

ORIGINAL

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND,)	On Appeal from the Cuyahoga County
)	Court of Appeals,
Appellee,)	Eighth Appellate District
)	
- vs -)	Case No. 13-1391
)	
ROBERT K. SCHMIDT,)	Court of Appeals
)	Case No. CA-12-098603
Appellant.)	

APPELLANT'S MOTION FOR RECONSIDERATION

Appellant:

Robert K. Schmidt, *pro se*
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For the Appellee City of Cleveland:

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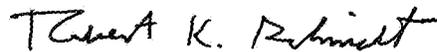
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CITY OF CLEVELAND,)	
)	
Appellee,)	Case No. 13-1391
)	
- vs -)	
)	
ROBERT K. SCHMIDT,)	<u>MOTION FOR</u>
)	<u>RECONSIDERATION</u>
)	
Appellant.)	

Appellant Robert K. Schmidt, pursuant to Rule 18.02(B)(1) of the Rules of Practice of the Supreme Court of Ohio, moves this Honorable Court to reconsider its judgment entry in the present matter of December 4, 2013 denying jurisdiction to hear this matter on its merits. The grounds for this motion are more fully stated in the Brief attached hereto and incorporated herein by reference.

Respectfully submitted,



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BRIEF

On December 4, 2013, this Honorable Court declined jurisdiction for the present matter. Appellant now respectfully requests that this Court reconsider the ruling on the ground that the appeal presents the substantial constitutional question of whether an appeals court may alter the charge of which a defendant was convicted. The Court of Appeals was only able to find that the trial court had subject-matter jurisdiction by considering a crime other than what the defendant was charged with. Schmidt was never charged with, and had no notice of, this new crime.

It is respectfully submitted that a defendant has a constitutional right to know the charge against him at the trial court level. Adequacy of notice and the right to respond to charges are basic to the right to due process under the Ohio and U.S. Constitutions. In this case, the appeals court based its affirmance on an uncharged crime rather than on charge the defendant was given notice of at the trial court level, as set forth in both the complaint and the bill of particulars. A defendant's notification of a new crime charged for the first time in the opinion of an appeals court leaves him no opportunity to be heard on that new charge, except by appealing to this Court to correct the error. As well, a no-contest plea cannot be knowing and voluntary under such circumstances, presenting another substantial constitutional issue.

This case also asks the substantial constitutional question of whether a court of appeals may elect not to apply the rule of lenity. The application of the rule of lenity has been found to be a constitutional requirement by the United States Supreme Court, because the constitutional right to "due process bars courts from applying a novel construction of a criminal statute to conduct that neither the statute nor any prior judicial decision has fairly disclosed to be within its scope." *United States v. Lanier*, 520 U.S. 259, 266, 117 S. Ct. 1219, 137 L. Ed. 2d 432 (1997); *see also State v. Elmore*, 122 Ohio St.3d 472, 2009-Ohio-3478, 912 N.E.2d 582, ¶ 38. It is

respectfully submitted that no statute or prior judicial decision makes a crime of driving upon a private-property paved area, and that a private-property area cannot be a sidewalk (or, for that matter, a “sidewalk area”).

The Appellee City of Cleveland proposes, without authority, that “sidewalk area” means “the area *around* a sidewalk in which a pedestrian may walk.” City’s Memorandum in Opposition to Jurisdiction, p. 4 (emphasis added). All other known uses of the phrase confine “sidewalk area” to the area of a street between the roadway curb and the property line. Memorandum in Support of Jurisdiction, p. 10. The issue is not which of the two readings may be desirable, but that the ambiguity exists. Given the ambiguity, an appeals court should be bound by the Constitution to apply the rule of lenity and prefer the construction that favors the defendant. The error gives rise to a substantial constitutional question.

It is further respectfully submitted that the prerequisite of a court’s jurisdiction is an important component of due process under the Ohio and U.S. Constitutions. The basis for the Motion to Dismiss at the trial court level was the lack of jurisdiction of the trial court. Subject-matter jurisdiction is a condition precedent to a court’s ability to hear the case. If a court acts without jurisdiction, then any proclamation by that court is void. *Patton v. Diemer*, 35 Ohio St. 3d 68, 518 N.E.2d 941 (1988). Whether or not a void traffic ticket, written by a person without the authority to police traffic, vests a court with subject-matter jurisdiction in the first instance represents a substantial constitutional issue that has not yet been addressed by this Court. If private persons may police traffic without lawful authority, then the rule of law may be subverted to private interests, endangering constitutional rights to due process and equal protection.

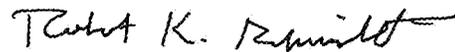
A significant number of constitutional issues were before the trial court in this case. In addition to these, the Court of Appeals created new constitutional issues when it changed the

charge against the defendant and failed to apply the rule of lenity. Given that these new issues only first arose with the opinion of the court of appeals, the defendant has been deprived of his due process rights, unless this Honorable Court hears the case.

This case thus presents a substantial constitutional question. If a claim or charge against a defendant may be altered by a court of appeals when considering subject-matter jurisdiction of a trial court, then no Ohioan can be assured of due process.

WHEREFORE, Appellant respectfully requests that this Honorable Court reconsider its ruling of December 4, 2013 and grant jurisdiction for the within matter based on the significance of the constitutional issues raised herein, pursuant to Article IV, Section 2(B)(2)(a)(iii) of the Ohio Constitution.

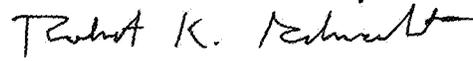
Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum was duly served upon Angela Rodriguez, Assistant City Prosecutor, at 1200 Ontario Street, 8th Floor, Cleveland OH 44113, via regular U.S. mail this 5th day of December, 2013.



Robert K. Schmidt
pro se