

ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF ZANESVILLE,

Case No. 09-1282

Appellant.

-Vs-

RONALD T. ROUSE, JR.,

Appellee.

On Appeal from the Muskingum
County Court of Appeals, Fifth
Appellate District.

Court of Appeals Case No.
CT08-0035. 2009-Ohio-2689

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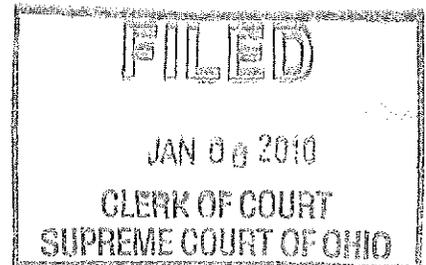


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I. STATEMENT OF FACTS

On or about February 27, 2006 the herein named Defendant-Appellee Ronald T. Rouse, Jr. was apparently arrested upon an allegation of a violation of Zanesville Municipal Code § “537.14A,” Domestic Violence. That allegation was set forth upon a document labeled “Summons after Arrest without Warrant and Complaint upon such Summons.” See Exhibit A. As evidenced by that document, there is an absence of a file stamp or other indicia of filing upon its face. See Exhibit A. Nevertheless, Defendant was compelled to appear in the Zanesville Municipal Court on or about February 28, 2006. Despite what the City alleges, a Complaint was never filed with the Zanesville Municipal Court on February 28, 2006. Inspection of the “Complaint” indicates that it was sworn before a deputy clerk of court on February 27, 2006.¹ We argue that it was not filed and recorded at all, but certainly if it was “presented to the clerk”, which Appellant claims is all one needs for filing, or to invoke the subject matter jurisdiction of the court, this happened on February 27, 2006, not February 28, 2006. Equally, the “Summons After Arrest without Warrant and Complaint Upon Such Summons” was not filed and recorded with the Zanesville Municipal Court at all, and certainly was not filed on February 28, 2006, again as indicated by the document itself, the clerk notarized it on the 27th day of February, 2006. Defendant was forced to “appear”, as he had been jailed, and he entered a plea of not guilty. The Municipal Court accepted that plea and set the matter for a trial date of April 5, 2006. The Court released Defendant on his own recognizance.² On April 13, 2006, according to a filed Judgment Entry and the Transcript

¹ See Exhibit A .

² According to the Docket, Exhibit E, this document was never filed and recorded with the Court.

of the 4-13-2006 Hearing, the defendant attempted to change his plea from not guilty to guilty. See Exhibit B and Transcript, 4-13-2006 Hearing, p. 8, l.20 to p.9 l.7. As evidenced upon that Entry and the statements made at that hearing the Court refused that plea. As evidenced by the Transcript of that Hearing and the documents “contained in the file”, the Court NEVER followed Criminal Rule 11 regarding the so-called “change of plea”.³ Indeed the Court NEVER throughout the history of the case, until undersigned counsel got on board in July 2007, invoked Defendant’s Sixth Amendment right to counsel. After a review of the transcript of the April 13, 2006 hearing, and the many unfiled stamped documents as “contained in the file” of the Municipal Court⁴ there is the disquieting absence of any proof that Defendant voluntarily signed away any rights, including his right to counsel, and his right to a speedy trial. See Certified Docket/Journal attached as Exhibit C. On July 6, 2007, Defendant again appeared, this time with undersigned Counsel and orally moved the Court to dismiss the case. Defendant through Counsel on July 20, 2007, filed a *Motion to Dismiss Case With Prejudice or in the Alternative Dismiss Complaint for Violation of Speedy Trial Right and Find that TPO Filed in this Case is Void for Causes Shown Herein*. Defendant expressly stated that he did not voluntarily submit to the jurisdiction of the Court and that his appearance was limited to the purposes stated in the Motion. He moved the Court pursuant to Crim.R. 48(B) and the inherent power of the Court to dismiss the Case and declare all entries and orders *void ab initio*. After a Response filed by the State, Defendant on August 31, 2007, filed *Alleged Defendant’s Response to State’s August 24, 2007 Filed Response*.

³ See Transcript, 4-13-2006 Hearing, p.7, l.7-25 to p.8, l.1-19.

⁴ There was also, inter alia, a Temporary Protection Order signed by the Judge in this case. That supposed Order was not filed in this case. That document and the ramification thereof were used against the Defendant by the State in a felony proceeding in the Muskingum County Court of Common Pleas.

After continuances, so that the original Judge on the case, Judge Joseph, could recuse himself and another Judge, Visiting Judge Fais, could be appointed, the case was set for final hearing on June 9, 2008.

Judge Fais overruled all of the Defendant's motions, found him guilty, sentenced him to 10 days suspended, 50 dollar fine suspended. See *Amended Judgment Entry*, 6-13-08, Exhibit D.

Judge Fais found that the "Complaint" in this case was "filed" in the Court. Transcript, 6-10-2008 hearing, p. 18, l.25. He stated that it is a "de facto, de jure" issue:

"Now, defendants [sic] now filed a motion to dismiss claiming that it was a lack of subject matter jurisdiction with this court because the complaint filed with the court was not time stamped by the clerk. So the question is de facto de jure. In other words, in fact, the defendant did appear. In fact, the defendant entered a plea and requested that the matter be continued so that he could do a program of some type.

That appears to be what, in fact, happened. At some point the Court issued also a protection order and that was apparently served upon the defendant. Now, that is, in fact, what appears to be the facts in this case.

The Court is going to overrule the motion to dismiss, is going to overrule the motion for lack of a speedy trial, and go forward now at this stage which appears to be a need to address his plea of guilty. The Court is going to accept the plea and enter a finding of guilty against the defendant and proceed at this time with sentencing."

Transcript, 6-10-08 hearing, p.19, l.24 to p.20, l.19.

Judge Fais filed an Entry on June 9, 2008, from which Defendant appealed, and then an Amended Entry on June 13, 2008, from which Defendant appealed – those two documents were consolidated as one case.

On June 3, 2009 the Fifth District Court of Appeals of Muskingum County in *City of Zanesville v. Rouse* 2009-Ohio 2689 sustained Assignment of Error II, which argued that the trial court was without subject matter jurisdiction, because the case was not properly before the Court, as the criminal complaint's filing was not noted upon the

docket and further, did not contain a file stamp in accord with the mandates of R.C. §§ 1903.31(E), 2303.08 and 2303.10. *Rouse* at ¶¶ 13-15. City of Zanesville filed its Notice of Appeal to the Ohio Supreme Court on November 23, 2009 and the Ohio Supreme Court granted jurisdiction to hear the case and allow the appeal October 14, 2009.

II. ARGUMENT CONTRA THE CITY'S TWO PROPOSITIONS OF LAW

The City argues that “Complaints are filed when they are delivered to the Clerk for filing” and “The duties of the Clerk of a Court are not jurisdictional; and his or her failure to properly process a complaint by time stamping and or docketing and journaling do not render the complaint invalid.” *Appellant’s Merit Brief*, 3-10.

In a nutshell, the City argues that because the City delivered its complaint to the Clerk of Court, it was therefore filed. The City fails to address the mandates of R.C. §§ 2303.08 or 2303.10. The City however did address R.C. § 1903.31(E). The City states that if the Complaint was not “properly before the Court” so that the Court did not have jurisdiction to act in the case, then that was the fault of the Clerk of Court, not the City. The Fifth District Court of Appeals rejected this argument. *Rouse* at ¶¶ 13-15.

The *Rouse* decision, which is at issue here, was based upon that Court’s prior holding in *State v. Sharp*, 5th Dist. Knox App. Nos. 08CA000002, 08CA000003, and 08CA000004, 2009-Ohio-1854, *Rouse* at ¶¶ 13-15. The Appellee in *Sharp* (City of Mount Vernon) there admitted that the charging instruments were not file-stamped nor noted on the certified transcript of the docket. See *Sharp* at ¶ 13. In *Sharp*, the Fifth cited to R.C. 1901.31(E), which mandates that, under proper dates the clerk shall note on the docket the filing of the complaint. The Court went on to determine that the certified docket of the case as obtained from the Municipal Court failed to contain such a notation,

Sharp at ¶¶ 21-23 (citing cases). Further the Court found that the charging instrument failed to contain a file-stamp. *Sharp* at ¶ 23. Therefore, the Fifth held that the charging instruments were not properly before the Municipal Court at the time that Mr. Sharp was convicted and sentenced and accordingly, the Municipal Court thereon lacked subject-matter jurisdiction and as a result vacated the convictions, *Sharp* at ¶ 23. In applying *Sharp* the Appellate Court in *Rouse* likewise vacated the judgment of conviction. *Rouse* at ¶ 24. It should be noted by this Court that the State (City of Mount Vernon) did not appeal the *Sharp* decision to this Court.

Further, the Appellate Court having found that the Municipal Court lacked subject matter jurisdiction due to the fact that the City of Zanesville's criminal complaint was not properly filed and recorded, then turned its attention to the issue of a temporary protection order that was set forth upon the alleged complaint. That Court cited to the mandates of R. C. § 2919.26, and accordingly held that the temporary protection order that was set forth by the lower Court in *Rouse* was void because the complaint was never properly "filed" and thereby vacated said order and therefore sustained Assignment of Errors V, VI and VII. See *Rouse* at ¶¶ 17-24.

The crux of this case *sub judice* is that the City Law Director's Office, the plaintiff or moving party in the matter, prosecuted the Appellee, Ronald Rouse Junior, when it had failed to invoke the jurisdiction of the Zanesville Municipal Court through a properly "filed and recorded" criminal complaint. In spite of the City's failure, the trial court rendered judgment against Mr. Rouse and thereon sentenced him. The Fifth District Court of Appeals of Muskingum County rectified the situation in *Rouse*.

The City, in its *Memorandum in Support of Jurisdiction*, has taken the astonishing position that the *Rouse* decision has rendered every case heard in the Municipal Court from 1986 until 2007, void for want of subject matter jurisdiction, because as the City claims that “the complaints were not file stamped nor was there a journal entry which specifies that the complaints were filed.” *Appellant’s Memorandum* p. 1, ¶ 1 and p. 3, ¶ 3.

The City next incredibly states that the “Clerk has never been told to file stamp criminal complaints.” *Appellant’s Memorandum* p. 2 ¶ 1. The City, being the Law Director’s Office also attempts to absolve itself of any blame, and again place blame on the Clerk of Court when it states “...that 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.” *Appellant’s Memorandum* p. 7, ¶ 2. The City blames the Clerk. *Appellant’s Merit Brief*, p. 7-10.

The City’s real cause in this Court is unveiled when we discover the City’s closing remark of its Memorandum. The City requests that this Court, “... determine whether the court of appeals was too specific in identifying what constitutes filing a complaint.” *Appellant’s Memorandum* p. 3.

Contained in the case file of the lower court, there is a document that purports to be a “Complaint” of a violation of the Municipal Ordinances of the City of Zanesville leveled against Appellee. The documents are titled “Summons in lieu of Arrest Without Warrant, and Complaint upon such Summons”. See Exhibit A. The first hint that these documents are without force is that they do not show a file stamp anywhere on their faces

as proof that they were in fact filed with or in the lower court. That absence of filing is undeniably sustained upon a review of the lower court's Docket and/or Journal of said cases. That Docket and/or Journal does not contain any mention or notation of a "complaint" having been filed. See Exhibit C. Nonetheless, the State of Ohio, by and through the City Prosecutor's Office, could only compel Appellee to appear before the Zanesville Municipal Court through a verified complaint that was or had been *filed* and recorded with or in that Court.⁵ A criminal complaint is the only means whereby the criminal jurisdiction and conferred power thereof of the lower court could have been wielded against Appellee. The filing of a valid complaint is a necessary prerequisite to a court acquiring subject-matter jurisdiction. See ***Columbus v. Jackson*** (1952), 93 Ohio App. 516, 518, 114 N.E.2d 60; ***Newburgh Heights v. Hood***, 8th Dist. No. 84001, 2004 Ohio 4236, ¶ 5 citing cases ; also ***State v. Human***, (1978) 56 Ohio Misc. 5, 381 N.E.2d 969 (Criminal jurisdiction is statutory and must be strictly construed whether one is dealing with a court of general jurisdiction or a court of limited jurisdiction such as a municipal court); (Jurisdiction is the power of a court to hear and determine a cause and it is *coram judice* whenever a case is presented that brings this power into action); (**No cause or case arises involving the criminal jurisdiction of a court until a complaint or information is filed or an indictment returned**). *Id.* Syllabus ¶¶ 4-6 (emphasis added). Further, the Zanesville Municipal Court would need a properly filed complaint to

⁵ Numerous Ohio courts have held that a time-stamp or file-stamp is necessary in order to confer jurisdiction upon the court. See, e.g., ***State v. Callihan*** (4th Dist., Sept. 14, 1993), Lawrence App. No. 93CA1, 1993 WL 373788 (dismissing an appeal for lack of jurisdiction where "[n]either the front nor the back of the complaint [in the form of a Uniform Traffic Ticket charging appellant with a violation of R.C. § 4511.25] contains a file-stamp nor any other indicia of if and/or when it was filed with the trial court clerk"); ***State v. Griffin*** (4th Dist., June 17, 1991), Washington App. No. 90 CA 8, 1991 WL 110225 (dismissing an appeal for lack of jurisdiction based on purported court documents that did "not bear either a time stamp or other evidence that it had been filed with the Clerk of the Marietta Municipal Court").

hold a hearing or a trial, and for that matter, to even have the authority to render a valid judgment. See *State v. Villagomez* (1974), 44 Ohio App.2d 209, 211, 337 N.E.2d 167.

Succinctly stated, absent a filed and recorded valid complaint, the Zanesville Municipal Court lacked subject-matter jurisdiction from the outset, and thusly, did not ever have the authority to go forward with the supposed case below, hold hearings on the matter, render judgments or convictions on the matter, including a “Temporary Protection Order” or take any judicial action whatsoever in light of the lack of subject-matter jurisdiction. Accordingly, the judgment rendered against Appellee in the Municipal Court was void as a matter of law. Any Order, Judgment, or otherwise that has been rendered or could have been rendered or that may be rendered, that was or could be directed toward Appellee is or would be void *ab initio*. See *State v. Whitner*, (6-26-98) 6th District No. L-97-1253 citing *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, (“If a court acts without jurisdiction, then any proclamation by that court is void *ab initio*.” Syllabus); see also *Freeland v. Pfeiffer* (1993), 87 Ohio App.3d 55, 58, 621 N.E.2d 857; *State ex rel. Lawrence Dev. Co. v. Weir* (1983), 11 Ohio App. 3d 96, 97, 11 Ohio B. 148, 463 N.E.2d 398. In essence, the Zanesville Municipal Court, under the law of this State, was without any legal authority to hold, demand or adjudicate any issue against Appellee, because it lacked judicial power to do so.

The lower court had an inherent power to decide whether the subject matter jurisdiction of the court had been properly invoked by the State of Ohio. Cf. *State ex rel. Hummel v. Sadler*, 96 Ohio St.3d 84, 2002-Ohio-3605, 771 N.E.2d 853, at ¶ 21. In fact, in the face of the evidence presented herein, the court could have at any time raised the issue of whether it had jurisdiction *sua sponte*. *In re Graham*, 147 Ohio App.3d 452,

2002-Ohio-2407, at ¶ 29; see Civ.R. 12(H)(3); *Fox v. Eaton* (1976), 48 Ohio St.2d 236, 238, 358 N.E.2d 536, *overruled on other grounds*, *Manning v. Ohio State Library Bd.* (1991), 62 Ohio St.3d 24, 29, 577 N.E.2d 650.

(A) DISCUSSION OF APPELLANT'S PROPOSITION 1.

Does a Prosecutor or police officer, delivering a criminal Complaint to a Clerk of Court, with nothing further occurring in terms of official indorsement on the Complaint as to the date of filing, and no recordation on the docket/journal entry of the Court of the date and fact of the Complaint being delivered and received, place that issue and the Defendant “before the Court” and invoke the jurisdiction of the Court to “hale the Defendant into Court”, incarcerate him pending bond, hold hearings, convict him and sentence him to jail? If the Prosecutor delivers the Complaint to a Clerk, does the Complaint not have to be made “part of the record” for the Court to have subject matter jurisdiction over the subject and Defendant? Since the Prosecutor is the moving party, in a concerted effort to possibly deprive a Defendant of his liberty, is it her responsibility to look at the file and verify that she can go forward?

The *Rouse* decision concerns the issue of “when is a Complaint before the Court.” It does not define, “when has a Prosecutor filed a complaint.”

The procedure for filing a document, and making it a part of the Court’s record, is specifically laid out in the statutory law of this State. See R.C. § 1901.31(E)(entry in journal); R.C. § 2303.08 (“... shall indorse on each pleading or paper in a cause filed in the clerk’s office the **time of filing**,...”); and § 2303.10, (“... shall indorse upon every

paper filed with him the **date of the filing** thereof, ...” . ⁶ Evidence of the filing is sustained by the time stamp or an endorsement by the Clerk as to what date and time the document was received. *Ins. Co. of N.M. v. Reese Refrig.*, (1993) 89 Ohio App.3d 787, (“The endorsement upon the document by the clerk of the fact and date of filing is evidence of such filing.) *Id.* (citing cases). ⁷ Ohio Courts have consistently held that, “[A] judge speaks as the court only through journalized judgment entries.” See *William Cherry Trust v. Hoffmann* (1985), 22 Ohio App.3d 100, 103 (citing cases). Absent a journalized entry, such order has no force or effect. *Id.* at 105; (“[I]n order to be ‘effective,’ a court’s judgment, whatever its form may be, must be filed with the trial court clerk for journalization.” Proper journalization requires “some indication on the document that it was filed with the trial court clerk and, most importantly, when).” *Hoffmann, supra*, at 106. Further, absent a time stamp or endorsement by the Clerk, a document cannot be considered a part of the record. See *Buckley v. Personnel Support Sys., Inc.*, (12-15-1999) Hamilton No. C-990159 (unpublished) (documents that are not properly filed cannot be considered by an appellate court) *Id. passim*, cases cited. Further, as also stated in *Buckley*, “A party may not rely on unfiled documents in support of his or her claims.” *Id.* (Cases cited).

In the unreported case *Villa v. Elmore*, 2005-Ohio-6649, the Sixth Appellate District addressed the requirements of journalization and filing. In *Villa v. Elmore*, the Appellant

⁶ R.C. §§ 2303.08 and 2303.10 are made applicable to the Municipal Clerk of Court through § 2303.31. “The duties prescribed by law for the clerk of the court of common pleas shall, so far as they are applicable, apply to the clerks of other courts of record.”

⁷ The Ohio Supreme Court has specifically held that “filed” means that the document must be delivered to the Clerk and must be indorsed by the Clerk of Court i.e. time-stamped. See *State v. Gipson*, (1998) 80 Ohio St.3d 626, 634, 1998-Ohio-659 at syllabus.

brought a suit against multiple people for a newspaper story that revealed the Appellant was arrested for impersonating a police officer. The Appellant claimed that there had been a valid expungement order filed and consequently the references to his arrest were never properly removed from the Trial Court file. The Trial Court dismissed the Appellant's complaint on Summary Judgment finding that the expungement was never properly journalized or filed. The Appellate Court agreed, holding that the existence of an order for expungement signed by the Municipal Court judge but not file stamped, combined with filed documents referring to the expungement *do not constitute a validly journalized and filed order*. The Sixth Appellate District held:

In considering whether the expungement statutes were violated by the clerk of the Sylvania Municipal Court, the trial court found there was no evidence in the record that the 1977 order to expunge the impersonating offense was ever journalized. Civ.R. 58(A), effective July 1, 1970, states that "[a] judgment is effective only when entered by the clerk upon the journal." Appellant calls the court's attention to several documents which he claims raise a question of fact as to whether the order was journalized, including a letter from an official with the Ohio Attorney General's office that referred to a copy of the order; a memo from the Lucas County clerk of courts that referred to a certified copy of the expungement order; and a document purported to be written by Sylvania Municipal Clerk of Courts Bonnie Chromik regarding her search for appellant's expungement documents. Upon review, however, we find that none of the documents offered by appellant show that the order was in fact journalized. Accordingly, the trial court properly found that the order expunging the impersonating conviction was not journalized and appellant's second assignment of error is not well-taken.

Having determined there was no evidence that the order was journalized, the trial court found that it was therefore not valid and enforceable. In his third assignment of error, appellant asserts the judgment was valid and enforceable regardless of whether it was journalized. **Appellant appears to argue the order is valid and enforceable because he relied on its validity. Appellant also attempts to gloss over the absence of a file-stamped and journalized order by citing to some documents in the case file which referred to the order. The documents cited by appellant, set forth above in paragraph 20, do not constitute proof that the order was valid. The issue before the trial court was not whether there were other documents indicating some people believed the order to be valid, or whether appellant relied on the order's validity. The question before the trial court, which it correctly answered in the negative, was**

whether the expungement order was journalized. See *Villa v. Elmore*, 2005-Ohio-6649.

In the present case the mere existence of a document called “Summons After Arrest Without Warrant and Complaint upon such Summons” that is not file stamped or even referenced in the certified case docket a year and a half after the Appellee’s arrest, combined with the filed documents referring to the complaint does not prove that the complaint was ever properly before the Court. In short, the fact that a case presumably went forward against the Appellee absent a filed and recorded complaint is not evidence that the complaint was ever properly filed, docketed and journalized.

Most illustrative of the fact the complaint was never filed and recorded, is Exhibit C, a certified true copy of the case docket dated July 6th, 2007, which does not contain a journalized entry of the complaint having been filed.

The City, four days after being informed the court lacked jurisdiction, in an attempt to back date the filing of the complaint, had the Clerk of the Zanesville Municipal Court, Kris Dodson, swear out an affidavit on July 24th, 2007.(Exhibit E) Clerk of Court Kris Dodson swore that she knows, a complaint purportedly filed over 17 months previous, was in fact filed and further was handled in accordance with the procedures and practices of the Zanesville Municipal Court, despite the fact that the complaint was not file-stamped, indorsed, docketed or journalized. Kris Dodson goes on to swear in the Affidavit that the filing of the complaint generated a file and the filing date of February 28, 2006 is indicated in the Court’s Docket/Journal, despite the fact that a copy of the Docket/Journal certified by Kris Dodson on July 6th 2007, makes no mention of a complaint being filed. Succinctly put, absent a filed, docketed and recorded valid complaint, the Trial Court lacked subject-matter jurisdiction and thusly, never had the

authority to go forward with the case. Further, under the facts herein stated, any Order, Judgment, or otherwise that had been rendered that was directed toward Mr. Rouse would be void *ab initio*.

Further, any argument as to the timeliness of the motion to dismiss would be without legal basis. As a matter of law, an objection that is based upon the lack of subject-matter jurisdiction may be raised at any stage of the proceedings and can never be waived. See *United States v. Cotton* (2002), 535 U.S. 62f5, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860; *State ex rel. Tubbs Jones v. Suster* (1998), 84 Ohio St.3d 70, 75, 1998 Ohio 275, 701 N.E.2d 1002; *In re Byard* (1996), 74 Ohio St. 3d 294, 296, 1996 Ohio 163, 658 N.E.2d 735; also Crim.R. 12(C)(2) (“...failure to show jurisdiction in the court ... which ... shall be noticed by the court at any time during the pendency of the proceeding).

Finally, any argument that would be hinged upon the unrepresented appearances of Mr. Rouse before the lower Court, in that those appearances in some form or fashion conferred subject-matter jurisdiction in this case would also, as a matter of law - fail. Under the controlling law of this State any such attempt must be overruled. See *State ex rel. Lawrence Dev. Co. v. Weir, supra* at 97 (“...subject matter jurisdiction may not be conferred upon a court by agreement of the parties, nor may lack of subject matter jurisdiction be waived”).

(1) THE TRIAL COURT ABUSED ITS DISCRETION BY LITIGATING A MATTER WITH WHICH THE TRIAL COURT DID NOT ENJOY SUBJECT-MATTER JURISDICTION.

Under Crim . R. 4(A)(3), the following, in relevant part is found:

(3) By law enforcement officer without a warrant. In misdemeanor cases where a law enforcement officer is empowered to arrest without a warrant, the officer may issue a summons in lieu of making an arrest, when issuance of a summons appears reasonably calculated to ensure the

defendant's appearance. **The officer issuing the summons shall file, or cause to be filed, a complaint describing the offense.** No warrant shall be issued unless the defendant fails to appear in response to the summons, or unless subsequent to the issuance of summons it appears improbable that the defendant will appear in response to the summons.

Emphasis added.

Next, we must turn to the duties of the Municipal Court Clerk as enunciated within R.C.

§ 1901.31(E), which states:(E) The clerk **shall** do all of the following: file and safely keep all journals, records, books, and papers belonging or appertaining to the court; record the proceedings of the court; perform all other duties that the judges of the court may prescribe; and keep a book showing all receipts and disbursements, which book shall be open for public inspection at all times.

The clerk shall prepare and maintain a general index, a docket, and other records that the court, by rule, requires, all of which shall be the public records of the court. **In the docket, the clerk shall enter, at the time of the commencement of an action, the names of the parties in full, the names of the counsel, and the nature of the proceedings. Under proper dates, the clerk shall note the filing of the complaint, issuing of summons or other process, returns, and any subsequent pleadings.** The clerk also shall enter all reports, verdicts, orders, judgments, and proceedings of the court, clearly specifying the relief granted or orders made in each action.

Emphasis added.

Further, “[t]he duties as prescribed by law for the clerk of the court of common pleas shall, so far as they are applicable, apply to the clerks of other courts of record.”

See R.C. § 2303.31 (Effective Date: 10-01-1953). As such, under the duties of the Clerk of Court of Common Pleas, the following is found:

The clerk of the court of common pleas shall **indorse on each pleading or paper in a cause filed in the clerk’s office the time of filing**, enter all orders, decrees, judgments, and proceedings of the courts of which such individual is the clerk, make a complete record when ordered on the

journal to do so, and pay over to the proper parties all moneys coming into the clerk's hands as clerk. * * * *

The clerk of the court of common pleas shall file together and carefully preserve in his office all papers delivered to him for that purpose in every action or proceeding. R.C. § 2303.09, "Filing and preserving papers," Effective Date: 10-01-1953; and,

The clerk of the court of common pleas **shall indorse upon every paper filed with him the date of the filing thereof**, and upon every order for a provisional remedy and upon every undertaking given thereunder, the date of its return to his office. R.C. § 2303.10 "Indorsement of papers," Effective Date: 10-01-1953. Emphasis added.

The Courts of this State, in furtherance of their respective jurisdictions have consistently upheld this caveat as to what the definition of "filed and recorded with a court" means.

In *Ins. Co. of N.M. v. Reese Refrig.*, (1993) 89 Ohio App.3d 787, that Court construed the duties of the Clerk of Court under R.C. §§ 1901.31, 2303.08 and 2303.10 concerning the "filing" of a document in a civil matter. That case involved an appeal of the dismissal of a complaint that was time barred. The Court stated:

The ultimate issue we must decide is whether the trial court erred in deciding April 24, 1992 was the date appellant's complaint was filed. The necessity of determining the date a document was actually filed is not a new problem. In a comparatively old case the Supreme Court of Ohio stated that a paper is "filed" when it is delivered to the proper officer and received by that officer to be kept in its proper place in his office. *King v. Penn* (1885), 43 Ohio St. 57, 61, 1 N.E. 84, 87.

Simply leaving a document for the clerk to find later does not constitute "filing" the paper. *King v. Paylor* (1942), 69 Ohio App. 193,

196, 23 O.O. 594, 595, 43 N.E.2d 313, 315. The filing of a document can only be accomplished by bringing the paper to the attention of the clerk, so it can be accepted by him as the official custodian. *Id.*

The endorsement upon the document by the clerk of the fact and date of filing is evidence of such filing. Penn, 43 Ohio St. at 61, 1 N.E. at 87. **Because clerks generally file-stamp papers immediately upon delivery and receipt, the file-stamp date is usually indicative of the date the paper was filed.** See *In re Hopple* (1983), 13 Ohio App.3d 54, 55, 13 OBR 58, 58-59, 468 N.E.2d 129, 130; *Toledo v. Fogel* (1985), 20 Ohio App.3d 146, 149, 20 OBR 180, 182, 485 N.E.2d 302, 305. **Moreover, R.C. 1901.31(E), 2303.08 and 2303.10 require the clerk of courts to endorse the date of filing on each pleading or other document filed in a case, thereby creating a presumption that the file-stamped date reflects the date of the filing.**

Id. passim. (Emphasis added).

In *State v. Bolden*, (1-20-2004) Preble No. CA2003-03-007 (unreported) the Court there faced a question as to when, under a criminal statute, an affidavit of indigency was “filed” involving R.C. § 2929.18, specifically that Court stated:

2929.18(B)(1) requires "imposition of the mandatory fine unless (1) the offender's affidavit is filed prior to sentencing, and (2) the trial court finds that the offender is an indigent person and is unable to pay the mandatory fines." *State v. Gipson*, 80 Ohio St.3d 626, 634, 1998-Ohio-659.

The filing of an affidavit of indigency by a defendant does not automatically entitle the defendant to a waiver of the mandatory fine. *Id.* **The Ohio Supreme Court has held that the requirement that an affidavit must be filed with the court prior to sentencing means that "the affidavit must be delivered to the clerk of court for purposes of filing and must be indorsed by the clerk of court, i.e., time-stamped, prior to the filing of the journal entry reflecting the trial court's sentencing decision."** *Id.* at syllabus.

Id. at ¶¶ 33-35. (Emphasis added).

In *State v. Callihan* (9-14-1993) Lawrence No. 93CA1 (unpublished) the Fourth District Court of Appeals, when faced with a question of appellate jurisdiction noted that:

Prior to a consideration of the merits of this appeal, we must determine whether we possess the requisite jurisdiction. The record here includes a complaint in the **form of a uniform traffic ticket** charging appellant with the R.C. 4511.25 traffic offense and a signed notation on the back of the ticket dated “12-1-92” which apparently finds him guilty and fines him \$25. **Neither the front nor the back of the complaint contains a file-stamp nor any other indicia of if and/or when it was filed with the trial court clerk.** Furthermore, the transcript of docket and journal entries only notes “Defendant Found Guilty” on “December 1, 1992” but fails to indicate that a judgment entry of conviction and sentence was filed on that date.

All judgment entries, and other papers, must be file-stamped on the date they are filed; just as a judgment entry that has not been journalized, or filed with the clerk for journalization, is not a final appealable order, so a judgment entry that has not been file-stamped by the trial court clerk is not a final appealable order. Griffin, supra; In re Hopple (1983), 13 Ohio App.3d 54, 55; see, also, Brackmann Communications, Inc. v. Ritter (1987), 38 Ohio App.3d 107, 109; State v. Jones (Nov. 29, 1988), Pickaway App. No. 87CA9, unreported.

As succinctly noted by the Supreme Court of Ohio, an appellate court lacks subject-matter jurisdiction over the merits of an appeal when the judgment entry has not been file-stamped by the trial court clerk. State v. Domers (1991), 61 Ohio St.3d 592; see, also, Akron v. Perry (May 27, 1992), Summit App. No. 15278, unreported, citing Domers. Since the purported judgment entry was not file-stamped, we sua sponte dismiss this appeal for lack of jurisdiction.

Id. passim.

In *State v. Ward*, (1996) 114 Ohio App.3d 722, that Court was faced with a question as to whether a valid jury waiver had been “filed” under the criminal statute R.C. § 2945.05 which states in relevant part here:

In all criminal cases pending in courts of record in this state, the defendant may waive a trial by jury and be tried by the court without a jury. Such waiver by a defendant, shall be in writing, signed by the defendant, **and filed in said cause** and made a part of the record thereof.

The Court began its discussion:

The dispositive issue raised in this appeal is whether the trial court had jurisdiction to try defendant Fred Ward, whose signed jury waiver was not filed with the clerk of courts. Under authority of *State v. Pless* (1996), 74 Ohio St.3d 333, 658 N.E.2d 766, **we find that the trial court lacked jurisdiction to conduct trial and reverse.**

The Court went on to cite the following case.

In *State v. Harris* (1991), 73 Ohio App.3d 57, 62, 596 N.E.2d 563, 566-567, the court stated that **"papers pertaining to the trial of a case can exist in one of only two ways: first, by an actual filing of the paper with the clerk of the trial court and, second, by admission into the record during the course of a trial which then makes the paper an exhibit to the transcript of proceedings."**

The Court then made its determination.

Neither event occurred in this case. **The clerk's endorsement of the fact of filing and the date of the filing is evidence of the filing.** *Ins. Co. of N. Am. v. Reese Refrig.* (1993), 89 Ohio App.3d 787, 790-791, 627 N.E.2d 637, 639-640. **Because the jury waiver form did not contain a time stamp from the clerk of courts, the waiver is not considered "filed" for purposes of R.C. 2945.05.**

Id. at p. 723 *et seq.* (Emphasis added).

In fact, a document that is merely in the court file, but is absent a time stamp or endorsement that such was received by a Clerk of Court and/or is not through notation contained upon the docket or journal of a court, is not a part of the record of that case. *See Buckley v. Personnel Support Sys., Inc.*, (12-15-1999) Hamilton No. C-990159 (unpublished). In *Buckley* the Court, in an appeal of a civil matter was faced with an issue of the record on appeal where documents were in the Court file, but there was a lack of evidence that the documents had actually been “filed” and “time-stamped.” The Court there stated:

Our examination of the record in this case reveals that numerous documents necessary to the resolution of the issues are not part of the record on appeal. **The reason for these omissions is that these documents were never properly filed and time-stamped in the trial court, and, therefore, they never became part of the record.** See App.R. 9(A). Though the trial court apparently saw the missing documents, simply sending a document to the court does not constitute a “filing.” **It must be actually delivered to and received by the official custodian, who has a duty to endorse the date of filing on each document.** *Fulton v. State ex rel. General Motors Corp.* (1936), 130 Ohio St. 494, 497-500, 200 N.E.2d 636, 637-638; *Ins. Co. of N. Am. v. Reese Refrig.* (1993), 89 Ohio App.3d 787, 790-791, 627 N.E.2d 637, 638-639; *Rhoades v. Harris* (Oct. 15, 1999), Hamilton App. No. C-981000, unreported. **A party may not rely on unfiled documents in support of his or her claims.** See *LaMar v. Marbury* (1982), 69 Ohio St.2d 274, 278, 431 N.E.2d 1028, 1031; *Crabtree v. Burnley* (July 6, 1988), Medina App. No. 1638, unreported.

Id. passim, cases cited. (Emphasis added).

Conversely, when a document bears a file stamp it is considered filed. See *City of Dayton v. Ferrugia*, (3-1-2002) Montgomery No. 18747 (unreported) (Crim. R. 4.1(D) citation bore time stamp of date and time of filing); *State v. Bunnell* (6-7-2002) Lucas No. L-02-1015 (unreported) (Crim. R. 7, indictment bore time stamp, therefore filed, *Id.*

¶ 5-6). In the instant matter, pursuant to Crim. R. 4(A)(3), the Police Officer who set forth the Summons and Complaint was under a mandatory duty signified by the use of the word “shall” file, or cause to be filed, a complaint describing the offense. The Clerk of Court, then upon accepting the charging instrument, under the duties as mandated by R.C. § 1901.31(E), was to make, *inter alia*, an entry upon the docket of the case noting the filing of the charging instrument and date that the same was filed. Further, the Clerk was to “endorse” on the charging instrument the time of and the date of filing. R.C. §§ 2303.08 and 2303.10. However, the Summons and Complaint (Exhibit A) is completely absent a time stamp or for that matter any indication of an endorsement as to on what date or what time that the Municipal Clerk of Court accepted this document in compliance with R.C. §§ 1901.31(E), 2303.08 or 2303.10.⁸ Further, when we examine the “Docket-Journal” of this case (Exhibit C), we must find that the filing of the Summons and Complaint is not noted upon that document in compliance with R.C. § 1901.31(E).

Accordingly, the lower court should have found that the State failed to comply with Crim. R. 4(A)(3) in that it had and/or has failed to file a charging instrument against Appellee, and make that charging instrument a part of the trial record, in accordance with R.C. §§ 1901.31(E), 2303.08 and 2303.10.

The filing of a valid charging instrument was a necessary prerequisite in order for the lower court to acquire criminal subject-matter jurisdiction of Appellee’s allegation. See *Columbus v. Jackson* (1952), 93 Ohio App. 516, 518, 114 N.E.2d 60; *Newburgh*

⁸ The Clerk of Court complied with § 1901.31(E) in part in that the clerk shall enter, at the time of the commencement of an action, the names of the parties in full, the names of the counsel, and the nature of the proceedings. See Exhibit E.

Heights v. Hood, 8th Dist. No. 84001, 2004 Ohio 4236, ¶ 5 citing cases; also State v. Human, (1978) 56 Ohio Misc. 5, 381 N.E.2d 969:

“Criminal jurisdiction is statutory and must be strictly construed whether one is dealing with a court of general jurisdiction or a court of limited jurisdiction such as a municipal court”

“Jurisdiction is the power of a court to hear and determine a cause and it is *coram judice* whenever a case is presented that brings this power into action”

“No cause or case arises involving the criminal jurisdiction of a court until a complaint or information is filed or an indictment returned”.

Id. Syllabus ¶¶ 4-6 (emphasis added).

Without a properly filed and recorded charging instrument, the lower court was foreclosed from holding any hearing⁹ or trial and did not have the authority to render judgment. See State v. Villagomez (1974), 44 Ohio App.2d 209, 211, 337 N.E.2d 167; Human, supra.

Thus, the subsequent sentencing entry was void *ab initio* due to the lack of subject matter jurisdiction upon Appellant’s failure to file and have docketed and recorded, in accordance with law, a valid charging instrument. See Patton v. Diemer (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, (If a court acts without jurisdiction, then any proclamation by that court is void *ab initio*) Id. syllabus; Freeland v. Pfeiffer (1993) 87 Ohio App.3d 55, 58, 621 N.E.2d 857; State ex rel. Lawrence Dev. Co. v. Weir (1983), 11 Ohio App. 3d

⁹ In fact, a Court may not issue an arrest warrant until a complaint has been filed. See R.C. § 2935.08 (“**Upon the filing of an affidavit or complaint** as provided in sections 2935.05 or 2935.06 of the Revised Code such judge, clerk, or magistrate shall forthwith issue a warrant ...”); also R.C. § 2935.10. Further, it may not hold an arraignment hearing until a complaint has been filed. See § 2937.02 (“When, after arrest, the accused is taken before a court or magistrate, or when the accused appears pursuant to terms of summons or notice, **the affidavit or complaint being first filed**, the court or magistrate shall, before proceeding further:...”)

96, 97, 11 Ohio B. 148; also *State v. Whitner*, (6-26-98) 6th District No. L-97-1253 citing *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941; *Accord State v. Miller* (1988), 47 Ohio App.3d 113, 114, 547 N.E.2d 399, 400, ("In the absence of a sufficient formal accusation, a court acquires no jurisdiction whatever, and if it assumes jurisdiction, a trial and conviction are a nullity"). See, also, *Stewart v. State* (1932), 41 Ohio App. 351, 353-354, 181 N.E. 111, 111-112; Cf. *Akron v. Meissner*, 92 Ohio App.3d 1 (1993)(Crim.R. 3 & 4, Officer failed to file a sworn original, conviction void); *Stoll v. State*, 724 So.2d 90 (Ala. Crim. App. 1998) (Absence of evidence that Uniform Traffic Ticket Complaint ["UTTC"] had been filed, Court lacked subject-matter jurisdiction). That Court also rejected the argument that because the ticket had been handed to the alleged defendant it conferred jurisdiction, *Id.* pp. 91-92. The force and effect of such "Entry" of sentencing is clear, due to the fact that it is void for lack of subject matter jurisdiction - "[i]t is as though such proceedings had never occurred." *Tari v. State*, (1927), 117 Ohio St. 481, 490-494, 159 N.E. 594, 597-598, 5 Ohio Law Abs. 824; also 31 Ohio Jurisprudence 2d 706, *Judgments*, Section 250, (The parties are in the same position as if there had been no judgment.); 30A American Jurisprudence 198, *Judgments*, Section 45; see also *State v. Abner*, Cuyahoga App. No. 81023, 2002-Ohio-6504 (same). Accordingly, the lower court should have determined that the Journal Entry of sentencing was void, as a matter of law, pursuant to the cited authority, *supra*.

Any argument by Appellee that should happen to be premised upon a position that because the charging instrument is contained in the Court file of this case, and therefore filed - would fail. That argument was attempted in *State v. Ward*, *supra* and was readily rejected. In *Ward* the State's position was set forth to the Court:

The state next argues that the waiver should be considered "filed" because, despite not being time-stamped, it is contained in the record on appeal.

Id.

The Court thereon rejected that argument:

Neither event occurred in this case. **The clerk's endorsement of the fact of filing and the date of the filing is evidence of the filing.** Ins. Co. of N. Am. v. Reese Refrig. (1993), 89 Ohio App.3d 787, 790-791, 627 N.E.2d 637, 639-640. **Because the jury waiver form did not contain a time stamp from the clerk of courts, the waiver is not considered "filed" for purposes of R.C. 2945.05.**

Id. at 723, *et seq*; accord *Buckley, Callihan, Reese Refrig supra*. Furthermore that position would be in disregard of the mandates of R.C. §§ 1901.31(E), 2303.08 and 2303.10 under the facts and evidence of this case. Moreover, the charging instrument is not a part of the record of this case for the reasons as set forth in *Buckley, supra*.

Any argument that would be hinged upon the compelled appearances of Appellee before the lower court, in that those appearances in some form conferred subject-matter jurisdiction in this case and/or an argument that he failed to object to the sentence and/or proceedings would also, as a matter of law, fail. See *State ex rel. Lawrence Dev. Co. v. Weir* (1983), 11 Ohio App. 3d 96, 97, ("...subject matter jurisdiction may not be conferred upon a court by agreement of the parties, nor may lack of subject matter jurisdiction be waived"). *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, paragraph three of the syllabus. *United States v. Cotton* (2002), 535 U.S. 625, 630, 122 S. Ct. 1781, 152 L. Ed. 2d 860; *State ex rel. Tubbs Jones v. Suster*

(1998), 84 Ohio St.3d 70, 75, 1998 Ohio 275, 701 N.E.2d 1002; *In re Byard* (1996), 74 Ohio St. 3d 294, 296, 1996 Ohio 163, 658 N.E.2d 735.

Accordingly, the trial court abused its discretion by litigating an action for which it did not enjoy subject-matter jurisdiction, The trial court had proper jurisdiction, either through its inherent power or through Crim. R. 48(B), to vacate the void entries, including the Temporary Protection order and then to dismiss the case.

(2) WAS THE CRIMINAL COMPLAINT “FILED” FOR PURPOSES OF CONFERRING SUBJECT-MATTER JURISDICTION TO THE COURT?

Appellee need not look to a non-statutory source for the definition of “file” and to a 17-months-later affidavit of the Zanesville Municipal Court Clerk for their procedures and practices. The Rules of Superintendence for the Courts of Ohio devised and enacted by the Ohio Supreme Court provides for the “fair, impartial, and speedy resolution of cases without unnecessary delay” Sup. R. Preface. These rules, “are applicable to all courts of appeal, courts of common pleas, municipal courts, and county courts in this state.” Sup. R. 1(A). During the relevant times of this appeal, February 28, 2006, the Records Retention Schedule in the Ohio Rules of Superintendence set forth the procedures and practices for filing case documents in all Municipal Courts in Ohio:

RULE 26.05. Municipal and County Courts--Records Retention Schedule.

(A) Definition of docket. As used in this rule, "docket" means the record where the clerk of the municipal or county court enters all of the information historically included in the appearance docket, the trial docket, the journal, and the execution docket.

(B) Required records. (1) Municipal and county courts shall maintain an index, docket, journal, and case files in accordance with Sup. R. 26(B) and divisions (A) and (C) of this rule.

(2) **Upon the filing of any paper or electronic entry permitted by the municipal or county court, a stamp or entry shall be placed on the paper or electronic entry to indicate the day, month, and year of filing.**

(C) Content of docket. (1) The docket shall be programmed to allow retrieval of orders or judgments of the municipal or county court in a chronological as well as a case specific manner. Entries in the docket shall be made as events occur, shall index directly and in reverse the names of all parties to cases in the municipal or county court and shall include all of the following:

- (a) Names and addresses of all parties in full;
- (b) Names, addresses, and Supreme Court attorney registration numbers of all counsel;
- (c) The issuance of documents for service upon a party and the return of service or lack of return;
- (d) A brief description of all records and orders filed in the proceeding, the date filed, and a cross reference to other records as appropriate;
- (e) A schedule of court proceedings for the municipal or county court and its officers to use for case management;

This rule mandates that upon filing the Clerk of Court **shall** place a date or entry on the paper or electronic entry to indicate the day, month, and year of filing. The Ohio Supreme Court has provided the definition of file in Sup. R. 44(E) which states:

(E) “File” means to deposit a document with a clerk of court, upon the occurrence of which the clerk time or date stamps and docket the document.

The Ohio Supreme Court clearly and unambiguously requires three conditions be met for a document to be considered *filed* with the Clerk of Court. The document must be deposited with the clerk, the document must be time or date stamped, and the document must be entered on the court docket. Even presuming the Complaint at issue in this case (and the T.P.O.) was properly deposited and docketed

with the clerk, the Complaint has not been filed because it lacks a time or date stamp. Consequently, the document was never “filed” and subject-matter jurisdiction was never conferred on the court.

Columbus v. Jackson (1952), 93 Ohio App. 516, 518, 114 N.E.2d 60; Newburgh Heights v. Hood, 8th Dist. No. 84001, 2004 Ohio 4236, ¶ 5 and State v. Human, (1978) 56 Ohio Misc. 5, 381 N.E.2d 969 all stand for the proposition that the filing of a valid complaint is a necessary prerequisite to a court acquiring subject-matter jurisdiction. In State v. Callihan (4th Dist., Sept. 14, 1993), Lawrence App. No. 93CA1, 1993 WL 373788 the record included a complaint in the form of a uniform traffic ticket. The back of the ticket had a signed notation dated “12-1-92” and found the Appellant guilty and fined him \$25. The Fourth District Court of Appeals notes in the opinion, “[n]either the front nor the back of the **complaint** contains a **file-stamp** nor any other indicia of **if and/or when it was filed** with the trial court clerk.” State v. Callihan (4th Dist., Sept. 14, 1993), Lawrence App. No. 93CA1, 1993 WL 373788. In Callihan the Court is troubled by the fact the complaint lacks a time-stamp and the notation on the back of the complaint (which the court views as an attempted judgment entry) also lacks a time stamp, and the court dismisses the case on the basis that the “purported judgment entry” lacks a time stamp and consequently the Court of Appeals lacked subject-matter jurisdiction. However, the court goes on to state that all papers must be filed stamped, “[a]ll judgment entries, and other papers, must be file-stamped on the date they are filed; just as a judgment entry that has not been journalized, or filed with the clerk for journalization, is not a final appealable order, so a judgment entry that has not been file-stamped by the trial court clerk is not a final appealable order.” State v. Callihan (4th

Dist., Sept. 14, 1993), Lawrence App. No. 93CA1, 1993 WL 373788 citing; State v. Griffin (June 17, 1991), Washington App. No. 90CA8; In re Hopple (1983), 13 Ohio App.3d 54, 55; see, also, Brackmann Communications, Inc. v. Ritter (1987), 38 Ohio App.3d 107, 109; State v. Jones (Nov. 29, 1988), Pickaway App. No. 87CA9, unreported. State v. Griffin (4th Dist., June 17, 1991), Washington App. No. 90 CA 8, 1991 WL 110225 stands for the similar proposition found in Callihan, that a judgment entry must be file stamped to be considered filed, but as in Callihan the court in Griffin goes on to make the statement that **all papers** must be file stamped. State v. Griffin (4th Dist., June 17, 1991), Washington App. No. 90 CA 8, 1991 WL 110225.

Appellant goes into a discussion of State v. Otte (2002) 94 Ohio St.3d 167, 179, 761 N.E.2d 34 and State ex. Rel. Larkins v. Baker (1995) 73 Ohio St.3d 658, 653 N.E.2d 701, 660. Appellant makes the statement, “[t]he Ohio Supreme Court has determined that a file stamp is a formality that is not necessarily prerequisite to jurisdiction,” *Appellant’s Merit Brief*, p. 9, and then cites *Otte* and *Larkins*. The Ohio Supreme Court in *Otte* and *Larkins* do not state that a time stamp is a ‘formality’ but rather evidence of whether a **jury waiver was in fact filed**. Second, the issue of jurisdiction in these cases is in the context of **continuing jurisdiction for a court to proceed with a bench trial** after a jury waiver. The Ohio Supreme Court’s decisions in this area have evolved and narrowed over time when analyzing the courts’ degree of statutory compliance necessary to render a valid waiver. In State v. Pless, 658 N.E.2d 766 (Ohio 1996), the Ohio Supreme Court synthesized its previous strict compliance cases, disregarding earlier opinions that appear not to have required rigid compliance with the statute to effectuate jury waiver. The Pless court held that, “[a]bsent strict compliance with the requirements

of R.C. 2945.05, a trial court lacks jurisdiction to try the defendant without a jury." *Id.* at ¶ 1 of the syllabus.

Rouse is not a 2945.05 jury waiver case. This is a case where **the court never acquired subject matter jurisdiction** because the charging instrument was not file marked, indorsed, file stamped, or date stamped, nor was it properly listed in the record or journal of the court, therefore there was never a properly filed instrument sufficient to confer jurisdiction from the very beginning. It should also be noted that in *Otte* the issue was not that the jury waiver was *never* time stamped but rather the trial court failed to time stamp the jury waiver form **prior to trial**. *Otte v. Houk* (N.D. Ohio 2-12-2008) at 39.

(3). HOW IS SUBJECT-MATTER JURISDICTION INVOKED

Essentially Judge Fais concluded that the subject matter jurisdiction of a court is invoked when personal jurisdiction is acquired over an accused, ie, no charging instrument is necessary : "So the question is de facto, de jure. In other words, in fact, the defendant did appear. In fact the defendant entered a plea and requested that the matter be continued so that he could do a program of some type." *Transcript*, 6-10-08 hearing, p.19, l.24 to p.20, l.19. *Simpson v Maxwell*, 1 Ohio St. 2d 71 (1964) and *State ex rel Clark v Allamon*, 87 Ohio App. 101 (1950), stand for the principle that the subject matter jurisdiction of the court is invoked only when a complaint is **filed**. A charging instrument must be properly filed to invoke the subject matter jurisdiction of a court. In *State v Lanser*, 111 Ohio St. 23, 27, the court stated: "The filing of the affidavit is pre-requisite to the issuing of the warrant, and without the filing of a proper affidavit no jurisdiction is acquired." Other cases stating the jurisdiction of a lower court is invoked only by the filing of an affidavit or complaint are *State v Zdove*, 106 Ohio App. 481 (1958); *State v*

Titak, 79 Abs. 430 (1955) App.; *City of Columbus v Jackson*, 93 Ohio App. 516 (1952); *Van Hoose, In re.*, 61 Abs 256 (1951) (App.); *State v Hayes*, 29 O.O. 203 (1943) (C.P.). *State v Villagomez*, 44 Ohio App. 2d 209 (1974), says "It is, of course, recognized as fundamental that the **jurisdiction** of the trial court must be properly invoked" and holding the affidavit **filed** therein was sufficient for that purpose. In *Van Hoose, In re.*, *supra*, the court rejected the argument that a plea of guilty was sufficient to confer **jurisdiction** since it was, in effect, a waiver. The court noted the familiar principle that **subject matter jurisdiction** is to be distinguished from **jurisdiction** over the person, the latter being waivable but the former not. Judge Fais seems to find an express waiver of the filing of the complaint ("**de facto, de jure**"). We are unable to perceive how compelled appearance of the Defendant and an attempt at a plea are sufficient to confer subject matter jurisdiction of the court where it had not been invoked as provided by law. Judge Fais seems to state the basic issue before us is one of jurisdiction over the person and not jurisdiction of the subject matter since no question exists that the Municipal Court possessed jurisdiction as to the domestic violence offense. However, the focus must be on whether the subject matter jurisdiction reposed in the Municipal Court was invoked by law to allow the court to proceed.

(B) DISCUSSION OF APPELLANT'S PROPOSITION 2.

(1). DUTIES OF THE CLERK OF COURT

The Twelfth District Court in *Ginocchio* reviewed the requirements for journalization of a judgment entry as required by Crim. R. 32(B) renamed Crim. R. 32(C):

Whether it be a municipal, county, or common pleas court, the same basic procedural formalities must be followed in order to assure that the parties, particularly the defendant in a criminal case, are fully aware of the time from which the thirty-day limitation of App. R. 4(B) commences to run. *State v. Tripodo, supra*. Therefore, in all criminal cases appealed to this court, a formal final journal entry or order must be prepared which contains the following:

1. the case caption and number;
2. a designation as a decision or judgment entry or both;
3. a clear pronouncement of the court's judgment, including the plea, the verdict or findings, sentence, and the court's rationale if the entry is combined with a decision or opinion;
4. the judge's signature; and
5. a time stamp indicating the filing of the judgment with the clerk for journalization.

Only by compliance with the above formalities can this court be assured that it is correctly and completely informed of the trial court's judgment or other order from which an appeal is being taken.

State v. Ginocchio (1987), 38 Ohio App.3d 105.

The Appeals Court in *Ginocchio* is particularly concerned with the Trial Court's unambiguous compliance with the requirements of journalization of a final appealable order to ensure the Appellate Court has jurisdiction of the case and to provide clear notice to the Defendant of when time starts to run on his right to Appeal the decision. While *Ginocchio* deals with a judgment entry and not a criminal complaint the reasoning behind requiring a time stamp on both documents is the same. The filing and recording of a

valid complaint ensures the Trial Court has jurisdiction over the case and informs the court and the Defendant when the Defendant's right to a speedy trial has begun, and his 4th, 5th, 6th, and 14th Amendment rights begin. Further, the requirement of a time stamp in *Ginocchio* conferring jurisdiction and providing notice is not "a mere formality" as stated by the Appellant but rather strictly required. As recently as 2006 in *State v. Charlton*, the Twelfth District Court of Appeals dismissed an appeal on the sole grounds that the Appellate court lacked jurisdiction for failure to adhere to the requirements laid out in *Ginocchio* where the judgment entry only lacked a time stamp:

"In terminating any criminal case, a trial court must issue a formal judgment entry which satisfies five basic requirements. **One such requirement is that the entry must be time stamped for the purpose of indicating that the entry has been filed with the clerk for journalization.** See *State v. Ginocchio* (1987), 38 Ohio App.3d 105. In this case, although it is apparent that the trial court intended to take the necessary steps to render a final judgment, **the final step in the process has not been completed: i.e., the trial court's judgment entry has not been time-stamped. Until this last step has taken place, a proper final judgment has not been issued in the underlying case, and the running of the thirty-day period for the filing of the notice of appeal has not commenced.**"

State v. Charlton, Unpublished Decision (7-14-2006) 2006-Ohio-3643.

The Zanesville Municipal Court, Rules of Practice as filed in this Court, as shown by the date-stamp of March 1, 1999, at Loc. R. 7, "Records of the Clerk" we find it is therein stated "[t]he Clerk **shall** prepare and keep records, dockets, and books as provided by the Ohio Revised Code." (Emphasis added). In that regard we turn to Revised Code §§ 1903.31(E), which mandates that under proper dates the clerk shall note on the docket the filing of the complaint, then to R.C. § 2303.08 which states, the clerk shall indorse on each pleading or paper ... the time of filing, then lastly to R.C. § 2303.10, which states,

the clerk shall indorse upon every paper filed with him the date of the filing thereof. R.C. §§ 2303.08 and 2303.10 are made applicable to the Clerk of the Municipal Court through R.C. § 2303.31. Said sections of the Code have been in effect in this State since 1953. In the face of the law as set forth by the Ohio General Assembly and the mandate of the Local Rule, the City's contention fails.

The City, being the Law Director's Office attempts to absolve itself of any blame, and then place blame on the Clerk of Court when it states "...that 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." *Appellant's Memorandum* p. 7, ¶ 2.

The mandates as set forth by the Ohio General Assembly for the Clerk of Courts of this State as contained in R.C. §§ 1903.31(E), 2303.08 and 2303.10 are well known. These sections of the Revised Code have been in effect since 1953.

It is unbelievable that neither the Law Director of the City of Zanesville or an Assistant thereof, who were the people responsible for litigating these complaints and prosecuting these people over a twenty-one year period, from 1986 until 2007 failed to notice that these 60,000 to 100,000 complaints failed to bear a time stamp. *Appellant's Memorandum* p. 3 ¶ 2,3. At any time the City Law Director's Office could have brought the issue either to the Court or directly to the Clerk of Court, and it is apparent, it did not. In this same context, the City has indicated to this Court that several sitting and visiting judges "[n]ot knowing there was a problem" continued to hear the cases because according to the City - this all occurred for the reason that "there was a file" which had a case number with the complaint inside of the file. *Appellant's Memorandum* p. 2, ¶ 1.

Well, again if the Law Director's Office had used its presumed knowledge of the law, and brought the issue before the court, the action would have been dismissed. See Civ. R. 12(H)(3) (" Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction on the subject matter, the court shall dismiss the action."). It is apparent that the Law Director's Office failed here also.

The City looks primarily for relief to the case of *Mir v. Birjandi*, 2007 Ohio 3444 (Greene County), a disputed divorce case, for its argument. The Court in *Mir* stated,

"...Mir alleges in his brief that his complaint and proposed restraining orders were delivered for the judge's signature on the proposed orders several days before they were file-stamped. If the trial court required the complaint, as well as the proposed restraining orders, to be delivered to the court for review of the proposed orders by the court before the complaint could be filed, Mir is entitled to have the date of delivery treated as the date of filing. "This conclusion comports with the long-established precedent that a party should not be penalized for the ministerial delays of the relevant public officer ***. See *King v. Kenny* (1829), 4 Ohio 79, 83 *** (when instruments have been properly presented to the recorder's officer for record but were not recorded due to ministerial nonfeasance, the instrument is treated as though it had been recorded at the time it was properly presented); *King v. Penn* (1885), 43 Ohio St. 57, 1 N.E. 84 (holding that when the appellant had timely delivered his appeal to the court but the clerk had failed to formally file and indorse it, the appeal was 'filed' when it was delivered to the court clerk); see, also, *Young v. State Personnel Dept. Bd. of Review* (1967), 9 Ohio App.2d 25, 38 O.O.2d 36, 222 N.E.2d 789 (applying a presumption of timely delivery and deeming the notice of appeal timely when it was untimely file-stamped after the notice was found 'under some books')." *Gilbert v. Fifth Third Bancorp*, 159 Ohio App.3d 56, 61, 2004-Ohio-5829, 823 N.E.2d 11. See, also, *Bach v. Crawford*, Montgomery App. No. 19531, 2003-Ohio-1255, at ¶12 (finding substantial compliance with the civil rules where objections had been delivered to the court and forwarded to opposing counsel in a timely manner, but were file-stamped by the clerk several days later.."

Mir v. Birjandi, 2007 Ohio 3444 , ¶ 10.

These cases are all inapposite to the instant case. *Rouse*, of course, is different. *Rouse* is a criminal case, whereby a man's liberty interest is at stake. As outlined in this Brief, above, p.7, criminal jurisdiction is statutory and must be **strictly construed** whether one is dealing with a court of general jurisdiction or a court of limited

jurisdiction such as a municipal court. Jurisdiction is the power of a court to hear and determine a cause and it is *coram judice* whenever a case is presented that brings this power into action. **No cause or case arises involving the criminal jurisdiction of a court until a complaint or information is filed or an indictment returned.** The civil cases the City cites above revolve around disputes of when a civil complaint or appeal was actually submitted to be filed, in variance with the file-stamped date; these cases are not about charging instruments, and whether they were *ever* file-stamped (for *Rouse*, never) or made a part of the Court's docket, journal, or record (for *Rouse*, never).

(2) THE CITY INVITED THE ERROR

United States Supreme Court Justice William O. Douglas once stated that the prosecutor's role "is not to tack as many skins of victims as possible to the wall, [but] to vindicate the rights of the people as expressed in the law and give those accused of a crime a fair trial." *Donnelly v. DeChristoforo*, (1974) 416 U.S. 637, 648-49 (Douglas, J. dissenting). In that regard there is only one conclusion, in its zeal to tack some 60,000 to 100,000 skins to the wall, the City, by and through the Law Director's Office has invited the error that induced the Court to proceed to the end that the City has admitted and now complains of to this Court. As such it is well settled that a party may not take advantage of such an invited error. *State ex rel. Kline v. Carroll*, 96 Ohio St.3d 404, 2002-Ohio-4849, 775 N.E.2d 517, ¶ 27; *State ex rel. Soukup v. Celebrezze* (1998), 83 Ohio St.3d 549, 550; *Lester v. Leuck* (1943), 142 Ohio St. 91, 26, paragraph one of the syllabus.

This Court has never afforded ignorance of the law, as a defense to any person in this State; it should not now be given to the City of Zanesville, or its prosecutors.

The City through its placement of blame on the Clerk, its obvious attempt to absolve itself now seeks the jurisdiction of this Court in order to, as it states, "... determine whether the court of appeals was too specific in identifying what constitutes filing a complaint." *Appellant's Memorandum* p. 3.

(3) APPELLANT'S TREATMENT OF THE DECISION OF *ROUSE*

The first proposition of law that Appellant has set before this Court, in reality seeks a determination from this Court on the definition of "filed." The second proposition of law that Appellant has set before this Court, is that essentially, if a charging instrument is submitted to a clerk and never file-stamped, and then the Clerk further never notes on its docket or journal the date of the acceptance of the charging instrument, or even that it was accepted for filing – i.e., there is no record of the charging instrument – then that is good enough to confer subject matter to a court in a criminal case over the defendant and the charge. In truth, the City of Zanesville is asking the Ohio Supreme Court to change the law, "to protect the sanctity of the courts". *Appellant's Merit Brief* p. 11.

What about the sanctity of the Constitution?

U.S. Constitution, Amendment 5, states as follows:

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 offense 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.

Due process is the principle that the government must respect all of the legal rights that are owed to a person according to the law. Due process holds **the government subservient to the law of the land, protecting individual persons from the state.**

Due process under the U.S. Constitution not only restrains the executive and judicial branches, but additionally restrains the legislative branch. For example, as long ago as 1855, the Supreme Court explained that, in order to ascertain whether a process is due process, the first step is to “examine the constitution itself, to see whether this process be in conflict with any of its provisions....” *Murray v. Hoboken Land*, 59 U.S. 272 (1855).

The issue as to when a charging instrument is properly before the court, such that the court has jurisdiction to act on the instrument, hale a man into court, hold hearings, convict and sentence him to incarceration, goes to the very core of the canons of decency and fairness. In this regime of “ordered liberty”, *Palko v. Connecticut*, 302 U.S. 319 (1937), Mr. Rouse’s rights are fundamental in the context of the criminal process. The City’s entreaty to this Court to change the law, to protect its practices, violates “a fundamental principle of liberty and justice which inheres in the very idea of a free government and is the inalienable right of a citizen of such government.” *Twining v. New Jersey*, 211 U.S. 78, 106 (1908).

The Appellate Court's decision in *Rouse* or *Sharp reiterates* when a complaint is properly before the court. The Court in *Rouse* via the *Sharp* decision, states that for the municipal court to have subject matter jurisdiction, a criminal complaint has to be properly before the court, meaning, that it must be noted upon the certified transcript of the docket, and contain a file stamp, showing the date and time of filing. See *Sharp* ¶¶21-24.

The City claims that the law does not require a 'file stamp' or a separate notation that the complaint was filed, and the fact that the clerk received the complaint (some time, was it the 26th or 27th or 28th of February 2006?) and assigned it a case number was

sufficient evidence that the complaint was filed. *Appellant's Merit Brief*, p. 6-10.

Nevertheless again, we turn to Revised Code §§ 1903.31(E), which mandates that under proper dates the clerk shall note on the docket the filing of the complaint, then to R.C. § 2303.08 which states, the clerk shall indorse on each pleading or paper ... the time of filing, then lastly to R.C. § 2303.10, which states, the clerk shall indorse upon every paper filed with him the date of the filing thereof. R.C. §§ 2303.08 and 2303.10 are made applicable to the Clerk of the Municipal Court through R.C. § 2303.31. Said sections of the Code have been in effect in this State since 1953.

The Appellate Court in *Sharp* relied upon R.C. § 1903.31(E) (*Sharp* at ¶¶ 18-20) and cited to *In re Hopple* (1983) 13 Ohio App.3d 54, for the proposition that "[a]ll judgments and other papers must be filed stamped on the date they are filed." *Sharp* at ¶21. *Hopple* for authority, cited R.C. §§ 2303.08 and 2303.10. *Idat* 54-55.

In short the law is that a Municipal Court does not obtain subject matter jurisdiction of a criminal complaint until it is properly before the Court. To be properly before the Court it first must be submitted to the Clerk of Court who then as a matter of law is required to, *inter alia*, note under the proper date the filing of the complaint on the docket, and then shall endorse on the complaint the time and date of filing pursuant to R.C. §§ 1903.31(E), 2303.08 and 2303.10. The City had a duty to look at the court file. The Fifth District Court of Appeals in *Rouse* and *Sharp* followed the law.

V. CONCLUSION

WHEREFORE, for the reasons stated above, the judgment of the Fifth District Court of Appeals must be affirmed.

Respectfully submitted,

Elizabeth N. Gaba

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CERTIFICATE OF SERVICE

Undersigned hereby certifies a true copy of the foregoing document, was served upon Susan Small, Assistant City Law Director, City of Zanesville, at 825 Adair Avenue, Zanesville, OH 43701 by ordinary U.S. Mail postage prepaid on this the 6th day of January, 2010.

Elizabeth N. Gaba

ELIZABETH N. GABA (0063152)

Attorney for Appellee, Ronald Rouse

APPENDIX

EXHIBITS

- A Summons
- B Change of Plea
- C Certified Docket/Journal
- D Amended Judgment Entry 6-13-08
- E Affidavit of Kris Dodson

EXHIBIT A

FORM XIII

SUMMONS AFTER ARREST WITHOUT WARRANT, AND COMPLAINT UPON SUCH SUMMONS

CITY OF ZANESVILLE Municipal Court
ZANESVILLE, MURKIN Co. County, Ohio
(City) (Name of County)

THE STATE OF OHIO
ZANESVILLE
RONALD T ROUSE
name of defendant
633 MANNION AVE
address
ZANESVILLE OH
D.O.B. 5/16/75 SEX M
SOC. SEC. NO. [REDACTED]

SUMMONS NO. 09447
CASE NO. 60CRBJ0319
DOC. PAGE
Summons After Arrest Without Warrant, and Complaint Upon Such Summons (Rule 4(F))

TO DEFENDANT: SUMMONS
In lieu of immediate arrest upon a misdemeanor you are summoned and ordered to appear at 8:45 o'clock A.M. on 2/28/06 day - month - year
ZANESVILLE Municipal Court
If you fail to appear at this time and place you may be arrested.
This summons served personally on the defendant on 2/27, 2006

On 2/27 2006 at 813 Duane place COMPLAINT

you WILL CEASE OR ATTEMPT TO CEASE PHYSICAL HARM TO A FAMILY OR HOUSEHOLD MEMBER DOMESTIC VIOLENCE 537.14A
M.L. PUKRICH

Signature of Issuing-Charging Law Enforcement Officer
Being duly sworn the issuing-charging law enforcement officer states that he has read the above complaint and that it is true.

Sworn to and subscribed before me by PUKRICH on Feb. 27 2006
[Signature] Deputy Clerk/
[Signature] Municipal Court

Notary Public
My Commission Expires _____ 20____
County/State of Ohio/

NOTICE TO DEFENDANT: The officer is not required to swear to the complaint upon your copy of the summons and complaint. He swears to the complaint on the copy he files with the court. You may obtain a copy of the sworn complaint before hearing time. You will be given a copy of the sworn complaint before or at the hearing. For information regarding your duty to appear call _____

fill in telephone number(s)
NOTICE TO DEFENDANT UNDER EIGHTEEN YEARS OF AGE: You must appear before the _____ County Juvenile Court,

at the time and place determined by that Court. The Juvenile Court will notify you when and where to appear. This Summons and Complaint will be filed with the Juvenile Court. The Complaint may be used as a juvenile complaint. You may obtain a copy of the sworn complaint from the Juvenile Court before the Juvenile Court hearing. You will be given a copy of the sworn complaint before or at the Juvenile Court hearing. For information regarding your duty to appear Juvenile Court call _____ fill in telephone number(s)

ZANESVILLE MUNICIPAL COURT

(Multiple Count Entry)

CASE NO 06CRB00319

() State of Ohio

() City of Zanesville

vs

RONALD T JR ROUSE, Defendant

FILED ZANESVILLE MUNICIPAL CT. Description 3 AM 11:22

JUDGMENT ENTRY

Deeree

Count	Code Section	Description	Deeree
06CRB00319-A	537.14	DOMESTIC VIOLENCE	M1

() Defendant failed to appear: () SUMMONS ISSUED: () WARRANT ISSUED: Bond Set at _____

ARRAIGNMENT: () Defendant appeared in Court: Acknowledged receipt of a copy of the complaint, has been informed of the nature of the charge and the maximum penalty, the right to counsel, the right to a continuance, and other rights under Criminal Rule 5.

() Entry of appearance, waiver of rights and written plea of NOT GUILTY filed by: () Attorney _____ () Defendant

COUNSEL: () Retained Counsel _____ () Requested appointment: () Not Eligible () Found indigent. Appointed: _____ () Waived the right to counsel. () Requested continuance to confer with an attorney. Continued until _____

BOND: \$ _____ CONTINUED: 10% CASH/SURETY: OWN RECOGNISANCE

PLEA: () NOT GUILTY: As to counts _____ Assigned for Pre-Trial _____ Trial _____ (X) GUILTY: As to counts A (Readvised of rights according to Criminal Rule 11) () NO CONTEST: As to counts _____ (Readvised of rights according to Criminal Rule 11) () NONE: B FELONY CHARGE: Preliminary Hearing Scheduled _____ (X) OTHER: B

DECISION: ~~(X)~~ GUILTY: As to count ~~_____~~ () NOT GUILTY: As to count _____ () DIMISSED AT REQUEST OF PROSECUTION: As to count _____ () DIMISSED AT REQUEST OF COMPLAINANT WITH CONSENT OF PROSECUTION: As to count _____ () BOUND OVER TO GRAND JURY: As to count _____ (X) Stayed Until 10/26/06 () to get OL and ins.: to Complete Anger Management Course at the () FAILED TO APPEAR FOR HEARING/PLEA: () Bench Warrant: _____ Bond () Cash/Must Post _____

SENTENCE: Count: () () () () FINE \$ _____ +costs \$ _____ +costs \$ _____ +costs \$ _____ +costs Fine Suspended _____ JAIL _____ Days _____ Days _____ Days _____ Days Jail Suspended _____ Days _____ Days _____ Days _____ Days on condition of no offenses of similar nature within two years and complete counseling at () Response (Anger Management) () MBH: () Six County: and _____ License Suspended _____ Immobilization _____ Forfeiture _____ Jail to begin _____ Driving Privileges _____

PROBATION: _____ Months. Terms: _____ OTHER ORDERS: _____

Date 4/13/06

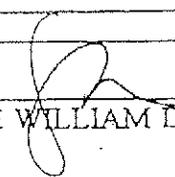
JUDGE WILLIAM D. JOSEPH 

EXHIBIT B

ZANESVILLE MUNICIPAL COURT TRAFFIC

660880012-A CHARGE: 187.14 DOMESTIC VIOLENCE CRIC.
 ZANESVILLE POLICE DEPARTMENT FILE DATE: 02/28/2006 FLYER:
 HOUSE, RONALD E. JR DATE HEARD: 8/18/06
 915 MAPLE RDR (UPSTAIRS) VIOL DATE: 02/27/2006 FINE:
 FINDING: CREDIT:
 PLEA: NO TOTAL:
 PLEA DATE: 02/28/2006

ZANESVILLE, OH 43701
 170-80-070; FYES-09447
 BANCORP INC INC#:0601188
 ***** STATE HISTORY *****

APPOINTMENT	02/28/2006	AMOUNT :	1000.00	DT SEC:04.14.20
HEARING	04.05/2006	REFUND :	1000.00	REC#:B0603000
SR ISSUED-INDIVIDUAL	04.05/2006	FORFEIT:	0.00	REF#:04.14.20
SR RET'D-L. JUDGE-PEA	04.12/2006	CTY FEE:	0.00	CHRG:04.14.20
CASE HEARD	04.13/2006			TRCF:
CONFIRMANCE	07.28/2006			
CONTINUANCE	07/08/2006			

***** DOCKET JOURNAL *****
 04/28/2007

STELL H. CARVEY JAIL, W/ FELONY CHARGES IN OHIO. WILL NOT
 ATTENDING RESPONSE. QUESTIONER IS THIS ADV FOR SOME 12 DAYS
 04/28/2007
 HAS BEEN IN JAIL SINCE JULY, STILL WANTS TO DO THE PROGRAM
 IF JAIL IS UNABLE TO COMPLETE ANGER MANAGEMENT AT RESPONSE

I hereby certify this to be a true copy of DOCKET
 taken from the Zanesville Municipal Court records, Zanesville, Ohio.
 Dated this 12 day of October 2007
 Kristine Madison
 Clerk
 Clerk/Dep Clerk

EXHIBIT C

2008 JUN 12 11:50 AM
CLERK OF COURT

IN THE MUNICIPAL COURT FOR THE CITY OF ZANESVILLE, OHIO

CITY OF ZANESVILLE,	*	CASE NO. 06CRB00319
	*	
Plaintiff,	*	
	*	JUDGE JAMES J. FAIS
vs.	*	SITTING BY ASSIGNMENT
	*	
RONALD ROUSE	*	<u>AMENDED JUDGMENT ENTRY</u>
	*	
Defendant.	*	

.....

This cause came on before the court upon defendant's motions. Defendant and counsel appeared on their motion on June 9, 2008 for a hearing. The prosecution was also represented. The court reviewed the court record and the arguments of counsel. The court found that the defendant in fact was charged with the offense of domestic violence and was served with a summons. The defendant appeared in court on February 28, 2006 for arraignment and in response to the summons.

The defendant entered a plea of not guilty and was released on his own recognizance. The defendant was served with a Temporary Protection Order on February 28, 2006 and acknowledged service on that date as exhibited by the court record. Eventually, this matter was scheduled for trial on April 13, 2006 at which time the defendant appeared and entered a plea of guilty to the offense. The parties agree that the court delayed a finding pending the defendant's completion of an anger management program.

The court scheduled a hearing for October 26, 2006 to ascertain if the program was completed. The defendant failed to appear because he was incarcerated on another matter.

Subsequently, the defendant filed the pending motions which the court overrules today. The court proceeded to enter a finding of guilty on the defendant's plea and sentenced the defendant to ten (10) days in jail and a fifty dollar (\$50) fine both of which are suspended because the defendant is currently serving a sentence of fifteen (15) years in the State correctional facility.

James J. Faiss
 JUDGE JAMES J. FAIS
6-11-08

EXHIBIT D

AFFIDAVIT

STATE OF OHIO)
COUNTY OF MUSKINGUM) ss

1. I am the Clerk of the Zanesville Municipal Court; and was the Clerk of the Zanesville Municipal Court on February 28, 2006.
2. On February 28, 2006 a complaint was filed with the court regarding Defendant, Ronald Rouse, Jr.
3. That complaint was handled in accordance with the procedures and practices of the Zanesville Municipal Court.
4. The filing of the complaint generated a file and the filing date of February 28, 2006 is indicated in the Court's Docket/Journal.
5. The fact that the complaint was accepted for filing is further supported by the fact that the complaint was assigned a case number and a file was set up. The complaint became part of the file in case number 06CRB00319.
6. Also filed in case number 06CRB00319 is a Temporary Protection Order signed by Judge William Joseph on February 28, 2006. The fact that a Temporary Protection Order was issued is noted in the Court's Docket/Journal.
7. A true copy of the Zanesville Municipal Court's Docket/Journal is attached hereto and marked Exhibit B.

FURTHER AFFIANT SAYETH NAUGHT.

Kris Dodson
KRIS DODSON, Affiant

Sworn to and subscribed in by presence this 24 day of August, 2007.

Kathy L Elliott
Notary Public



KATHY L. ELLIOTT
Notary Public, State of Ohio
My Commission Expires
9-28-07

EXHIBIT B