

ORIGINAL

IN THE SUPREME COURT OF OHIO

SCOTTY R. MCDONALD,

CASE NO. 12-1177

APPELLANT,

On Appeal from the  
Lawrence County Court  
Of Appeals, Fourth  
Appellate District

VS.

STATE OF OHIO,

Court of Appeals  
Case No. 11CA1

APPELLEE.

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BRIEF OF STATE OF OHIO, APPELLEE

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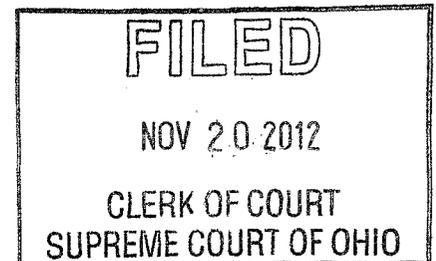
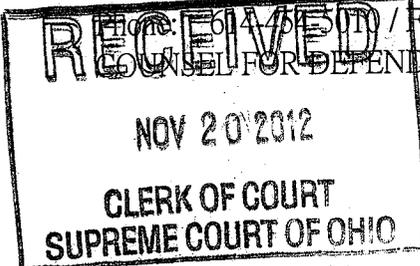


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## STATEMENT OF THE CASE

The Defendant was arrested for Failure to Comply with the Order or Signal of a Police Officer, a felony of the third degree, on September 30, 2010. On that same date, the Defendant was arraigned in the Ironton Municipal Court. The Court set a \$25,000.00 surety bond.

On October 7, 2010, the Defendant waived his right to a preliminary hearing in the Ironton Municipal Court. The matter was bound over to the Grand Jury and on October 25, 2010, the Grand Jury indicted the Defendant for Failure to Comply with the Order or Signal of a Police Officer, a felony of the third degree, a violation of Ohio Revised Code Section 2921.331 (B)(C)(5)(a)(ii).

On January 10, 2011, the case proceeded to a jury trial before the Honorable Judge D. Scott Bowling. The jury returned a guilty verdict that same day.

On January 14, 2011, the Defendant was sentenced to serve a term of incarceration of four (4) years in prison.

The Defendant filed an appeal with the Fourth District Court of Appeals on January 24, 2011. The Fourth District Court of Appeals issued a decision and Judgment Entry on March 29, 2012 affirming the trial court's judgment.

The Fourth Appellate District declined to follow a Third District case *State v. Schwable*, 2009 WL4756435 (Ohio App.3rd Dist.) On June 13, 2012 the Fourth Appellate District granted a motion to certify a conflict filed by the Appellant. On July 13, 2012, Appellant filed a notice of certified conflict with this Honorable Court. On September 5, 2012 this Honorable Court determined that a conflict did

exist. On October 26, 2012 the Appellant, Scotty R. McDonald, filed his brief. This reply brief timely follows.

## STATEMENT OF FACTS

In the early morning hours of September 30, 2010, Officer Gleo Runyon of the Coal Grove Police Department was sitting stationary running radar at the intersection of U.S. 52 and the Ashland Bridge. (Trial Tr. Pg. 34). Officer Runyon observed the Appellant traveling at a high rate of speed and activates his radar unit. The radar unit indicated the Appellant was traveling at a speed of 112 miles per hour. (Trial Tr. Pg 34). Officer Runyon activated his lights and began pursuit of the Defendant-Appellant. Officer Runyon was able to catch up with the vehicle at the U.S. 52 on ramp at Coal Grove. (Trial Tr. Pg 36). The Appellant failed to stop at the stop sign at the off ramp of U.S. 52 and Marion Pike and continued traveling at a high rate of speed in excess of 80 miles per hour toward the City of Ironton. (Trial Tr. Pg. 37). The Appellant proceeded at a high rate of speed in excess of 80 miles per hour through the City of Ironton running three (3) red lights along the way. (Trial Tr. Pg. 38). Officer Runyon testified that on at least two (2) occasions during the pursuit numerous people were congregated at the Shenanigan's Bar and Grill and the Peddler's Restaurant. (Trial Tr. Pg. 39 - 40). The Appellant turned right at Fourth and Neal Streets and failed to stop at the stop sign located at Fifth and Neal Streets. (Trial Tr. Pg. 40). The Appellant finally came to a stop on Scott Avenue after striking the curb and blowing out a tire on his vehicle. (Trial Tr. Pg. 41). The Appellant exited his vehicle and Officer Runyon immediately pulled his taser and instructed him to stop or that he would be tased at which time the Appellant complied with the officer. (Trial Tr. Pg. 41). The Appellant was subsequently arrested and transported to the Ironton Police Department

where he was administered a breath test which showed a result of .163. (Trial Tr. Pg. 79)

The Appellant admits in his brief that he was "...drunk, driving like a lunatic" at the time of the offense. In an attempt to argue that the Appellant was not able to see the officer on the night in question, the Appellant sets forth mathematical equations, google maps, and a study by the Michigan State Police. These are facts that were never presented at trial and were not considered by the jury or the Fourth Appellate District. These "facts" and "mathematical truths" are now being presented by the Appellant for the first time and were never considered prior to this Court's review.

## PROPOSITION OF LAW

- I. IS THE INCLUSION OF “SUBSTANTIAL RISK OF SERIOUS PHYSICAL HARM TO PERSONS OR PROPERTY” LANGUAGE FROM R.C. 2921.331 (C)(5)(a)(ii) SUFFICIENT TO SUSTAIN A THIRD DEGREE FELONY CONVICTION FOR A VIOLATION OF R.C. 2921.331(B) WHEN THE VERDICT FAILS TO SET FORTH THE DEGREE OF THE OFFENSE, AND ALSO FAILS TO REFERENCE OR INCLUDE LANGUAGE FROM R.C. 2921.331(B)?

Ohio Revised Code Section 2945.75 (A)(2), states, "A guilty verdict shall state either the degree of the offense of which the offender is found guilty, or that such additional element or elements are present. Otherwise, a guilty verdict constitutes a finding of guilty of the least degree of the offense charged."

Pursuant to Ohio Revised Code Section 2921.331 (B), "No person shall operate a motor vehicle so as to willfully elude or flee a police officer after receiving a visible or audible signal from a police officer to bring the person's motor vehicle to a stop." The Appellant incorrectly asserts in his brief that the element which elevates the crime of failure to comply with order or signal of police officer is that he "willfully" failed to comply.

R.C. 2921.331(B)(C)(1)(3) states, "Except as provided in divisions (C)(4) and (5) of this section, a violation of division (B) of this section is a misdemeanor of the first degree."*(Emphasis added)* What elevates the charge to a felony of the third degree is set forth in Ohio Revised Code Section 2921.331 (C)(5)(a), which states in pertinent part,

A violation of division (B) of this section is a felony of the third degree if the jury or judge as trier of fact finds any of the following by proof beyond a reasonable doubt: (ii) the operation of a motor vehicle by the offender caused a substantial risk of serious physical harm to persons or property.

The jury, in the case at bar, was presented with two separate verdict forms. The first verdict form, stated, "We, the jury, find the Defendant, SCOTTY R. MCDONALD, (Guilty or Not Guilty) of Count On[e]: Failure to Comply with Order or Signal of a Police Officer and Caused a Substantial Risk of Serious Physical Harm to Persons or Property." (App'x at 19). The language that it caused, "a substantial risk of serious physical harm to persons or property" is what makes the charge a felony of the third degree. The jury was given an additional verdict form which stated "We, the jury, find the Defendant, SCOTTY R. MCDONALD, (Guilty or Not Guilty) of Count On[e]: Failure to Comply with the Order or Signal of Police officer." (See App'x at 18). The jury could have returned verdict form #2 and the Appellant would have been convicted of a misdemeanor of the first degree. However, the jury found the additional element that the Appellant caused a substantial risk of serious physical harm to persons or property while failing to comply with the order or signal of a police officer. Therefore, the verdict form as used herein was sufficient to comply with Ohio Revised Code Section 2945.75 (A)(2).

In addition to the two separate verdict forms the Trial Court charged the jury as follows,

The defendant is charged in Count 1 with failing to comply with the order or signal of a police officer. Before you find the defendant guilty, you must find beyond a reasonable doubt that Scotty R.

McDonald on or about September 30, 2010, and in Lawrence County, Ohio, did operate a motor vehicle so as willfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring his motor vehicle to a stop, and the operation of said motor vehicle caused a substantial risk of serious physical harm to persons or property. (App'x at 7.)

The jury was also provided definitions including the definition of "willfully" as follows,

"Willfully". A person acts "willfully" when it is his specific intention to cause a certain result or that he intentionally failed to do that which should be done. It must be established in this case that at the time in question there was present in the mind of the defendant a specific intention to elude and flee a police officer after receiving a visible or audible sign from a police officer to bring his motor vehicle to a stop. (App'x at 8-9.)

This Honorable Court in State v. Pelfrey, 112 Ohio St. 3d 422, held that, "pursuant to the clear language of R.C. 2945.75, a verdict form signed by a jury must include either the degree of the offense of which the defendant is convicted or a statement that an aggravating element has been found to justify convicting a defendant of a greater degree of criminal offense". In the case at bar, the jury verdict form had a statement consisting of the aggravating element which justified the Appellant being convicted of a greater degree of criminal offense. The aggravating element being that the Appellant caused a "substantial risk of serious physical harm to persons or property".

The Proposition of Law as set forth herein is presented on a certified conflict between the Fourth Appellate District and the Third Appellate District in State v. Schwable, 2009 WL 4756435 (Ohio App. 3 Dist). The facts in Schwable, are analogous to the facts at bar. However, the Third

District Court of Appeals Decision should not be followed as the decision is not well reasoned. The Third District, in an attempt to follow the strict compliance set forth in State v. Pelfrey, 112 Ohio St.3rd 422, overturned a conviction based upon the fact that “willfully” was not set forth in the jury verdict form.

The reason the decision in Schwable, *Id.* is not well reasoned is due to the fact that “willfully” is not the element that elevates the offense to a felony. If the jury had only found that the Appellant had willfully failed to comply with the order or signal of a police officer, the Appellant would have been convicted of only a misdemeanor of the first degree. The fact that elevates the offense to a felony is that the defendant “caused a substantial risk of serious physical harm to persons or property.” The Fifth District Court of Appeals applied this reasoning in upholding a conviction for failure to comply with the order or signal of a police officer. See State v. Garver, 2011 WL 1944259 (Ohio App. 5 Dist.)

This Honorable Court should follow and adopt the reasoning of the Fourth and Fifth District Court of Appeals and uphold the conviction of the Appellant.

## CONCLUSION

The verdict form in the case at bar complies with R.C. 2945.75 and State v. Pelfrey, 112 Ohio St. 3d 422. Therefore, this Honorable Court should adopt the ruling of the Fourth District Court of Appeals and hold that the inclusion of “substantial risk of serious physical harm to persons or property” is sufficient to sustain a third degree felony conviction for a violation of R.C. 2921.331 (B)(C)(5)(a)(ii).

Respectfully submitted,

J.B. Collier, Jr., #0025279  
Prosecuting Attorney



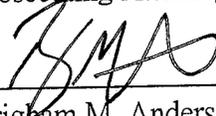
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PROOF OF SERVICE

A copy of the foregoing Brief was served upon James D. Owen and Todd A. Long, Attorneys at Law, 5354 N. High Street, Columbus, OH 43214, on this 19 day of November, 2012 by regular US mail.

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Prosecuting Attorney



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IN THE COURT OF COMMON PLEAS  
LAWRENCE COUNTY, OHIO

STATE OF OHIO )  
 )  
 PLAINTIFF(S) ) CASE NO. 10-CR-258  
 )  
 VS ) JURY CHARGE  
 )  
 SCOTTY R. MCDONALD )  
 )  
 DEFENDANT(S) )

**LADIES AND GENTLEMEN OF THE JURY:** You have heard the evidence and arguments of counsel. The court and the jury have separate functions: you decide the disputed facts and the court provides the instructions of law. It is your sworn duty to accept these instructions and to apply the law as it is given to you. You are not permitted to change the law, nor to apply your own conception of what you think the law should be.

A criminal case begins with the filing of an indictment. An indictment informs a defendant that they have been charged with an offense. The fact that it was filed may not be considered for any other purposes. The plea of not guilty is a denial of the charge and puts in issue all the essential elements of each offense.

Each defendant is presumed innocent until their guilt is established beyond a reasonable doubt. A defendant must be found not guilty unless the State produces evidence which convinces you beyond a reasonable doubt of every essential element of the offense charged in the indictment.

### **BURDEN OF PROOF**

Reasonable Doubt Is Present when after you have carefully considered and compared all the evidence, you cannot say you are firmly convinced of the truth of the charge. Reasonable doubt is a doubt based on reason and common sense. Reasonable doubt is not mere possible doubt, because everything relating to human affairs or depending on moral evidence is open to some possible or imaginary doubt. Proof beyond a reasonable doubt is proof of such character that an ordinary person would be willing to rely and act upon it in the most important of their own affairs.

Evidence is all the testimony received from the witnesses, including depositions, any exhibits admitted during trial, facts agreed to by counsel and any facts which the court requires you to accept as true.

Evidence may be direct or circumstantial, or both.

Direct evidence is the testimony given by a witness who has seen or heard the facts to which they testify. It includes exhibits admitted into evidence during the trial.

Circumstantial evidence is the proof of facts or circumstances by direct evidence from which you may reasonably infer other related or connected facts which naturally and logically follow, according to the common experience of mankind.

To infer, or to make an inference, is to reach a reasonable conclusion or deduction of fact which you may, but are not required to, make from other facts which you find have been established by direct evidence. Whether an inference is made rests entirely with you.

Direct evidence and circumstantial evidence are of equal weight or probative weight.

The evidence does not include the indictment, opening statements, or closing arguments of counsel. The opening statements and closing arguments of counsel are designed to assist you. They are not evidence.

Statements or answers that were stricken by the court or which you were instructed to disregard are not evidence and must be treated as though you never heard them.

You must not speculate as to why the court sustained the objection to any question or what the answer to such question might have been.

You must not draw any inference or speculate on the truth of any suggestion included in a question that was not answered.

The view of the scene is not evidence, but it may help you understand the evidence that has been given on this case.

You are the sole judges of the facts, the credibility of the witnesses and the weight of the evidence.

To weigh the evidence, you must consider the credibility of the witnesses (including the defendant). You will apply the tests of truthfulness which you apply in your daily lives.

These tests include the appearance of each witness upon the stand; their manner of testifying; the reasonableness of their testimony; the opportunity they had to see, hear and know the things concerning which they testified; their accuracy of memory; frankness or lack of it; intelligence; interest and bias, if any; together with all the facts and circumstances surrounding the testimony. Applying these tests, you will assign to the testimony of each witness such weight as you deem proper.

You are not required to believe the testimony of any witness simply because they were under oath. You may believe or disbelieve all or any part of the testimony of any witness. It is your province to determine what testimony is worthy of belief and what testimony is not worthy of belief.

Some things you may consider in weighing the testimony of identifying witnesses are:

Capacity of the witness, that is, the age, intelligence, defective senses, if any, and the opportunity of the witness to observe.

The witness' degree of attention at the time they observed the offender.

The accuracy of witness' prior description or identification, if any.

Whether witness had occasion to observe defendant in the past.

The interval of time between the event and the identification.

All surrounding circumstances under which a witness has identified the defendant including deficiencies, if any, in a lineup, photo display or one-on-one.

If, after examining the testimony of an identifying witness, you are not convinced beyond a reasonable doubt that the defendant is the offender, you must find the defendant not guilty.

## DEFENDANT DOES (NOT) TESTIFY

The testimony of a defendant is to be weighed by the same rules that apply to other witnesses.

It is not necessary that the defendant take the witness stand in their own defense. A defendant has a constitutional right not to testify. The fact that the defendant did not testify must not be considered for any purpose.

Generally a witness may not express an opinion. However, a person who had an opportunity to observe is permitted to express an opinion. In determining the value of such opinion(s) you will consider the opportunity that such witness(es) had to observe the facts and their knowledge of an experience on the subject. In addition you will apply the usual rules for testing credibility and determining the weight to be given to testimony.

Generally a witness may not express an opinion. However, a person who follows a profession or special line of work may express their opinion because of their education, knowledge and experience. Such testimony is admitted for whatever assistance it may provide to help you to arrive at a just verdict.

A number of exhibits and the testimony related to them have been introduced. You may consider whether the exhibits are the same objects

and in the same condition as originally taken by the police officers. You will determine what weight, if any, the exhibits should receive in the light of all the evidence.

In determining the guilt or innocence of the defendant, you may consider the testimony of his reputation and give it such weight as you determine it should receive in connection with all the evidence.

The defendant is charged in **Count 1** with failing to comply with an order or signal of a police officer. Before you can find the defendant guilty, you must find beyond a reasonable doubt that Scotty R. McDonald on or about September 30, 2010, and in Lawrence County, Ohio, did operate a motor vehicle so as wilfully to elude or flee a police officer after receiving a visible or audible signal from a police officer to bring his motor vehicle to a stop, and the operation of said motor vehicle caused a substantial risk of serious physical harm to persons or property.

“Recklessly”. A person acts recklessly when, with heedless indifference to the consequences, he perversely disregards a known risk that his conduct is likely to cause a certain result. A person is reckless with respect to circumstances when, with heedless indifference to the

consequences, he perversely disregards a known risk that such circumstances are likely to exist.

“Invested With Authority”. Invested with authority means that the officer was entitled to issue the order or direction.

“Lawful Order or Direction”. You must decide whether the order or direction was lawful. It was lawful if a reasonable police officer, under the facts and circumstances in evidence, would have believed that the order or direction was necessary to control or regulate traffic.

“Failed to Comply” means ignored or disobeyed.

“Police Officer” means every officer authorized to direct or regulate traffic, or to make arrests for violations of traffic regulations.

“Motor Vehicle”. Motor vehicle means any vehicle, including mobile homes and recreational vehicles, that is propelled or drawn by power, other than muscular power or power collected from overhead electric trolley wires.

“Risk” means a significant possibility as contrasted with a remote possibility, that a certain result may occur.

“Willfully”. A person acts “wilfully” when it is his specific intention to cause a certain result or that he intentionally failed to do that which should

be done. It must be established in this case that at the time in question there was present in the mind of the defendant a specific intention to elude and flee a police officer after receiving a visible or audible sign from a police officer to bring his motor vehicle to a stop.

“Caused Serious Physical Harm or Substantial Risk”. If your verdict is guilty, you must decide beyond a reasonable doubt whether the defendant’s operation of the motor vehicle caused substantial risk of serious physical harm to persons or property.

“Serious Physical Harm to Persons”. Serious physical harm to persons means any of the following: Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment; any physical harm that carries a substantial risk of death; any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity; any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement; any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

“Serious Physical Harm to Property”. Serious physical harm to property means any physical harm to property that does either of the following: Results in substantial loss to the value of the property or requires a substantial amount of time, effort, or money to repair or replace; temporarily prevents the use or enjoyment of the property or substantially interferes with its use of enjoyment for an extended period of time.

“Substantial Risk”. Substantial risk means a strong probability, as contrasted with a remote or even a significant possibility, that a certain result may occur or that certain circumstances may exist.

“Elude” means to get away from.

“Visible” means capable of being seen.

“Audible” means capable of being heard.

**GUILTY AS CHARGED.** You must further consider the offense charged in the indictment. If you find that the state proved beyond a reasonable doubt all the essential elements of the offense of Failure to Comply with Order or Signal of Police Officer And The Operation Of The Motor Vehicle Caused Substantial Risk Of Serious Physical Harm To Persons Or Property, your verdict must be guilty as charged as against Scotty McDonald.

**GUILTY OF LESSER INCLUDED OFFENSE.** However, if you find that the state failed to prove beyond a reasonable doubt all the essential elements of Failure to Comply with Order or Signal of Police Officer And The Operation Of The Motor Vehicle Caused Substantial Risk Of Serious Physical Harm To Persons Or Property, then your verdict must be not guilty of that offense; and in that event, you will continue your deliberations to decide whether the state has proved beyond a reasonable doubt all the essential elements of the lesser included offense of Failure to Comply with Order or Signal of Police Officer Without The Substantial Risk Of Serious Physical Harm To Persons Or Property.

If all of you are unable to agree on a verdict of either guilty or not guilty of Failure to Comply With Order or Signal of Police Officer as charged by the State, then you will continue your deliberation to decide whether the state has proved beyond a reasonable doubt all the essential elements of the lesser included offense of Failure to Comply With Order or Signal of Police Officer without the defendant causing substantial risk of serious physical harm to persons or property.

**EXPLAIN LESSER OFFENSE.** The offense of Failure to Comply With Order or Signal of Police Officer as charged is distinguished from Failure to Comply With Order or Signal of Police Officer by the absence of Substantial Risk of Serious Physical Harm to Persons or Property.

If you find the defendant Failure to Comply With Order or Signal of Police Officer with Substantial Risk of Serious Physical Harm To Persons or Property, that supports a conviction as charged by the state. If you find the defendant Failure to Comply With Order or Signal of Police Officer without Substantial Risk of Serious Physical Harm To Persons or Property, that supports a conviction of a lesser included charge, of all the remaining elements of either offense is proved by proof beyond a reasonable doubt.

**GUILTY OF LESSER OFFENSE.** If you find that the state proved beyond a reasonable doubt all the essential elements of the offense of Failure to Comply With Order or Signal of Police Officer Without Substantial Risk of Serious Physical Harm To Persons or Property, your verdict must be guilty of defendant, Scotty McDonald.

**NOT GUILTY.** If you find that the state failed to prove beyond a reasonable doubt any one of the essential elements of the offense of Failure to Comply With Order or Signal of Police Officer without Substantial

Risk of Serious Physical Harm To Persons or Property, your verdict must be not guilty of defendant, Scotty McDonald.

If the evidence warrants it, you may find the defendant guilty of an offense lesser than that charged in the indictment; however, notwithstanding this right, it is your duty to accept the law as given to you by the court, and if the facts and the law warrant a conviction of the offense charged in the indictment namely, ~~open dumping~~, then it is your duty to make such finding uninfluenced by your power to find a lesser offense.

This provision is not designed to relieve you from the performance of an unpleasant duty. It is included to prevent failure of justice if the evidence fails to prove the original charge but does justify a verdict for the lesser offense.

If you find that the State proved beyond a reasonable doubt all the essential elements of the offense of failure to comply with the order or signal of a police officer, your verdict must be guilty, according to the findings.

If you find that the State, failed to prove beyond a reasonable doubt any one of the essential elements of the offense of failure to comply with

the order or signal of a police officer, then your verdict must be not guilty, according to your findings.

You will have with you in the jury room the following verdict.

### **READ VERDICTS**

When you have reached a verdict, you will complete the form which corresponds to your decision and sign the verdict in ink.

You may not discuss or consider the subject of punishment. Your duty is confined to the determination of the guilt or innocence of the defendant. In the event you find the defendant guilty, the duty to determine the punishment is placed, by law, upon the court.

You must not be influenced by any consideration of sympathy or prejudice. It is your duty to carefully weigh the evidence, to decide all disputed questions of fact, to apply the instructions of the court to your findings, and to render your verdict accordingly. In fulfilling your duty, your effort must be to arrive at a just verdict. Consider all the evidence and make your finding with intelligence and impartiality, and without bias, sympathy or prejudice, so that the State of Ohio and the defendant will feel that their case was fairly and impartially tried. If during the course of the

trial, the court said or did anything that you consider an indication of the court's view on the facts, you are instructed to disregard it.

It may be difficult to remember all the instructions that I have given you. If during your deliberations you cannot remember or are in doubt about a portion of the instructions, you may request such information. The Foreman or Forewoman must put your question in writing, indicating what is requested. Such communication must be delivered to the bailiff.

Your initial conduct upon entering the jury room is a matter of importance. It is not wise immediately to express a determination to insist upon a certain verdict because if your sense of pride is aroused you may hesitate to change your position even if you later decide you are wrong.

Consult with one another, consider each other's views and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide the case for yourself, but you should do so only after a discussion and consideration of the case with your fellow jurors. Do not hesitate to change an opinion if convinced that it is wrong. However, you should not surrender honest convictions in order to be congenial or to reach a verdict solely because of the opinion of other jurors.

You should confer with each other in your deliberations and give careful consideration to the views expressed by each juror.

\_\_\_\_\_ was selected to serve in the event of any misfortune to a member of the panel. It will not be necessary for you to serve further. You are not to discuss this case or tell anyone how you would have voted until after your jury has returned a verdict. You are now excused.

On behalf of the public and the parties, the court expresses appreciation for your services in performing this important public function.

After your verdict is returned, you may discuss this case with anyone but you are not required to do so. Whether you discuss this case with counsel or anyone else after you are discharged is a matter of your own free choice.

### **NOTE TAKING**

The court has allowed you to take notes if you desired. The fact that one took notes and another did not, does not make one's remembrance better than another. The taking of notes is entirely a matter of personal choice. All notes are confidential and will be destroyed after the trial.

The court will place in your possession the exhibits and the verdict forms. The Foreman or Forewoman will retain possession of these records, including the verdicts, and return them to the court room. The Foreman or Forewoman will see that your discussions are orderly and that each juror has the opportunity to discuss the case and to cast his or her vote; otherwise, the authority of the Foreman or Forewoman is the same as any other juror. Until your verdict is announced in open court, you are not to disclose to anyone else the status of your deliberations or the nature of your verdict.

Does counsel desire anything further at this time?

After you retire, select a Foreman or Forewoman and whenever all twelve-I repeat twelve-jurors agree upon a verdict, you will sign the verdicts in ink and advise the bailiff by using the buzzer in the jury room. You will then be returned to the court room.

You may now retire and bring us a verdict.

IN THE COURT OF COMMON PLEAS  
LAWRENCE COUNTY, OHIO

STATE OF OHIO )

PLAINTIFF(S) )

VS )

SCOTTY R. MCDONALD )

DEFENDANT(S) )

CASE NO. 10-CR-258

VERDICT FORM

We, the jury, find the Defendant, SCOTTY R. MCDONALD, (Guilty or Not Guilty) of  
Count One: Failure to Comply with Order or Signal of Police Officer And Caused A Substantial  
Risk of Serious Physical Harm To Persons or Property.

Each of us said Jurors concurring in said Verdict signs their name this \_\_\_\_\_ day of  
January, 2011.

- |          |           |
|----------|-----------|
| 1. _____ | 7. _____  |
| 2. _____ | 8. _____  |
| 3. _____ | 9. _____  |
| 4. _____ | 10. _____ |
| 5. _____ | 11. _____ |
| 6. _____ | 12. _____ |

If not guilty, proceed to Verdict Form #2, if guilty, stop and contact Bailiff.

IN THE COURT OF COMMON PLEAS  
LAWRENCE COUNTY, OHIO

2011 JAN 10 PM 2:24

STATE OF OHIO )

PLAINTIFF(S) )

VS )

SCOTTY R. MCDONALD )

DEFENDANT(S) )

CASE NO. 10-CR-258

VERDICT FORM

We, the jury, find the Defendant, SCOTTY R. MCDONALD (Guilty) or Not Guilty) of  
Count One: Failure to Comply with Order or Signal of Police Officer And Caused A Substantial  
Risk of Serious Physical Harm To Persons or Property.

Each of us said Jurors concurring in said Verdict signs their name this 10 day of  
January, 2011.

- |               |                |
|---------------|----------------|
| 1. [Redacted] | 7. [Redacted]  |
| 2. [Redacted] | 8. [Redacted]  |
| 3. [Redacted] | 9. [Redacted]  |
| 4. [Redacted] | 10. [Redacted] |
| 5. [Redacted] | 11. [Redacted] |
| 6. [Redacted] | 12. [Redacted] |

If not guilty, proceed to Verdict Form #2, if guilty, stop and contact Bailiff.