

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND

Appellee,

-v-

DESTINY VENTURES, LLC

Appellant.

) Case No. 2008-2230  
)  
) On Appeal from the  
) Cuyahoga County Court of Appeals  
) Eighth Appellate District  
)  
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APPELLEE'S MERIT BRIEF IN RESPONSE

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**RECEIVED**  
MAY 22 2009  
CLERK OF COURT  
SUPREME COURT OF OHIO

**FILED**  
MAY 22 2009  
CLERK OF COURT  
SUPREME COURT OF OHIO

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## STATEMENT OF THE FACTS AND CASE

On June 6, 2007, a certified City of Cleveland Housing Inspector, (pp. 9-10) Nadine Brownlee, inspected the property located at 3677 East 117<sup>th</sup> Street, Cleveland, Ohio for Building and Housing Code violations. At that time, she noted numerous code violations<sup>1</sup>. As a result, she returned to the office and researched the property to determine who the owner was. (p. 10) After checking the official records, she determined that the owner of the property was Destiny Ventures, LLC. (p. 10) She created a violation notice, which was subsequently sent to Destiny Ventures, LLC by certified mail. (pp. 10-11) Inspector Brownlee had copies of the notice sent to two addresses, one in Tulsa, Oklahoma, the other in Columbia, South Carolina. (p. 11-12) She received signed return receipts indicating that the notices were received at both addresses. (p. 12) The notice gave Destiny Ventures, LLC until June 11, June 15 and July 8<sup>th</sup>, 2007 respectively to correct the violations noted. (p. 12) Inspector Brownlee re-inspected the property on August 6, 2007. (p. 13) On that date she found that none of the violations had been corrected. (p. 13)

As a result of the August 6, 2007 inspection, the City of Cleveland filed a summons and complaint in the Cleveland Municipal Housing Court against Destiny Ventures, LLC for property located at 3677 East 117<sup>th</sup> Street, Cleveland, Ohio. The summons and complaint alleged that the Defendant had failed to comply with an order of the Commissioner of Building and Housing by failing to correct the code violations at the property. The case was set for arraignment on December 6, 2007. Defendant Destiny

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<sup>1</sup> Violation Notice attached to Complaint.

Ventures, LLC failed to appear and a *capias* was issued with a \$10,000 bond.<sup>2</sup> On January 2, 2008, the Court issued two entries, one putting the case on the Corporate Trial In Absentia Docket and the other, served to both the defendant and the City, detailing the date, time and place of the trial and the fact that, should the Defendant fail to appear, a trial would be held in their absence.<sup>3</sup> On the trial date, January 14, 2008, the City and its witness were present. (p. 2) Rick Jones appeared before the Court on behalf of Destiny Ventures. (p. 5) After having the clerk review the record and determine that no Notice of Appearance had been filed and finding that Mr. Jones was not an officer of the corporation or an attorney, the Court permitted the case to go to trial. (p. 5-8) The Clerk of Courts entered a plea on behalf of the defendant and the case proceeded to trial in the defendant's absence. (p. 8) After the presentation of evidence, the Court found the defendant guilty as charged. (p. 18) The Court then proceeded to consider the number of days out of compliance and ordered a fine of \$140,000. (p. 19)

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<sup>2</sup> December 7, 2007 Journal Entry.

<sup>3</sup> Cleveland Municipal Housing Court's January 2, 2008 Order pp. 6 & 7 of Record

**Appellant's Proposition of Law 1: The appellate court's interpretation and application of R.C. 2941.47 to authorize trials in absentia of corporations accused of violating the Cleveland Housing Code improperly infringes upon corporate defendants' fundamental Sixth Amendment rights to representation by counsel, to confrontation of witnesses, and to be present at trial.**

On appeal to this Court, Appellant has essentially made three arguments, 1) that the current state of the law supports a finding that a defendant has a right to be present; 2) that Housing Court erred in using O.R.C. §2941.47 in two ways, a) it was improper to hold a trial in absentia utilizing §2941.47; and b) if the use was appropriate, §2941.47 was unconstitutional as applied to appellant; and 3) by reason of the 8<sup>th</sup> District's decision in *City of Cleveland v. Washington Mutual*, (2008) 179 Ohio App.3d. 692, 903 N.E.2d 384, the decision in this case should be overruled.

*A Defendant's Right to be Present*

Both here and below, Appellant has failed to discuss the significant difference between a corporate, or organizational defendant, and an individual defendant. While many of the arguments made by Appellant are well settled with respect to individuals, little case law exists to support the argument that these same rights are automatically available to corporate defendants.

The United States Supreme Court has discussed the application of the Sixth Amendment to corporations in *Armour Packing v. United States*<sup>4</sup>. While the court agreed that a corporation was an "accused" under the amendment, a delineation of how the other rights accruing under the 6<sup>th</sup> Amendment would apply to corporations was not

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<sup>4</sup> *Armour Packing v. United States* (1908) 209 U.S. 56, 28 S.Ct. 428. Although the Court does not directly make this ruling, they analyze the case as if accused as used in the 6<sup>th</sup> Amendment applies to corporate defendants.

undertaken. Further it is well settled, that the right to be present is also grounded in the Due Process clause of the 5<sup>th</sup> and 14<sup>th</sup> Amendments. Courts have found that a defendant has a right to be present to the extent that a full and just hearing would be thwarted by his absence.<sup>5</sup> However, how that right would accrue to a corporate defendant in a criminal case has not been specifically delineated.

A corporate defendant should not be able to avail itself of the same rights as individuals under the Constitutions of the United States and Ohio. By virtue of the differences between a corporation and an individual, a one-for-one transfer of rights available to individuals to corporations makes little sense.

The 8<sup>th</sup> District Court of Appeals did not specifically address whether these constitutional protections apply to corporations.<sup>6</sup> In the case below, the 8<sup>th</sup> District found that by its actions, Appellant Destiny Ventures L.L.C. effectively waived any such right to be present when it ignored the Court's order to appear.

Appellant cites to *Crosby v. United States*, (1993) 506 U.S. 255, 113 S.Ct. 748 for the proposition that a trial in absentia is not permissible. However *Crosby* was a case based on an individual defendant not a corporation. Looking to the common law, the Court noted:

The right [to be present] generally was considered unwaivable in felony cases. Mikell 492; 1 Bishop 175 and 178. This canon was premised on the notion that a fair trial could take place only if the jurors **met the defendant face-to-face** and only if those testifying against the defendant did so in his presence. See Wharton 392; 1 Bishop 178. **It was thought "contrary to the dictates of humanity to let a prisoner 'waive that advantage which a view of his sad plight might give him by inclining**

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<sup>5</sup> *State v. Hale*, (2008), 119 Ohio St.3d 118, 133, 892 N.E.2d 864, 890 citing *Snyder v. Massachusetts* (1934), 291 U.S. 97, 107-108, 54 S.Ct. 330, 78 L.Ed. 674.

<sup>6</sup> *City of Cleveland v. Destiny Ventures, LLC*. (Sept. 11, 2008), Cuyahoga App. No. 91018, unreported.

**the hearts of the jurors to listen to his defense with indulgence.’ ”**  
*Ibid.*, quoting *Prine v. Commonwealth*, 18 Pa. 103, 104 (1851).<sup>7</sup>

Pursuant to Ohio Criminal Rule 43(A), a corporation may appear via its attorney for all stages of the proceedings.<sup>8</sup> A corporation is never required to appear “in person” before the court and consequently, the reasons underpinning the common law right to be present do not exist when the defendant is a corporation. Federal Criminal Rule 43 is more specific in that it clearly states that an organizations’ presence is not required.<sup>9</sup> This however does not address the Due Process right to be present. The underpinnings of the 6<sup>th</sup> Amendment right to be present do not translate to corporate defendants. It is clear that anyone, including a corporation, has the right to due process, as it is a hallmark of the justice system. However, it is overreaching to assume that a corporation is entitled to the same level of due process as an individual.

However a corporation’s right to due process manifests itself, it is clear that if the right to be present applies to corporations, they may waive that right.

In *Illinois v. Allen* (1970), 397 U.S. 337, 90 S.Ct. 107, the court noted:

The broad dicta in *Hopt v. Utah*, *supra*, and *Lewis v. United States*, 146 U.S. 370, 13 S.Ct. 136, 36 L.Ed. 1011 (1892), that a trial can never continue in the defendant's absence have been expressly rejected. *Diaz v. United States*, 223 U.S. 442, 32 S.Ct. 250, 56 L.Ed. 500 (1912). We accept instead the statement of Mr. Justice Cardozo who, speaking for the Court in *Snyder v. Massachusetts*, 291 U.S. 97, 106, 54 S.Ct. 330, 332, 78 L.Ed. 674 (1934), said: ‘No doubt the privilege (of personally confronting witnesses) may be lost by **consent** or at times even by misconduct.’<sup>10</sup>

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<sup>7</sup> *Crosby*, *supra*, at 259, 113 S.Ct. at 751 (emphasis added).

<sup>8</sup> Crim.R. 43(A).

<sup>9</sup> Fed.R. 43: Defendant’s Presence, (b) When not required; (1) Organizational Defendant. The defendant is an organization represented by counsel who is present.

<sup>10</sup> *Illinois v. Allen*, *supra* at 342-343, 90 S.Ct. at 1060. (emphasis added)

The court went on to specifically delineate when disruption by the defendant could lead to waiver of the right to be present.

That precedent has been codified in Crim.R. 43 which states in pertinent part:

- B. Where a defendant's conduct in the courtroom is so disruptive that the hearing or trial cannot reasonably be conducted with the defendant's continued physical presence, the hearing or trial may proceed in the defendant's absence or by remote contemporaneous video, and judgment and sentence may be pronounced as if the defendant were present. Where the court determines that it may be essential to the preservation of the constitutional rights of the defendant, it may take such steps as are required for the communication of the courtroom proceedings to the defendant.

In *Cuoco vs. U.S.* (C.A.2 2000), 208 F.3<sup>rd</sup> 27, a case that was pending appeal when *Crosby*, supra, was decided the Court determined that where the trial court notified the defendant of the date and time of trial and that a trial in absentia would ensue if he failed to attend court, the defendant's subsequent refusal to attend court constituted a waiver of the defendant's right to be present. In analyzing *Crosby*, the *Cuoco* court believed that the holding was limited to a defendant who absconded prior to the commencement of trial and not "other circumstances" where a defendant failed to appear.<sup>11</sup> For that reason, that court distinguished the facts of *Cuoco* from *Crosby* to determine that an express waiver occurred. In examining the two cases, the main difference is that in *Cosby* the defendant fled the proceedings before the trial began. In *Cuoco* the defendant was in custody and refused to be transported to court. The judge ordered him to be brought to court by force if necessary and informed him at that time that a continued failure to come to court would result in a trial in absentia.

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<sup>11</sup> *Cuoco* at 31.

In this case, Appellant was given notice of the City's criminal case against them when they were served with the summons. They have never denied that they received the summons nor have they denied that they failed to appear for arraignment. Subsequently they were notified that because they failed to appear at arraignment, the case was being set for trial, and that their failure to appear at said trial would result in a trial in their absence. If a corporation is held to be no different than an individual in this circumstance, then a manifest injustice occurs if the Court is required to secure the presence of the corporation before they can be deemed to have waived their rights. A corporation is not an individual and the State's ability to address the willful failure of a corporate defendant to appear in court is severely hampered. If an individual flees the jurisdiction prior to trial, the courts can issue a warrant, notify the proper authorities and when found, arrest and hold the defendant until a hearing can be held. The Court cannot do this when the defendant is a corporation. This Court must consider whether the corporate defendant's failure to respond to a duly executed summons and its failure to appear at trial when properly notified is relevant to whether a waiver occurred.

In *Illinois v. Allen*, the Court noted:

It would degrade our country and our judicial system to permit our courts to be bullied, insulted, and humiliated and their orderly progress thwarted and obstructed by defendants brought before them charged with crimes. As guardians of the public welfare, our state and federal judicial systems strive to administer equal justice to the rich and the poor, the good and the bad, the native and foreign born of every race, nationality, and religion. Being manned by humans, the courts are not perfect and are bound to make some errors. But, if our courts are to remain what the Founders intended, the citadels of justice, their proceedings cannot and must not be infected with the sort of scurrilous, abusive language and conduct paraded before the Illinois trial judge in this case.<sup>12</sup>

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<sup>12</sup> *Allen*, supra, at 346-347; 90 S.Ct. at 1062.

In *Diaz v. U.S.*, the Court noted:

(p. 454) ‘It does not seem to us to be consonant with the dictates of common sense that an accused person, being at large upon bail, should be at liberty, whenever he pleased, to withdraw himself from the courts of his country and to break up a trial already commenced. The practical result of such a proposition, if allowed to be law, would be to prevent any trial whatever until the accused person himself should be pleased to permit it.’<sup>13</sup>

The Appellant’s behavior was disrespectful to the Court, thwarted the ability of both the City and the Court in exercising criminal jurisdiction, and put the Court in the position of being held hostage to the defendant’s decision to appear or not. Assuming that O.R.C. §2941.47 is applicable in municipal court, the Housing Court should have been permitted to have a plea entered on Appellant’s behalf when they failed to appear. Furthermore, because a) a corporation is not subject to the risk to its liberty that an individual is, and b) because the courts have no way to force attendance by a corporate defendant that chooses to ignore a summons and journal entry, Appellant should be deemed to have waived their right to be present by their actions.

Even the decision of the Housing Court not to continue the case was justified. Appellant secured an attorney and was informed the Friday before trial that he was unavailable. However, that attorney did not file a motion to continue or take any other action to preserve the Appellant’s rights despite being aware of the Court’s order and the probable consequences of a failure to appear. Appellant has never explained why a motion to continue was not filed or why they did not personally contact the Court to secure a continuance rather than send a person who was neither an attorney nor an officer when they knew a trial date was set.

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<sup>13</sup> *Diaz*, supra, at 457, 32 S.Ct. at 255, citing *Barton v. State*, 67 Ga. 653, 44 Am. Rep. 743.

*The Application of §2941.47 to Appellant*

Appellant essentially makes two arguments with respect to O.R.C. §2941.47. First they argue that the Housing Court erred in using the statute to justify a trial in absentia and that the 8<sup>th</sup> District Court of Appeals erred in upholding the procedure. Secondly, for the first time, Appellant argues that O.R.C. §2941.47 was unconstitutional as applied to them and asks this Court to use a strict scrutiny analysis in determining whether the application was appropriate.

O.R.C. §2941.47 states:

When an indictment is returned or information filed against a corporation, a summons commanding the sheriff to notify the accused thereof, returnable on the seventh day after its date, shall issue on praecipe of the prosecuting attorney. Such summons with a copy of the indictment shall be served and returned in the manner provided for service of summons upon corporations in civil actions. If the service cannot be made in the county where the prosecution began, the sheriff may make service in any other county of the state, upon the president, secretary, superintendent, clerk, treasurer, cashier, managing agent, or other chief officer thereof, or by leaving a copy at a general or branch office or usual place of doing business of such corporation, with the person having charge thereof. Such corporation shall appear by one of its officers or by counsel on or before the return day of the summons served and answer to the indictment or information by motion, demurrer, or plea, and upon failure to make such appearance and answer, the clerk of the court of common pleas shall enter a plea of "not guilty." Upon such appearance being made or plea entered, the corporation is before the court until the case is finally disposed of. On said indictment or information no warrant of arrest may issue except for individuals who may be included in such indictment or information.

In this case, the 8<sup>th</sup> District found that §2941.47 allowed the clerk of courts to enter a plea on behalf of an absent corporation and once that plea was made, the defendant was considered before the court for the remainder of the case.

Pursuant to O.R.C. §2901.04(B), sections of the Revised Code dealing with procedure are to be construed to effect the fair, impartial, speedy and sure administration of justice. The committee comments to this section are important to note:

This section codifies the rule that penal statutes must be strictly construed against the state and liberally construed in favor of the accused. See, Harrison v Ohio, 112 Ohio St 429 (1925), affirmed 270 US 632; State ex rel Moore Oil Co v Dauben, 99 Ohio St 406 (1919). In addition, the section provides a rule for the construction of procedural measures, based on the premise that **the prime object of procedural statutes and rules is to promote justice both to the accused and to the state**. Thus, procedural measures are not to be construed in terms of strictness or liberality, but rather to effect the fair, impartial, speedy, and sure administration of justice.<sup>14</sup>

There is a tendency to focus on the rights of the defendant, which is understandable since in the ordinary course, a person's liberty is at stake. But the law has always recognized that the state is entitled to justice in the proceeding as well.<sup>15</sup>

When an entity that exists outside of the state is summonsed to court, the state must rely on the representatives of that entity to honor the court's request. Absent a charge against a specific individual, there is no way to force a corporation to appear before the court by way of warrant or arrest. A corporation should not be able to thwart a court's ability to exercise its jurisdiction by simply failing to appear. Appellant was summonsed to court for arraignment. They chose not to appear in court.

O.R.C. §2941.47 gives a court the ability to address cases in which a defendant fails to honor the jurisdiction of the court by failing to appear. In such situations, the clerk of courts enters a not guilty plea on behalf of the corporation and the corporation is deemed before the court from that point on. The Housing Court chose to utilize this

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<sup>14</sup> O.R.C. §2901.04 Commentary (emphasis added)

<sup>15</sup> *Stewart v. Peters* (C.A. 7, 1992) 958 F.2d 1379, 1388.

method only after Appellant failed to appear for arraignment after having been duly summonsed. By doing so, the Housing Court ensured that the State represented by the City of Cleveland was not impeded from prosecuting this case, as well as many others, because the defendant refused to take seriously a summons from Housing Court.

Furthermore it is not entirely clear that §2941.47 was intended solely for use in common pleas court. A version of this statute has been in existence since the 19<sup>th</sup> century and until recently no version contained the phrase “clerk of common pleas”.<sup>1617</sup> At the time it was enacted, a wide variety of cases were charged via indictment and information in a number of different courts. Unfortunately, there is no commentary with this statute nor is there legislative history to determine intent. However it is probable that this statute was to have a wider application than just common pleas court.

Appellant also argues for the first time here that §2941.47 was unconstitutional as applied to them. Appellant makes a fairly sparse argument that the statute was unconstitutional as applied and that strict scrutiny should be used to analyze the Housing Court’s procedure. As the only issue is the court’s procedure in utilizing §2941.47, the City would argue that the defendant has raised a procedural due process challenge. In a procedural due process challenge, the threshold issue is whether the defendant had a property or liberty interest protected by the Constitution.<sup>18</sup> Only if it is determined that the defendant had a property or liberty interest does the Court reach the question of what process was due.<sup>19</sup> A corporation is never faced with a loss of liberty pursuant to a

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<sup>16</sup> Sec. 7231 of the Revised Statutes (1880): See Appendix

<sup>17</sup> G.C. §13438-12 (1938). See Appendix

<sup>18</sup> *Narumanchi vs. Board of Trustees of Connecticut State University* (C.A.2 1988), 850 F.2d 70, 72.

<sup>19</sup> *Narumanchi*, supra.

criminal complaint. Courts have held that a fine does affect a legitimate property interest.<sup>20</sup> Where an interest is found, courts have determined that the appellant is entitled to notice of the hearing and an opportunity to be heard.<sup>21</sup>

Appellant was provided with notice of the hearing via the Housing Court's January 2<sup>nd</sup> order. Had they appeared, they would have had an opportunity to be heard on the charges. However, since they failed to appear in court, failed to have an appropriate party present to request a continuance and failed to file a continuance with the Housing Court, and further because they were notified of the consequence of their actions if they failed to appear, the Housing Court's procedure adequately protected their right to due process.

*Does City of Cleveland vs. Washington Mutual warrant reversal?*

Finally, Appellant argues that the 8<sup>th</sup> District's decision in *City of Cleveland vs. Washington Mutual* (2008), 179 Ohio App.3d 692, 903 N.E.2d 384 warrants a reversal of this case. In *Washington Mutual*, the 8<sup>th</sup> District found two things: a) §2941.47 did not apply to a complaint filed in municipal court and b) that §2938.12 and Crim.R. 43 prohibit trials in absentia.<sup>22</sup>

The 8<sup>th</sup> District made its decision with respect to §2941.47 based on the fact that it specifically referenced indictments and informations which the Court found were reserved for felony offenses<sup>23</sup>. Initially, it should be noted that Crim.R. 7 also indicates that misdemeanors "may" be prosecuted by indictment or information. As noted above,

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<sup>20</sup> *In re Judicial Campaign Complaint Against Carr* (1995) 74 Ohio Misc.2d. 81, 86, 658 N.E.2d 1158, 1161

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 694, 903 N.E.2d at 386.

<sup>23</sup> *Id.*

it is not clear given the history of the statute that its intent was to be limited to cases tried in common pleas court. Further, there is no rational basis for limiting this statute to indictments and informations, and not applying it to complaints. The only difference between these types of charging instruments is where they are utilized. A complaint is inadequate to charge a felony crime, however, a complaint is used to initially charge a defendant prior to issuance of an indictment or information. Furthermore, an indictment or information may be used to charge a misdemeanor crime. Pursuant to O.R.C. §2901.04(B), this procedural statute should be construed to ensure the fair, impartial, speedy and sure administration of justice. The Housing Court's application of the statute met §2901.04(B) goals.

With respect to Crim.R. 43 and §2938.12, the 8<sup>th</sup> District erred in its interpretation. First, both are procedural in nature and they should be interpreted with §2901.04(B) in mind. Secondly, Crim.R. 43 states clearly that a corporation may appear at all times by having an attorney present. There is no requirement in Crim.R. 43 that a corporation's attorney must do a formal waiver of their client's presence. §2938.12 states that the only way the defendant's presence can be excused is if they sign a waiver in open court. To the extent that §2938.12 contradicts Crim.R. 43 it does not apply.<sup>24</sup> Pursuant to O.R.C. §1.42, "[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage." By its plain, language §2938.12 indicates a situation where the defendant, not his attorney may waive his right to be present. As Crim.R. 43 indicates that a corporate defendant is never required to be present, §2938.12 does not apply to this factual situation.

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<sup>24</sup> OH Const. Article IV §5(B)

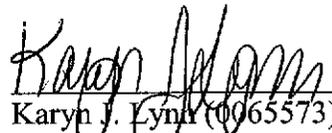
**Conclusion**

A corporation is not a person. The interpretation of the law urged by Appellant gives a corporation unprecedented and unwarranted power over the court system. The corporate trial in absentia procedure instituted by the Housing Court is reasonably and rationally designed to ensure that the Court can conduct its business and that defendants have an opportunity to be heard if they honor the courts order to appear. If however, a corporation fails to honor the Court's order then they face the consequences. The City urges this Court to ratify the Housing Court's procedure and to find that no constitutional deprivations occurred in this case.

Respectfully Submitted,

Robert J. Triozzi  
Director of Law

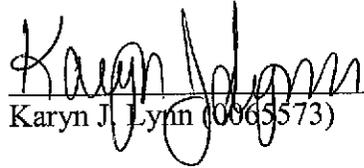
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**CERTIFICATE OF SERVICE**

It is hereby certified that a copy of the foregoing was sent to the following on  
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## **Appendix**

United States Code Annotated Currentness  
 Constitution of the United States

☞ Annotated

☞ Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property (Refs & Annos)

→ **Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<This amendment is further displayed in five separate documents according to subject matter,>

<see USCA Const Amend. V-Capital Crimes>

<see USCA Const Amend. V-Double Jeopardy>

<see USCA Const Amend. V-Self Incrimination>

<see USCA Const Amend. V-Due Process>

<see USCA Const Amend. V-Just Compensation>

**Amendment V. Grand Jury Indictment for Capital Crimes**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; \* \* \*

<For complete text of Amend. V, see USCA Const Amend. V-Full Text>

<This amendment is further displayed in four separate documents according to subject matter,>

<see USCA Const Amend. V-Double Jeopardy>

<see USCA Const Amend. V-Self Incrimination>

<see USCA Const Amend. V-Due Process>

**C**

United States Code Annotated Currentness

Constitution of the United States

▣ Annotated

▣ Amendment VI. Jury Trial for Crimes, and Procedural Rights (Refs &amp; Annos)

→ **Amendment VI. Jury trials for crimes, and procedural rights**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Current through P.L. 111-20 approved 5-15-09

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**C**

United States Code Annotated Currentness

Constitution of the United States

Annotated

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement (Refs &amp; Annos)

**→ AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT**

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Section 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Section 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Section 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Section 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

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**C**

Baldwin's Ohio Revised Code Annotated Currentness

Constitution of the State of Ohio (Refs &amp; Annos)

▣ Article IV. Judicial (Refs &amp; Annos)

→ **O Const IV Sec. 5 Powers and duties of supreme court; superintendence of courts; rules**

(A) (1) In 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.

(2) The supreme court shall appoint an administrative director who shall assist the chief justice and who shall serve at the pleasure of the court. The compensation and duties of the administrative director shall be determined by the court.

(3) The chief justice or acting chief justice, as necessity arises, shall assign any judge of a court of common pleas or a division thereof temporarily to sit or hold court on any other court of common pleas or division thereof or any court of appeals or shall assign any judge of a court of appeals temporarily to sit or hold court on any other court of appeals or any court of common pleas or division thereof and upon such assignment said judge shall serve in such assigned capacity until the termination of the assignment. Rules may be adopted to provide for the temporary assignment of judges to sit and hold court in any court established by law.

(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, which rules shall not abridge, enlarge, or modify any substantive right. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.

Courts may adopt additional rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the supreme court. The supreme court may make rules to require uniform record keeping for all courts of the state, and shall make rules governing the admission to the practice of law and discipline of persons so admitted.

(C) The chief justice of the supreme court or any judge of that court designated by him shall pass upon the disqualification of any judge of the courts of appeals or courts of common pleas or division thereof. Rules may be adopted to provide for the hearing of disqualification matters involving judges of courts established by law.

CREDIT(S)

SEC. 7220. In all other cases, when it is necessary to make an averment in an indictment as to any instrument, whether the same consists, wholly or in part, of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same is usually known, or by the purport thereof. [66 v. 302, § 95.]

SEC. 7221. In an indictment for perjury, or for subornation of perjury, it shall be sufficient to set forth the substance of the offense charged, and before what court or authority the oath was taken, averring such court or authority to have full power to administer the oath, together with the proper averments to falsify the matters wherein the perjury is assigned, without setting forth any part of any record or proceeding, or the commission or authority of the court, or other authority, before which the perjury was committed. [33 v. 33, § 11.]

SEC. 7222. In an indictment under sections *sixty-nine hundred and forty-one to sixty-nine hundred and forty-eight*, inclusive, it shall not be necessary to allege the kind of liquor sold, nor to describe the place where sold; and in an indictment under section *sixty-nine hundred and forty-two* it shall not be necessary to allege the name of the person to whom intoxicating liquor was sold. [52 v. 153, § 13.]

SEC. 7223. It shall be sufficient in an indictment where it is necessary to allege an intent to defraud, to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person or body corporate; and on the trial of such indictment it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with intent to defraud. [66 v. 302, § 96.]

SEC. 7224. When an offense is committed upon, or in relation to, any property belonging to partners or joint owners, the indictment for such offense shall be deemed sufficient if it allege the ownership of such property to be in such partnership by its firm name, or in any one or more of such partners or owners, without naming all of them; and in all indictments under section *sixty-eight hundred and fifty-nine* it shall not be necessary to allege that the will, codicil, or other instrument is the property of any person, or is of any value. [47 v. 21, § 3, 66 v. 302, § 97.]

SEC. 7225. When an offense is committed in relation to any election, an indictment for such offense shall be deemed sufficient if it allege that such election was authorized by law, without stating the names of the officers holding the election, or the persons voted for, or the offices to be filled, at such election. [66 v. 302, § 98.]

SEC. 7226. Counts under sections *seven thousand and forty-four, seven thousand and sixty-four, seven thousand and sixty-five, and seven thousand and sixty-six*, may be joined in the same indictment, against the same defendant, for acts committed with reference to the same

§ 7221. An essential element in the crime of subornation of perjury is the knowledge or belief on the part of the accused not only that the witness will swear to what is untrue, but also that he will do so corruptly and knowingly. *Stewart v. State*, 22 O. S. 477.  
What sufficiently charges the defendant with knowledge that the witness would corruptly and knowingly swear falsely. *Id.*  
An indictment for perjury which was held sufficient under a similar statutory provision. *Hallock v. State*, 11 O. 400. And see *Ditcher v. State*, 39 O. S. 30.

§ 7223. This section is not in conflict with section 10 of the bill of rights, which requires the accused, on demand, to be furnished with the nature and cause of the accusation against him. *Turpin v. State*, 19 O. S. 540; *Bainbridge v. State*, 30 O. S. 264.  
The indictment must charge the intent to defraud directly, and not merely by way of legal deduction or inference from the facts previously found. *Drake v. State*, 19 O. S. 211.

§ 7224. See *Lasure v. State*, 19 O. S. 43.  
§ 7225. See *Lane v. State*, 39 O. S. 312.

election; and evidence offered on any one count shall be competent evidence to prove the intent charged in any other count of the indictment. [76 v. 75, § 6.]

SEC. 7227. An indictment for larceny may contain a count for obtaining the same property by false pretense, a count for embezzlement thereof, and a count for receiving or concealing the same property, knowing it to have been stolen, or any of such counts, and the jury may convict of either offense, and may find all or any of the persons indicted guilty of either of the offenses charged in the indictment. [66 v. 302, § 99.]

Count for embezzlement, etc., in indictment for larceny.

SEC. 7228. In every indictment in which it is necessary to make an averment as to any money, or bank bill or notes, United States treasury notes, postal and fractional currency, or other bills, bonds, or notes, issued by lawful authority, and intended to pass and circulate as money, it shall be sufficient to describe such money, bills, notes, currency, or bonds simply as money, without specifying any particular coin, note, bill, or bond; and such allegation shall be sustained by proof of any amount of coin, or of any such note, bill, currency, or bond, although the particular species of coin of which such amount was composed, or the particular nature of such note, bill, currency, or bond, be not proved. [66 v. 302, § 100.]

How bank bills, etc., to be described.

PROCESS.

SEC. 7229. A warrant may be issued in term time, or in vacation of the court, on any indictment found, and when directed to the sheriff of the county where such indictment was found, or presentment made, he may pursue and arrest the accused in any county, and commit him to jail, or hold him to bail, as provided in this title. [68 v. 4, § 101.]

Warrant on indictment, and arrest of accused.

Revised statutes

SEC. 7230. When the accused resides out of the county in which the indictment was found, a warrant may issue thereon, directed to the sheriff of the county where the accused resides or is found; and such officer shall arrest the accused, and convey him to the county from which such writ issued, and there commit him to the jail, or hold him to bail, as provided in this title. [66 v. 303, § 102.]

Warrant when accused lives out of the county in which he is indicted.

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SEC. 7231. When an indictment is presented against a corporation, a summons, commanding the sheriff to notify the accused thereof, and returnable on the seventh day after its date, shall issue on the precipice of the prosecuting attorney; such summons, together with a copy of the indictment, shall be served and returned in the manner provided for service of summons upon such corporation in civil actions; the corporation, on or before the return day of a summons duly served, may appear by one of its officers, or by counsel, and answer to the indictment by motion, demurrer, or plea, and upon its failure to make such appearance and answer, the clerk shall enter a plea of "Not guilty"; and upon such appearance being made, or plea entered, the corporation shall be deemed thenceforth continuously present in court until the case is finally disposed of.

Summons and indictment against corporations.

SEC. 7232. When the accused escapes, and forfeits his recognizance, at any time after the jury is sworn, a warrant reciting the facts may, at the request of the prosecuting attorney, issue to the sheriff of any county, who shall pursue and arrest the accused, and commit him

Warrant when accused escapes during trial.

§ 7228. The indictment need not show the kind of money stolen, or that it was issued by lawful authority, or intended to circulate as money. *McDivitt v. State*, 20 O. S. 281.

§ 7232. Where, pending trial, the accused, being on bail, absconds, it is legal to proceed with the case, and to receive a verdict in his absence. *Fight v. State*, 7 O. 181.

his parole or release, to forthwith arrest such person and report the same to the warden or superintendent of the penitentiary or reformatory, as the case may be, from which said person was so released.

**HISTORY.**—113 v. 123 (172), ch. 17, § 11. For an analogous section, see former G. C. § 13606-1; 103 v. 404, § 1.

Particular instances of arrest by officer: O-JUR Arrest 9 S.

**SEC. 13438-12.** Summons on indictments against corporations. When an indictment is returned or information filed against a corporation, a summons commanding the sheriff to notify the accused thereof, returnable on the seventh day after its date, shall issue on praecipe of the prosecuting attorney. Such summons with a copy of the indictment shall be served and returned in the manner provided for service of summons upon such corporations in civil actions. If the service cannot be made in the county where the prosecution began, the sheriff may make service in any other county of the state, upon the president, secretary, superintendent, clerk, treasurer, cashier, managing agent or other chief officer thereof, or by a copy left at a general or branch office or usual place of doing business of such corporation, with the person having charge thereof. Such corporation on or before the return day of the summons duly served, shall appear by one of its officers or by counsel, and answer to the indictment or information by motion, demurrer or plea, and upon failure to make such appearance an answer, the clerk shall enter a plea of "not guilty"; and upon such appearance being made or plea entered, the corporation shall be deemed thenceforth continuously present in court until the case is finally disposed of. On said indictment or information no warrant of arrest may issue except for individuals who may be included in such indictment or information.

**HISTORY.**—113 v. 123 (172), ch. 17, § 12. For an analogous section, see former G. C. § 13607; R. S. § 7231; 87 v. 351.

This section differs from former G.C. § 13607 in that it forbids the arrest of any individual.

Process against corporation:  
Ala. Code 1928, § 3727.  
Ariz. Rev. Code 1928, § 5208.  
Ill. Smith-Hurd Rev. Stat. 1933, ch. 88, § 664.  
Ind. Burns' Stat. 1933, § 9-1013.  
Iowa Code 1931, § 13765.  
Kans. Rev. Stat. 1923, § 62-1104.  
Md. Bagby's Code 1924, art. 27, § 727.  
Minn. Mason's Gen. Stat. 1927, § 10682.  
Miss. Hemingway's Code 1927, § 1257.  
Mont. Rev. Codes 1921, §§ 12230, 12233.  
Nebr. Comp. Stat. 1929, § 29-1508.  
Nev. Comp. Laws 1929, § 11207.  
N.J. Comp. Stat. 1910, Cr. Fr., § 61.  
N.Y. Gilbert's Cr. Code 1935, § 681.  
N.Dak. Comp. Laws 1913, § 11078.  
Okla. Stat. 1931, § 2745.  
S.Dak. Comp. Laws 1929, § 4638.  
Utah Rev. Stat. 1933, § 105-52-7.  
Va. Code 1930, § 4892.  
Wash. Remington's Comp. Stat. 1922, § 2011-1.  
W.Va. Code 1937, § 6137.

References to Page's Digest and Ohio Jurisprudence  
Arrest of corporations: PAGE Arrest §§ 2, 23  
Corp. § 104; O-JUR Corp. §§ 683, 685, Crim.  
Law § 215, Statutes § 316.  
Process against corporations: PAGE Corp. § 255;  
O-JUR Process § 123 et seq.

Crimes for which a corporation may be indicted, see general note preceding G. C. § 12368.

There is no statutory authority in Ohio for the arrest of a corporation: Reinhart & Newton Co. v. State, 15 O. N. P. (N.S.) 92, 23 O. D. (N.P.) 500 [affirmed, Reinhart & Newton Co. v. State, 26 O. C. C. (N.S.) 429, 35 O. C. D. 329].

In a criminal or quasi-criminal proceeding the only way service can be obtained upon a corporation is by issuing and serving a summons on one of its officers as provided in cases of indictment former G. C. § 13607: Reinhart & Newton Co. v. State, 15 O. N. P. (N.S.) 92, 23 O. D. (N.P.) 500 [affirmed, Reinhart & Newton Co. v. State, 26 O. C. C. (N.S.) 429, 35 O. C. D. 329].

If the president of a corporation is arrested on a complaint against the corporation for violation of a penal statute, and if the corporation thereafter files a motion to quash on grounds other than that of a lack of jurisdiction of the person, this is a voluntary appearance of the corporation and the justice has jurisdiction. A motion to quash because the justice has no jurisdiction of the person of the defendant and of the subject matter is an appearance, though the defendant states it appears solely for the purpose of the motion: Reinhart & Newton Co. v. State, 15 O. N. P. (N.S.) 92, 23 O. D. (N.P.) 500 [affirmed, Reinhart & Newton Co. v. State, 26 O. C. C. (N.S.) 429, 35 O. C. D. 329].

**SEC. 13438-13.** Recognizance of witnesses. In any case pending in the court of com-

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General Code