

ORIGINAL

IN THE SUPREME COURT OF OHIO

09-1282

City of Zanesville,	:	
	:	
Appellant,	:	On Appeal from the Muskingum
	:	County Court of Appeals,
v.	:	Fifth Appellate District
	:	
Ronald T. Rouse, Jr.,	:	Court of Appeals
	:	Case No. CT08-0035
Appellee.	:	

MEMORANDUM IN SUPPORT OF JURISDICTION OF
APPELLANT CITY OF ZANESVILLE

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EXPLANATION OF WHY THIS CASE IS A CASE OF
PUBLIC OR GREAT GENERAL INTEREST

This cause is important to the City of Zanesville, the Zanesville Municipal Court, and the citizens of Zanesville in that the effect of the ruling of the Court of Appeals for Muskingum County, Fifth District Court of Appeals, has rendered every criminal case heard in the Zanesville Municipal Court for a twenty-one year period void for lack of subject matter jurisdiction through their judgments in the instant case. If the tens of thousands of cases heard in the Zanesville Municipal Court are void, there is potential impact on judgments rendered in many other Courts of Ohio, where the prior judgments of the Zanesville Municipal Court caused other Municipal, County, or Common Pleas Courts to enhance penalties in cases heard. It is equally possible that judgments rendered in those other Municipal, County, or Common Pleas Courts may be void if for example the Court rendered judgment based on violation of a protection order issued in the Zanesville Municipal Court during that time period.

In the instant case, the court of appeals vacated the judgment of conviction and sentence and a temporary protection order. The court of appeals ruled that the trial court did not have subject matter jurisdiction because the charging document was not noted on the docket nor file stamped, in accordance with their prior ruling in *State v. Sharp* (Knox County, 2009) 2009 Ohio 1854.¹ This ruling reaches every criminal case handled in the Zanesville Municipal Court from 1986 until July of 2007 because every case was handled in the same way as the Appellee Rouse's case.

¹ *State v. Sharp* was decided approximately six weeks prior to the instant case. The facts leading to vacation in that judgment are the same and has produced a similar result in the Mount Vernon Municipal Court.

In 1986 the Zanesville Municipal Court purchased a program that would revolutionize the way dockets were kept. When technology reached the court, as many other clerks did, the clerk of the Zanesville Municipal Court did away with keeping the old journals. When cases were opened the case information was entered into an computerized docket/journal and the computer automatically assigned that date as the "file date" for the case. The "file date" appeared at the top of the docket. In other words, the date that the clerk typed the information into the computer was the date the computer assigned and indicated as the "file date" on the top of the docket journal. The clerk had never been told to file stamp criminal complaints and she continued the practices that had always been in place, including filing the complaint/charging instrument in a paper file and maintaining the files. Not knowing that there was a potential problem, several sitting and visiting judges in the Zanesville Municipal Court continued to hear complaints filed in the Court, which had been accepted by the clerk of the court, entered into the computer and maintained in paper files. After all, why would there be a file containing the complaint and with a case number if the clerk had not accepted and filed the complaint?

This practice was followed by other courts in Ohio, including the mount Vernon Municipal Court as well as some of the other courts that were utilizing the same computer software program. For that reason, no one is aware exactly how far reaching this decision may actually be.

The clerk of the Zanesville Municipal Court continued to notify the Bureau of Criminal Investigations, the Bureau of Motor Vehicles, and other appropriate law enforcement agencies of convictions. And, those agencies maintained records, which they in turn released to other Courts, and prosecutors throughout Ohio. So if John Doe had a conviction for OVI in the

Zanesville Municipal Court in 2005, any of the other courts of Ohio may have obtained his driving records, and enhanced the penalty for a subsequent conviction as required by statute. The decisions of the Muskingum County Court of Appeals may also be impacted in that they heard many cases on appeal between 1986 and 2007 in which the cases were handled in the exact same way as the appellee's case, i.e. the complaints were not file stamped nor was there a journal entry which specified that the complaints were filed.

If the decision of the court of appeals is to stand, there are several issues that must be addressed not only by the Zanesville Municipal Court, the Mount Vernon Municipal Court and other courts not yet identified, but also by other governmental agencies and courts. What is the Zanesville Municipal Court's responsibility toward all of the other defendant's convicted in the period 1986 through 2007? How are the records of the Bureau of Criminal Investigations and the Bureau of Motor Vehicles impacted? What is the impact on all of the defendant's tried by other Courts with enhancements due to void judgments of the Zanesville Municipal Courts?

Already Mr. Rouse has filed motions to render 16 other cases in the Zanesville Municipal Court void. It is anticipated that he will also be appealing at least one felony conviction that was enhanced because of the Zanesville Municipal Court case which the Court of Appeals has now vacated. The Zanesville Municipal Court heard between 3000 and 5000 cases annually, for a total of 60,000 to 100,000 potentially void cases.

With so many issues and so much potential impact on every court in Ohio it is critical for the Supreme Court of Ohio to consider this issue and determine whether the court of appeals was too specific in identifying what constitutes filing a complaint.

STATEMENT OF THE CASE AND FACTS

This case arises from the conviction of appellee Ronald Rouse, Jr. in the Zanesville Municipal Court for domestic violence. Mr. Rouse was charged on February 27, 2006. The charging instrument, Summons After Arrest Without Warrant and Complaint Upon Such Summons, commonly called a "ticket" was delivered to the court by a police officer. The clerk of courts received the ticket, she or one of her assistants assigned the complaint a case number, opened a file (both paper and computer), and placed the ticket in the file where it remains to this day. The ticket was not file stamped. The computerized docket is dated (file date) the day that the ticket was received and the file was opened, but does not contain the specific notation that the complaint was received and filed. Mr. Rouse appeared for arraignment in Zanesville Municipal Court on February 28, 2006. Trial was set for April 5, 2006.

Mr. Rouse did not appear on April 5, 2006, but he did appear on April 13, 2006. He changed his plea from guilty to not guilty. The trial judge stayed the matter until October 26, 2006 to allow time for Mr. Rouse to complete anger management counseling. Mr. Rouse appeared on October 26, 2006 and stated that he had been in jail from July to October, asking for another chance to attend anger management counseling. The trial judge granted a further stay in the matter until July 6, 2007.

On July 6, 2007, Mr. Rouse appeared with counsel, who orally moved for dismissal. On July 20, 2007, Mr. Rouse's counsel filed a Motion to Dismiss Case with Prejudice or in the Alternative Dismiss Compliant for Violation of Speedy Trial Right and Find that TPO Filed in this Case is Void for Causes Shown Herein. There was agreement that the trial judge should recuse himself and the matter was further continued until a visiting judge could be appointed.

The case was set for final hearing on June 9, 2008. Judge Fais, the visiting judge, overruled the Motions, found Appellee Rouse guilty and sentenced him.

Appellee timely appealed to the Muskingum County Court of Appeals. The Court of Appeals addressed the second of twelve assignments of error and found that the Zanesville Municipal Court “did not have subject matter jurisdiction because the charging document was not noted on the docket nor file stamped. “

The court of appeals erred in ruling that Zanesville Municipal Court did not have subject matter jurisdiction. In support of its position on these issues, the appellant presents the following argument.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: A criminal complaint is filed and the court has subject matter jurisdiction as a matter of law when the clerk of courts receives a complaint, assigns it a case number, enters the case caption on the court’s computer docket, and places the complaint in a file.

The complaining party is required to file a complaint in the appropriate court. In this case the complaining party is the City of Zanesville, who by and through an officer of the law filed a Summons After Arrest Without Warrant and Complaint Upon Such Summons (Complaint).

File, v. To lay away and arrange in order, pleadings, motions, instruments, and other papers for preservation and reference. To deposit in the custody or among the records of a court. To deliver an instrument or other paper to the proper officer or official for the purpose of being kept on file by him as a matter of record

and reference in the proper place. It carries the idea of permanent preservation as a public record. *City of Overland Park v. Nikias*, 209 Kan. 643, 498 P.2d 56, 59.²

In the case at hand, the police officer delivered the Complaint to the clerk of courts or her designated assistant. It was not his responsibility to file stamp the complaint or to direct the clerk in the manner in which she set up, recorded, or maintained a case file in the matter. The manner of setting up and keeping case files is left to the clerk of courts. The clerk did set up a file, assign a case number, and preserved the complaint in a file. The date the clerk did all of the above appears on the top of the docket/journal as "File Date."

Accordingly, the issue herein is does the law require a "file-stamp" or a separate notation that the complaint was filed; or is the fact that the clerk received the complaint and assigned it a case number sufficient evidence that the complaint was filed. Numerous cases that say that judgment entries must be file-stamped; and, there are also numerous cases that say that the court speaks through its journal. There is no case known to Appellant that states specifically that a complaint must be file-stamped or journaled in order to confer subject matter jurisdiction upon the court.

A complaint is different from every other paper filed with the clerk. It is the instrument that commences the case. The case commences the date the complaint is received by the clerk of courts for filing. The filing of the complaint generates a case number, a file in which it will be kept, a case caption entered into the computer to start the docket/journal. The fact that those things occur is sufficient to establish that the complaint was filed.

²*Black's Law Dictionary* Sixth Edition; Henry Campbell Black, M.A.; West Publishing Company; St. Paul, Minnesota; p.628.

The only case the Court of Appeals for Muskingum County cited in support of their opinion in this case was *State v. Sharp*, Knox App. Nos, 08CA00002, 08CA00003, 08CA000004, 2009 Ohio 1854 a case they had decided approximately six weeks earlier. In *State v. Sharp* there was also no file stamp or notation of the filing on the docket. In *State v. Sharp* the Court of Appeals cited three cases. Within those three cases one held that a judgment must be file stamped in order to constitute a final appealable order, so that the appellate court could determine if the appeal was timely filed. See *In Re Hopple* (Wood County, 1983) 13 Ohio App. 3d 54; 468 N.E.2d 129. Another case related to police reports that found their way into the file that were not file-stamped, which the appellate court refused to consider in determining whether the trial judge appropriately found the defendant guilty of OMVI and other charges on the record. See *State v. Dillon* (Licking County, 1994) 1994 Ohio App. Lexis, unreported.

The final case cited by the appellate court deals with a notice of appeal that the appellant had attempted to file, but which the clerk of courts wrongly refused to file. *Holland v. Mike Amer, dba American Designers Company* (Franklin County, 1979) 1979 Ohio App. LEXIS 11482, unreported. In *Holland* the Franklin County Court of Appeals did not hold the error of the clerk against the appellant and decided to determine the case upon its merits. *Id @* p. 5. As in *Holland*, in the instant case it is not the City of Zanesville's fault if the clerk did not file-stamp complaints or make journal entries regarding the filing. When the City of Zanesville caused the complaint to be deposited with the clerk, they had met their obligation.

Even if a clerk's record keeping is not technically perfect, when there is no question that the clerk received a criminal complaint for filing and the record demonstrates, that the clerk opened a paper file in which she filed and maintained the complaint, started a docket, and

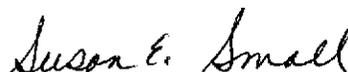
assigned a case number; as a matter of law, that is sufficient to show that the complaint was filed with the Clerk, that the case was commenced and that the court had subject matter jurisdiction.

CONCLUSION

This case clearly involves a matter of public and great general interest for the reasons discussed above. The appellant requests that this court accept jurisdiction in this case so that the important issues raised above may be presented to the court and heard on its merits.

Respectfully submitted,

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Certificate of Service

I certify that a copy of this Notice of Appeal was sent by ordinary U.S. mail to counsel for appellees, Elizabeth N. Gaba, Attorney at Law, 1231 East Broad Street, Columbus, Ohio 43205 on July 16, 2009.



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COUNSEL FOR APPELLANT,
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COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FILED
FIFTH DISTRICT
COURT OF APPEALS

JUN 03 2009

MUSKINGUM COUNTY, OHIO
TODD A. BICKLE, CLERK

CITY OF ZANESVILLE
Plaintiff-Appellee

-vs-

RONALD T. ROUSE, JR.
Defendant-Appellant

JUDGES:
Hon. William B. Hoffman, P.J.
Hon. John W. Wise, J.
Hon. Julie A. Edwards, J.

Case No. CT08-0035

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Zanesville Municipal Court
of Muskingum County, Case No.
06CRB00319

JUDGMENT:

Vacated

DATE OF JUDGMENT ENTRY:

APPEARANCES:

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Hoffman, P.J.

{¶1} Defendant-appellant Ronald T. Rouse, Jr., appeals the June 13, 2008 Amended Judgment Entry entered by the Zanesville Municipal Court, which overruled his motion to dismiss. Plaintiff-appellee is the City of Zanesville.

STATEMENT OF THE CASE AND FACTS

{¶2} On February 27, 2006, Appellant was arrested for domestic violence, in violation of Zanesville Ordinance 537.14A. Appellant was issued a document captioned, "Summons after arrest without warrant and complaint upon such summons". Appellant entered a plea of not guilty at his arraignment on February 28, 2006. The trial court scheduled the matter for trial on April 5, 2006. The trial court also issued a protection order. Appellant appeared before the trial court on April 13, 2006, and entered a plea of guilty to the charge. The trial court stayed the matter until October 26, 2006, to allow Appellant to complete an anger management program.

{¶3} Appellant did not complete the anger management program as he was incarcerated in July, 2006, on unrelated charges. Appellant informed the trial court he still wished to complete the program. Appellant was scheduled to be released from jail in December, 2006. The trial court stayed the matter until July 6, 2007, again giving Appellant time to complete the anger management program.

{¶4} On July 20, 2007, Appellant filed a motion to dismiss, alleging the trial court lacked subject matter jurisdiction to entertain the State's prosecution as a criminal complaint had never been filed. Appellant further argued the temporary protection order was void or unenforceable as a result. The City filed a memorandum contra. Appellant

filed a response thereto, which was followed by the City's response. The trial court conducted a hearing on the motions on June 9, 2008. Via Judgment Entry filed the same day, the trial court overruled Appellant's motion to dismiss.¹ The trial court then proceeded to enter a finding of guilty on Appellant's plea and sentenced him to ten days in jail and imposed a fine of \$50.00. The trial court suspended the jail time and fine as Appellant was serving a fifteen year sentence in a state correctional facility. The trial court memorialized its finding of guilt and sentence via Judgment Entry also filed June 9, 2008.

{15} It is from this conviction Appellant appeals, raising the following assignments of error:

{16} "I. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO DISMISS APPELLANT'S CASE WITH PREJUDICE, BASED UPON THE FACT THAT THE COMPLAINT HAD NEVER BEEN FILED IN VIOLATION OF DEFENDANT'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS OF LAW.

{17} "II. THE TRIAL COURT ABUSED ITS DISCRETION BY LITIGATING A MATTER WITH WHICH THE TRIAL COURT DID NOT ENJOY SUBJECT-MATTER JURISDICTION.

{18} "III. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO DISMISS APPELLANT'S CASE WITH PREJUDICE, BASED UPON THE FACT THAT THE APPELLANT'S STATUTORY RIGHT TO A SPEEDY TRIAL HAD BEEN VIOLATED.

¹ The trial court filed an Amended Judgment Entry on June 13, 2008, which did not substantially effect the June 9, 2008 Judgment Entry.

{¶9} "IV. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO DISMISS APPELLANT'S CASE WITH PREJUDICE, BASED UPON THE FACT THAT THE APPELLANT'S CONSTITUTIONAL RIGHT TO COUNSEL AND PROTECTIONS UNDER CRIMINAL RULES 11 AND 44 HAD BEEN VIOLATED.

{¶10} "V. IN THE ABSENCE OF AN UNDERLYING CRIMINAL COMPLAINT HAVING BEEN FILED IN THIS CASE, THE LOWER COURT EXCEEDED ITS JURISDICTION UPON A FAILURE TO COMPLY WITH R.C. §2919.26 IN ITS ATTEMPT TO ISSUE A TEMPORARY PROTECTION ORDER AND THUSLY, THAT ATTEMPT IS VOID.

{¶11} "VI. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO FIND THAT THE TEMPORARY PROTECTION ORDER WAS NEVER FILED IN THIS COURT, AND THUSLY HAD NO FORCE OR EFFECT.

{¶12} "VII. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO FIND THAT THE TEMPORARY PROTECTION ORDER WAS INVALID BECAUSE NO MOTION FOR THE TEMPORARY ORDER WAS EVER FILED."

II

{¶13} For ease of discussion, we shall address Appellant's second assignment of error first. In his second assignment of error, Appellant maintains the trial court lacked subject matter jurisdiction as the charging instrument was not properly filed.

{¶14} This Court recently addressed this exact issue in *State v. Sharp*, Knox App. Nos. 08CA000002, 08CA000003, 08CA000004, 2009-Ohio-1854. In *Sharp*, we vacated the appellant's conviction and sentence, finding the trial court did not have

subject matter jurisdiction because the charging document was not noted on the docket nor file stamped.

{¶15} In accordance with *State v. Sharp*, supra, we sustain Appellant's second assignment of error.

I, III, IV

{¶16} In light of our disposition of Appellant's second assignment of error, we find assignments of error I, III, and IV to be moot.

V, VI, VII

{¶17} Because Appellant's remaining three assignments of error involve the temporary protection order, we shall address said assignments of error together. In his fifth assignment of error, Appellant maintains the trial court exceeded its jurisdiction in attempting to issue a temporary protection order when an underlying criminal complaint had not been filed. Appellant concludes the attempt is void. In his sixth assignment of error, Appellant asserts the trial court abused its discretion in failing to find the temporary protection order was never filed; therefore, had no force or effect. In his seventh assignment of error, Appellant argues the trial court abused its discretion in failing to find the temporary protection order was invalid because a motion for such order was never filed.

{¶18} The document at issue herein is captioned "Criminal Temporary Protection Order (TPO) (R.C. 2919.26)".

{¶19} R.C. 2919.26 provides:

{¶20} "Upon the filing of a complaint that alleges a violation of section 2909.06, 2909.07, 2911.12, or 2911.211 of the Revised Code if the alleged victim of the violation

was a family or household member at the time of the violation, a violation of a municipal ordinance that is substantially similar to any of those sections if the alleged victim of the violation was a family or household member at the time of the violation, any offense of violence if the alleged victim of the offense was a family or household member at the time of the commission of the offense, or any sexually oriented offense if the alleged victim of the offense was a family or household member at the time of the commission of the offense, the complainant, the alleged victim, or a family or household member of an alleged victim may file, or, if in an emergency the alleged victim is unable to file, a person who made an arrest for the alleged violation or offense under section 2935.03 of the Revised Code may file on behalf of the alleged victim, a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46. The motion shall be filed with the clerk of the court that has jurisdiction of the case at any time after the filing of the complaint."

{¶21} Having found in Appellant's second assignment of error, supra, the complaint in the instant matter was never filed, we find the temporary protection order was not filed in compliance with R.C. 2919.26; therefore, is void.

{¶22} We note in this Court's previous opinion in *State v. Rouse*, Muskingum App. No. CT2007-0036, 2008-Ohio-2975, we found nothing on the face of State's Exhibit 16 indicated, "The signed protection order was *not* filed in the trial court. At most, it can be said that the protection order appears to lack a contemporaneous file stamp." *Id.* at para. 40. However, the panel which ruled on that case did not have the benefit of the full record from the municipal court. The record herein affirmatively

demonstrates neither the domestic violence complaint nor the temporary protection order was filed.

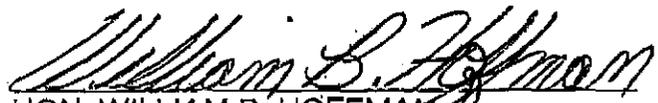
{123} Based upon the foregoing, we sustain Appellant's V, VI, and VII assignments of error.

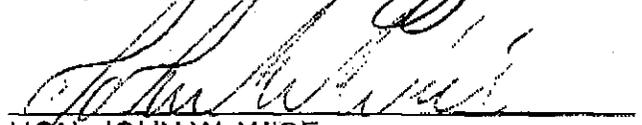
{124} The judgment of conviction and sentence of the Zanesville Municipal Court is vacated, and the temporary protection is vacated.

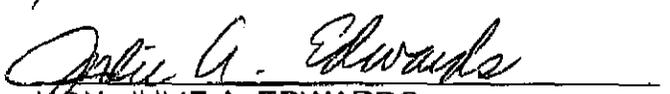
By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur


HON. WILLIAM B. HOFFMAN


HON. JOHN W. WISE


HON. JULIE A. EDWARDS

IN THE COURT OF APPEALS FOR MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

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FIFTH DISTRICT
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MUSKINGUM COUNTY, OHIO
TODD A. BICKLE, CLERK

CITY OF ZANESVILLE

Plaintiff-Appellee

-vs-

RONALD T. ROUSE, JR.

Defendant-Appellant

JUDGMENT ENTRY

Case No. CT08-0035

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of conviction and sentence of the Zanesville Municipal Court is vacated. The temporary protection order is vacated. Costs assessed to Appellee.


HON. WILLIAM B. HOFFMAN


HON. JOHN W. WISE


HON. JULIE A. EDWARDS