

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO : CASE NO. 2008-2391

Appellee, : APPELLANT'S MOTION TO

v. : SUPPLEMENT THE RECORD

DOUGLAS FUTRALL : WITH A TRANSCRIPT OF

Appellant. : PROCEEDINGS

FILED

APR 15 2009

CLERK OF COURT
SUPREME COURT OF OHIO

.....

Now comes Appellant, Douglas Futrall, by and through the undersigned counsel, and respectfully moves this Honorable Court, pursuant to SCt R V(7), to supplement the record with the transcript of proceedings from the trial court. For cause, Appellant shows that the Ninth District Court of Appeals stated in its Decision and Journal Entry filed November 3, 2008, that "the transcript of proceedings in the trial court was not transmitted by the court reporter." (Pg. 4.)

Appellant filed a praecipe directing the court reporter to file the nine-page transcript for the appeal; attached a certified copy of the transcript to his appellate brief; and, attached a copy of the certified transcript to his Memorandum in Support of Jurisdiction (Exhibit "A.")

Regardless, a copy of the transcript is "necessary to the Supreme Court's consideration of the questions presented on appeal . . ." As such, Appellant respectfully requests this Honorable Court order the Clerk to transmit a certified copy of the transcript of proceedings from the trial court for inclusion in the record hereto.

RECEIVED

APR 15 2009

CLERK OF COURT
SUPREME COURT OF OHIO

Appellant has filed a praecipe with the Court Reporter requesting she again file the transcript with the Clerk.

Alternately, Appellant respectfully moves the Court to simply supplement the record with the certified transcript attached and incorporated hereto as Exhibit "A."

Respectfully submitted,

GIARDINI, COOK & NICOL, LLC



D. CHRIS COOK, #0061073
520 Broadway, Third Floor
Lorain, OH 44052
PH: (440) 246-2665
FX: (440) 246-2670
email: cooklaw@centurytel.net
Attorney for Appellant

CERTIFICATE OF SERVICE

I certify that a copy of this Motion to Supplement the Record was sent via hand-delivery to the following this 13th day of April, 2009:

Dennis P. Will, Esq.
Billie Jo Belcher, Esq
Lorain County Prosecuting Attorneys
Lorain County Justice Center
225 Court Street, 3rd Fl.
Elyria, OH 44035
Attorneys for Appellee



D. CHRIS COOK
Attorney for Appellant

1 State of Ohio,)
) SS:
2 County of Lorain.)

3
4 IN THE COURT OF COMMON PLEAS

5 STATE OF OHIO,)
6 Plaintiff,) Case No. 01CR057973
7 vs.)
8 DOUGLAS FUTRALL,)
9 Defendant.)

10 - - -
11 COMPLETE TRANSCRIPT OF THE MOTION TO SEAL
12 RECORDS IN THE ABOVE-ENTITLED MATTER ON THE 12TH DAY
13 OF SEPTEMBER, 2007, BEFORE THE HONORABLE RAYMOND J.
14 EWERS, PRESIDING JUDGE OF SAID COURT.

15 - - -

16 APPEARANCES:

17 On behalf of the State of Ohio:
18 Lorain County Prosecutor's Office,
19 Dennis P. Will, Lorain County Prosecutor, by
20 Steven List, Assistant Prosecuting Attorney.

21 On behalf of Defendant Douglas Futrall:
22 D. Chris Cook, Esq.

23 - - -

24

25



1 to pick them up to take them to lunch. His ex-spouse
2 wouldn't let them go and an argument occurred. There
3 was no physical violence. There was no threats of
4 violence. There was simply an argument between him
5 and his neighbor. My client was loud. He used
6 profanity.

7 He later, upon being stopped by the
8 police, was found to have a loaded weapon in his
9 vehicle, but he had a job at the time that we were
10 able to demonstrate to the prosecutor that an
11 affirmative defense was appropriate. The charge was
12 reduced as a result of that.

13 Since that time, my client has been
14 what could be described as an outstanding citizen.
15 He has no prior criminal convictions of any nature
16 before that day and none since that day.

17 He was placed on a two-year community
18 control sanction and did so well on that sanction he
19 was released after four months. He paid his fines,
20 his costs. He went through a program, and the
21 probation department successfully terminated him
22 after four months.

23 He started his own company called Fast
24 Appraisals. He's run that business successfully now
25 for a number of years. He's employed people, paid

1 taxes. He just recently sold that business and is
2 now remaining on as a consultant.

3 He has -- his daughter and son have
4 grown up and are now, I believe, 21 and --

5 THE DEFENDANT: Fifteen.

6 MR. COOK: Fifteen.

7 He has since remarried and he is
8 raising, or helping to raise, two or three
9 stepchildren.

10 He is a member of the Lorain County
11 Greater Chamber of Commerce, Board of Realtors. He
12 is a commercial and a residential appraiser, a home
13 owner in the community. And if it wasn't for one
14 misdemeanor charge in his -- of these five
15 convictions, I don't think this Court would have any
16 pause but to grant the sealing of his records. He
17 fits the perfect model for why this statute is in
18 place.

19 The problem that I think this Court is
20 going to be confronted with is that he has a
21 conviction for aggravated menacing, a misdemeanor of
22 the first degree. And under 2953.36 -- or 2901(A)(9)
23 that is a crime of violence and that charge would not
24 be subject to being sealed, and we recognize that.

25 The other charges he has, however, the

1 CCW misdemeanor, the improper handling, telephone
2 harassment, and M4 DV are all subject to being
3 sealed. The M4 domestic violence is excluded because
4 it's not a crime of violence. It is a misdemeanor of
5 the first degree, so even the DV could be sealed. So
6 but for one charge of misdemeanor, again it wouldn't
7 be an issue.

8 What we are asking the Court to
9 consider, and I have not found any case law in the
10 State that says that this can't be done.
11 Unfortunately, I haven't found any case law that says
12 it can. It may very well be a matter of first
13 impression. I am asking this Court to seal those
14 four charges that he is convicted of, misdemeanors
15 that are subject to being sealed and expunged,
16 recognizing the aggravated menacing cannot be.
17 That's what we are asking for. That's why we are
18 here. Thank you.

19 THE COURT: Mr.
20 Prosecutor.

21 MR. LIST: Your Honor,
22 the main issue I take -- the main point I take issue
23 with Attorney Cook on is concerning the fourth degree
24 misdemeanor domestic violence. As the Court is well
25 aware, domestic violence in Ohio is an enhanceable

1 crime. By that I mean should the defendant have
2 prior convictions for domestic violence, in the
3 future charges are automatically enhanced to a
4 different level because of that prior conviction.

5 I have not had a chance to research
6 this, Your Honor. I would ask that the Court at the
7 very least take this matter under advisement and
8 allow me to check into that. I do not believe the
9 fourth degree misdemeanor domestic violence can be
10 sealed. I believe it has to remain on the
11 defendant's record.

12 Hopefully the defendant will never
13 again re-offend. Apparently he has led a law-abiding
14 life in the last five years, and that's fine.
15 However, he looks like a young man. He has many
16 years of ahead of himself. I don't want, for lack of
17 a better phrase, for him to have a chance to
18 re-offend and to come back as a misdemeanor when it
19 should be a felony.

20 I would like to have this defendant,
21 before he would lose control of his temper, stop and
22 think, hopefully, that "I can't do this again. I
23 have done it once before, and I am going to be in a
24 lot more trouble this time."

25 So at the very least, Your Honor, I

1 would ask that the Court to allow me to look into the
2 issue of whether a fourth degree misdemeanor domestic
3 violence, which is also a crime of violence, that can
4 be sealed, because I do not believe it can be.

5 The CCWs, the improper handling of a
6 firearm and the telephone harassment, those are
7 probably okay to be sealed, Your Honor. I don't see
8 a problem with those. But the two crimes that
9 indicate some sort of assaultive behavior, I don't
10 think could be.

11 MR. COOK: Judge, if it
12 would please the Court, I would refer the prosecutor
13 to 2953.36(C), 2953.36(C). That section is the
14 exclusionary section for the offenses. And it does,
15 as the prosecutor notes, exclude offenses of
16 violence, but if they are misdemeanors of the first
17 degree.

18 MR. LIST: Your Honor,
19 that is what the section says. I will admit to that.
20 My particular issue is I want to research whether a
21 crime that is necessary for an enhancement for a
22 future offense, if that can be sealed. That's my
23 question, not whether this is a really a misdemeanor
24 of the first degree. I am arguing whether this crime
25 because of its very nature could be sealed, thereby

1 denying the State the potential of being able to
2 enhance any future domestic violence charges. That's
3 the issue I am concerned about, and I would like the
4 chance to look at it.

5 THE COURT: I understand.
6 The only thing I'm not sure of is whether I can seal
7 part of the record and not all of it. So we will
8 take it under advisement. We will take a look at it.
9 And before we issue any opinion, we will get in touch
10 with you obviously.

11 MR. COOK: All right.

12 THE COURT: Thank you.

13 MR. COOK: Judge, I
14 would ask the Court if the matter after consideration
15 is denied we would ask that an entry be put on so we
16 can review the Court's findings.

17 THE COURT: That will be
18 fine.

19 MR. COOK: Thank you.

20 THE COURT: Very good.

21 - - -

22 (HEARING CONCLUDED.)

23 - - -

24

25

C E R T I F I C A T E

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF OHIO,)
) SS:
COUNTY OF LORAIN.)

I, Janis E. Albert, Notary Public and
Official Court Reporter of the Court of Common Pleas,
Lorain County, Ohio, do hereby certify that this is a
correct transcript of the proceedings in this case on
September 12, 2007.

I further certify that this is a complete
transcript of the proceedings on that date.

IN WITNESS WHEREOF, I have subscribed my name
this 1st day of October, 2007.

Janis E. Albert

Janis E. Albert, RPR
Official Court Reporter
Lorain County Justice Center
225 Court Street, 6th Floor
Elyria, Ohio 44035
(440) 329-5520
My commission expires 08-30-12