[Cite as *Riverside v. Huber*, 2009-Ohio-2542.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

CITY OF RIVERSIDE	:	
Plaintiff-Appellee	:	C.A. CASE NO. 22776
v.	:	T.C. NO. 2008 TRD 01677
JORJANA HUBER	:	(Criminal appeal from County Court Area Two)
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 29th day of May, 2009.

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RAYMOND J. DUNDES, Atty. Reg. No. 0041515, City of Riverside, 7 South Mechanic Street, Lebanon, Ohio 45036
Attorney for Plaintiff-Appellee

JORJANA HUBER, 259 Lorenz Avenue, Dayton, Ohio 45417
Defendant-Appellant

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DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of Jorjana Huber, filed May 30, 2008. On March 31, 2008, Huber received a citation from Officer Krueger of the Riverside Police Department for three violations of Riverside Codified Ordinance 337.27, due to Huber's failure to secure her children with seatbelts. Huber had been parked with her children in a fire lane, and upon Krueger's approach, she pulled her car forward. Huber was

summoned to appear in Montgomery County Area-2 Court on April 10, 2008. On April 8, 2008, Huber requested a continuance, asserting that she was scheduled to attend and help supervise a school field trip with her children on April 10th. The trial court did not rule on the motion for continuance, but it sent Huber a "No Show Notice" on April 11, 2008, which indicated: "You failed to appear on 4/24/08 for the original arraignment * * * ." The Notice further ordered Huber to "appear, without fail, to answer the above charge on 04/24/08 at 01:00 PM." The Notice was signed by the Deputy Clerk.

{¶ 2} On April 17, 2008, Huber filed a "Constructive Notice with motion to strike the 'No Show Notice,'" and a discovery demand. In her "Constructive Notice," Huber indicated that the date upon which she allegedly failed to appear in court was yet to arrive. Huber also stated that she asked the Deputy Clerk for a copy of the ordinance pursuant to which she was charged, and that the Deputy Clerk "stated that it would be 10 cents a page." The deputy clerk directed her to the public library to view a copy of the ordinance, ostensibly without charge. According to Huber, she "went to the public library and was informed that they did NOT have a copy of Riverside's ordinances." Huber then went to Riverside's government building, at the suggestion of the public librarian, where she obtained a copy of the ordinance.

{¶ 3} On May 19, 2008, Huber filed a Motion to Suppress and Motion to Dismiss, arguing that her "citation contains ambiguous information that is NOT specific towards a single ordinance of Riverside. The wording on the citation appears to combine two separate ordinances on the traffic ticket to form an offense."

{¶ 4} Huber was found guilty of the three offenses under 337.27(b)(2) on May 20, 2008, following a bench trial, and she was fined $150.00 for each offense plus costs for a total

amount due of $549.00.

{¶ 5} On May 27, 2008, Huber filed a Motion for Stay, attached to which is an affidavit of indigency. Huber's affidavit provides, "I have six people in my family; my husband, 4 children (all under 18) and me. The total family income, so far, in 2008 is $0.00. My husband has been unable to obtain work in his profession as an independent business analyst. His last work assignment ended December 6, 2007. * * * Currently, my family and I do not make any income and it is impossible to meet our monthly expenses, except for the help we get from our friends and church." The trial court scheduled an indigency hearing, ordering Huber to present at the hearing her tax returns for the past three years, any pay stubs for the past year, and any applications for assistance completed by Huber in the past year.

{¶ 6} On June 3, 2008, Huber filed a "Motion to view video recording," seeking the court's permission to view the videotaped proceedings of May 20, 2008. In the Motion, Huber states, "this court charges $20 to have a video recording of a trial transferred to the Appeal's Court. Again, the Defendant is without finances to have the video recording of the trial as part of the record sent to the Appeal's Court."

{¶ 7} On June 6, 2008, Huber filed a "Motion for issuance of Subpoenas." In her Motion, Huber noted, "the Second District Appeal Court has found me and my family indigent for appellate cases CA 22576 and CA 22309 both in 2007. The Common Please Court of Montgomery County has found me and my family to be Indigent in another case titled Justin Huber - Registration of Birth Application in 2007. The Dayton Municipal Court found me and my family Indigent [in] yet another case numbered 2006 CVF 00898." Huber sought to subpoena copies of her 2005 and 2006 personal tax returns, and a copy of her 2007 personal tax

extension from Duvall & Associates; copies of her or her husband's applications for assistance from the Ohio Department of Job and Family Services; copies of her or her husband's applications for assistance from the Community Action Partnership; copies of her bank statements from December, 2007, to the present from Key Bank; and copies of "J & J Consulting Enterprise's" account statements and "J & J Contracting" account statements from Wright Patt Credit Union. The trial court issued the subpoenas.

{¶ 8} On June 17, 2008, following a hearing, Huber was determined to be indigent. On June 19, 2008, Huber filed a "Statement of the May 20, 2008 Proceedings," in which she summarized the trial court's oral rulings on Huber's motions and its findings of guilt at trial. According to the "Statement," the trial court determined "the children are in violation of ordinance 337.27(b)(3) and the defendant guilty in violation of 337.27(b)(2). * * * you just don't get the point that the children must have seat belts on. I find you guilty of violating 337.27(b)(2) and fine you $150.00 for each violation plus court costs." On June 21, the trial court issued an Entry & Order providing that Huber may file her appeal without cost.

{¶ 9} Our initial review of the record before us revealed that Huber pled not guilty, and that the above fines were imposed for Huber's offenses, but the May 8, 2009, docket entry did not indicate findings of guilt. Failure to indicate a finding of guilt results in the lack of a final appealable order pursuant to R.C. 2505.02, and we accordingly remanded this matter to the trial court with instructions to properly journalize its findings within 10 days of our order. The trial court having complied with our order upon remand, we now proceed to the merits of this appeal on the briefs submitted.

{¶ 10} Huber asserts seven assignments of error. Her first assignment of error is as

follows:

{¶ 11} "THE TRIAL COURT COMMITTED AN ERROR OF JUDGMENT BY RULING THAT PASSENGERS NOT IN A FRONT SEATING POSITION MUST WEAR ELEMENTS OF AN OCCUPANT RESTRAINING DEVICE, CONTRARY TO ORDINANCE 337.27(b)."

{¶ 12} According to Huber, the trial court erred in finding her guilty of violating Riverside Ordinance 337.27(b)(2), when the evidence showed that her children were in the back and middle seats of her vehicle, and section 337.27(b)(2) prohibits a person from operating an automobile unless each *front* seat passenger is wearing a seatbelt. In response, the prosecutor admits that Officer Krueger observed children, who were less than fifteen years of age, in the back and middle seats of Huber's van, but he asserts that the "State of Ohio is a notice state," and that Huber's "charges stemmed from her failure to secure the children in the vehicle." We agree with Huber that Riverside Ordinance 337.27(b)(2) only applies when there are passengers in the front seat of a vehicle under operation.

{¶ 13} Riverside Ordinance 337.27(b) provides: "No person shall do either of the following:

{¶ 14} * * (2) Operate an automobile on any street or highway unless each passenger in the automobile *who is subject to the requirement set forth in subsection (b)(3) hereof* is wearing all of the available elements of a properly adjusted occupant restraining device;

{¶ 15} (3) Occupy, as a passenger, *a seating position on the front seat* of an automobile being operated on any street or highway unless that person is wearing all of the available elements of a properly adjusted occupant restraining device." (Emphasis added).

{¶ 16} In contrast, Riverside Ordinance 337.26(c), pursuant to which Huber was neither charged nor convicted, provides: "When any child who is at least four years of age but not older than fifteen years of age is being transported in a motor vehicle * * * that is required by the United State Department of Transportation to be equipped with seat belts at the time of manufacture or assembly, the operator of the motor vehicle shall have the child properly restrained either in accordance with the manufacturer's instructions in a child restraint system that meets federal motor vehicle safety standards or in an occupant restraining device as defined in Ohio R.C. 4513.263."

{¶ 17} It is uncontroverted that Huber's children were not in the front seat of her vehicle but were instead in the middle and back seats. Since Riverside Ordinance 337.27(b)(2) applies only when there are front seat passengers in the vehicle, it has no application to Huber, and the trial court erred in convicting her of violating section 337.27(b)(2). Accordingly, Huber's first assignment of error is sustained. The judgment of the trial court is reversed, and the trial court's findings of guilty are vacated.

{¶ 18} We will next address Huber's sixth assignment of error, since her remaining assignments of error have been rendered moot by our resolution of her first assignment of error. Huber's sixth assignment of error is as follows:

{¶ 19} "THE TRIAL COURT COMMITTED AN ERROR OF JUDGMENT BY CHARGING WITNESS FEES AND NOT ALLOWING ME TO SUBSTITUTE TAX RETURNS FOR TAX TRANSCRIPTS FROM THE IRS, WHICH CAUSED ADDITIONAL FEES FROM MY CPA WHEN I WAS ALREADY 'FOUND' TO BE INDIGENT."

{¶ 20} Huber asserts that her accountant charged her $153.00 to provide copies of her

2005 and 2006 tax returns and her 2007 extension. According to Huber, "[t]he charge of $153.00 defeated the purpose of being declared indigent." Huber asserts, "The trial court's actions (by causing unwarranted costs when I've been found indigent by this court and other courts) was unjust to a point of unreasonableness. This court should reverse the trial court's verdict with an order to pay the costs they caused."

{¶ 21} We agree with Huber that the trial court's approach to determining her indigency was unreasonable with respect to the volume of documents she was required to provide. The trial court ordered her to provide three years of tax returns, any pay stubs she received and any applications for assistance she completed in the last year. A review of Huber's affidavit alone provides sufficient facts to establish her indigency absent some suggestion of fraud, and Huber would have been subject to questioning under oath regarding her income and applications for assistance. While it would have been reasonable for the trial court to request, for example, Huber's most recent tax information from the preceding year, requiring her to provide returns for the last three years, along with any pay stubs and applications for assistance from the past year, was unduly burdensome under these circumstances. Huber's claim for reimbursement for the fees charged by her accountant, however, depends on facts and evidence outside this record, and the costs she incurred obtaining these records from her accountant cannot be assessed against the court as she requests. Accordingly, Huber's sixth assignment of error is overruled.

{¶ 22} In conclusion, based upon our resolution of the first assigned error, the judgment of conviction on three offenses is reversed and vacated.

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BROGAN, J. and WOLFF, J., concur.

(Hon. William H. Wolff, Jr., retired from the Second District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

Raymond J. Dundes
Jorjana Huber
Hon. James D. Piergies