal and/or traffic case opened in Berea Municipal Court, the \$15.00 State Revenue Fund charge, the \$9.00 State Victims of Crime Fund charge, and the \$5.00 CRIS charge are charged and remain pending once each per case regardless of the number of charges issued against such defendant arising out of the same incident, transaction or occurrence. In every criminal and/or traffic case opened in Berea Municipal Court, the remaining basic court costs are charged and remain pending once per charge issued against such defendant.

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.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Reply Brief has been served via regular U.S. mail this 22nd day

of May 2008 upon:

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