[Cite as *State v. Shutway*, 2015-Ohio-2433.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2014-CA-10
	:	
v.	:	T.C. NO. 2013-CRB-991
	:	
JOHN A. SHUTWAY	:	(Criminal appeal from
	:	Champaign County Municipal Court)
Defendant-Appellant	:	
	:	

. . . . . .

O P I N I O N

Rendered on the ___19th___ day of ____June____, 2015.

. . . . . .

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Attorney for Plaintiff-Appellee

JOHN SHUTWAY, 573 East Church Street, Urbana, Ohio 43078
Defendant-Appellant, *pro se*

. . . . . .

DONOVAN, J.

{¶ 1} Defendant-appellant John A. Shutway, pro se, appeals his conviction and sentence for violating an order of the Champaign County Health District (hereinafter "the Health District") to vacate his residence after it had been condemned due to his failure to have the potable water service reconnected, in violation of R.C. 3707.48, a minor

misdemeanor. Shutway filed a timely notice of appeal with this Court on February 27, 2014.

{¶ 2} The incident which forms the basis for the instant appeal began on July 16, 2013, when the Billing Department for the City of Urbana instructed the Water Department to shut off the water service to Shutway's residence located at 573 East Church Street. Shutway failed to remit payment for his outstanding water bill, and in early August, the Health District condemned his residence pursuant to Housing Maintenance Regulation, Section 1008.3, which states as follows:

> A dwelling unit shall be considered to be condemnable by the Champaign County Board of Health whenever a utility which is required under this regulation is discontinued for non-emergency or non-repair purposes.

{¶ 3} The notice of condemnation provided Shutway with forty-eight hours to vacate the residence, pay his outstanding bill to have the water service reconnected, or provide the Health District with notice that he had secured another potable water supply. Shutway, however, ignored the notice and continued to live in the house with his wife and child until mid-October. On October 13, 2013, Shutway was arrested by deputies from the Champaign County Sheriff's Office pursuant to a complaint issued under R.C. 3707.48 for violating the order from the Health District requiring him and his family to vacate the condemned residence or pay the outstanding balance to have his water service reconnected.

{¶ 4} The case was scheduled for a bench trial on November 13, 2013. Shutway represented himself at the trial. Ultimately the trial court found Shutway guilty of the

charged offense but delayed imposition of sentence because he had other charges pending in a separate case. At the sentencing hearing on January 27, 2014, the trial court ordered Shutway to pay a fine of $100.00.

{¶ 5} It is from this judgment that Shutway now appeals.

{¶ 6} Shutway's first assignment of error is as follows:

AS A MATTER OF LAW, THE CHAMPAIGN COUNTY MUNICIPAL COURT VIOLATED THE DEFENDANT'S DUE PROCESS RIGHTS WHEN IT FAILED TO PRESERVE THE RECORD OF COURT PROCEEDINGS FOR APPEAL.

{¶ 7} In his first assignment, Shutway contends that the trial court erred when the audio equipment employed by the court malfunctioned, thereby resulting in an incomplete record of the trial proceedings. Specifically, Shutway asserts that the transcript does not contain the majority of the testimony of Champaign County Health Inspector Russ Wellman because the audio equipment did not work properly when he was called to testify. The State concedes that Wellman's testimony was not recorded by the audio equipment utilized during the trial but argues that Shutway "waived his ability for the trial court to reconstruct the record by failing to follow the appropriate procedures outlined under App. R. 9 before filing" his merit brief in the instant appeal.

{¶ 8} "We are not unaware that the nonproduction of the appellate record, which is not caused by the defendant's misconduct, may require reversal of the underlying conviction." *State v. Lewis*, 2d Dist. Montgomery No. 23850, 2011-Ohio-1411, ¶ 26. However, a defendant may only be entitled to a new trial "if, after all reasonable solutions are exhausted, an appellate record could not be compiled." *State v. Jones*, 71 Ohio St.3d 293, 298, 643 N.E.2d 547 (1994).

{¶ 9} Here, the burden was on Shutway to provide a complete record, and "[i]t is well settled that when transcripts contain inaudible portions or omissions, a defendant must attempt to reconstruct the trial record on appeal, through App. R. 9(E) [or] otherwise, and demonstrate prejudice resulting from the incompleteness." *State v. Lewis*, 2d Dist. Montgomery No. 23850, 2011-Ohio-1411, ¶ 27, citing *State v. Arment*, 2d Dist. Montgomery No. 19459, 2003-Ohio-4089, ¶39 (addressing a transcript with inaudible portions when the trial was conducted in a courtroom with recording equipment rather than a court reporter).

{¶ 10} App.R. 9 provides a process by which a statement of the evidence may be created to cure the defect of the lack of an entire transcript, let alone individual defects. This is one of the "reasonable solutions" referred to in *Jones*. *Id*. at 297-298. Specifically, App. R. 9(E) provides for procedures to be followed to correct or modify the record if anything material is omitted from the record by error or accident.

{¶ 11} In the instant case, both parties acknowledge that after he received the incomplete transcript, Shutway filed an "Agreed Statement" on July 1, 2014 with the trial court, ostensibly to recreate Wellman's testimony. However, App.R. 9(D) contemplates an agreed statement only when signed by both parties. The State did not sign Shutway's "Agreed Statement," and Shutway did not properly avail himself of App.R. 9(E) to correct or modify the record. Thereafter, Shutway filed his appellate brief with this Court, relying upon his version of the record, which was not agreed to by the State. Because the State did not enter into the "Agreed Statement" of facts as asserted by Shutway, we cannot consider them. Shutway has thus waived any right he possessed to supplement the record with Wellman's missing testimony by relying upon facts not properly before us.

By not properly exhausting all reasonable solutions to reconstruct the record, Shutway's assigned error fails.

{¶ 12} Shutway's first assignment of error is overruled.

{¶ 13} Shutway's second assignment of error is as follows:

> AS A MATTER OF LAW, THE CHAMPAIGN COUNTY MUNICIPAL COURT VIOLATED THE APPELLANT'S DUE PROCESS RIGHTS WHEN IT ACCEPTED THE COMPLAINT, INITIATED A PROSECUTION, THEN SUMMONS, THEN WARRANT WITHOUT PROVIDING FOR THE REQUIRED REVIEW OF THE COMPLAINT BY A "REVIEWING OFFICIAL" AS R.C. 2935.09 SETS FORTH FOR PRIVATE CITIZEN COMPLAINTS.

{¶ 14} In his second assignment, Shutway argues that the prosecution against him was improperly commenced because Health Inspector Wellman "failed to follow the due process required by R.C. 2935.09 and [as a private citizen] did not present the complaint to a prosecutor or judge as a 'reviewing official' before commencing prosecution." Shutway asserts that because the proper procedure was not followed regarding private citizen complaints under R.C. 2935.09, his entire prosecution was flawed from its inception and therefore, invalid.

{¶ 15} Initially, we note that in order to constitute a valid complaint, Crim. R. 3 contains the following requirements, to wit: 1) a written statement of the essential facts constituting the offense charged; 2) the numerical designation of the applicable statute or ordinance; and 3) it must be made upon oath before any person authorized by law to administer oaths. *Id*. The complaint filed by Wellman states in pertinent part:

> R.C. 3707.48 VIOLATION OF HEALTH DISTRICT ORDERS 3707.48

Minor Misdemeanor

Complainant being duly sworn states that: John A. Shutway, at 573 E. Church Street, City of Urbana, Champaign County, Ohio, on or about August 24th 2013, did violate an order of the Champaign Health District by willfully and illegally omitting to obey said order issued by the Champaign County Health District 1008.2.3, i.e. failed within 48 hours to either vacate or correct said violation i.e. shut off water.

In violation of Ohio Revised Code Section 3707.48, a minor misdemeanor.

{¶ 16} Wellman signed his name as the complainant. Below his signature, the deputy clerk signed her name after the language "[s]worn to and subscribed before me by Russ Wellman on 8-29, 2013."

{¶ 17} Upon review, we conclude that the complaint in this case satisfies the three requirements of Crim. R. 3: 1) it set forth a written statement of the facts constituting the essential elements of the offense charged; 2) it stated the numerical designation of the Revised Code section, i.e. R.C. 3707.48, which Shutway allegedly violated; and 3) it was made under oath before a person authorized by law to administer oaths since the complaint here was sworn to before a deputy clerk of court for the Champaign County Municipal Court. *See State v. Palider*, 9th Dist. Summit No. 12557, 1987 WL 6964 (Feb. 18, 1987) (a complaint before a deputy clerk of court authorized to administer oaths is valid). Accordingly, the complaint charging Shutway with violating an order of the Health District clearly informed him of the nature of the offense with which he was charged. Therefore, the complaint is valid under Crim. R. 3. *See State v. Jones*, 11th Dist.

Portage Nos. 2010-P-0051, 2010-P-0055, 2011-Ohio-5109.

{¶ 18} R.C. 2935.09 states in pertinent part:

> (A) As used in this section, "reviewing official" means a judge of a court of record, the prosecuting attorney or attorney charged by law with the prosecution of offenses in a court or before a magistrate, or a magistrate.
>
> (B) In all cases not provided by sections 2935.02 to 2935.08 of the Revised Code, in order to cause the arrest or prosecution of a person charged with committing an offense in this state, a peace officer or private citizen having knowledge of the facts shall comply with this section.
>
> (C) A peace officer who seeks to cause an arrest or prosecution under this section may file with a reviewing official or the clerk of court of record an affidavit charging the offense committed.
>
> (D) A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. ***

{¶ 19} In the instant case, the complaint was signed and filed by Wellman, who the State concedes, is not a law enforcement or peace "officer" under R.C. 2935.09. Rather, Wellman filed the complaint as a "private citizen." A private citizen, to "cause [a] prosecution" under R.C. 2935.09(D), must file an affidavit with a "reviewing official" for the purpose of review in order to determine if a complaint should be filed by the prosecutor.

The record in the instant case establishes that, contrary to the required statutory procedure, Wellman directly filed the complaint with the deputy clerk, who accepted and processed it without forwarding the document for review by a "reviewing official," i.e. a prosecutor or judge. Clearly, the proper procedure under R.C. 2935.09 was not followed in this case. Thus, even though the complaint in this case meets the requirements of Crim. R. 3 for a valid charging instrument, it does not meet the requirements of R.C. 2935.09 since the complaint was filed by Wellman as a private citizen. Our analysis, however, does not end here.

{¶ 20} In *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, 951 N.E.2d 1025, a wife filed a complaint of domestic violence against her husband without the complaint first being reviewed by a reviewing official pursuant to R.C. 2935.09. The *Mbodji* court concluded that "a complaint that meets the requirements of Crim. R. 3 invokes the subject matter jurisdiction of a trial court." *Id*. at ¶ 12. The court further held that when a defendant challenged the fact that the complaint was not reviewed by a reviewing official before its filing, he was challenging a procedural defect in the prosecution of the case. *Id*. at ¶ 19. Crim. R. 12(C) requires that objections based on the defects in the institution of the prosecution be raised prior to trial. *Id*. "When a criminal complaint and affidavit are signed by a private citizen but not reviewed by a reviewing official before filing pursuant to R.C. 2935.09, the defect is not jurisdictional but may be the subject of a Crim. R. 12(C) motion before trial." *Id*. at ¶ 2 of the syllabus.

{¶ 21} On November 5, 2013, Shutway filed a pre-trial motion to dismiss pursuant to Crim. R. 12(C), wherein he advanced the following arguments: 1) Wellman did not have standing to file the complaint because the Health District did not have a valid contract with

the City of Urbana; 2) Wellman had no authority to enforce Housing Maintenance Regulation, Section 1008.3 against Shutway because he did not have "firsthand knowledge of said violation as listed in the complaint;" and 3) HMR 1008.3 is unconstitutional because it forces the "occupant or owner of a dwelling unit to purchase utilities or services which the Health District, nor any governing body, has the authority to require the owner or occupant to purchase a service."

{¶ 22} In the motion to dismiss, Shutway did not challenge the complaint on the basis that Wellman, as a private citizen, did not comply with the proper procedure under R.C. 2935.09(D) when he filed the complaint. Shutway raises this argument for the first time on appeal. Therefore, because Shutway failed to object to the complaint on this basis prior to trial pursuant to Crim. R. 12(C), he has waived any deficiencies regarding the institution of the prosecution in this regard. *See Jones*, 2011-Ohio-5109, ¶ 51 ("[c]onstruing the instant complaint as filed by Mr. Willard as a private citizen, we conclude a valid complaint meeting the requirements of Crim. R. 3 has been filed ***. [The defendant] waived any deficiencies regarding the institution of the prosecution by failing to raise the issue before trial.")

{¶ 23} Shutway's second assignment of error is overruled.

{¶ 24} Shutway's third assignment of error is as follows:

> AS A MATTER OF LAW, THE CHAMPAIGN COUNTY HEALTH DISTRICT FAILED TO PROVIDE THE DUE PROCESS OF LAW WHEN IT FAILED TO SERVE "NOTICE" UPON THE DEFENDANTS PURSUANT TO HEALTH DISTRICT REGULATION OF A CLAIMED VIOLATION AND PLACED A "CONDEMNED" PLACARD ON THE APPELLANTS' HOUSE.

{¶ 25} In his third assignment, Shutway argues that the record establishes that the Health District did not provide him proper service of notice that he had violated Champaign County Housing Maintenance Regulation, Section 1008.3. Specifically, Shutway contends that the State failed to adduce any evidence that service of notice was provided pursuant to Housing Maintenance Regulation 1012.3, which states in pertinent part:

> 1012.3 Service of Notice
>
> Service of notice to vacate shall be as follows:
>
> (1). By delivery to the owner personally, or by leaving the notice at the usual place of abode of the owner with a person of suitable age and discretion; or
>
> (2). By depositing the notice in the US Post Office addressed to the owner at his last known address with postage prepaid thereon; or
>
> (3). By posting and keeping posted for twenty-four hours a copy of the notice in placard form in a conspicuous place on the premises to be vacated.

{¶ 26} Upon review, we conclude that the State adduced sufficient testimony at trial which established that the Health District complied with Housing Maintenance Regulation 1012.3, which is evidenced by the following exchange between the prosecutor and Wellman:

> The State: Mr. Wellman, do you have the, uh, housing maintenance regulations right here in front of you?
>
> Wellman: Yes. Yes.
>
> Q: Okay. So, to reiterate. Ummm…. Under the 1012.3 service of notice

on page 15, you just testified that you were with Deputy McNeely when he served Mr. Shutway here at the Municipal Building on August 21, [2013], correct?

***

A: Yes.

Q: When he served Mr. Shutway here at the Municipal Building?

A: Yes.

Q: Okay. And you personally observed Deputy McNeely hand him the, service of, of the notice that was dated August 6th?

A: Yes.

Q: Okay. You left the notice at [Shutway's] house on August 6th?

A: Yes.

Q: And you placarded the house on August 8th?

A: Present.

Q: And you attempted to hand-serve Mr. Shutway at the Health Board meeting on August 14th?

A: Yes.

Q: When he refused. So I'm not asking for a legal conclusion but just a layman's understanding based on your requirement to abide by the regulation – and especially 1012.3 – *you attempted every method of service listed there except for using the postal service*?

A: *Yes*.

{¶ 27} We also note that Deputy McNeely testified that he hand delivered notice of

the violation of Regulation 1008.3 to Shutway at the Champaign County Municipal Building on August 21, 2013. Deputy McNeely further testified that Shutway was sitting with his wife and son when he received personal service of the notice. Conversely, Shutway failed to present any evidence at trial to refute the testimony of Wellman and Deputy McNeely regarding his receipt of notice of the violation. Thus, the record clearly establishes that Shutway was properly served notice of the violation pursuant to Housing Maintenance Regulation 1012.3.

{¶ 28} Shutway's third assignment of error is overruled.

{¶ 29} Shutway's fourth assignment of error is as follows:

> AS A MATTER OF LAW, THE CHAMPAIGN COUNTY HEALTH BOARD'S HOUSING MAINTENANCE REGULATION 1008 IS UNREASONABLE, UNLAWFUL AND UNCONSTITUIONAL AS IT DESIGNATES A HOUSE CONDEMNABLE WITHOUT REQUIREMENT FOR PRIOR INSPECTION AND VALIDATION OF THE CLAIMED VIOLATION.

{¶ 30} In his fourth assignment, Shutway argues that Housing Maintenance Regulation 1008 is an unconstitutional "Bill of Attainder, Bill of Pains and Penalties" because it allows the health inspector to condemn an individual's private residence without first finding that the home is "unfit for human habitation."

{¶ 31} "It is well-settled that courts will presume the constitutionality of a municipal ordinance and that the party challenging a legislative act of a municipality bears the burden of demonstrating its unconstitutionality." *City of Kettering v. Lamar Outdoor Advertising, Inc.*, 38 Ohio App.3d 16, 17, 525 N.E.2d 836 (2d Dist. 1987). Furthermore, a municipal ordinance passed under the authority of Sections 3 and 7 of Article XVIII of

the Ohio Constitution, providing for the legitimate exercise of local police power, is valid if it bears a real and substantial relationship to the health, safety, morals, or general welfare of the public and is neither unreasonable nor arbitrary. *Hudson v. Albrecht, Inc.*, 9 Ohio St.3d 69, 71, 458 N.E.2d 852 (1984). "Whether such legislation bears a real and substantial relation to the public health, safety, morals or general welfare and whether it is reasonable or arbitrary are questions committed in the first instance to the judgment and determination of the legislative body, and the decisions of the legislative body on those questions will not be disturbed unless they appear to be clearly erroneous." *Kettering*, 38 Ohio App.3d at 17, 525 N.E.2d 836, citing *Curtiss v. Cleveland*, 170 Ohio St. 127, 163 N.E.2d 682 (1959).

{¶ 32} R.C. 3709.21 provides in pertinent part:

> 3709.21 Orders and regulations of board of general health district
>
> The board of health of a general health district may make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances. *** All orders and regulations not for the government of the board, but intended for the general public, shall be adopted, recorded, and certified as are ordinances of municipal corporations and the record thereof shall be given in all courts the same effect as is given such ordinances ***.

{¶ 33} As defined by the U.S. Supreme Court, a bill of attainder is "a law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial." *State v. Williams*, 88 Ohio St.3d

513, 528, 728 N.E.2d 342 (2000), citing U*.S. v. Brown*, 381 U.S. 437, 445, 85 S.Ct. 1707, 14 L.Ed.2d 484 (1965). A bill of pains and penalties is similar except that the "punishment is less severe." Black's Law Dictionary, 88 (5th Ed.1983). Such bills are prohibited by the U.S. Constitution. U.S. Constitution, Article I, Section 10, cl. 1.

{¶ 34} We conclude that this argument is without merit since Shutway was afforded the protection of a trial prior to the imposition of a punishment. *See Village of St. Paris v. Galluzzo*, 2d Dist. Champaign No. 2014-CA-4, 2014-Ohio-3260, ¶ 20.

{¶ 35} Additionally, it was unnecessary for Wellman to enter Shutway's home for inspection because he was able to identify from extrinsic conditions that Housing Maintenance Regulation 1008.3 had been violated because the potable water service had been disconnected based on appellant's failure to pay his outstanding water bill. HMR 1008.3 specifies that condemnation can occur when any utility is disconnected "for non-emergency or non-repair purposes." In order to avoid criminal liability, Shutway could have vacated the condemned premises, paid the outstanding bill to have the water service reconnected, or provided the Health District with notice that he had secured another potable water supply. Shutway, however, ignored the notice and continued to live in the house with his wife and child. By violating the condemnation order, Shutway became subject to imposition of a criminal penalty under R.C. 3707.48.

{¶ 36} Shutway's fourth assignment of error is overruled.

{¶ 37} Shutway's fifth assignment of error is as follows:

AS A MATTER OF LAW, THE CHAMPAIGN COUNTY HEALTH BOARD'S HOUSING MAINTENANCE REGULATION 1008 IS UNCONSTITUTIONAL AS IT CONVERTS A CIVIL MATTER INTO A CRIMINAL MATTER WITH POTENTIAL

FOR INCARCERATION.

{¶ 38} In his fifth assignment, Shutway argues that Housing Maintenance Regulation 1008 is unconstitutional because the City of Urbana utilizes the regulation as a "billing service and when the bill is not paid[,] the regulation converts a Civil matter into a Criminal matter."

{¶ 39} In the instant case, Shutway's residence was condemned under Housing Maintenance Regulation 1008.3 after his water service was disconnected for failure to pay his water bill. At that point, Shutway had three civil remedies, to wit: (1) vacate the residence; (2) pay his outstanding bill to have the water service reconnected; (3) or provide the Health District with notice that he had secured another potable water supply. Shutway availed himself of none of these options and continued to live in the house with his wife and children until mid-October with the water service disconnected. On October 13, 2013, Shutway was arrested pursuant to arrest warrant and complaint under R.C. 3707.48 for violating the order from the Health District.

{¶ 40} Simply put, Shutway's failure to comply with the terms of the condemnation order made him subject to a complaint and summons or arrest. Shutway was not charged with a minor misdemeanor violation of HMR 1008.3. Shutway was charged with a minor misdemeanor for violating R.C. 3707.48 after noncompliance with the order of the Champaign County Health District. Shutway's decision to ignore the civil remedies involved with a violation of HMR 1008.3 constituted distinct conduct resulting in his conviction under R.C. 3707.48. "[O]nly the clearest proof will suffice to override the legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Hudson v. U.S.*, 522 U.S. 93, 99, 118 S.Ct. 488, 139 L.Ed.3d 450 (1997). Here,

Shutway has failed to establish any facts which would serve to transform HMR 1008.3 from a civil regulation into a criminal penalty, absent noncompliance with the condemnation order, which is separate conduct.

{¶ 41} Shutway's fifth assignment of error is overruled.

{¶ 42} Because they are interrelated Shutway's sixth and eleventh assignments of error will be discussed together as follows:

> AS A MATTER OF LAW, THE CHAMPAIGN COUNTY MUNICIPAL COURT COMMITTED PLAIN ERROR WHEN THE COURT ISSUED A WARRANT FOR A MINOR MISDEMEANOR ELEVEN DAYS AFTER IT ISSUED A SUMMONS.
>
> AS A MATTER OF LAW, SHERIFF'S DEPUTY CULLER COMMITTED PLAIN ERROR WHEN HE DROVE A CHAMPAIGN COUNTY SHERIFF'S VEHICLE INTO A PRIVATE DRIVEWAY, EXITED THE VEHICLE ONTO PRIVATE PROPERTY AND ATTEMTPED TO MAKE AN ARREST WITHOUT A VALID WARRANT IN HIS POSSESSION.

{¶ 43} Although the State concedes the sixth assignment of error in its brief, we find that the issue of whether the arrest warrant issued by the deputy clerk was invalid is not properly before us because Shutway failed to challenge the warrant in the trial court in Case No. 2013-CRB-0991, which is the case currently before this Court on appeal. Therefore, Shutway has waived the issue for the purposes of the instant appeal.[1]

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[1] We note that Shutway filed a motion to suppress the allegedly defective warrant in Case No. 2013-CRB-1144. We further note that in a written entry issued on May 13, 2014, the trial court found that although the warrant was, in fact, invalid, the arresting officer acted in good faith reliance that the warrant executed by the deputy clerk was proper. The trial court held that the exclusionary rule did not apply and upheld Shutway's arrest.

{¶ 44} Further, Deputy Culler, the officer who arrested Shutway for violation of R.C. 3707.48, is not a party to the instant case and therefore could not have erred, plainly or otherwise. To the extent that Shutway's eleventh assignment can be understood as a challenge to the arrest warrant, that issue is waived as previously stated.

{¶ 45} Shutway's sixth and eleventh assignments of error are overruled.

{¶ 46} Shutway's seventh assignment of error is as follows:

AS A MATTER OF LAW, THE CHAMPAIGN HEALTH DISTRICT INSPECTOR FAILED TO PROVIDE THE DUE PROCESS OF LAW, WHEN HE FILED TWO COMPLAINTS.

{¶ 47} In his seventh assignment, Shutway contends that Wellman, the health inspector, erred when he filed two complaints, one against Shutway and one against Shutway's wife. Initially, we note that any issue regarding a complaint filed against Shutway's wife is not properly before us in the instant appeal. More importantly, Wellman is not a party to the instant case. Although he caused the complaint to be filed against Shutway for violation of R.C. 3707.48, he was simply performing his duties as an inspector for the Health District.

{¶ 48} In a motion to dismiss filed November 15, 2013, Shutway argued that Wellman had no standing to file the complaint because the Champaign County Health District "is operating independently and without a valid contract within the City of Urbana" to provide water to residents and businesses in the area. Shutway further argued that Wellman had no authority to enforce Housing Maintenance Regulation 1008.3 because the Health District cannot force him, as the owner and/or occupant of a dwelling within the City of Urbana to purchase the water service. Shutway asserts that he does not have a

contract with the City of Urbana to purchase water service to his residence; therefore, Wellman could not find that Shutway had violated Regulation 1008.3 after his water service was disconnected for failure to pay his outstanding bill.

{¶ 49} R.C. 1901.02(A) confers jurisdiction upon Ohio municipal courts for misdemeanors occurring within their territorial boundaries. In *St. Paris v. Galluzzo,* 2d Dist. Champaign No. 2014-CA-4, 2014-Ohio-3260, we explained:

> The judicial power of the state is vested in "such other courts inferior to the supreme court as may from time to time be established by law." Section 1, Article IV, Ohio Constitution. The constitution gives the General Assembly the power to provide for municipal courts and their jurisdiction. *Behrle v. Beam,* 6 Ohio St.3d 41, 42, 451 N.E.2d 237 (1983). Municipal courts, as they exist today in Ohio, were established in 1951 with the enactment of R.C. Chapter 1901. *Id*.[;] *State v. Spartz*, 12th Dist. Madison No. CA99-11-026, 2000 WL 204280, * 1 (Feb. 22, 2000).
>
> Generally, all Ohio courts have jurisdiction over violations of Ohio law occurring in Ohio. See R.C. 2901.11(A). More to the point, municipal courts have jurisdiction over misdemeanor offenses.
>
> Pursuant to R.C.1901.20, "The municipal court has jurisdiction of the violation of any ordinance of any municipal corporation within its territory * * * and of the violation of any misdemeanor committed within the limits of its territory."
>
> * * *
>
> The Ohio Constitution Section 3, [A]rt. 18, provides: "Municipalities

> shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." The Ohio Supreme Court in *Village of Struthers v. Sokol*, 108 Ohio St. 263, 140 N.E. 519 (1923) noted " * * * by virtue of [S]ection 3, [A]rt. 18, of the Ohio Constitution, as amended in 1912, municipalities of the state have police power directly conferred by the people in all matters of local self-government * * *." *Id*. at 267, 140 N.E. [ ] 520-521. "Promptly after the establishment of home rule in Ohio, municipal control over municipal streets was clearly enunciated. *Billings v. Cleveland Ry. Co.*, 92 Ohio St. 478, 111 N.E. 155 (1915)." *State v. Parker*, 68 Ohio St.3d 283-284, 626 N.E.2d 106, 107 (1994). In *Parker* the Court reiterated " * * * a municipality's authority to regulate traffic comes from the Ohio Constitution * * * ." *Id.* at 285, 626 N.E.2d at 108.

Galluzzo at ¶ 11, quoting *Mount Vernon v. Young*, 5th Dist. Knox No. 2005CA45, 2006-Ohio-3319, ¶ 54-58.

{¶ 50} As previously noted, R.C. 3709.21 provides in pertinent part that "[t]he board of health of a general health district may make such orders and regulations as are necessary for its own government, for the public health, the prevention or restriction of disease, and the prevention, abatement, or suppression of nuisances." The evidence adduced at trial clearly established that Shutway failed to pay his outstanding bill for water service to his residence and he did not secure another acceptable source for potable water. Acting pursuant to Housing Maintenance Regulation 1008.3, Wellman

condemned Shutway's house for lack of a potable water source, after which, Shutway and his family continued to live in the house in clear violation of the condemnation order. By violating the condemnation order, Shutway became subject to imposition of a minor misdemeanor penalty under R.C. 3707.48. By filing the criminal complaint against Shutway, Wellman was merely acting on behalf of the Health District which is vested by the State of Ohio with enforcement of orders and regulations "necessary *** for the public health." By virtue of residency in the City of Urbana, Shutway is subject to the regulations drafted by the Health District for the safety of its citizens. Moreover, there is no question that the Champaign County Municipal Court had jurisdiction over Shutway for violation of R.C. 3707.48. Accordingly, the trial court did not err when it overruled his motion to dismiss.

{¶ 51} Shutway's seventh assignment of error is overruled.

{¶ 52} Shutway's eighth assignment of error is as follows:

> AS A MATTER OF LAW, JUDGE LIPP[E]NCOTT AND PROSECUTOR PARCELS COMMITTED PLAIN ERROR WHEN THE JUDGE REFUSED TO HOLD A PRETRIAL HEARING BECAUSE JUDGE LIPP[E]NCOTT WOULD NOT CONFER WITH A NON-ATTORNEY AND PROSECUTOR PARCELS REFUSED TO MEET WITH THE APPELLANT IN THE ABSENCE OF COUNSEL EVEN THOUGH THE APPELLANT WAS SELF REPRESENTED.

{¶ 53} In his eighth assignment, Shutway argues that Judge Lippencott erred when she refused to let him have a pretrial conference at a hearing held on October 15, 2013. Shutway also asserts that Prosecutor Breanne Parcels erred when she refused to meet with him to discuss the case in the absence of counsel.

{¶ 54} Although Judge Lippencott did not provide Shutway a pretrial hearing because he is a non-attorney, just fifteen days later on October 30, 2013, Judge Liston, sitting by assignment, allowed Shutway a pretrial hearing in open court wherein he was allowed to argue several pretrial motions that he had filed in the instant case. Since Shutway was provided a pretrial hearing before the trial court and the prosecutor, this assignment of error is moot. Moreover, we note that because Shutway was not represented by counsel, any pretrial conference had to be conducted in open court pursuant to Crim. R. 17.1.

{¶ 55} Shutway's ninth assignment of error is as follows:

> AS A MATTER OF LAW, THE CHAMPAIGN COUNTY MUNICIPAL COURT COMMITTED PLAIN ERROR WHEN THE COURT REFUSED, OVER-RULED [sic] AND THEN DISMISSED THE APPELLANT'S LAWFUL DEMURRER WITHOUT HOLDING THE REQUIRED HEARING PURSUANT TO OHIO REVISED CODE 2941.62 WHERE A DEMURRER EXISTS IN LAW AS A CONSTITUTIONAL MEANS TO CHALLENGE JURISDICTION AND THE SUFFICIENCY OF AN ACCUSATORY PLEADING. THE CHAMPAIGN COUNTY MUNICIPAL COURT COMMITTED PLAIN ERROR WHEN THE COURT ERRONEOUSLY PROCEEDED TO TRIAL WITHOUT ESTABLISHING PROOF OF JURISDICTION ON THE RECORD IN VIOLATION OF THE APPELLANT'S DUE PROCESS AND OTHER CONSTITUTIONALLY GUARANTEED RIGHTS.

{¶ 56} In his ninth assignment, Shutway contends that the trial court erred when it overruled his notice of demurrer. In support of his argument, he cites R.C. 2941.62,

which requires a hearing on a request for demurrer. The prosecution correctly responds that demurrers were abolished by Crim. R. 12(A), which provides, "[p]leadings in criminal proceedings shall be the complaint, and the indictment or information, and the pleas of not guilty, not guilty by reason of insanity, guilty, and no contest. All other pleas, demurrers, and motions to quash, are abolished. * * *."

{¶ 57} Demurrers "were previously abolished in misdemeanor cases by R.C. 2937.04, and exceptions to the complaint that could have been made thereunder were consolidated into a motion to dismiss the complaint." *Galluzzo* at ¶ 10, citing 2 Katz & Giannelli, *Criminal Law*, Section 47.2, fn. 2 (2009). In addition to his motion for demurrer, Shutway filed a motion to dismiss the complaint which the trial court properly overruled, as we previously explained in the second and seventh assignments of error. We, therefore, conclude that the trial court did not err when it "struck" the demurrer.

{¶ 58} Shutway's ninth assignment of error is overruled.

{¶ 59} Shutway's tenth and final assignment of error is as follows:

AS A MATTER OF LAW, THE CITY OF URBANA COMMITTED PLAIN ERROR WHEN IT FAILED TO REPSOND IN A TIMELY MANNER TO A REDRESS OF GRIEVANCES.

{¶ 60} In his final assignment, Shutway argues that the City of Urbana Utility Billing Department erred when it failed to respond to his "redress of grievances." The billing department for the City of Urbana is not a party to the instant appeal. Shutway asserts that the instant case should have been addressed as a civil matter regarding an outstanding bill for water service. However, as has been clearly established, Shutway was arrested and convicted for a violation of R.C. 3707.48. After the condemnation

notice pursuant to HMR 1008.3, Shutway had the choice to either (1) vacate the residence; (2) pay his outstanding bill to have the water service reconnected; (3) or provide the Health District with notice that he had secured another potable water supply. Shutway availed himself of none of these options and continued to live in the condemned house with his wife and children until mid-October with the water service disconnected. By violating the condemnation order, Shutway became subject to imposition of a criminal penalty under R.C. 3707.48. The instant case is therefore a criminal matter and has been properly addressed herein and before the trial court. Any issue regarding Shutway's "redress of grievances" is not properly before this Court and not part of the record in this appeal.

{¶ 61} Shutway's final assignment of error is overruled.

{¶ 62} All of Shutway's assignments of error having been overruled, the judgment of the trial court is affirmed.

. . . . . .

FAIN, J., and WELBAUM, J., concur.

Copies mailed to:

Breanne Parcels
John Shutway
Hon. Teresa L. Liston
(sitting by assignment for Judge Gil S. Weithman)