

IN THE  
SUPREME COURT OF OHIO

STATE OF OHIO : NO. 2010-0819  
Plaintiff-Appellee : On Appeal from the Hamilton  
County Court of Appeals, First  
vs. : Appellate District  
MOR MBODJI : Court of Appeals  
Case Number C090384  
Defendant-Appellant :

**MERIT BRIEF OF PLAINTIFF-APPELLEE**

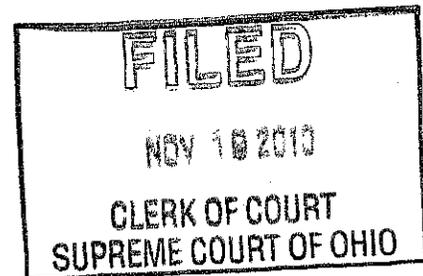
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STATE OF OHIO,	:	NO. 2010-0819
Plaintiff-Appellee,	:	
vs.	:	
MOR MBODJI,	:	<u>MERIT BRIEF OF PLAINTIFF-</u> <u>APPELLEE</u>
Defendant-Appellant.	:	

**Introduction**

The question presented in this case is what constitutes a complaint that confers subject matter jurisdiction to a municipal court. Mor Mbodji wants this Court to rule that, in addition to the requirements of Criminal Rule 3, that a valid complaint only exists when the procedures set forth in R.C. 2935.09 and 2935.10 are precisely followed. The State, however, asks this Court to hold that complaint confers subject matter jurisdiction to a trial court when it complies with Crim. R. 3.

The complaint in this matter complies with Crim. R. 3. Because Crim. R. 3 does not require an affidavit that complies with R.C. 2935.09, this Court should rule that the complaint that initiated this case conferred subject matter jurisdiction to the trial court and should, therefore, affirm this matter.

## Statement of the Case and Facts

Mor Mbodji was charged with domestic violence after his wife filed an affidavit and a complaint against him with the Hamilton County Clerk of Courts. The complaint against him included a statement of the essential facts of the crime he committed, the numerical designation of the statute he violated, and was sworn to before a person authorized to give oaths.

Based off of that complaint, Mbodji was found guilty of domestic violence after a bench trial. He was sentenced to a suspended jail sentence, fines and costs, eight months of probation, and any treatment or counseling that the probation department might recommend. That sentence was stayed pending his appeal.

The First District Court of Appeals affirmed the matter and denied a motion to reconsider. Mbodji then asked this Court to accept jurisdiction over the matter. This Court initially declined jurisdiction, but then sua sponte reversed that declination.

Now before this Court, Mbodji argues that the trial court lacked subject matter jurisdiction. This is an issue that is being raised for the first time in this Court. Since the issue pertains to subject matter jurisdiction, however, this is an issue that can be raised at any time.

**State's Proposition of Law: A complaint that meets the requirements of Crim. R. 3 confers subject matter jurisdiction to a trial court.**

The question before this Court is whether the complaint against Mbodji conferred subject matter jurisdiction to the trial court. Because the complaint complied with Crim. R. 3, the answer to that question is yes.

A valid complaint is required to confer jurisdiction to a trial court.<sup>1</sup> Under Crim. R. 3, a "complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths." All three requirements are met here.

The complaint in this matter stated that "Mor T. Mbodji, on or about the 16<sup>th</sup> day of April, 2009, in Hamilton County, State of Ohio, did knowingly cause physical harm to Katrina McCall, a family member," thus the complaint set forth the essential facts of the crime charged. It specified that those facts showed that Mbodji acted "contrary to and in violation of Section 2919.25 of the Revised Code of Ohio, a misdemeanor of the first degree," thus the complaint stated the numerical designation of the applicable statute. And it was made under oath to a "peace officer authorized

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<sup>1</sup>See *City of Franklin v. Hall*, 12 Dist. No. CA86-06-035, 1986 WL 4912, \*1, citing Section 10, Article I of the Ohio Constitution and *State v. Lindway* (1936), 131 Ohio St. 166.

to administer oaths pursuant to R.C. 2935.03.1," thus the complaint was made upon oath before a person authorized by law to administer oaths.

Nothing in Crim. R. 3 makes the validity of a complaint dependant upon the procedural niceties used in procuring an affidavit under R.C. 2935.09. Indeed, while a complaint must be sworn to, nothing in the rules requires that a separate affidavit be filed for the complaint to be valid.

Yet Mbodji argues that this is not the case. He claims that R.C. 2935.09 and 2935.10 overrule the criminal rules and make affidavits a mandatory part of a complaint. He believes that any variation from the procedures used in filing an accompanying affidavit renders a complaint invalid. Thus, he argues, this Court has no choice but to find that the trial court did not have subject matter jurisdiction because of a potential procedural problem with how an affidavit was filed. Mbodji is wrong.

Section 2935.09 sets forth the procedure for how a private citizen can file an affidavit in the hopes of having a complaint filed against someone. Section 2935.10 sets forth the procedure to be followed once an affidavit or a complaint has been filed. Neither section, however, defines what a complaint actually is. That is left to Crim. R. 3.

Criminal Rule 3 requires a written statement of the facts of the charged offense, the numerical designation of the statute or ordinance those facts violate, and that the complaint be sworn to before someone authorized to administer oaths – all things that exist in this matter. A separate affidavit is not required. The valid complaint in this matter, therefore, conferred subject matter jurisdiction to the trial court.

And even if Mbodji was correctly reading R.C. 2935.09 as somehow trying to make a complaint's validity dependent upon the procedures used in filing an affidavit, then his argument would reveal nothing more than a poor attempt by the legislature to override the Criminal Rules that this Court has issued for Ohio. And when such conflicts occur, this Court has ruled that "[w]here a conflict arises between a rule and a statute, the rule will control the statute on matters of procedure."<sup>2</sup>

Revised Code 2935.09 may have been amended to change the procedure on how affidavits from private citizens are to be handled and those changes may have some impact on how warrants are issued under R.C. 2935.10. But those changes do not change what constitutes a valid complaint. The complaint against Mbodji complies with Crim. R. 3. It is, therefore, a valid complaint that conferred subject matter jurisdiction to the trial court.

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<sup>2</sup>*State ex rel Boylen v. Harmon*, 107 Ohio St. 3d 370, 2006-Ohio-7, 839 N.E.2d 934, ¶ 8 quoting *State v. Slatter* (1981), 66 Ohio St. 2d 452, 454, 423 N.E.2d 100, and citing *Fraiberg v. Cuyahoga Cty. Court of Common Pleas, Domestic Relations Div.* (1996), 76 Ohio St. 3d 374, 376, 667 N.E.2d 1189; Section 5(B), Article IV of the Ohio Constitution.

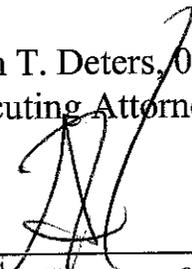
### Conclusion

Mbodji has insisted that this Court must find that the trial court lacked subject matter jurisdiction due to the procedures used when an affidavit that accompanied the complaint against him was filed. But this Court's hands are not tied because Criminal Rule 3 tells us what three things are required for a valid criminal complaint. Those three things are a written statement of the essential facts that constitute the charged offense, the numerical designation of the statute or ordinance of that offense, and that the complaint be sworn to before someone authorized to administer oaths.

Those three things exist here. Thus, under Crim. R. 3, Mbodji's complaint conferred subject matter jurisdiction to the trial court. This Court should, therefore, affirm.

Respectfully,

Joseph T. Deters, 0012084P  
Prosecuting Attorney

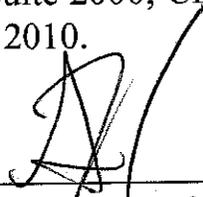


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**Certificate of Service**

I hereby certify that I have sent a copy of the foregoing Merit Brief of Plaintiff-Appellee, by United States mail, addressed to Robert Hastings Jr., Hamilton County Public Defender's Office, 230 East 9<sup>th</sup> Street, Suite 2000, Cincinnati, Ohio 45202, counsel of record, this 18<sup>th</sup> day of November, 2010.



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Assistant Prosecuting Attorney

## **Appendix**

### **Section 10, Article I of the Ohio Constitution**

Except in cases of impeachment, cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and cases involving offenses for which the penalty provided is less than imprisonment in the penitentiary, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury; and the number of persons necessary to constitute such grand jury and the number thereof necessary to concur in finding such indictment shall be determined by law. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed; but provision may be made by law for the taking of the deposition by the accused or by the state, to be used for or against the accused, of any witness whose attendance can not be had at the trial, always securing to the accused means and the opportunity to be present in person and with counsel at the taking of such deposition, and to examine the witness face to face as fully and in the same manner as if in court. No person shall be compelled, in any criminal case, to be a witness against himself; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel. No person shall be twice put in jeopardy for the same offense.

### **Section 5, Article IV of the Ohio Constitution**

(A)(1) In addition to all other powers vested by this article in the supreme court, the supreme court shall have general superintendence over all courts in the state. Such general superintending power shall be exercised by the chief justice in accordance with rules promulgated by the Supreme Court.

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

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

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

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

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

### **Criminal Rule 3**

The complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths.