Supreme Court of Ohio Clerk of Court - Filed April 01, 2015 - Case No. 2015-0381

IN THE SUPREME COURT OF OHIO

CITY OF CLEVELAND,	)	Case No. 2015-0381
	)	
Plaintiff-Appellee	)	
	)	
-vs.-	)	
	)	On Appeal from the Cuyahoga County
TROUSSAINT JONES,	)	County Court of Appeals, Eighth Appellate
	)	District Court of Appeals
	)	CA: 10058
Defendant-Appellant.	)	

MEMORANDUM IN OPPOSITION TO JURISDICTION

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WHY THE SUPREME COURT SHOULD NOT ACCEPT JURISDICTION

The City of Cleveland asserts that there is no substantial constitutional question nor does this case present an issue of great general or public interest; and therefore, this Honorable Court should decline jurisdiction in this case.

Defendant-Appellant asserts that the decision by the Eighth District Court of Appeals in City of *Cleveland v. Jones*, 8th Dist. Cuyahoga No. 100598, 2014-Ohio-4201, allowed the City to appeal or otherwise challenge a final verdict. There was no final verdict in this case because a plea was never entered, as the plea hearing was infirm. Therefore, there was no challenge to the final verdict, no issue of double jeopardy, and no substantial constitutional question. Additionally, the City was challenging a purely legal issue: whether a trial court has the authority to amend the charge over the prosecutor's objection. The Eighth District's holding was in agreement with other appellate courts which held that it does not. *Akron v. Jaramillo*, 97 Ohio App.3d 51, 646 N.E. 2d 212 (9th Dist. 1994), *North Ridgeville v. Harris*, 9th Dist. Lorain No. 03CA008287, 2004-Ohio-957. The issues in this case derive from a very narrow and specific set of facts not destined to repeat itself in courts throughout the state of Ohio, thereby negating any need for this Court's jurisdictional review as one of great general or public interest.

STATEMENT OF THE CASE AND FACTS

The City of Cleveland adopts and incorporates the facts as stated by the Eighth District Court of Appeals in *Jones*.

ARGUMENT IN OPPOSITION TO APPELLANT'S PROPOSITION OF LAW

Defendant-Appellant's proposition of law is that a trial court's pronouncement of a verdict precludes any appeal by the State that could disturb the verdict. Of course, the City agrees that where there is a final verdict, the City cannot disturb or otherwise challenge that. This is not some new proposition of law that would make this case fall under this Court's jurisdictional purview. Instead, here, there was no final verdict and the Eighth District's granting of leave to file an appeal to the City as well as its decision to reverse and remand the proceedings to the trial court were proper.

In its decision, the Eighth District held that, "Jones 'plea,' which was entered only by his attorney and without any compliance with Traf.R. 10, was infirm...[t]he municipal court conducted neither a trial nor a proper plea hearing. In her effort to come to 'a balance of what happened,' the judge simply took it upon herself to provide Jones with an unrelated municipal code section as a way for the court to resolve its case." *Jones* at ¶ 29, 34. The City asserted and the Eighth District agreed that the trial court improperly amended the charges in this case and then found Defendant-Appellant guilty of such. There was no final verdict because the trial court improperly amended the charges in contravention of Crim.R. 7 and because after the trial court did so, it did not properly comply with Traf.R. 10.

The City challenged the purely legal issue of whether a trial court could amend a charge over the objection of the prosecutor. The Eighth District's holding that it could not was in alignment with other appellate courts. Crim.R. 7 flatly forbids changing the name or the identity of the crime charged, which is exactly what happened in this case. And because the trial court improperly amended the charge, the plea of no contest (which was never really entered by

Defendant-Appellant) was infirm, and therefore there was no "final verdict" for the City to appeal. Instead, the City was granted to leave to file on that purely legal issue.

Defendant-Appellant cites to *State ex rel. Sawyer*, 54 Ohio St.2d 380, 377 N.E.2d 494 (1978) as being directly on point with this case. It is not. In *Sawyer*, a plea of no contest was entered. Here, a plea of no contest was never entered. The court did not engage in the requirements of Traf.R.10 when taking Defendant-Appellant's plea and in fact, Defendant-Appellant himself never entered a no contest plea. That is the key distinction between *Sawyer* and the instant case: the defendant in *Sawyer* actually entered a no contest plea but Defendant-Appellant did not. As such, there was no final verdict and the Eighth District decision to reverse and remand the proceedings of the trial court were proper as the City did not challenge a final verdict.

Further, there are no double jeopardy issues here that would arise based upon the Eighth District's decision to reverse and remand the proceedings. This Honorable Court in *State v. Malinovsky*, 60 Ohio St.3d 20, 23, 573 N.E.2d 22 (1991) held that the United States Supreme Court in *U.S. v. Scott,* 437 U.S. 82, 98 S.C. 2187, 57 L.E.2d 65 (1978), ultimately decided that "retrial is permissible after the guarantee against double jeopardy has attached where the defendant has sought a termination of the proceedings on grounds other than the state's failure of proof." Here, Defendant-Appellant sought to terminate the proceedings without a factual regard to his guilt or innocence to the crime with which he was charged; namely, R.C. 4511.19(A)(1)(a), OVI. Here, prior to any factual determination as to guilt or innocence, the trial court *sua sponte* improperly amended the charge of OVI to C.C.O. 433.011, physical control.

Moreover, the *Scott* Court went on to hold that, "[it had] previously noted that 'the trial judge's characterization of his own action cannot control the classification of the action.'" *Scott*

at 96 quoting *U.S. v. Jorn*, 400 U.S. 470, 478, 91 S.Ct. 547, 27 L.Ed.2d 543 (1971). That is precisely what happened in this case. The trial court based its improper amendment upon facts extraneous to the crime with which Defendant-Appellant was charged and then proceeded to find Defendant-Appellant guilty of physical control without any regard to his factual guilt or innocence to the charge of OVI. Therefore, Defendant-Appellant does not incur the protections of the Double Jeopardy Clause as "an appeal is not barred simply because a ruling in favor of a defendant is based upon facts outside the face of the indictment." *Scott* at 96.

CONCLUSION

Based upon the foregoing, Plaintiff-Appellee City of Cleveland respectfully requests this Honorable Court decline jurisdiction over this matter as it does not present a substantial constitutional question, nor does it present an issue of great general or public interest.

Respectfully submitted,

/s Bridget E. Hopp
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CERTIFICATE OF SERVICE

A copy of the City's Memorandum in Opposition to Jurisdiction was served by ordinary US Mail upon Cullen Sweeney, Counsel for Defendant-Appellant, 310 Lakeside Ave., Suite 200, Cleveland, OH 44113 on this 1st day of April, 2015.

By: /s Bridget E. Hopp
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