

ORIGINAL

IN THE SUPREME COURT OHIO

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|----------------|---|--|
| STATE OF OHIO, | : | |
| | : | |
| Appellee, | : | Case No. 2010-0819 |
| | : | |
| vs. | : | |
| | : | On Appeal from the Hamilton County |
| MOR MBODJI, | : | Court of Appeals, First Appellate District |
| | : | |
| Appellant. | : | |

MERIT BRIEF OF APPELLANT MOR MBODJI

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 SUPREME COURT OF OHIO

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STATEMENT OF FACTS

Mor Mbodji was charged with domestic violence, a misdemeanor of the first degree on April 16, 2009. The affidavit and complaint filed with the clerk of courts for Hamilton County Municipal Court were both signed by the complaining witness, Katrina McCall, a private citizen. Neither the affidavit nor the complaint was reviewed by a judge, or a magistrate or a prosecutor before they were filed.

On April 30, 2009, the case proceeded to trial before the trial judge. The evidence established that the Appellant was residing with his wife, Katrina McCall. During an argument, McCall threw her cell phone at the Appellant. Although the phone did not strike the Appellant, he did retrieve the phone and attempted to leave the couple's apartment. As the Appellant went toward the door, McCall blocked the doorway. McCall testified that the Appellant then threw her to the ground and attempted to punch her. These actions, according to McCall, caused McCall to sustain a bruise. The Appellant testified that he moved McCall to the side so that he could leave the apartment. He denied that he threw McCall to the ground or that he attempted to punch her.

The trial court found the Appellant guilty and sentenced him to eight months of Community Control. Appellant appealed to the First District Court of Appeals. That court affirmed his conviction and overruled the Appellant's eight assignments of error, including the eighth assignment that dealt with the issue of the trial court not having jurisdiction. On May 12, 2010, the Court of Appeals denied Appellant's motion to reconsider. This Court granted Appellant's Motion for Leave to Appeal on August 2, 2010.

ARGUMENT

Proposition of Law No. I:

Where the complaint and affidavit are signed by a private citizen, without being reviewed by a reviewing official, the trial court is without jurisdiction to proceed against the defendant.

The Ohio General Assembly amended Section 2935.09 of the Ohio Revised Code with the amended statute being effective June 30, 2006. The section is entitled "Person Having Knowledge of Offense to File Affidavit – Official Review Before Complaint Filed."

The affidavit of the private citizen may be filed with a reviewing official or the clerk. However, if filed with the clerk, the clerk shall forward it to the reviewing official during the reviewing official's normal business hours¹. Further, Section 2935.09 of the Revised Code requires that a private citizen affidavit shall comply with the section in order to cause the arrest or prosecution of a person.

Relevant Statute

§ 2935.09. Accusation by affidavit to cause arrest or prosecution

(A) As used in this section, "reviewing official" means a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate.

(B) In all cases not provided by sections 2935.02 to 2935.08 of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer or a private citizen having knowledge of the facts *shall* comply with this section (emphasis added).

(C) A peace officer who seeks to cause an arrest or prosecution under this section may file with a reviewing official or the clerk of a court of record an affidavit charging the offense committed.

(D) A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law

¹ R.C. 2935.09(D)

with the prosecution of offenses A private citizen may file an affidavit charging the offense committed with the clerk A clerk who receives an affidavit before or after the normal business hours of the reviewing officials *shall* forward it to a reviewing official when the reviewing official's normal business hours resume (emphasis added).

In this case, the Appellant's wife's affidavit was never filed or forwarded to a reviewing official as mandated under Section 2935.09 of the Ohio Revised Code. Therefore, the complaint was not properly deposited for filing since the essential requirement of review by a reviewing official never occurred.

The First District Court of Appeals relied upon this Court's decision in *State ex rel. Boylen v. Harmon*², when it interpreted Sections 2935.09 and 2935.10 of the Revised Code. However, this Court decided *Boyle* five and one half months before the amended Section 2935.09 of the Revised Code was effective on June 30, 2006.

Subsequently, in 2009, the Fifth District Court of Appeals set forth the basic law regarding subject matter provided by Sections 2935.10 and the amended R.C. 2935.09 of the Revised Code. The court in *State v. Sharp*,³ held that "in the absence of a sufficient formal accusation, a court acquires no jurisdiction whatsoever, and if it assumes jurisdiction, a trial and conviction are a nullity." The court reasoned that, "the complaint is the jurisdictional instrument of the municipal court." Therefore, they concluded, "a court's subject matter jurisdiction is invoked by the filing of a complaint." It follows then that, "The filing of a valid complaint is therefore a necessary prerequisite to a court's acquiring jurisdiction."

The court in *Sharp*,⁴ further reasoned that, "the defense of subject matter jurisdiction can never be waived" and that "any conviction resulting from an invalid complaint is a nullity." As to when the defense can be raised, the court explained, "The question of subject matter

² *State ex rel. Boylen v. Harmon* (2006), 107 Ohio St.3d 370, 839 N.E.2d 934, 2006 Ohio 7.

³ *State v. Sharp*, 2009 Ohio 1854, 2009 Ohio App. LEXIS 1561 (5th Dist. C/A 2009).

⁴ *Supra*.

jurisdiction is so basic that it can be raised at any stage before the trial court or any appellate court, or even collaterally in subsequent and separate proceeding.”

This Court followed the Fifth District’s decision in *Sharp*, earlier this year when the Court reviewed a claim of lack of subject matter jurisdiction in *City of Zanesville v. Rouse*.⁵ In *Rouse*, the issue was whether the complaint had been filed by the clerk. In analyzing this issue, the Court concurred with the Fifth District in *State v. Sharp*,⁶ stating that “the filing of a complaint invokes the jurisdiction of the municipal court.” Further, “it follows that if a complaint is not filed in a case, the trial court has not obtained jurisdiction over it.” The Court held that, “a document is ‘filed’ when it is deposited properly for filing with the clerk of courts.”

In this case, Katrina McCall, a private citizen, went to the clerk’s office for the Hamilton County Municipal Court on April 16, 2009, and presented a sworn affidavit (Appx. Page 11) as well as a sworn complaint (Appx. Page 12) to the clerk. However, the affidavit was not reviewed by a reviewing official or forwarded to a reviewing official before the complaint was filed. Clearly, this procedure did not comply with the mandatory requirement of Section 2935.09 of the Ohio Revised Code.

This is similar to *In re Slayman*,⁷ where a defendant attempted to file a “complaint” against a police detective, via affidavit, with the clerk of court. The clerk refused the filing and referred the matter to the prosecutor’s office. The defendant also sent a copy of his affidavit to a judge, who also referred the matter to the prosecutor’s office. After reviewing the materials, the prosecutor declined to prosecute. Upon receiving that information the defendant filed for a

⁵ *City of Zanesville v. Rouse* (2010), 126 Ohio St.3d 1, 929 N.E.2d 1044, 2010 Ohio 2218.

⁶ *State v. Sharp*, 2009 Ohio 1854, 2009 Ohio App. LEXIS 1561 (5th Dist. C/A 2009).

⁷ *In re Slayman* 2008 Ohio 6713, 2008 Ohio App. LEXIS 5610 (5th Dist. C/A 2008).

probable cause hearing, which the trial court denied. The Fifth District Court of Appeals upheld the trial court's ruling and this Court did not allow the defendant's discretionary appeal.⁸

Likewise, the Fifth District in *State ex rel. Muff v. Wollenberg*⁹ held that the criminal complainant did not have a clear legal right to have a writ of mandamus issued. The court reasoned that Section 2935.09(D) of the Revised Code does not permit the filing of a complaint by a private citizen while pointing out the distinction between an affidavit and a complaint.

The procedures and safeguards set forth in Section 2935.09 of the Revised Code were followed in *In re Slayman*, but they were not followed in Appellant's case. According to *In re Slayman*, a private citizen who attempts to file a complaint with an affidavit attached does not have a clear legal right to file the complaint.

Accordingly, it is clear that the First District Court of Appeal's reliance on *State ex rel. Boylen v. Harmon*,¹⁰ was misplaced. *Harmon* analyzed the prior Section 2935.09 of the Revised Code, which does not apply to Appellant's case. This is because this Court reviewed that section of the Ohio Revised Code five and one half months before the amended Section 2935.09 of the Revised Code was effective on June 30, 2006.

Conclusion

The affidavit, in this case, was not properly reviewed by a reviewing official. The complaint was not properly deposited with the clerk for filing due to the failure to follow the mandatory review procedure contained in Section 2935.09 of the Revised Code. Since the complaint was not valid, the trial court did not have subject matter jurisdiction of the case, as it was a nullity from the outset. The failure of jurisdiction makes the trial and conviction of the

⁸ *In re Slayman* 2009 Ohio 2511, 2009 Ohio LEXIS 1521 (Ohio, June 3, 2009).

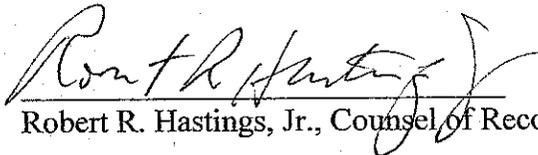
⁹ *State ex rel. Muff v. Wollenberg*, 2008 Ohio 4699, 2008 Ohio App. LEXIS 3942 (5th Dist C/A 2008).

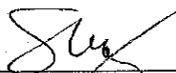
¹⁰ *State ex rel. Boylen v. Harmon* (2006), 107 Ohio St.3d 370, 839 N.E.2d 934, 2006 Ohio 7.

Appellant nullities. The issue of subject matter jurisdiction was properly raised in the Court of Appeals for Hamilton County, Ohio by the Appellant.

Appellant asks this Court to reverse the holding of the Court of Appeals and to order the charge against Appellant be dismissed.

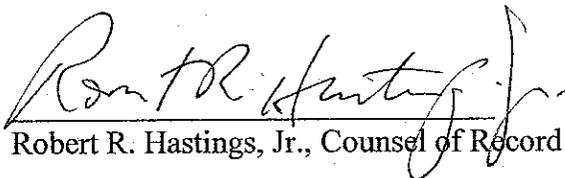
Respectfully submitted,


Robert R. Hastings, Jr., Counsel of Record


Susannah M. Meyer
COUNSEL FOR APPELLANT,
MOR MBODJI

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was hand delivered to the Office of the Hamilton County Prosecutor's Office, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202 on this 20th day of October, 2010.


Robert R. Hastings, Jr., Counsel of Record

APPENDIX

**IN THE
OHIO SUPREME COURT**

STATE OF OHIO, : NO. **10-0819**
Appellee, : Appeal from the Hamilton County Court
vs. : of Appeals, First Appellate District
MOR MBODJI, : Court of Appeals Case No. C-090384
Appellant. :

NOTICE OF APPEAL OF APPELLANT MOR MBODJI

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COUNSEL FOR APPELLEE, STATE OF OHIO

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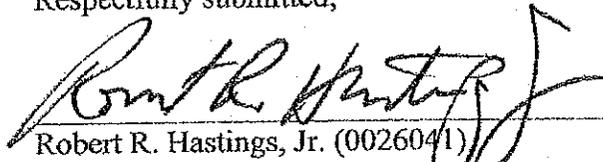
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MAY 07 2010
CLERK OF COURT
SUPREME COURT OF OHIO

Notice of Appeal of Appellant Mor Mbodji

Appellant Mor Mbodji hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Hamilton County Court of Appeals, First Appellate District, entered in the Court of Appeals case no. C-090384 on March 24, 2010.

This case involves a misdemeanor conviction for Domestic Violence and raises a substantial constitutional question as well an issue of public or great general interest regarding the procedures for filing a complaint and affidavit by a private citizen.

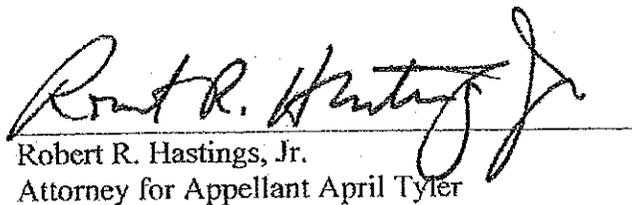
Respectfully submitted,



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(513) 946-3707 – Fax
Attorney for Appellant Mor Mbodji

Certificate of Service

I certify that a copy of this Notice of Appeal was hand delivered to the Office of the Hamilton County Prosecutor, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202 on the 6th day of May, 2010.



Robert R. Hastings, Jr.
Attorney for Appellant April Tyler

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

Plaintiff-Appellee,

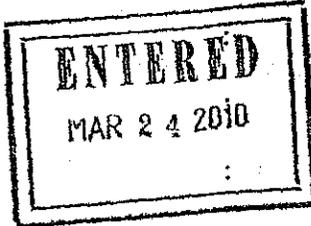
vs.

MOR MBODJI,

Defendant-Appellant.

APPEAL NO. C-090384
TRIAL NO. C-09CRB-12152

JUDGMENT ENTRY.



We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Defendant-appellant, Mor Mbodji, appeals the judgment of the Hamilton County Municipal Court convicting him of domestic violence. He was convicted after a bench trial.

Mbodji was residing with his wife, Katrina McCall. One morning the two had an argument, and McCall threw her cellular telephone at Mbodji. The telephone did not strike Mbodji, but Mbodji retrieved the telephone and attempted to leave the couple's apartment.

McCall blocked the door of the apartment. She testified that Mbodji had then thrown her to the ground and attempted to punch her. She stated that she had sustained a bruise as the result of Mbodji's actions.

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.



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OHIO FIRST DISTRICT COURT OF APPEALS

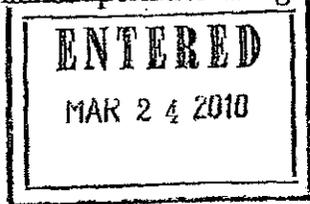
A police officer arrived on the scene shortly after the altercation. He testified that McCall had appeared agitated and had described the incident in terms consistent with her trial testimony. The officer saw a bruise on McCall's back, and he described it as approximately three inches in diameter.

Mbodji testified that, when McCall had blocked the door, he had merely moved around her so he could "squeeze by" and leave the apartment. He denied that he had thrown her to the floor, had attempted to punch her, or had otherwise caused her physical harm. The trial court found him guilty and sentenced him to probation.

We address Mbodji's eight assignments of error out of order. We begin with the eighth assignment of error, in which Mbodji argues that the trial court did not have jurisdiction to hear the case. Specifically, he argues that because the complaint and affidavit were filed by McCall and signed by the police officer but were not reviewed by a "reviewing official" within the meaning of R.C. 2935.09, the trial court did not possess jurisdiction.

R.C. 2935.09(C) states that a complaint filed by a private citizen must be filed with or reviewed by a "reviewing official," who is defined in R.C. 2935.09(A) as "a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate."

But the Supreme Court of Ohio has held that R.C. 2935.09 must be read in conjunction with R.C. 2935.10(B), which permits the clerk of courts to issue a warrant or summons upon the filing of a misdemeanor complaint by a private



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citizen.² Thus, the trial court had jurisdiction, and we overrule the eighth assignment of error.

In his first assignment of error, Mbodji argues that the trial court erred in failing to ensure that his waiver of a jury trial was made knowingly and voluntarily. But as Mbodji concedes, the charge against Mbodji was a "petty offense" under Crim.R. 23(A). For petty offenses the defendant must file a jury demand to invoke his right to a jury trial. Mbodji did not do so, and the trial court was therefore not required to address the issue. And while Mbodji asks this court to abrogate Crim.R. 23, we are powerless to do so. We overrule the first assignment of error.

In his third assignment of error, Mbodji argues that the trial court erred in compelling McCall to testify after she had invoked her right not to incriminate herself under the Fifth Amendment to the United States Constitution. This assignment is without merit. McCall did initially assert her right not to testify, but after consulting with an attorney during trial, she elected to waive that right and to testify. Accordingly, we overrule the third assignment of error.

In his fourth assignment of error, Mbodji contends that the trial court erred in admitting McCall's out-of-court statement to the officer. He argues that the statement was inadmissible hearsay.

We find no merit in this argument. Under Evid.R. 803(2), there is a hearsay exception for statements "relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition."

² See *State ex rel. Boulen v. Harmon*, 107 Ohio St.3d 370, 2006-Ohio-7, 839 N.E.2d 934, 16. See, also, Crim.R. 23(A) and *State v. Baker*, 1st Dist. Nos. C-080157 and C-080159, 2009-Ohio-4188, ¶54, jurisdictional motion overruled, 124 Ohio St.3d 1416, 2009-Ohio 6816, 919 N.E.2d 215.

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OHIO FIRST DISTRICT COURT OF APPEALS

Here, the officer testified that he had arrived at the residence shortly after the altercation had occurred and that McCall had appeared upset and agitated. Thus, the trial court did not err in concluding that her statement was admissible. And in any event, McCall's trial testimony was consistent with her statement to the officer, rendering the out-of-court statement merely cumulative.³ Therefore, we overrule the fourth assignment of error.

In his sixth assignment of error, Mbodji argues that the trial court erred in failing to issue findings of fact and conclusions of law to support its finding of guilt. Under Crim.R. 23(C), the court is required to make only a general finding upon the trial of the case. We overrule the sixth assignment of error.

We address the seventh and fifth assignments of error together. In the seventh assignment of error, Mbodji argues that his conviction was against the manifest weight of the evidence. In his fifth assignment of error, he argues that the trial court erred in rejecting his claim of self-defense.

To reverse a conviction on the manifest weight of the evidence, a reviewing court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and conclude that, in resolving the conflicts in the evidence, the trier of fact clearly lost its way and created a manifest miscarriage of justice.⁴

The domestic-violence statute, 2919.25(A), provides that "[n]o person shall knowingly cause or attempt to cause physical harm to a family or household member.

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MAR 24 2010

³ See *State v. McGhee*, 1st Dist. No. C-080801, 2009-Ohio-4887, ¶17.

⁴ *State v. Thompkins*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

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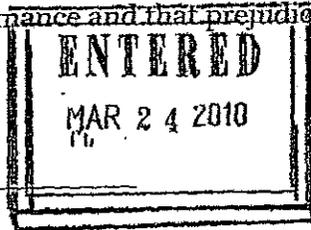
Here, the conviction was in accordance with the evidence. McCall's testimony indicated that Mbodji had pushed her to the floor and had attempted to punch her, and that his actions had caused a visible injury.

And there was no merit to Mbodji's claim of self-defense. To establish self-defense in a case involving nondeadly force, a defendant must prove by a preponderance of the evidence that (1) he was not at fault in creating the situation giving rise to the affray; (2) he reasonably believed that he needed to use force to defend himself against the imminent use of unlawful force by the victim; and (3) the force used was not likely to cause death or great bodily harm.⁵

In the case at bar, Mbodji failed to prove self-defense. McCall was simply blocking the door of the apartment; she was not using or threatening to use unlawful force against Mbodji. We overrule the fifth and seventh assignments of error.

Finally, in the second assignment of error, Mbodji contends that he was denied the effective assistance of trial counsel. He argues that counsel was deficient in failing to file a motion to dismiss the complaint; in failing to assert self-defense; in failing to seek discovery; in failing to make an opening statement; in failing to more aggressively contest the alleged hearsay testimony of the police officer; and in general failing to aggressively defend the case.

To establish ineffective assistance of counsel, the defendant must demonstrate that counsel's performance fell below an objective standard of reasonable performance and that prejudice arose from counsel's performance.⁶



⁵ See *State v. Roth*, 1st Dist. No. C-030303, 2004-Ohio-374, ¶12.

⁶ *Strickland v. Washington* (1984), 466 U.S. 668, 686, 104 S.Ct. 2052; *State v. Bradley* (1989), 42 Ohio St.3d 136, 538 N.E.2d 373, paragraphs two and three of the syllabus.

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We have already held that the trial court had jurisdiction, that self-defense was not a viable argument, and that the testimony of the police officer was admissible. And because Mbodji has not demonstrated any prejudice to have arisen from the failure of his attorney to seek discovery and to make an opening statement, we cannot say that counsel's performance was ineffective. Counsel competently represented Mbodji, and we overrule the second assignment of error.

The judgment of the trial court is affirmed.

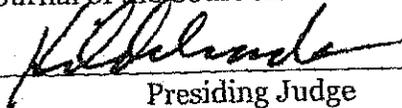
Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

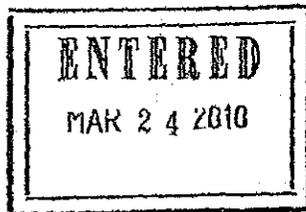
HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on March 24, 2010

per order of the Court


Presiding Judge



CLERK'S USE ONLY

INITIALS: _____

PAYMENT DATE: _____

RECEIPT NO: _____

FINE: _____

COSTS: _____

CONCAR: _____

WIT FEES: _____

JURY FEES: _____

P.D. FEES: _____

LIP FEE: _____

BMV FEE: _____

TOTAL PAID: _____

HAMILTON COUNTY MUNICIPAL COURT
 JOURNAL ENTRY - MITTIMUS

PAGE: _____

PRE-ROLL: ALLEN/LISA/C
 ACTIVATE DATE: 04/18/2009

CASE: C/09/CRB/12152
 DEFENDANT: MBODJI/MOR/T
 CTLNO: 2840029 TICKET:
 SEC. VIOL: 2919-25 ORCN
 CHARGE: DOMESTIC VIOLENCE
 ARREST DATE: 04/17/2009
 JMS NUMBER: 1342396
 SEX: M D.O.B. 08/27/1980
 DEF. COUNSEL:
 PROS. WIT: MCCALL/PO

COMM. CONTROL
 VIOL.:

*Stansel
 39775*



TO THE SHERIFF OF HAMILTON COUNTY, GREETINGS: Where as, the above defendant was arrested and charged with the above section number, For good cause shown, the defendant is ordered to give bail in the sum indicated below. You are, therefore, commanded to receive the defendant into your custody until the trial date, or until he/she gives bail as ordered. Or, whereas, the above defendant, having been tried and convicted of said charge(s) is sentenced, as indicated below. Therefore, we command you to receive the defendant into your custody, there to remain until he/she has fully executed the terms of the sentence, or until otherwise discharged by due course of law.

| DATE | ACTION | SIGNATURE OF JUDGE/MAGISTRATE |
|-----------------------|---|-------------------------------|
| 04/18/2009 9:00 am | JCA Arraignment - Probable cause to hold demonstrated () YES () NO OR/ \$ _____ Unsecured bond per Crim.R.46(A)(1) \$ 20 <i>15</i> Bond @10% per Crim.R.46(A)(2) or (3) \$ _____ Secured Bond per Crim.R.46(A)(3) Only Conditions: <i>ACT OR TEMU</i> TPO EXECUTED AND SERVE | BOUCHARD/BERNIE |
| | UPON DEFENDANT <i>[Signature]</i> | |
| | <i>[Signature]</i> | |
| | C/09/CRB/12152 MBODJI/MOR/T NJ MWIL COURT DATE: 04/30/09 AT 9:00 AM IN ROOM 280 COURTHOUSE | |
| 4.30.09 | <i>NK/</i> Motion For Judgement Of Acquittal Crim. R. 29 - Is Denied <i>G</i> | <i>[Signature]</i> |
| | <i>W/S stay away Per PW</i> | |
| Date | The decision of the magistrate is adopted and the recommended sentence is entered as the judgment of the court. | Judge |

A TRUE COPY
 SENSITIVE INFORMATION REDACTED
 ATTEST PATRICIA M. CLANCY
 HAMILTON COUNTY CLERK OF COURTS
 DEPUTY CLERK

(9)

HAMILTON COUNTY MUNICIPAL COURT
JOURNAL ENTRY - COMMITMENT/SENTENCE

PRE-ROLL: ALLEN/LISA/C

CASE: C/09/CRB/12152

(check if applicable)

MAGISTRATE'S DECISION

DEFENDANT: MBODJI/MOR/T

CTLNO: 2840029

TICKET:

SEC. VIOL: 2919-25 ORCN

CHARGE: DOMESTIC VIOLENCE

ARREST DATE: 04/17/2009

JMS_NUMBER: 1342396

SEX: M D.O.B. 08/27/1980

DEF. COUNSEL:

PROS. WIT: MCCALL/PO

PLEA: NG

FINDING: G

O.V.I CONVICTIONS W/IN PREV. 6YRS: _____

TO THE SHERIFF OF HAMILTON COUNTY, GREETINGS:

Whereas, the above defendant was arrested and charged with the above section number. Whereas, the above defendant, having been tried and convicted of said charge is sentenced, as indicated below. Therefore, we command you to receive the defendant into your custody, there to remain until he/she has fully executed the terms of the sentence, or until otherwise discharged by the course of law.

DAYS: _____ SUSP: _____ CREDIT TIME: _____ STAY: _____

FINE: _____ REMIT: _____ SUSP: 100 FEE STAY: _____

*COSTS: _____ REMIT: _____ SUSP: _____ STAY: _____

LOCAL COSTS ONLY _____ REMIT _____ STAY: _____

COMMUNITY SERVICE IN LIEU OF FINES
LANGUAGE INTERPRETER FEE: 8 months PTP

COMMUNITY CONTROL: _____ DAYS/MOS/YRS. PAY TERM: _____

DRIVING CONDITIONS: _____ DRIVING SUSPENSION: _____ DAYS/MOS/YRS EFFECTIVE DATE: _____

FRA COMPLIANCE: _____ FRA/NON COMPLIANCE: _____

VEH. IMMOBILIZATION _____ DAYS FORFEITURE: YES NO & PLATES IMPOUNDED

CREDIT _____ DAYS HELD

DEFENDANT IS GRANTED LIMITED DRIVING PRIVILEGES AS FOLLOWS AFTER MANDATORY SUSPENSION EFFECTIVE:
CURRENT F.R.A. COMPLIANCE SHOWN.

- OCCUPATIONAL
- VOCATIONAL
- EDUCATIONAL
- COURT TREATMENT
- MEDICAL
- RESTRICTED LICENSE PLATES
- IGNITION INTERLOCK
- D.L. EXAMINATION

has stay away per PW.

Treatment/counseling as recommended.

COMMUNITY CONTROL SANCTIONS: _____

TREATMENT/COUNSELING AS RECOMMENDED BY HAMILTON COUNTY PROBATION

DATE: 4-30-09 4-30-09

JUDGE/MAGISTRATE: _____

WARNING: A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF A MAGISTRATE'S FACTUAL FINDING OR LEGAL CONCLUSION UNLESS THE PARTY HAS TIMELY AND SPECIFICALLY OBJECTED THERETO AS REQUIRED BY CRIMINAL RULE 19.

*Any Notation in the Costs Field Indicates that costs are to be assessed in this case.

SENSITIVE INFORMATION REDACTED
ATTEST PATRICIA M. CLANCY
HAMILTON COUNTY CLERK OF COURTS
DEPUTY CLERK

10

CASE NO. C09CRB12152

DATE: 4-16-09

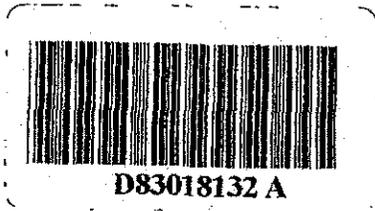
AFFIDAVIT

HAMILTON COUNTY MUNICIPAL COURT

MOR MBODJI

11640 KODIAK DR #42

CINCINNATI, OH 45240



Before me personally came KATRINA MCCALL who, being duly sworn

according to law, states that on or about the 16TH day of APRIL, 2009,

at 11640 KODIAK #42, Ohio, MOR MBODJI did* He

grabbed me by my neck and collar & threw
me down with a body slam hard to the
floor in living rm where I went down with my hand &
arm hitting the coffee table then started in on
punching me and kicking me! He ran out
front door calling me Bitches and saying he
didn't care!

Location of offense 11640 KODIAK #42

Katrina McCall (5)
Complainant/Witness

11640 KODIAK #42

CINCINNATI, OH 45240

Sworn to before me, and subscribed in my presence this

16th day of April, 2009

Grace Officer
Notary Public/Deputy Clerk
Qualified to Administer Oaths
According to R.C. 2935.03.1

COMPLAINT
HAMILTON COUNTY MUNICIPAL COURT

STATE OF OHIO vs. Mor T. Mbodji

11640 Kodiak Dr #42

Cincinnati, OH 45240



D83018131 C

Katrina McCall, being first duly cautioned and sworn, deposes and says that Mor T. Mbodji, on or about the 16th day of April, 2009, in Hamilton County, State of Ohio, did knowingly cause physical harm to Katrina McCall, a family member, contrary to and in violation of Section 2919.25 of the Revised Code of Ohio, a misdemeanor of the first degree.

The complainant states that this complaint is based on victims and suspects statements.

Sworn to and subscribed before me this 16TH day of APRIL, 2009.

PEACE OFFICER

[Signature]
Notary Public, Deputy Clerk and
Authorized to Administer Oaths

[Signature]
(Complainant)

Filed Pursuant to R.C. 2935.03.1 4/16/09
PATRICIA M. CLANCY
(Clerk of Hamilton County Municipal Court)

11640 Kodiak Dr. #42

Cincinnati, OH 45240

By *[Signature]*
Deputy Clerk



2935.09 Person having knowledge of offense to file affidavit - official review before complaint filed.

(A) As used in this section, "reviewing official" means a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate.

(B) In all cases not provided by sections 2935.02 to 2935.08 of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer or a private citizen having knowledge of the facts shall comply with this section.

(C) A peace officer who seeks to cause an arrest or prosecution under this section may file with a reviewing official or the clerk of a court of record an affidavit charging the offense committed.

(D) A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record before or after the normal business hours of the reviewing officials if the clerk's office is open at those times. A clerk who receives an affidavit before or after the normal business hours of the reviewing officials shall forward it to a reviewing official when the reviewing official's normal business hours resume.

Effective Date: 01-01-1960; 06-30-2006

2935.10 Filing of affidavit or complaint procedure.

(A) Upon the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code, if it charges the commission of a felony, such judge, clerk, or magistrate, unless he has reason to believe that it was not filed in good faith, or the claim is not meritorious, shall forthwith issue a warrant for the arrest of the person charged in the affidavit, and directed to a peace officer; otherwise he shall forthwith refer the matter to the prosecuting attorney or other attorney charged by law with prosecution for investigation prior to the issuance of warrant.

(B) If the offense charged is a misdemeanor or violation of a municipal ordinance, such judge, clerk, or magistrate may:

(1) Issue a warrant for the arrest of such person, directed to any officer named in section 2935.03 of the Revised Code but in cases of ordinance violation only to a police officer or marshal or deputy marshal of the municipal corporation;

(2) Issue summons, to be served by a peace officer, bailiff, or court constable, commanding the person against whom the affidavit or complaint was filed to appear forthwith, or at a fixed time in the future, before such court or magistrate. Such summons shall be served in the same manner as in civil cases.

(C) If the affidavit is filed by, or the complaint is filed pursuant to an affidavit executed by, a peace officer who has, at his discretion, at the time of commission of the alleged offense, notified the person to appear before the court or magistrate at a specific time set by such officer, no process need be issued unless the defendant fails to appear at the scheduled time.

(D) Any person charged with a misdemeanor or violation of a municipal ordinance may give bail as provided in sections 2937.22 to 2937.46 of the Revised Code, for his appearance, regardless of whether a warrant, summons, or notice to appear has been issued.

(E) Any warrant, summons, or any notice issued by the peace officer shall state the substance of the charge against the person arrested or directed to appear.

(F) When the offense charged is a misdemeanor, and the warrant or summons issued pursuant to this section is not served within two years of the date of issue, a judge or magistrate may order such warrant or summons withdrawn and the case closed, when it does not appear that the ends of justice require keeping the case open.

Effective Date: 03-23-1973