

IN THE SUPREME COURT OF OHIO

**ELEVATORS MUTUAL INSURANCE
COMPANY,**

Plaintiff/Appellee,

v.

**J. PATRICK O'FLAHERTY'S, INC.,
et al.,**

Defendants/Appellees.

) **SUPREME COURT CASE NO. 09-0321**
)
)
) **On appeal from the**
) **Sandusky County Court of Appeals**
) **Sixth Appellate District**
)
) **Court of Appeals Case No. 08CAS00006**
)
)
)

MEMORANDUM IN OPPOSITION TO JURISDICTION

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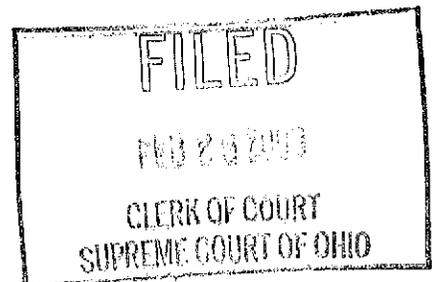


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THIS CASE IS NOT OF PUBLIC AND GREAT GENERAL INTEREST

Appellants mischaracterize the appellate court decision in a dramatic fashion in an attempt to profoundly change the long standing general rule of law in Ohio that a conviction following a no contest plea is not admissible in subsequent civil litigation. Appellants repeatedly state in their memoranda that the Court of Appeals in its December 31, 2008, Decision and Judgment held that an arsonist guilty of “torching” his own restaurant can exclude evidence of his criminal convictions in his civil suit against his insurer, thereby permitting the wrongdoer to “profit” from his or her own wrongdoing. Apparently, appellants believe that if they make this statement often enough, it will be accepted as true. It is axiomatic that proven wrongdoers or arsonists should not be allowed to recover for their criminal acts. Appellees have no argument with this general principle. However, this general principle does not apply to the case at bar. As the Court of Appeals found, the issue in this case is not one of policy, but of evidence.

Appellee cites numerous foreign cases for the proposition that, as a matter of policy, an arsonist ought not to be allowed to profit from the act of arson. The question here, however, is not one of **policy**, but of **evidence**.

(Elevators Mutual Insurance Company v. J. Patrick O'Flaherty's, Inc., 6th App. Dist., No. S-08-006, Decision and Judgment, decided Dec. 31, 2008 @ p. 7; emphasis added).

For over one hundred (100) years civil plaintiffs' lawyers, defense lawyers, and insurance representatives have comfortably advised clients to enter no contest pleas in criminal pleadings. This advice was freely given because it was well established in the common law that a no contest plea or the routine conviction which followed could not be used in any subsequent civil proceeding.

The record in this case is clear. **The appellee/defendant, Richard Heyman, entered a no contest plea because he was assured that it would have no impact upon his civil case.**

The plea was clearly entered for reasons other than that he had committed a crime. He was faced with a situation in which his ailing wife was indicted without a shred of evidence supporting her guilt of any criminal act. Furthermore, he was represented by appointed counsel whom he felt had little incentive to properly and vigorously defend him. Finally, he was given assurance that he would have to pay no restitution and he would not be incarcerated. In summary, the prosecutor recognized the total weakness of his case and gave him a plea bargain which one could hardly turn down.

Hundreds of plea bargains involving no contest pleas occur across the State of Ohio on a monthly basis which include the direct or indirect promise that they will have no impact on the civil proceeding which often times follow. Every municipal judge in this state accepts no contest pleas on charges from speeding to traffic manslaughters by potential defendants. The legal representatives of insurance companies and plaintiffs' attorneys all over the nation have been comfortable in advising their clients that a no contest plea and the conviction which inevitably follows will not affect their civil case.

In the instant case, the appellants seek to change this long-standing rule. This proposed change in the law undermines the credibility of the court system. Hundreds of plaintiffs and defendants throughout the State of Ohio have entered pleas in reliance upon the law which has existed for over one hundred (100) years. The appellants believe that by reiterating over and over that appellee, Richard Heyman, is a convicted felon is justification for the argument that the conviction should be allowed in the civil case. Appellee, Richard Heyman, has always denied his guilt in this matter. Furthermore, the appellants are not in any way deprived of the ability to prove their case because of the long-standing rule of evidence which excludes the admissibility

of no contest pleas and convictions. If the appellants have a case, they will be given the opportunity to fully present it before a court and jury.

The public policy reason for precluding the no contest plea/conviction in evidence in a civil case has its roots in an understanding that people enter no contest pleas for multiple reasons other than admitting guilt. Some of the reasons are:

- (1) The avoidance of publicity over an extended period of time (i.e. politicians);
- (2) The enormous costs connected with fully defending a criminal case;
- (3) The emotional turmoil which a criminal trial can cause an individual;
- (4) The protection of one's health and family reputation; and
- (5) The avoidance of the extended time frame one experiences while waiting for a criminal trial.

This Court has repeatedly ruled that where one has **actually litigated** an issue and a court has made a finding, that conviction can be utilized in a civil proceeding. This Court's previous holdings make good sense. One should have to live with the consequences of a matter which was actually litigated. The appellees have no quarrel with those cases cited by appellants for this proposition of law.

This Court has also made it very clear that it will follow the well-established law that a no contest plea/conviction will not be allowed in evidence if the matter was not **actually litigated**. In the instant case, it is not in dispute that the issue behind the no contest plea was never litigated.

Appellants attempt to recast this Court's holdings by arguing that the no contest plea should be allowed if the criminal defendant **had an opportunity to litigate**. Of course, this

position completely eliminates the no contest plea for all time. It makes the no contest plea nonsensical.

Ohio courts have long recognized that the underlying criminal proceedings are an extremely poor place for civil litigation to be played out. If the appellee's argument prevails, the no contest plea will be eliminated from the court system in any instance where a potential civil case may follow. The consequences of eliminating the no contest plea will profoundly change the way the courts of Ohio function. In every instance where a traffic accident leads to a citation, a liability case will have to be fully tried at the municipal court or county court level. Any no contest plea which results in a conviction will be determinative of liability. Plaintiff's counsel will simply have to point to the conviction of the defendant in every intersection case, red light case or others. The matter will be *res judicata*.

Insurance companies and their lawyers will never advise another potential civil defendant to enter a no contest plea. The municipal courts will be overwhelmed with trials. There will be an overwhelming number of requests for jury trials. The liability issues in civil cases will be played out in the traffic courts. The no contest plea will be the equivalent of a guilty plea.

Prosecutors throughout Ohio routinely induce settlements in criminal cases by offering defendants the right to make no contest pleas. This is an extremely important part of their armament in reducing the criminal case load. If this Court makes the no contest plea/conviction the equivalency of a guilty plea, thousands of potential plea deals will evaporate.

Contrary to appellants' assertion, the Sixth District Court of Appeals' 12-31-08 decision is not in "direct conflict with" and does not misinterpret this Court's decision in *Mapes v. Ohio* (1985), 19 Ohio St.3d 108. The Sixth District Court of Appeals correctly applied *Mapes* in the case at bar.

The *Mapes* case clearly stands for the proposition that a no contest plea conviction will not be allowed in evidence of a civil case except when the conviction is made relevant by statute. In *Mapes*, a previous murder conviction was allowed into evidence following a no contest plea when it was offered by the prosecution for the purposes of establishing a specification in a second murder charge (i.e. a previous conviction). This court ruled as follows:

These rules do not prohibit the admission of a conviction entered upon that plea when such conviction is **made relevant by statute**. The trial court was correct in admitting the evidence of the prior conviction as it was not equivalent to the admission of the no contest plea and it was not introduced by the prosecution for any purpose other than establishing the specification. (Emphasis added.)

The Sixth District correctly found that the distinction between a no contest plea and a conviction on the plea, in a civil case, to be a false dichotomy. If the conviction is admissible, then it must be explained. Any explanation would have to include the fact that a no contest plea was entered and why. Admission of the conviction, in a civil case, is admission of the no contest plea which Ohio Evidence Rule 410 and Criminal Rule 11(B)(2) prohibit.

STATEMENT OF CASE AND FACTS

On the night of February 4, 2001, a fire destroyed the building, used as a restaurant, owned by defendants, Richard and Jan Heyman. An investigator from the State Fire Marshal's Office, Keith Lorenzo, went to the scene on February 4, 2001, to conduct an investigation as to the origin and cause of the February 4, 2001, fire. During the course of his investigation, he received a copy of James Churchwell's report. Churchwell was the investigator hired by plaintiff, Elevators Mutual Insurance Company. Churchwell prepared a written report dated October 3, 2001. Mr. Churchwell was at the scene of the fire on six occasions beginning

February 6 through April 10, 2001. (February 6, 7, 9, 15, 16 and April 10). He spoke with Loreno at the scene of the fire.

Loreno received a laboratory report authored/prepared by Christa Rajendram from the State Fire Marshall forensic laboratory which identified samples from the fire scene as **paint thinner**. These samples came from underneath boxes stored on the second floor, for which Loreno could not find any way for it to have gotten there. Consequently, he “reasoned” that the fire must have been deliberately set. Churchwell reached the same conclusion. Churchwell, as well as Loreno, relied upon the fact that “financial records” were soaked with **paint thinner**.

The failure of the sprinkler system to function, also, “certainly played a role” in Loreno’s determination that the fire was intentionally set. Loreno did not personally find that the sprinkler system was intentionally defeated/disarmed. In reaching the conclusion that the sprinkler system had been disarmed, Loreno relied upon the opinion of the insurance company’s experts.

Michael Kinn examined the sprinkler system at the request of the State Fire Marshal. Mr. Kinn had worked on the sprinkler system prior to the fire of 2-4-2001. He was asked by the State Fire Marshal to describe the normal operation of the system. He concluded that the whole system had, **prior to the fire, frozen, broke, and discharged all the water in the tank**. This conclusion was exactly the opposite of the insurer’s experts.

Loreno testified that he would determine the cause and origin of a fire and if deliberately set before he began an investigation as to who set the fire. However, in this case, he investigated Heyman’s motive for committing arson before he even determined the cause and origin of the fire.

Defendants retained Dennis Smith who gave expert witness testimony in this action in an April 4, 2007, deposition. He testified that scientific principles apply to the investigation of

fires. The proper methodology to investigate a fire is application of the scientific method in order to ensure that valid and reliable conclusions are reached. He visited the fire scene forty-one (41) days after the actual fire. When he visited the fire scene, it was evident that destruction had taken place caused by demolition equipment (not the fire itself). **Elevators Mutual's expert, Churchwell, was responsible for post-fire demolition.**

A fire investigator is required to examine all heat sources in the area(s) where the fire potentially started in order to identify a cause. If all the sources are not examined, they cannot be evaluated and eliminated as a cause of the fire. A fire investigator should locate where the fire started and the cause. In making these determinations, the investigator must look at all the heat sources starting with fuel and followed by the ignition sequence. Smith could not examine all heat sources because of the post-fire destruction. If the fire is determined to be deliberately set, only then does the issue become, who set the fire. Only then is motive relevant. A motive analysis and investigation of a motive is not an element of the analysis related to determining a fire's cause.

Neither Lorenzo nor Churchwell properly determined the origin of the fire.

Q So you told me you do not believe that either Mr. Churchwell or Mr. Lorenzo properly identified the area of the origin of the fire. Have I stated your testimony correctly?

A Yes.

Q And could you tell me why?

A Why they haven't provided any basis for their opinions. They have identified an area of origin based on simply finding what they believe to be paint thinner.

Q Okay.

A That is – that's the premise upon which their conclusions are supported. And that premise it turns out was recanted by the chemist. It's not paint thinner at all.

(Smith depo., p. 64, line 17 thru p. 65, line 6).

Loreno and Churchwell both identify an origin based on the presence of paint thinner on financial records. While the laboratory report did identify paint thinner as being found, the chemist, Christa Rajendram, did not testify that paint thinner was found. **Rather, the substance identified was medium petroleum distillate (hereinafter referred to as “MPD”).**

...I did report it as paint thinner, but it is a medium petroleum distillate.

(Rajendram depo., p. 31, lines 13-14).

MPDs and their by-products can show up in **clothing, t-shirts, dyes, paper, newspaper and ink**. The lab tests performed did not show how much MPD (the quantity) was present in any sample. One must know what amount of MPD is inherent to the material tested before concluding that it was added to the material (in this case, the financial records) to set the fire. No attempt was made to determine what amount of MPD was present. The trial court in Richard A. Heyman’s criminal case did not have this evidence before it.

The trial court had before it seven (7) depositions and three (3) affidavits among other evidentiary materials in ruling on plaintiff, Elevators Mutual’s, motion for summary judgment. The trial court’s January 25, 2008, decision granting summary judgment in plaintiff/appellant, Elevators Mutual’s, favor was based solely on defendant/appellee, Richard Heyman’s, convictions, not a review of the evidentiary record. The trial court’s January 25, 2008, decision granting Elevators’ motion for summary judgment reversed the trial court’s previous identical decisions of October 6, 2005, and April 12, 2006, denying all parties’ cross-motions for summary judgment. In these previous decisions, the same judge who entered the findings of conviction, addressed the admissibility and preclusive effect of Heyman’s no contest plea and his subsequent conviction. These decisions stated in pertinent part:

On May 25, 2004, defendant Richard A. Heyman entered a plea of *no contest* (see Rule 11 of Ohio Rules of Criminal Procedure) in relation to the charges of arson

and insurance fraud as charged in said indictment; and he was ultimately convicted and sentenced on said plea. **As part of the plea agreement, all charges against defendant Jan D. Heyman were dismissed.** (Emphasis on last sentence added.)

...As discussed below, this court finds that the *no contest* plea entered by defendant Richard A. Heyman has no issue-preclusive effect, and, therefore, plaintiff's motion for summary judgment fails.

Plaintiff cites authority from a number of jurisdictions, which establishes that a defendant who has been **convicted** of the crime of arson is precluded from arguing the issue again in a subsequent civil trial....

...The Ohio Supreme Court in *Mapes* held that here there was no error on the part of the trial court in the admission of evidence of the New Jersey conviction. In its holding, the Supreme Court noted that there were circumstances in which it had allowed admission of a no contest plea – such as in death penalty convictions and in relation to seeking enhanced penalties. However, the Court also noted that the primary goal of *Evid. R. 410* is to “protect the traditional characteristic of the no contest plea, which is avoiding the admission of guilt that is inherent in pleas of guilty.”

Here the attempted use of Richard Heyman's *no contest* plea to collaterally estop him from arguing his innocence would work against the primary goal of *Evid. R. 410* as stated by the Ohio Supreme Court in the *Mapes* case, and is not consistent with Ohio's definition of issue preclusion. **Richard Heyman chose to enter the plea of *no contest* for his own reasons, which are not relevant here. What is relevant is that he entered this plea with the expectation that it could not be used collaterally against him in a civil case, as his criminal case was not actually litigated or decided on the merits. This well settled practice is best left undisturbed by this court.** (Emphasis added.)

The 12-31-2808 appellate court decision correctly reinstated the previous decision of the trial court denying Elevators' motion for summary judgment.

ARGUMENTS CONTRA APPELLANTS' PROPOSITIONS OF LAW

The Sixth District Court of Appeals' decision is consistent with the long-standing rule of law in Ohio and other jurisdictions that a no contest plea/conviction could be admitted into

evidence only under very limited circumstances. This court, in addressing the question of issue preclusion, has repeatedly found the doctrine of issue preclusion requires an actual admission or actual litigation of the identical issue for the doctrine to apply. The Sixth District Court of Appeals had previously addressed this issue in *Young v. Gorski*, 2004 Ohio 1325; 2004 Ohio App. LEXIS 1170, as follows:

In *Monahan v. Eagle Picher Industries, Inc.* (1984), 21 Ohio App.3d 179; 21 Ohio B. 191, 486 N.E.2d 1165, paragraph one of syllabus, the Ohio Supreme Court defined issue preclusion using the four following elements:

(1) The party against whom estoppel is sought was a party or in privity with a party to the prior action; (2) there was a final judgment on the merits in the previous case after full and fair opportunity to litigate the issue; (3) **the issue must have been admitted or actually tried and decided and must be necessary to the final judgment**; and (4) the issue must have been identical to the issue involved in the prior suit. (Emphasis added.)

The Sixth District addressed this issue again in the case of *Frank v. Simon*, 2007 Ohio 1324; 2007 Ohio App. LEXIS 1231. The court stated on p. 4:

[P]rerequisite to the application of collateral estoppel is that the party asserting the preclusion must prove that the identical issue was **actually litigated, directly determined**, and essential to the judgment in the prior action. *Goodson v. McDonough Power Equipment, Inc.* (1983), 2 Ohio St3d 193, 201, 2 Ohio B. 732, 443 N.E.2d 978. Collaterally estopping a party from relitigating an issue previously decided against it violates due process where it could **not be foreseen that the issue would subsequently be utilized collaterally, and where the party had little knowledge or incentive to litigate fully and vigorously in the first action due to the procedural and/or factual circumstances presented therein**. *Id.*

Whether the issue was “actually and necessarily litigated” in the prior criminal action is more relevant than whether the party seeking to use collateral estoppel was a bound party to the criminal action. A criminal conviction is conclusive proof and operates as an estoppel on defendants as to the facts supporting the conviction

in a subsequent civil action. * * * **Estoppel extends only to questions directly put in issue and directly determined in the criminal prosecution.** *Wloszek v. Weston, Hurd Fallon, Paisley & Howley, LLP*, 8th Dist. No. 82412. (Emphasis added.)

The Supreme Court of Michigan, in the case of *Lichon v. American Universal Insurance Company*, 435 Mich. 408; 459 N.W.2d 288; 1990 Mich. LEXIS 2281, was dealing with a fire insurance claim in which the insurance company advanced precisely the same argument that the appellants are pursuing in this cause. The court explained why a **no contest plea** cannot create collateral estoppel in subsequent civil litigation. The court stated in its opinion:

Collateral Estoppel is also unavailable to American Universal because the issue whether plaintiff set the fires was never actually litigated. Under 1 *Restatement Judgments*, 2d §27, p. 250, collateral estoppel applies” [when] an issue of fact or law is *actually litigated* and determined by a valid and final judgment” (Emphasis added.) Comment e to this section clarifies this rule: “A judgment is not conclusive in a subsequent action as to issues **which might have been but were not litigated and determined in the prior action.**” *Id.*, p. 256. See also *Stolaruk Corp v. Dep’t of Transportation*, 114 Mich App 35; 319 NW2d 581 (1982).

The taking of Lichon’s **nolo contendere plea** cannot be considered “**actual litigation**,” at least not in terms of collateral estoppel jurisprudence. The essence of a nolo contendere plea is in its name, “nolo contendere,” or, “I will not contest it.” If the charges are uncontested, they are necessarily unlitigated. Neither can we accurately say that the procedures followed by the judge in establishing a factual basis for taking a nolo contendere plea constitute “actual litigation.” (Emphasis added.)

The court also stated:

We hold only that **neither a plea of nolo contendere nor a conviction** based thereon prevents the person who entered that plea from maintaining innocence in subsequent civil litigation regardless of whether the person who entered the plea is the plaintiff or the defendant in the subsequent litigation. (Emphasis added).

The Michigan Supreme Court noted that the plaintiff insured's insurance policy prevented recovery for damages caused by an insured's criminal acts. The Michigan Supreme court emphasized that it was untenable on public policy grounds to allow a person to benefit from his or her criminal acts. **However, the court reasoned that to say an arsonist should not benefit from his crime did not answer the question as to how a court may properly determine that a litigant is, in fact, an arsonist.** The primary purpose of a plea of *nolo contendere* or no contest, is to avoid potential future repercussions caused by the admission of liability, particularly, in the arena of potential future civil litigation. **To the extent a no contest plea is an implicit admission of guilt, it is an admission only for the purposes of the criminal proceeding in which the plea is entered.** The Michigan Supreme Court concluded that if the plaintiff insured's plea-based conviction established the truth of the charge in a subsequent action, that he played a role in starting the fire, the court would be required to ignore the language of Evidence Rules 410 and 803(22). Evidence Rules 410 and 803(22), according to the Michigan Supreme Court, recognized that a plea of *nolo contendere* does not necessarily establish a party's guilt **because of the inconclusive and compromised nature of judgments based on *nolo contendere* pleas.** The court noted that these evidence rules **facilitate plea bargaining and speedy resolution of criminal cases,** and that permitting a conviction following such a plea to prove the fact of a party's guilt, in a civil proceeding, **would thwart these purposes.** Permitting the admissibility of a conviction following such a plea, in a civil proceeding, as being dispositive, would render the use of the plea in a criminal proceeding **meaningless.**

Ultimately, the issue becomes one of reliability of the evidence. A no contest plea means that the defendant decides not to "fight" the charge. One can make the decision not to "fight,"

for a multitude of reasons, totally unrelated to innocence or guilt. If a party chooses not to “fight,” evidence favorable to the criminal defendant is not presented.

NAMIC relies upon out-of-state cases, primarily *Morin v. Aetna Casualty and Surety Co.* (R.I., 1984), 478 Atlantic 2d 964 (cited at pages 5, 10, and 12 of its memorandum) and *Mineo v. Eureka Security Fire & Marine Insurance Co.* (10/03/56), 125 A.2d 612 (cited at pages 12-13 of its memorandum). Both these cases addressed the issue of the admission and preclusive effect of a criminal conviction following, **not a no contest plea, but an actual trial**. The appellants have simply chosen to ignore the fact that many of the cases it relies upon involve criminal convictions following actual litigation (trial).

Both appellants continue to argue that the 12-31-2008 decision is in conflict with *Steinke v. Allstate Company* (1993), 86 Ohio App.3d 798, even though the court of appeals denied Elevators Mutual’s motion to certify a conflict. The Sixth District specifically distinguished the *Steinke* holding at Paragraph 30 (page 9) of its 12-31-2008 decision.

Elevators’ claim that the Sixth District’s 12-31-2008 decision conflicts with *Jaros v. Ohio State Bd. of Emergency Med. Serv.*, 6th Dist. No. L-01-1422, 2002-Ohio-2362, and *Bivins v. Ohio State Bd. of Emergency Med. Serv.*, 6th Dist. No. E-05-010, 2005-Ohio-5999, (Elevators’ Memorandum at pages 7-8) is itself “baffling” in light of the court’s explanation that the convictions were made relevant by statute. (Paragraph 29 at pages 8-9 of 12-31-2008 decision).

The Sixth District Appellate Court further correctly addressed appellants’ argument that a conviction following a no contest plea was admissible if relevant to exclusionary provisions in an insurance policy, as follows:

What is at issue in this matter is not a statute, but exclusionary provisions in an insurance policy.³ We take no position on whether an insurer and an insured may contract to make a prior conviction relevant in a subsequent action on the

contract. **In this insurance contract, no such provision appears.** (Paragraph 33 at page 10 of 12-31-2008 decision; emphasis added).

The appellants fully understand the profound significance of the requested ruling in this case. In order to make its position more palatable, it makes the specious argument that some litigants should be treated in an unequal and unfair fashion. Of course, this offensive vs. defensive position has been soundly rejected by Ohio courts. Appellants argue that defendants in litigation should be permitted to preclude their no contest plea/conviction from evidence in a civil case. In other words, the tortfeasor who inflicts terrible damage on another person should be able to avoid the consequences of a no contest plea but his victim should not have that privilege. It argues that a potential plaintiff should have to live with the consequences of a no contest plea/conviction and it should be allowed into evidence against the plaintiff. As a practical matter, the following is an example of how that would play out in the real world: Plaintiff recklessly drives car off road and hits a tree and suffers no injury. He pleads no contest to reckless operation. The Court convicts him. Twenty (20) minutes after future plaintiff hits the tree and while sitting in his car, a drunken defendant drives off the road and slams into plaintiff's car causing him very serious injury. Defendant pleads no contest to driving under the influence and reckless operation. He is convicted. The appellants contend that the plaintiff's conviction should be admitted and the defendant's should be excluded. The argument on its face is specious. The court system must treat all parties equally and fairly.

Appellants' argument seems to suggest that the injured plaintiff who seeks fair and just compensation in a court of law should be treated differently than the defendant who causes him injury. The mere suggestion that the tortfeasor or wrongdoer should have an overwhelming advantage in a civil proceeding points out the frailty of the appellants' argument. No Ohio court

has adopted this argument. In addition, appellants fail to comment upon the fact that Elevators' initial action was for declaratory judgment and sought to recover the money it had advanced.

CONCLUSION

The appellants seek to reverse the long-standing law of Ohio and most other states that preclude from evidence a no contest plea in a criminal case. They make a specious argument that the conviction following a no contest plea is admissible into evidence under the theory of *res judicata* or issue preclusion. The courts have long recognized that innocent people enter no contest pleas for multiple reasons other than an admission of guilt. Furthermore, traffic courts and prosecutors' offices are better able to function because of the no contest plea. It would create a monumental problem for the court system if every criminal case had to be fully tried in the traffic courts (before juries) because the inevitable conviction after a no contest plea is admissible into evidence in all subsequent proceedings. Clearly the appellants in this case will have every opportunity to prove their cause in the appropriate forum. They should not have to rely upon a no contest plea/conviction to prove a case which is otherwise unprovable.

Respectfully submitted,



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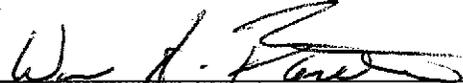
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by regular U. S. Mail, postage prepaid, on the following:

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