

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND	:	
Appellee	:	
-vs-	:	On Appeal from the
TROUSSAINT D. JONES	:	Cuyahoga County Court
Appellant	:	of Appeals, Eighth
		Appellate District Court
		of Appeals
		CA: 100598

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**MEMORANDUM IN SUPPORT OF JURISDICTION**  
**OF APPELLANT TROUSSAINT D. JONES**

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## TABLE OF CONTENTS

	PAGES
EXPLANATION OF WHY THIS FELONY CASE INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND AN ISSUE OF GREAT GENERAL AND PUBLIC INTEREST .....	1
STATEMENT OF THE CASE AND FACTS .....	3
LAW AND ARGUMENT .....	6
Proposition of Law I: .....	6
<i>A trial court’s pronouncement of a verdict precludes any appeal by the State that         could disturb that verdict.</i> .....	6
CONCLUSION.....	8
CERTIFICATE OF SERVICE .....	9
APPENDIX	
Appellee’s motion for en banc consideration denied, January 22, 2015 .....	A1
Appellee’s motion for reconsideration overruled, December 30, 2014.....	A3
Eighth District Court of Appeals Decision <i>City of Cleveland v. Troussaint D. Jones</i> CA. 100598, released September 25, 2014 .....	A6

**EXPLANATION OF WHY THIS FELONY CASE INVOLVES A  
SUBSTANTIAL CONSTITUTIONAL QUESTION AND  
AN ISSUE OF GREAT GENERAL AND PUBLIC INTEREST**

Troussaint Jones walked into Cleveland Municipal Court on October 10, 2013 and, through counsel, pled no contest to four charges. The trial court rendered the following verdict based upon the facts presented at the hearing: 1) Guilty of physical control as a lesser of OVI (R.C. 4511.19(A)(1)) (count one); 2) Not guilty of OVI (R.C. 4511.19(A)(2)) (count two); 3) Guilty of driving with a 12-point license suspension (R.C. 4510.037); and 4) Guilty of driving in marked lanes (R.C. 4511.33) (count four). The trial court sentenced Mr. Jones to one year of active probation with several conditions. By all accounts this was a very ordinary case.

Two things transformed this ordinary case into an extraordinary one that deserves this Court's attention: 1) The *City* (not the defendant) sought leave to appeal the trial court's final verdict; namely the trial court's finding that Jones was "guilty of violating Cleveland Codified Ordinance ("CCO") 433.01, physical control;" *City of Cleveland v. Jones*, 8<sup>th</sup> Dist. No. 100598, 2014-Ohio-4201, ¶ 1; and 2) the Eighth District granted the City leave and, in a 2-1 decision, vacated the trial court's verdict. The lead opinion held that Jones no contest plea was infirm because the trial court failed to engage in the proper plea colloquy as required by Traf. R. 10. *Jones*, 2014-Ohio-4201 at ¶¶ 29 and 34. The Eighth District's decision is groundbreaking because it represents the first time the prosecution was permitted to appeal and actually overturn a final verdict. Moreover, this case represents the first occasion that an appellate court has found a plea colloquy to be infirm *at the request of the State (or in this case the City)*.

The Eighth District's decision in this case is truly unprecedented and, carried to its logical conclusion, will result in further State's appeals that are squarely prohibited by Ohio law and state and federal principles of Double Jeopardy. Prior to the instant case, few principles of

law were more sacrosanct than the State's inability to affect a final verdict. The General Assembly has expressly provided that the prosecutor may, with leave appeal any decision "except the final verdict." And this Court has previously made clear that a final verdict may not be appealed even if it were clearly wrong as a matter of fact or law. *See State ex rel. Sawyer v. O'Connor* (1978), 54 Ohio St. 2d 380, 382.

For at least 40 years, Ohio courts have not deviated from the fundamental principle that the State may not appeal or otherwise challenge a final verdict "even if the trial court ignored the law or facts in arriving at its verdict." *Id.*; *see also State v. Davis*, 5<sup>th</sup> Dist. No. 03 CA-A07038, 2004-Ohio-2804, ¶¶ 11 and 20-21 (dismissing the State's appeal because it was challenging the final verdict); *State v. Anderson*, 6<sup>th</sup> Dist. L 00-1194, 2000 WL 1752641 (explaining that the final verdict is not appealable); *State v. Mayfield*, 8<sup>th</sup> Dist. No. 81924, 2003-Ohio-2312 at ¶¶ 6-7 (explaining that, even if the trial court lacked the authority to acquit the defendant of felony charges after a no contest plea, "the State is statutorily precluded from appealing that verdict."); *State v. Gump*, 8<sup>th</sup> Dist. No. 85693, 2005-Ohio-5689, ¶¶ 18-19 (explaining that the court lacked jurisdiction to review a final verdict entered after a no contest plea despite non-compliance with Crim. R. 11); and *State v. Conti* (1989), 57 Ohio App. 3d 36. In all three cases, this Court consistently held that the State could not appeal a verdict rendered by a trial court after a no contest plea even if the verdict was clearly contrary to law or failed to comply with Crim. R. 11. *Mayfield*, 2003-Ohio-2312 at; *Gump*, 2005-Ohio-5689; *Conti*, 57 Ohio App.3d at 36-37. Indeed, the dissenting judge in this case, citing *Sawyer*, would have affirmed the case because "[t]he trial court rendered a final verdict and that verdict is unassailable because it is being appealed by this city." *Jones*, 2014-Ohio-4201, at ¶ 49.

Without even addressing the unambiguous statutory prohibition of State's appeals of final verdicts, or this Court's clear holding in *Sawyer*, the lead opinion breaks entirely new, and dangerous ground, in allowing the State (or City) to challenge the validity of a plea colloquy and obtain the reversal of a final verdict. The concurring judge urged the General Assembly to amend R.C. 2945.67 to "permit appeals even where jeopardy has attached," but was unwilling to wait for legislative action. 2014-Ohio-4201, at ¶ 43. With the instant decision, the Eighth District has created an ill-advised exception that will allow the *State* to appeal and vacate final verdicts in clear violation of statutory and constitutional limitations on State's appeal.

This Court should accept the instant case to further clarify the principle that final verdicts may not be unsettled by a State or City appeal regardless of how "fatally flawed" the proceedings appear. In the alternative, to the extent that this Court agrees that the Eighth District's decision is clearly wrong in light of R.C. 2945.67 and this Court's *Sawyer* decision, this Court should summarily reverse the decision.

#### STATEMENT OF THE CASE AND FACTS

On June 15, 2013, appellee Troussaint Jones was charged in Cleveland Municipal Court with four misdemeanor offenses: 1) DUI in violation of R.C. 4511.19(A)(1) (a first-degree misdemeanor that carries a mandatory three-day jail term); 2) DUI with a prior conviction and refusal to submit to chemical tests in violation of R.C. 4511.19(A)(2) (a first-degree misdemeanor that carries a mandatory six-day jail term); 3) Driving while under a 12-point suspension in violation of R.C. 4510.037 (a first-degree misdemeanor); and 4) Driving in marked lanes in violation of R.C. 4511.33 (minor misdemeanor). Mr. Jones initially pled not guilty and was appointed counsel.

Approximately four months later, on October 10, 2013, the trial court held a change of

plea hearing. At the beginning of the hearing, the State presented its version of the traffic stop. The trooper explained that he pulled Jones over for “drifting” three times outside his lane. The trooper indicated that Jones had “an attitude” as soon as he was pulled over and that Jones became “verbally combative” during the traffic stop. The trooper also claimed that he “smelled an odor of alcohol, glassy, bloodshot eyes.” The trooper ordered Jones “out of the vehicle” and attempted to perform field sobriety tests but Jones kept interrupting him and “was trying to dictate the tone of the traffic stop from the beginning to the end.” The trooper acknowledged that Jones “maintained that he was not drinking.”

Mr. Jones explained that he “wasn’t drunk at all” and was “just upset” about being stopped because the car he was using needed to be returned to someone who needed to get to work. He explained that “the only reason [he] was drifting” was that his phone had started ringing and he dropped it on the seat. He also told the judge that he had his license and “didn’t know my license was suspended” because he thought he “took care of that.”

The trial judge noted that there is “a difference between intoxicated and angry.” And the judge went on to explain that she could understand “some degree of combativeness” and wanted to look beyond that to the “underlying factors.”

After Jones apologized to the trooper for “being rude and disrespectful,” he changed his plea to no contest. The trial court then rendered the following verdict based on the facts that “have already been submitted:”

- Guilty of physical control instead of DUI (count one);
- Not guilty of DUI in violation of R.C. 4511.19(A)(2) (count two);
- Guilty of driving under the 12-point suspension (count three);
- Guilty of driving in the marked lines (count four);

(Tr. at 14-15). The trial court explained that this “probably more resembles and finds a balance of what happened.” The trial court sentenced Jones to one year of active probation, ordered Jones to attend the Cop Program at Tri-C, ordered him to attend two MADD meetings, and imposed six points on his license.

The City prosecutor then sought clarification regarding the trial court’s verdict on the DUI counts. The trial court explained:

Count 1, is the Physical Control, I make the notation the prosecutor amended that, based upon the facts, the Court finds the defendant guilty of Physical Control, it’s not as though you are amending it.

The City prosecutor wanted to make clear that “the city did not amend count 1 to Physical Control.” The trial judge acknowledged that was the case and said “[t]hat’s what I’m writing on the journal.” And the journal entry stated, in pertinent part, “[b]ased upon facts court finds defendant guilty of physical control.”

The City sought and was granted leave to appeal the trial court’s guilty verdict on physical control (count one). It did not challenge the trial court’s verdict on the other three charges. On September 25, 2014, the Eighth District issued a 2-1 decision, sustaining the City’s assignment of error, concluding that Jones’ plea was infirm, and reversing the verdict of the trial court. *Jones*, 2014-Ohio-4201, ¶¶ 2, 29, and 37. Mr. Jones filed a timely motion for reconsideration and for rehearing *en banc*. On December 30, 2014, the Eighth District, once again in a 2-1 decision, denied Mr. Jones’ motion for reconsideration. The Eighth District denied Jones’ motion for *en banc* review on January 22, 2014.

Mr. Jones has now filed a timely appeal with this Court.

## LAW AND ARGUMENT

### **Proposition of Law I:**

*A trial court's pronouncement of a verdict precludes any appeal by the State that could disturb that verdict.*

The Eighth District should have dismissed the City's appeal because the City lacked the right to appeal the final verdict in this case.

In obtaining leave to appeal, the City relied on R.C. 2945.67. R.C. 2945.67 provides that the State "may appeal by leave of the court to which the appeal is taken any other decision, *except the final verdict.*" Although the City has presented this case as presenting a legal issue regarding the trial court's authority to amend charges, that characterization is incorrect. In fact, the City is challenging the trial court's final verdict. It is seeking a ruling from this Court that the trial court could not find the defendant guilty of physical control based upon his no contest plea to a charge of DUI. That is the final verdict that the City cannot appeal and an appellate court has no jurisdiction to review. *State ex rel. Sawyer v. O'Connor* (1978), 54 Ohio St. 2d 380; *State v. Mayfield*, 8<sup>th</sup> Dist. No. 81924, 2003-Ohio-2312, ¶ 6.

This Court's decision in *Sawyer* is directly on point and requires the dismissal of the City's appeal. In *Sawyer*, the defendant pled no contest to an OVI charge. 54 Ohio St. 2d at 380. And although the facts elicited at the hearing clearly supported an OVI conviction, the trial court found the defendant guilty of reckless operation because the OVI conviction would cause the defendant to lose his job. *Id.* at 380-81. Recognizing that it had no right to appeal, the City sought a writ of mandamus to direct the trial court to "set aside the finding of guilty of reckless operation" and sentence the defendant for OVI. *Id.* at 381. The Court of Appeals granted the writ, but this Court unanimously reversed that decision. *Id.*

In reversing the Court of Appeals, this Court reiterated that the State has no right to appeal a final verdict “no matter how erroneous.” *Id.* at 382. This Court explained that this rule is “required by federal and Ohio constitutional protections against double jeopardy” and that the “constitutional guarantees against double jeopardy cannot be frustrated by mandamus, even if the trial court ignored the law or facts in arriving at the verdict.” *Id.* And, although this Court recognized that the “trial court simply failed to follow the law,” it also recognized that the state had no recourse because the trial court’s final verdict was inviolate. *Id.*

The instant case is indistinguishable from *Sawyer*. As in *Sawyer*, the defendant pled no contest to OVI. And, as in *Sawyer*, the trial court exercised its judgment and proceeded to final judgment on a reduced charge. Thus, as in *Sawyer*, the Court of Appeals was wrong to disturb that verdict, regardless of how wrong the Court viewed it.

Moreover, the Court of Appeals’ decision to address the validity of the plea, when that issue was not raised by the defendant, is literally without precedent.<sup>1</sup> Indeed, the purpose of Crim. R. 11 and Traf. R. 10 is to protect the rights of the defendant and to ensure that the defendant enters any plea knowingly and intelligently. As explained by the Ohio Supreme Court, Crim. R. 11 (and, by analogy Traf. R. 10) is designed “to assure that the defendant is informed, and thus enable the judge to determine that the defendant understands that his plea waives his constitutional right to a trial.” *State v. Ballard* (1981), 66 Ohio St. 2d 473, 480-81. Because these rules protect the *defendant’s* rights, any failure to comply with Rule 11 must be

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<sup>1</sup> The issue was actually not raised by the City or briefed by either party. Rather, it was raised sua sponte by the Court of Appeals in contravention of this Court’s recent decision in *State v. Tate*, 140 Ohio St. 3d 442, 19 N.E.3d 888, 2014-Ohio-3667. In *Tate*, the Ohio Supreme Court held that “appellate courts should not decide cases on the basis of a new, unbriefed issue ‘without giv[ing] the parties notice of its intention and an opportunity to brief the issue.’” *Id.* at 446. And that is precisely what the Eighth District Court of Appeals did again in this case.

raised by the defendant and the defendant alone.<sup>2</sup> And there has never been a rule that a trial court's failure to comply with these procedural protections automatically invalidates the plea. *Id.* On the contrary, it is well-established that a *defendant's* failure to raise a challenge to the plea colloquy on direct appeal prevents any future challenges to the plea on the basis of *res judicata*. See e.g. *State v. Smith*, 8<sup>th</sup> Dist. No. 94063, 2010-Ohio-3512, ¶¶ 19-20.

Ultimately, any imperfections in the plea process do not change the most significant salient fact in this case—the trial court rendered a final verdict, or the well-established the legal principle that the State may not appeal that final verdict.

### **CONCLUSION**

For the foregoing reasons, Defendant-Appellant respectfully asks this Court to accept jurisdiction over this matter as it presents substantial constitutional questions and issues of great general and public interest for review.

Respectfully submitted,

/s/ Cullen Sweeney  
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Counsel for Appellant

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<sup>2</sup> Indeed, it was the defendant who raised the challenge to the adequacy of the plea colloquy in each case relied on by the majority. See *Cleveland Hts. v. Rowland*, 197 Ohio App.3d 661, 2012-Ohio-170, ¶ 18, 968 N.E.2d 564 (8<sup>th</sup> Dist.) (*defendant* argued that his no contest plea should be vacated because the trial court failed to explain the immigration consequences of his plea); *State v. Watkins*, 99 Ohio St. 3d 12, 2003-Ohio-2419, 788 N.E.2d 635) (*defendant* argued that his no contest plea should be vacated because the trial court failed to adequately explain the consequences of his plea).

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Appeal was served by ordinary mail upon Bridge E. Hopp, Assistant City Prosecutor, The Justice Center - 8th Floor, 1200 Ontario Street, Cleveland, OH 44113 on this 26th day of February, 2015.

/s/ Cullen Sweeney  
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