

[Cite as *State v. Russell*, 2019-Ohio-3397.]

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
MONTGOMERY COUNTY**

STATE OF OHIO

Plaintiff-Appellee

V.

JIM M. RUSSELL

Defendant-Appellant

.....

Appellate Case No. 28167

Trial Court Case No. TRD 1803232

(Criminal Appeal from  
Municipal Court)

## OPINION

Rendered on the 23rd day of August, 2019.

CHRISTOPHER B. EPLEY, Atty. Reg. No. 0070981, 10 West Second Street, Suite 2400,  
Dayton, Ohio 45402

Attorney for Plaintiff-Appellee

JIM M. RUSSELL, 2037 Washington Creek Lane, Dayton, Ohio 45458

Defendant-Appellant, Pro Se

HALL, J.

{¶ 1} Jim M. Russell appeals pro se from the municipal court's judgment finding that he violated a municipal traffic ordinance. We affirm.

### **I. Facts and Procedural History**

{¶ 2} On April 12, 2018, Russell was driving in the City of Vandalia and was involved in a traffic accident. A Vandalia police officer responded and found minor damage to the vehicle, which did not meet the threshold for a formal traffic accident report. Russell admitted to the officer that he did not have an Ohio driver's license, and the officer charged Russell with a violation of Vandalia Ordinance 436.01, operating a motor vehicle without an operator's license, an unclassified misdemeanor.

{¶ 3} Russell was arraigned on April 23 before a Vandalia Municipal Court magistrate and pleaded not guilty. He filed a motion to dismiss the charge for lack of jurisdiction, which the magistrate overruled. A trial was held before the magistrate the following month. Before the trial started, Russell orally renewed his motion to dismiss for lack of jurisdiction, which the magistrate again overruled. The only witness was the police officer who charged Russell. Russell did not testify and did not cross-examine the officer. The magistrate found Russell guilty and fined him \$1,000 with \$950 suspended, plus court costs.

{¶ 4} Russell filed objections to the magistrate's decision. He then filed a motion to dismiss for lack of jurisdiction with the municipal court judge. On September 5, the court overruled both the objections and the motion to dismiss, adopted the magistrate's decision, and entered a final judgment. A couple of weeks later, Russell filed a motion to "arrest" the court's judgment and dismiss the complaint for lack of jurisdiction. The court

overruled the motion.

{¶ 5} Russell appeals.

## **II. Analysis**

{¶ 6} Russell assigns three errors to the September 5 judgment. In the first two, he contends that the municipal court lacked jurisdiction. In the third assignment of error, Russell contends that his arraignment was invalid.

### **A. The jurisdiction of the municipal court**

{¶ 7} The first and second assignments of error respectively allege:

The trial court erred in not dismissing the case below for want of jurisdiction *in personam* upon appellant's DEMAND (MOTION) TO DISMISS, because a legally sufficient complaint or affidavit had not been filed as required by Ohio Driver's License Law and the Ohio Rules of Criminal Procedure. The Uniform Traffic Citation (hereinafter UTC), which was filed, is insufficient to charge a violation of Ohio's Driver's License Law.

The trial court erred in prosecuting appellant without having subject-matter jurisdiction pursuant to Ohio law, as explained above, except no motion to dismiss was made for want of subject-matter jurisdiction, nor is it necessary, for when a court lacks subject-matter jurisdiction it can do no more than dismiss.

{¶ 8} Russell contends that the Ohio Uniform Traffic Ticket cannot be used for a violation of R.C. Chapter 4507, Ohio's driver's license law. He argues that the authority to promulgate the Ohio Uniform Traffic Rules, under R.C. 2935.17 and 2937.46, does not apply to violations of the driver's license law. Therefore Russell concludes that the

Uniform Traffic Ticket charging him with operating a motor vehicle without an operator's license was insufficient, because it did not include a jurat, that is, a sworn certification of the charging officer's signature.

{¶ 9} Generally, to commence a criminal action, a sworn affidavit charging an offense committed is needed, see R.C. 2935.09, the form and substance of which is provided in R.C. 2935.17. But the statute contains an exception for violations of traffic laws: "Provided, that the supreme court of Ohio, may, by rule, provide for the uniform type and language to be used in any affidavit or complaint to be filed in any court inferior to the court of common pleas for violations of the motor vehicle and traffic acts and related ordinances \* \* \*." See *also* R.C. 2937.46(A) ("The supreme court of Ohio, in the interest of uniformity of procedure in the various courts and for the purpose of promoting prompt and efficient disposition of cases arising under the traffic laws of this state and related ordinances, may make uniform rules for practice and procedure in courts inferior to the court of common pleas not inconsistent with the provisions of Chapter 2937. of the Revised Code \* \* \*."). Thus the Supreme Court of Ohio has the authority to promulgate different rules for charging violations of "the motor vehicle and traffic acts and related ordinances." The Court has promulgated the Ohio Traffic Rules and applied them to "traffic cases." Traf.R. 1(A). The Traffic Rules pertinently define a "traffic case" as "any proceeding \* \* \* that involves one or more violations of a law, ordinance, or regulation governing the operation and use of vehicles." Traf.R. 2(A).

{¶ 10} The statutes governing motor vehicles are found in Title 45 of the Revised Code. This title contains statutes governing driver's licenses in R.C. Chapter 4507 and the operation of a motor vehicle in R.C. Chapter 4511. Russell argues that the driver's

license law does not govern “the operation and use of vehicles.” We disagree. The ordinance that Russell was charged with violating, Vandalia Ordinance 436.01, prohibits the same basic conduct that the driver’s license law prohibits in R.C. 4507.02(A)(1), namely, operating a motor vehicle without a valid driver’s license. Obviously, to violate either the ordinance or the law, a person must operate and use a motor vehicle. See R.C. 4511.01(HHH) (pertinently defining “operate” as “to cause or have caused movement of a vehicle”). Therefore this case involves a violation of an ordinance “governing the operation and use of vehicles,” making it a traffic case to which the Traffic Rules apply.

{¶ 11} Because the Traffic Rules apply, the Uniform Traffic Ticket was sufficient to charge Russell. The rules contain no requirement that a Uniform Traffic Ticket be sworn to by the issuing officer. See Traf.R. 3(E) (stating the duties of the officer); 1975 Staff Note, Traf.R. 3(E) (“[T]he rule [division (E)] is notable because it, along with the ticket, does away with the need to have the ticket sworn to. The officer merely completes and signs the ticket. His unsworn signature is sufficient since it is made under the penalties for falsification.”); Lang, Gotherman & Babbitt, *Local Government Law – Municipal*, Section 28:40 (Updated Ed. Aug. 2018) (“The Ohio Uniform Traffic Ticket issued under penalties of perjury and falsification is a valid complaint, although it is not sworn to by the issuing officer.”). See also *City of Cleveland v. Austin*, 55 Ohio App.2d 215, 223, 380 N.E.2d 1357 (8th Dist. 1978) (“It [the ticket] does not require that the officer swear to the veracity of the complaint before an appropriate authority. However, all Ohio Uniform Traffic Tickets are subject to the following caveat: ‘The issuing-charging law enforcement officer states that under the penalties of perjury and falsification that he has read the above complaint and that it is true.’ Thus, all law enforcement officers continue to attest

to the accuracy of the ticket to protect the interests of the motorists.”); *State v. Russell*, 11th Dist. Lake No. 95-L-135, 1996 WL 200575, \*2 (Mar. 1, 1996) (quoting *Austin*’s analysis and finding it persuasive).

{¶ 12} A Uniform Traffic Ticket serves as a complaint and summons and invokes the jurisdiction of a municipal court. Traf.R. 3(A); *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, ¶ 12. Here, we conclude that the Vandalia Municipal Court had jurisdiction over Russell for committing a traffic offense within the city’s boundaries. The record shows that Russell was personally served with an Ohio Uniform Traffic Ticket for violating Vandalia Ordinance 436.01, operating a motor vehicle without an operator’s license. Consequently the Vandalia Municipal Court had both subject-matter jurisdiction and personal jurisdiction over Russell. *Compare State v. Matthews*, 2d Dist. Greene No. 2015-CA-73, 2016-Ohio-5055, ¶ 4 (holding that municipal court had subject-matter and personal jurisdiction over defendant for violating state traffic law prohibiting the operation of a motor vehicle without an operator’s license). Therefore the municipal court properly exercised jurisdiction.

{¶ 13} The first and second assignments of error are overruled.

### **B. The arraignment**

{¶ 14} The third assignment of error alleges:

Appellant was never read the complaint against him during his so-called arraignment thus no valid arraignment was conducted as required by Ohio law.

{¶ 15} As an initial matter, we note that Russell did not properly object to the magistrate’s alleged failure to read the complaint. His failure to raise the issue in the trial

court constitutes a waiver of the error claimed. *State v. Comen*, 50 Ohio St.3d 206, 211, 553 N.E.2d 640 (1990). Generally, an appellate court will not consider any error which a party complaining of the trial court's judgment could have called but did not call to the trial court's attention at a time when such error could have been avoided or corrected by the trial court. *State v. Barker*, 149 Ohio St.3d 1, 2016-Ohio-2708, 73 N.E.3d 365, ¶ 64, quoting *State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 15; *State v. Terrell*, 2017-Ohio-7097, 95 N.E.3d 870, ¶ 67 (2d Dist.). Nevertheless, we will briefly address the issue that Russell raises.

{¶ 16} According to the Ohio Traffic Rules, “[a]rraignment shall be conducted in open court and shall consist of reading the complaint to the defendant, or stating to him the substance of the charge, and calling on him to plead thereto.” Traf.R. 8(B). At Russell's arraignment, the magistrate told Russell that he had been charged with having no operator's license. The magistrate then explained the offense to him: “That is an Unclassified Misdemeanor, carries a maximum fine of a Thousand Dollars (\$1,000.00) or five hundred hours of community service, plus courts costs plus two points if convicted. You understand? Alright, indicating yes.” (Tr. 2).

{¶ 17} Contrary to Russell's assertion, the magistrate was not required to read the complaint. The magistrate complied with the law by explaining the substance of the charge, and Russell indicated that he understood. Also, the record contains the traffic ticket, which lists the offense as no driver's license in violation of Vandalia Ordinance 436.01 and which is signed by Russell. Moreover, any error that the magistrate might have committed is not grounds for reversal. Russell has not shown how the magistrate's actions affected his substantial rights, see Crim.R. 52(A), that is, how he was

prejudiced.

{¶ 18} The third assignment of error is overruled.

### **III. Conclusion**

{¶ 19} We have overruled all of the assignments of error presented. The municipal court's judgment is affirmed.

. . . . .

FROELICH, J. and TUCKER, J., concur.

Copies sent to:

Christopher B. Epley  
Jim M. Russell  
Hon. Robert E. Messham, Visiting Judge