

[Cite as *State v. Howard*, 2007-Ohio-6591.]

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

STATE OF OHIO	:	
	:	Appellate Case No. 21899
Plaintiff-Appellee	:	
	:	Trial Court Case No. 06-TRD-20902
v.	:	
	:	(Criminal Appeal from
JACQUELINE Y. HOWARD	:	Dayton Municipal Court)
	:	
Defendant-Appellant	:	

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OPINION

Rendered on the 7<sup>th</sup> day of December, 2007.

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PATRICK J. BONFIELD, Atty. Reg. #0015796, by DEIRDRE E. LOGAN, Atty. Reg. #0052745, and RAYMOND L. BILOTT, Atty. Reg. #0022220, City of Dayton Prosecutor’s Office, 335 West Third Street, Dayton, Ohio 45402

Attorney for Plaintiff-Appellee

CHARLES T. CROMLEY, Atty. Reg. #0068714, 117 South Main Street, Suite 500, Dayton, Ohio 45402

Attorney for Defendant-Appellant

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FAIN, J.

{¶ 1} Defendant-appellant Jacqueline Y. Howard appeals from her conviction and order to pay court costs for Operating a Vehicle with Invalid License Plates, following a no-contest plea. Howard contends that the trial court mis-advised her that her proffered defense – that she was not the owner of the vehicle and did not know that expiration date on the temporary license plate had been altered – was no defense

because the offense was a strict-liability offense. Howard also contends that the trial court failed to advise her of the effect of her plea, as required by Traf. R. 10. The State confesses error in both regards. We agree. Accordingly, the judgment of the trial court is Reversed, and this cause is Remanded for further proceedings.

I

{¶ 2} Howard was stopped driving a car with a temporary license plate. Although the plate had expired, it had been altered to show an expiration date that was still in the future. Howard was cited for violating R.C. 4503.214 (Expired Plates) and R.C. 4549.08(A) (Invalid License Plate). At the time set for trial, after a colloquy with the trial court, Howard pled no contest to the Invalid License Plate charge, and the other charge was dismissed. Howard was found guilty. The only sanction imposed is that Howard was ordered to pay court costs.

{¶ 3} From the conviction and sanction, Howard appeals.

II

{¶ 4} Howard's First Assignment of Error is as follows:

{¶ 5} "THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT ACCEPTED THE DEFENDANT'S 'NO CONTEST' AND FOUND HER GUILTY IN VIOLATION OF HER FEDERAL AND STATE CONSTITUTIONAL PROTECTIONS OF DUE PROCESS WHEN SUCH PLEA WAS NOT VOLUNTARILY AND KNOWING[LY] MADE."

{¶ 6} At the proceeding in which Howard's no-contest plea was tendered and

accepted, the following colloquy occurred:

{¶ 7} “THE COURT: Now the original offer was an offer to plea to the Fictitious Plates on a dismissal of the Expired Plates. She still want to go to trial?

{¶ 8} “MR. CROMLEY [representing Howard]: Yeah, given this wasn’t her vehicle, she’s prepared –

{¶ 9} “THE COURT: If she was operating the vehicle, I’m gonna find her guilty of both, because the citation runs to the operator of the motor vehicle and not the owner.

{¶ 10} “MR. BILOTT [representing the State]: And we would at this point, I guess we could ask her to be held in contempt of Court [Howard was late to court], but we won’t ask for that at this point and time.

{¶ 11} “THE COURT: Doesn’t matter. If you’re the owner, if you were behind the wheel, you’re the one that’s guilty of the ticket as a matter of law. And they’re minor misdemeanor offenses as far as I’m concerned, fineable offenses, so a one for one offer is as good as you’re gonna get. You want to take it?

{¶ 12} “THE DEFENDANT: Yes.

{¶ 13} “THE COURT: To the Fictitious Plate charge, how do you plea[d]?

{¶ 14} “THE DEFENDANT: No contest.

{¶ 15} “THE COURT: Let me approve dismissal of the Expired Plate charge, and I’ll take your no contest plea to the Fictitious Plate charge.

{¶ 16} “Reviewing the citation, including the supplemental report contained on the back, I do make a finding of guilty on the charge. I would order the Defendant to pay court cost only on the finding of guilty.”

{¶ 17} Howard contends that she was misled by the trial court in two respects. First, she contends that a violation of R.C. 4549.08 is not a minor misdemeanor, but a fourth-degree misdemeanor with a potential sentence that could include imprisonment for up to thirty days. More importantly, since she was not, in fact, sentenced to imprisonment, she contends that R.C. 4549.08 is not a strict-liability offense, so that the State would have to prove that she knowingly operated a motor vehicle with an altered license plate. Thus, the defense her counsel indicated, or at least implied, that she would be presenting to the trial court – that it was not her vehicle, so that she did not know, or have reason to know, that the expiration date showing on the temporary license plate had been altered – was, in fact, a viable defense.

{¶ 18} The colloquy quoted above would have misled a reasonable person in Howard’s position into believing that she would have had no defense to either charge based upon her lack of knowledge that the temporary license plate on the vehicle she was driving had been altered. As a result, her no-contest plea was not knowingly and intelligently tendered, and the rights that would otherwise have been waived by her no-contest plea were not knowingly and intelligently waived.

{¶ 19} We held in *State v. Combs*, Greene App. No. 2006 CA 38, 2006-Ohio-7088, that a violation of R.C. 4549.08 is not a strict liability offense, because it subjects the offender to possible incarceration, and the driver of another’s vehicle cannot usually be expected to know that the owner of the vehicle has altered the license plates on the vehicle.

{¶ 20} The State agrees, and confesses error.

{¶ 21} Howard’s First Assignment of Error is sustained.

III

{¶ 22} Howard’s Second Assignment of Error is as follows:

{¶ 23} “THE TRIAL COURT COMMITTED PREJUDICIAL ERROR WHEN IT ACCEPTED THE DEFENDANT’S ‘NO CONTEST’ AND FOUND HER GUILTY IN VIOLATION OF THE REQUIREMENTS OF TRAFFIC RULE 10.”

{¶ 24} Traf. R. 10(D) provides that: “In misdemeanor cases involving petty offenses, except those processed in a traffic violations bureau, the court may refuse to accept a plea of guilty or no contest and shall not accept such pleas without first informing the defendant of the effect of the plea of guilty, no contest, and not guilty.”

{¶ 25} At no point during the brief colloquy did the trial court inform Howard of the effect of her no-contest plea. The State confesses error in this regard. We agree. Howard’s Second Assignment of Error is sustained.

IV

{¶ 26} Both of Howard’s assignments of error having been sustained, the judgment of the trial court is Reversed, and this cause is Remanded for further proceedings consistent with this opinion.

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WOLFF, P.J., and DONOVAN, J., concur.

Copies mailed to:

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