

In the
Supreme Court of Ohio

CITY OF CLEVELAND,	:	Case No. 2015-0381
	:	
Plaintiff-Appellee,	:	On Appeal from the
	:	Cuyahoga County
v.	:	Court of Appeals,
	:	Eighth Appellate District
TROUSSAINT JONES,	:	
	:	Court of Appeals
Defendant-Appellant.	:	Case No. 100598
	:	

**BRIEF OF *AMICUS CURIAE* OHIO ATTORNEY GENERAL
MICHAEL DEWINE IN SUPPORT OF APPELLEE CITY OF CLEVELAND**

ROBERT L. TOBIK (0029286)
Chief Public Defender
CULLEN SWEENEY* (0077187)
Assistant Public Defender
**Counsel of Record*
310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113
216-443-3660
csweeney@cuyahogacounty.us

Counsel for Appellant
Troussaint Jones

BARBARA A. LANGHENRY (0038838)
Director of Law
BRIDGET E. HOPP* (0085250)
Assistant Prosecuting Attorney
**Counsel of Record*
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
216-664-4839
bhopp@city.cleveland.oh.us

Counsel for Appellee
City of Cleveland

MICHAEL DEWINE (0009181)
Attorney General of Ohio

ERIC E. MURPHY* (0083284)
State Solicitor
**Counsel of Record*
SAMUEL C. PETERSON (0081432)
Deputy Solicitor
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
eric.murphy@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*
Ohio Attorney General Michael DeWine

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
STATEMENT OF AMICUS INTEREST	3
STATEMENT OF CASE AND FACTS	4
A. Jones was pulled over after a State Highway Patrol officer observed him driving erratically on I-480 in Cleveland	4
B. The City charged Jones with two counts of operating a vehicle while intoxicated, but the trial court reduced the charges over the prosecutor’s objection.....	4
C. The City appealed and the Eighth District reversed and remanded for further proceedings	6
ARGUMENT	8
<u>Amicus Ohio Attorney General’s Proposition of Law 1:</u>	
<i>A prosecutor may appeal a trial court’s decision to amend a charge against a defendant when the court reduces the charge over the prosecutor’s objection and then accepts a no contest plea to the reduced charge.</i>	
8	
<u>Amicus Ohio Attorney General’s Proposition of Law 2:</u>	
<i>When a defendant pleads no contest to a reduced charge over a prosecutor’s objection, the Double Jeopardy Clause does not preclude prosecution on the originally charged offense.</i>	
13	
A. Jeopardy did not attach to the charged operating-while-intoxicated offense when Jones entered his no contest plea	14
1. Courts disagree about when jeopardy attaches after a defendant enters a plea of guilty or no contest	14
2. The <i>Johnson</i> decision requires the Court to reconsider its prior statements about when jeopardy attaches after a defendant pleads guilty or no contest	17

- B. Even if jeopardy attached, the City may pursue the originally charged offense on remand because the charged offense was dismissed otherwise than on the merits20

CONCLUSION.....23

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Akron v. Jaramillo</i> , 97 Ohio App. 3d 51 (9th Dist. 1994)	12, 13
<i>Arbino v. Johnson & Johnson</i> , 116 Ohio St. 3d 469, 2007-Ohio-6948.....	17
<i>Bally v. Kemna</i> , 65 F.3d 104 (8th Cir. 1995)	16
<i>City of Akron v. Robertson</i> , 118 Ohio App. 3d 241 (9th Dist. 1997)	12
<i>City of Akron v. Shuman</i> , No. 18851, 1998 WL 281360 (9th Dist. May 27, 1998).....	12
<i>City of Cleveland v. Jones</i> , 143 Ohio St. 3d 1440, 2015-Ohio-3427.....	8
<i>Crist v. Bretz</i> , 437 U.S. 28 (1978).....	14, 15
<i>Evans v. Michigan</i> , 133 S. Ct. 1069 (2013).....	3, 21, 22
<i>Gilmore v. Zimmerman</i> , 793 F.2d 564 (3d Cir. 1986).....	16
<i>Illinois v. Somerville</i> , 410 U.S. 458 (1973).....	20
<i>In re A.J.S.</i> , 120 Ohio St. 3d 185, 2008-Ohio-5307.....	2, 9, 11
<i>In re M.M.</i> , 135 Ohio St. 3d 375, 2013-Ohio-1495.....	11
<i>In re S.J.</i> , 106 Ohio St. 3d 11, 2005-Ohio-3215.....	9, 11
<i>Lee v. Cardington</i> , 142 Ohio St. 3d 488, 2014-Ohio-5458.....	22
<i>Lee v. United States</i> , 432 U.S. 23 (1977).....	3, 21

<i>Martinez v. Illinois</i> , 134 S. Ct. 2070 (2014).....	14, 20
<i>North Carolina v. Pearce</i> , 395 U.S. 711 (1969).....	13
<i>Ohio v. Johnson</i> , 467 U.S. 493 (1984).....	<i>passim</i>
<i>People ex rel. Daley v. Suria</i> , 490 N.E.2d 1288 (Ill. 1989).....	20
<i>Ricketts v. Adamson</i> , 483 U.S. 1 (1987).....	15
<i>Serfass v. United States</i> , 420 U.S. 377 (1975).....	14
<i>State ex rel. Leis v. Gusweiler</i> , 65 Ohio St.2d 60 (1981).....	16, 17, 19
<i>State ex rel. Sawyer v. O’Connor</i> , 54 Ohio St. 2d 380 (1978)	<i>passim</i>
<i>State ex rel. Steffen v. Court of Appeals, First Appellate Dist.</i> , 126 Ohio St. 3d 405, 2010-Ohio-2430.....	9, 11
<i>State ex rel. Stern v. Mascio</i> , 75 Ohio St. 3d 422 (1996)	19
<i>State ex rel. Yates v. Court of Appeals for Montgomery County</i> , 32 Ohio St.3d 30 (1987).....	10
<i>State v. Angel</i> , 51 P.3d 1155 (N.M. 2002)	16
<i>State v. Bistricky</i> , 51 Ohio St. 3d 157 (1990)	10
<i>State v. Brewer</i> , 121 Ohio St. 3d 202, 2009-Ohio-593.....	15
<i>State v. Calhoun</i> , 18 Ohio St. 3d 373 (1985)	20
<i>State v. Conti</i> , 57 Ohio App. 3d 36 (8th Dist. 1989)	2, 17

<i>State v. Craig</i> , 116 Ohio St. 3d 135, 2007-Ohio-5752.....	9
<i>State v. Gustafson</i> , 76 Ohio St. 3d 425 (1996)	15
<i>State v. Knaff</i> , 128 Ohio App. 3d 90 (1st Dist. 1998).....	17
<i>State v. Martinez-Mendoza</i> , 804 N.W.2d 1 (Minn. 2011).....	16
<i>State v. Rader</i> , 55 Ohio App.3d 102 (1988)	17
<i>State v. Richter</i> , 92 Ohio App. 3d 395 (6th Dist. 1993)	1, 3, 19
<i>State v. Ross</i> , 128 Ohio St. 3d 283, 2010-Ohio-6282.....	2, 10, 11
<i>State v. Thomas</i> , 995 A.2d 65 (Conn. 2010)	16
<i>United States v. Hecht</i> , 638 F.2d 651 (3rd Cir. 1981)	16
<i>United States v. Patterson</i> , 406 F.3d 1095 (2005).....	16
<i>United States v. Santiago Soto</i> , 825 F.2d 616 (1st Cir. 1987).....	16
<i>United States v. Scott</i> , 437 U.S. 82 (1978).....	10
<i>United States v. Vaughan</i> , 715 F.2d 1373 (9th Cir. 1983)	16
<i>United States v. Wilson</i> , 420 U.S. 332 (1975).....	10, 18
Statutes, Rules, and Constitutional Provisions	
Cleveland Codified Ordinance § 433.011.....	5
Crim. R. 7(D)	12
Crim. R. 11.....	19

Ohio Const., Art. I, § 10.....	13, 15
R.C. 109.02	3
R.C. 2937.07	3, 19, 21
R.C. 2945.67(A).....	<i>passim</i>
U.S. Const., 5th Amend.	13, 15

INTRODUCTION

“[T]he state, like [a] defendant, has a substantial right to have a criminal trial conducted according to the proper procedure as established by the Criminal Rules, by the Constitutions of the United States and of Ohio, and by applicable provisions in the Revised Code.” *State v. Richter*, 92 Ohio App. 3d 395, 399 (6th Dist. 1993). There can be no legitimate dispute that the municipal court deprived the City of Cleveland of that right in this case. The question at issue here is whether anything can be done to correct the lower court’s error, or whether the Eighth District was required to let that error stand.

The City of Cleveland charged Jones in municipal court with, among other things, two counts of operating a vehicle while under the influence. *Cleveland v. Jones*, 2014-Ohio-4201, ¶ 3 (8th Dist.). Despite Jones’s claims that he had not been drinking, but because of the evidence and Jones’s prior history, the city prosecutor steadfastly refused to reduce or amend the charges against Jones. Oct. 10, 2013, Tr. at 14. The municipal court acknowledged the prosecutor’s refusal and, after Jones pleaded no contest, the court indicated that its final entry would reflect that the prosecutor had not amended the charges. Tr. at 18. But that is not what happened. Both the municipal court’s journal entry and its docket indicated that the prosecutor *had* amended the charges. See Municipal Court Journal Entry; see also Municipal Court Docket (claiming to grant the prosecutor’s “motion to amend the complaint”).

It was the court’s power to amend the charges over the prosecutor’s objection—not the final verdict—that provided the basis for the City’s appeal below. Jones in this case challenges both the City’s power to appeal the municipal court’s flawed proceedings as a statutory matter and the available remedy should the City prevail as a constitutional matter. Because neither his statutory argument nor his double jeopardy argument are well-taken, the Court should affirm the Eighth District’s decision below.

First, R.C. 2945.67(A) authorized the City to appeal. That statute allows prosecutors to appeal a decision dismissing all or part of a criminal charge as a matter of right, and any decision other than a final verdict with leave of an appellate court. *See* R.C. 2945.67(A). In this case, the municipal court’s decision to reduce the charges against Jones was the functional equivalent of a decision to dismiss the originally charged offense. R.C. 2945.67(A) thus permitted the City to appeal that decision as a matter of right. *See In re A.J.S.*, 120 Ohio St. 3d 185, 2008-Ohio-5307, ¶ 33 (applying functional equivalent test). But even if the decision was not the equivalent of a dismissal, the City properly sought and received leave to challenge the legal basis for the municipal court’s amendment to the charge. A prosecutor can appeal an independent legal question under R.C. 2945.67(A) even if the answer to that question might undermine the basis for a final verdict. *See State v. Ross*, 128 Ohio St. 3d 283, 2010-Ohio-6282 ¶¶ 21 and 32-33 (affirming power to appeal a legal question even where prosecutor did not “expressly disavow” an appeal of the final verdict).

Second, the Double Jeopardy clause does not prevent the City from pursuing the original charge against Jones on remand. The U.S. Supreme Court has emphasized that defendants may not “use the Double Jeopardy Clause as a sword to prevent the State from completing its prosecution.” *Ohio v. Johnson*, 467 U.S. 493, 502 (1984). And it has determined that a guilty plea to a lesser offense does not necessarily preclude trial on a greater charged offense. *Id.* at 501-02. The *Johnson* decision calls into question the basis for this Court’s earlier decision in *State ex rel. Sawyer v. O’Connor*, 54 Ohio St. 2d 380, 382-83 (1978), which Jones relies on to argue that jeopardy attached at the time he pleaded no contest. As lower courts within Ohio have noted, the continuing validity of the *Sawyer* decision “seem[s] questionable . . . in view of *Ohio v. Johnson*.” *State v. Conti*, 57 Ohio App. 3d 36, 36 (8th Dist. 1989).

Even if the Court finds that jeopardy attached to the charged offense when Jones entered his no contest plea, it should nevertheless hold that the municipal court's decision raises no double jeopardy concerns because it was otherwise than on the merits with respect to that offense. If Jones is correct that the municipal court *did not* amend the charged offense prior to his plea, then the municipal court's only authority once he pleaded no contest was to test the sufficiency of the charging document after assuming the truth of all the facts as alleged. *See* R.C. 2937.07. Its decision in this case should therefore be construed most charitably as one finding the complaint insufficient as a matter of law. Such a decision raises no double jeopardy concerns. *See Lee v. United States*, 432 U.S. 23 (1977). Should the municipal court's decision be construed otherwise, it would raise the specter of judicial nullification, a possibility that the U.S. Supreme Court has declined to entertain on the basis that "courts exercise their duties in good faith." *Evans v. Michigan*, 133 S. Ct. 1069, 1079 (2013).

STATEMENT OF AMICUS INTEREST

As the State's chief law officer, R.C. 109.02, the Ohio Attorney General has an interest in protecting the State's right to have a criminal trial conducted according to the proper procedure as established by the Criminal Rules, by the Constitutions of the United States and of Ohio, and by applicable provisions in the Revised Code. *See State v. Richter*, 92 Ohio App. 3d 395, 399 (6th Dist. 1993). Furthermore, R.C. 2945.67(A) specifically governs the Attorney General's appellate rights in addition to the rights of city and county prosecutors. The Court's interpretation of that statute in this case will therefore affect the Attorney General's ability to appeal in future proceedings.

STATEMENT OF CASE AND FACTS

A. Jones was pulled over after a State Highway Patrol officer observed him driving erratically on I-480 in Cleveland

A State Highway Patrol officer pulled Jones over at 4:27 a.m. after observing him drift out of his lane three times while traveling on I-480 in Cleveland. Tr. at 10. Jones had a prior conviction for operating a vehicle while intoxicated, Tr. at 6, and at the time was under a twelve-point license suspension, Tr. at 8-9. When stopped on I-480, Jones was “immediately” uncooperative and began what the officer described as a “verbal assault” that continued until Jones arrived at jail. Tr. at 3. Although Jones denied that he had been drinking, the officer observed numerous signs of impairment. Tr. at 3. He reported that he smelled alcohol, Tr. at 4, 10, and, after conducting a horizontal gaze test, observed several clues indicating that Jones was intoxicated. Tr. at 3-5. The officer attempted to conduct other field sobriety tests, including a walk-and-turn test. Tr. at 6. Jones began that test, but lost his balance at the outset. Tr. at 6. The officer was unable to complete the test, or perform other tests, because Jones was uncooperative and combative, Tr. 4, 6, and 10, and because of safety concerns stemming from the fact that the stop occurred on the side of a busy highway at night, Tr. at 4.

B. The City charged Jones with two counts of operating a vehicle while intoxicated, but the trial court reduced the charges over the prosecutor’s objection

The City of Cleveland charged Jones in municipal court with two counts of operating a vehicle while under the influence, one count of driving while under suspension, and one marked lane violation. See Municipal Court Entry, Nov. 4, 2013. At a pre-trial hearing, the City and Jones reached a plea agreement, but the judge refused to accept the plea without first hearing from the trooper who pulled Jones over. Tr. at 1. A second hearing was held and the trooper described the events surrounding Jones’s stop, but was never sworn in as a witness. See Tr. at 1-12. As part of a discussion held at that second hearing, the judge stated that she had not accepted

an earlier plea because “[t]here is a difference between intoxicated and angry,” Tr. at 5, and that she “[could] understand the combativeness, and I would think that you can understand and appreciate a certain level of combativeness if there is a sense of, you know, I live in the inner city. I get policed all the time.” Tr. at 8. The court held several off-the-record conversations, and ultimately told Jones she was going to “hold [him] accountable for some of the stuff.” Tr. at 12. She indicated that she believed that he was “totally responsible” for all of the charges against him “but one,” and that she was going to “give him the benefit of the doubt,” Tr. at 13-14. In response to the judge’s comments, the city prosecutor informed the judge that “given [Jones’s] prior history,” the “city [was] not willing to make any reductions” in the charges against him. Tr. at 14.

After the judge indicated that she did not believe Jones should be found guilty of operating a vehicle while intoxicated, *see* Tr. at 12-14, Jones’s attorney stated that Jones would enter a plea of no contest, Tr. at 14. There was no further discussion of the plea, *see generally* Tr. 14-26, and the court proceeded to find Jones guilty of violating Cleveland Codified Ordinance § 433.011, prohibiting physical control of a vehicle while under the influence, Tr. at 14-15. The prosecutor asked for clarification of the judge’s actions. Tr. at 17. The judge stated that “Count 1, is the Physical Control, I make the notation the prosecutor amended that, based on the facts, the Court finds the defendant guilty of Physical Control, it’s not as though you are amending it.” Tr. at 17. The prosecutor reiterated that “the city did not amend count 1 to Physical Control.” Tr. at 18. The judge acknowledged the prosecutor’s refusal to amend the charges and reassured her that the refusal would be reflected in the final order, noting “[t]hat’s what I’m writing on the journal.” Tr. at 18.

Despite the judge's assurances to the contrary, both the court's journal entry and its docket stated that the prosecutor had amended the charges against Jones. The entry indicated that the prosecutor had amended the first charge against Jones to a violation of Cleveland's physical control ordinance. *See* Entry, Nov. 4, 2013. It reflected a finding of guilty as to the amended charge and the judge wrote that "[b]ased upon facts court finds defendant guilty of physical control." *Id.* The court's docket likewise assigned to the prosecutor the decision to reduce the charges against Jones; it purported to grant motions by the prosecutor to amend the first operating-while-intoxicated offense charged in the complaint and nolle prosequi the second.

C. The City appealed and the Eighth District reversed and remanded for further proceedings

The City sought and received leave to appeal the municipal court's decision amending the charges against Jones. In its appeal, the City argued that the judge abused her discretion when, over the prosecutor's objection, she reduced the operating-while-intoxicated charge to a lesser charge. A divided panel of the Eighth District Court of Appeals agreed and sustained the City's sole assignment of error. *Cleveland v. Jones*, 2014-Ohio-4201 ¶ 2 (8th Dist.) ("App. Op"). The panel held that the municipal court lacked the authority to unilaterally amend the charges against Jones. App. Op. at ¶¶ 32-37. And, even though the City had not independently challenged the adequacy of the plea colloquy, the court of appeals found that the municipal court had failed to substantially comply with the requirements of Traf.R. 10 when it accepted Jones's no contest plea. App. Op. at ¶¶ 27-29.

Yet none of the panel members could agree about the Double Jeopardy implications of the City's appeal. The lead opinion rejected outright Jones's argument that Double Jeopardy principles barred the City's appeal. App. Op. at ¶¶ 25-27. The concurring judge, on the other hand, wrote that, while he "d[id] not believe that jeopardy attached," Jones's double jeopardy

argument was “an issue for another day.” App. Op. at ¶ 42 (Gallagher, J., concurring). And it was in part double jeopardy concerns that provided the foundation for the dissent. The dissenting judge agreed with the majority that Jones’s plea hearing was “infirm,” but would have held that the City was precluded from appealing what he viewed as a final verdict. App. Op. at ¶¶ 45-52 (Jones, J. dissenting). Because he believed that the municipal court had not amended the charges against Jones before the guilty plea, the dissenting judge would have affirmed the municipal court’s decision “irrespective of whether the trial court made errors” in accepting the plea. App. Op. at ¶ 51. The dissent nevertheless would have remanded with instructions to the municipal court to correct the journal entry and “remove any notation that the prosecution moved to amend the charge.” App. Op. at ¶ 52.

Jones filed a motion for reconsideration and a motion for rehearing en banc. The Eighth District denied both motions. In its entry denying Jones’s motion for reconsideration, the court of appeals took issue with Jones’s characterization of the proceedings below. It noted that Jones’s arguments were “premised on a claim that his case went to trial and he entered a plea, but nothing in the record supports such a claim.” See Order Denying Motion for Reconsideration, *State v. Jones*, No. 100598 (8th Dist. Dec. 30, 2014). Jones’s en banc motion was similarly denied. The Eighth District, sitting en banc, concluded that “[t]here was no majority opinion” in this case and that “[e]ach panel member performed a different analysis of the issues.” Order Denying Motion for Rehearing En Banc, *State v. Jones*, No. 100598 (8th Dist. Mar. 6, 2014). Therefore, because none of the members of the appellate panel agreed on a legal basis for the challenged decision, the en banc court denied his motion, reasoning that “there was no decision of the court on [those] issues.” *Id.*

Jones appealed to this Court, which accepted review. *City of Cleveland v. Jones*, 143 Ohio St. 3d 1440, 2015-Ohio-3427.

ARGUMENT

The fact that the municipal court exceeded its authority in this case is not in doubt; the only disagreement is whether the City has the power to challenge the obvious errors and whether any court has the power to correct them. See App. Op. at ¶ 49 (Jones, J. dissenting) (noting that even if the trial court abused its discretion, the court was “constrained to affirm”). Thus, this case presents two legal questions: (1) Does the City have the power to appeal? and (2) What is the appropriate remedy should it prevail? The first question is a statutory one: R.C. 2945.67(A) governs whether and when a prosecutor may appeal. The second question is a constitutional one: The Double Jeopardy Clause governs the available remedy, and the scope of the proceedings permitted on remand *following* an appeal. Although Jones presents only a single proposition of law, the statutory and constitutional questions are best addressed separately and will therefore be treated as independent propositions of law. Because this case can be resolved without examining the circumstances surrounding Jones’s plea, this brief will not address his third argument, which challenges the Eighth District’s analysis of the plea colloquy.

Amicus Ohio Attorney General’s Proposition of Law 1:

A prosecutor may appeal a trial court’s decision to amend a charge against a defendant when the court reduces the charge over the prosecutor’s objection and then accepts a no contest plea to the reduced charge.

Under R.C. 2945.67, a “prosecuting attorney, village solicitor, city director of law, or the attorney general” may appeal two different types of trial court decisions. *First*, prosecutors may appeal certain decisions as a matter of right. As is relevant here, they may appeal any time a trial court grants a motion to dismiss some or all of the charges against a defendant. R.C. 2945.67(A). Although phrased in the context of a “motion to dismiss,” this Court has interpreted

R.C. 2945.67(A)'s appeal-of-right provision as covering *any* order that is the “functional equivalent of the dismissal of an indictment.” See *In re A.J.S.*, 120 Ohio St. 3d 185, 2008-Ohio-5307 ¶ 33. A functionally equivalent order generally relates to issues that arise before trial and will typically involve “the legal sufficiency of [an] indictment” or otherwise “prevent the state from seeking a criminal indictment.” See *State ex rel. Steffen v. Court of Appeals, First Appellate Dist.*, 126 Ohio St. 3d 405, 2010-Ohio-2430, ¶ 34 (holding that the modification of a jury verdict was not the functional equivalent of a dismissal because it occurred after trial and was based on newly discovered evidence).

The Court has applied this functional-equivalent rule in a variety of circumstances. It has done so when a judge *sua sponte* dismissed an indictment, reasoning that “a judge’s dismissal on her own motion is the equivalent of a decision granting a motion to dismiss pursuant to R.C. 2945.67(A).” *State v. Craig*, 116 Ohio St. 3d 135, 2007-Ohio-5752, ¶ 15. It has done so when a juvenile court denied the State’s motion for mandatory bindover, holding that the decision was the “functional equivalent of a dismissal of a criminal indictment.” *A.J.S.*, 120 Ohio St. 3d 185, syl. & ¶¶ 32-33. Finally, it has done so when a lower court on its own motion dismissed one charge and amended another. Because that decision was the “equivalent of a ‘decision granting a motion to dismiss,’” the Court explained, the State could appeal as a matter of right pursuant to R.C. 2945.67(A). *In re S.J.*, 106 Ohio St. 3d 11, 2005-Ohio-3215, ¶ 13.

Second, even when an appeal as of right is not authorized, prosecutors may appeal a trial court’s other decisions “by leave of court to which the appeal is taken.” R.C. 2945.67(A). The discretionary power to grant leave to appeal is limited in a significant way: Prosecutors may not be granted leave to appeal a “final verdict.” *Id.* The prohibition on appealing a final verdict is a statutory, not constitutional, one. See *United States v. Wilson*, 420 U.S. 332, 342 (1975) (“In the

course of the debates over the Bill of Rights, there was no suggestion that the Double Jeopardy Clause imposed any general ban on appeals by the prosecution.”); *see also United States v. Scott*, 437 U.S. 82, 87 (1978), even though the two may sometimes overlap, *see State ex rel. Yates v. Court of Appeals for Montgomery County*, 32 Ohio St.3d 30, 32-33 (1987). In that respect, R.C. 2945.67(A) is unlike the equivalent federal law, which merges the two and permits federal prosecutors to appeal *any* decision unless further proceedings would be barred by double jeopardy principles. *See id.*

Because the state statute is not identical to the federal constitution, R.C. 2945.67(A) permits a prosecutor to appeal purely legal questions even when double jeopardy would bar retrial. *See State v. Ross*, 128 Ohio St. 3d 283, 2010-Ohio-6282, ¶¶ 32-33; *see also State v. Bistricky*, 51 Ohio St. 3d 157, syl. (1990) (“A court of appeals has discretionary authority pursuant to R.C. 2945.67(A) to review substantive law rulings made in a criminal case which result in a judgment of acquittal so long as the judgment itself is not appealed.”). In *Bistricky*, for example, the State conceded that “principles of double jeopardy preclude[d] retrial.” 51 Ohio St. 3d at 158. But the Court held that, under R.C. 2945.67, the State could appeal the substantive legal question at issue because the question was “capable of repetition yet evading review.” *Id.* at 158-60. The Court reinforced that holding in *Ross*. In that case, the prosecutor sought to challenge the timeliness of a defendant’s motion for acquittal but “did not expressly disavow” an appeal of the final verdict (and even included the acquittal order within the description of its appeal). *See Ross*, 128 Ohio St. 3d 283 at ¶ 21. The Court allowed the appeal, answered the substantive legal question, but left the verdict intact. *Id.* at ¶¶ 50-51. It held that the trial court’s acquittal order was “distinct from the substantive legal rulings underlying it” and, even though it concluded that the court erred, it left the ultimate result intact. *Id.* ¶ 51.

In this case, the City sought and was granted leave to appeal the municipal court’s decision to amend (and reduce) the charges against Jones. But, as an initial matter, leave should not have even been required. The municipal court’s decision to amend the operating-while-intoxicated charge against Jones was the functional equivalent of a dismissal of that offense. As with a dismissal, the City was denied any opportunity to present evidence and the municipal court’s decision prevented the City from obtaining a conviction on the charged offense. See *A.J.S.*, 120 Ohio St. 3d 185 at ¶ 33 (applying functional-equivalent rule where juvenile court decision “prevented the state from seeking a criminal indictment”). And, unlike in *Steffen*, the decision to amend was made *before* trial and *before* any evidence was introduced. See *State ex rel. Steffen*, 126 Ohio St. 3d 405 at ¶¶ 6 and 34 (declining to apply functional-equivalent rule where the trial court ordered a new penalty-phase trial *after* trial and *after* the introduction of newly discovered evidence). In that respect, the municipal court’s decision was most similar to *In re S.J.*, where this Court confirmed that the State had the right to appeal a decision dismissing one charge and amended another. *In re S.J.*, 106 Ohio St. 3d 11 at ¶ 13. Because in this case there was no meaningful difference between the municipal court’s decision to unilaterally reduce the charge against Jones and a decision dismissing that charge outright, the City should have been permitted to appeal the municipal court’s decision as a matter of right.

In the face of uncertainty and out of an abundance of caution, the City sought leave to appeal the municipal court’s decision in this case. See *In re M.M.*, 135 Ohio St. 3d 375, 2013-Ohio-1495, ¶¶ 36-50 (clarifying the relationship between the two avenues for appeal under R.C. 2945.67(A)). But even if the City was required to seek leave to appeal, the court of appeals properly granted it here. In its request for leave, the City challenged the municipal court’s authority to amend the charges against Jones, arguing that Crim. R. 7(D) did not permit the

municipal court to amend the charges in a way that changed the nature or identity of the crime charged. The legal question—involving the power to amend—is separate and distinct from any verdict on the amended charge. And it is a question that, at the very least, qualifies as capable of repetition yet evading review. In almost every conceivable situation, a trial court’s decision to reduce a charge over a prosecutor’s objection will also be accompanied by a final verdict on the reduced charge. If a prosecutor lacked the ability to appeal, trial courts would have free reign to amend indictments, comfortable in the knowledge that the limit on appealing a “final verdict” would forever shield their decisions from review.

A series of decisions from the Ninth District Court of Appeals confirm that R.C. 2945.67(A)’s prohibition on appealing a final verdict does not bar the City’s appeal in this case. On at least three occasions, the Ninth District has been asked to determine whether Crim. R. 7(D) permits a trial court to reduce the charges against a defendant over a prosecutor’s objection. See *Akron v. Jaramillo*, 97 Ohio App. 3d 51 (9th Dist. 1994); *City of Akron v. Robertson*, 118 Ohio App. 3d 241 (9th Dist. 1997); *City of Akron v. Shuman*, No. 18851, 1998 WL 281360 (9th Dist. May 27, 1998). And in all three cases, the court of appeals held that the trial court lacked the authority to do so. *Jaramillo*, 97 Ohio App. 3d at 53-54; *Robertson*, 118 Ohio App. 3d at 242-43; *Shuman*, 1998 WL 281360 at *1. Significantly, in *none* of the cases was there any question about whether R.C. 2945.67(A) permitted the prosecutor’s appeal. See *generally id.*

Take *Jaramillo* as an example. In that case the City of Akron charged Stephen Jaramillo with driving under the influence, but the Akron Municipal Court reduced that charge to reckless operation of a vehicle over the prosecutor’s objection. *Id.* at 52-53. The prosecutor appealed and the court of appeals reversed. The appellate court held that “[t]he trial court did not just

abuse its discretion when it granted [the defendant's] motion to amend the complaint; it had no discretion to do so at all.” *Jaramillo*, 97 Ohio App. 3d at 54. It concluded that the municipal court mistakenly amended the charge unilaterally because doing so deprived the State “of its opportunity to prove its DUI case.” *Id.* That the defendant did not raise, and the court did not address, the statutory authority for the prosecutor’s appeal in *Jaramillo* shows that the power to appeal such a decision pursuant to R.C. 2945.67(A) should be self-evident. (The *Jaramillo* court also determined that because “trial on the DUI charge was terminated without any reference to his guilt or innocence” there was no double jeopardy bar either to the City’s appeal *or* to retrial on the originally charged offense. *Id.* at 55. As the following section will demonstrate, that decision was correct as well.)

Amicus Ohio Attorney General’s Proposition of Law 2:

When a defendant pleads no contest to a reduced charge over a prosecutor’s objection, the Double Jeopardy Clause does not preclude prosecution on the originally charged offense.

The Double Jeopardy Clause states that “[n]o person shall be . . . twice put in jeopardy of life or limb.” U.S. Const., 5th Amend.; *see also* Ohio Const., Article I, Section 10. It provides three primary protections to defendants: “It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense.” *Ohio v. Johnson*, 467 U.S. 493, 498 (1984) (quoting *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969)). But whether any of those protections are at issue here, and whether the Double Jeopardy clause prevents the City on remand from trying Jones for the originally charged offense, requires the Court to answer two questions. First, did jeopardy attach in the proceedings before the municipal court? And second, even if it did attach, would trying Jones for that offense on remand be a double jeopardy violation? The answer to both questions is no.

A. Jeopardy did not attach to the charged operating-while-intoxicated offense when Jones entered his no contest plea

Whether jeopardy attached in the proceedings below depends in part on whose characterization of those proceedings is factually correct. All of Jones's arguments on appeal assume that he pleaded no contest *before* the municipal court amended the charges against him. Even he does not argue that the City's appeal was barred if his plea came *after* the amendment. See Jones Br. at 8-10 and 16-18. Thus if the Eighth District properly concluded that "nothing in the record" supports Jones's claim that "his case went to trial and he entered a plea," see Order Denying Motion for Reconsideration, *State v. Jones*, No. 100598 (8th Dist. Dec. 30, 2014), the Double Jeopardy inquiry ends before it even begins; if he entered his plea *after* the charges were amended, then there can be no dispute that jeopardy did not attach to the originally charged offense. In that case, the Court need not to confront the more difficult double jeopardy questions that Jones raises. If Jones is correct, however, that the municipal court *did not* amend the charge before he pleaded no contest, this Court must confront an additional question, and one that has sparked debate between and within courts throughout the country: When does jeopardy attach after a plea of guilty or no contest?

1. Courts disagree about when jeopardy attaches after a defendant enters a plea of guilty or no contest

It is clear when double jeopardy attaches if a defendant stands trial. If the trial is before a jury, it is black-letter law that "jeopardy attaches when the jury is empaneled and sworn." *Martinez v. Illinois*, 134 S. Ct. 2070, 2072 (2014) (quoting *Crist v. Bretz*, 437 U.S. 28, 35 (1978)). If the trial is before the court, the U.S. Supreme Court has held that "jeopardy attach[es] when the court begins to hear evidence." *Serfass v. United States*, 420 U.S. 377, 388 (1975). It has explained that "[i]n nonjury trials jeopardy does not attach until the first witness is sworn." *Crist*, 437 U.S. at 37. When a defendant pleads not guilty, this Court has similarly applied the

Crist rule that jeopardy does not attach until the first witness is sworn to testify. See *State v. Gustafson*, 76 Ohio St. 3d 425, 435 (1996). It has done so as both a federal and state matter, consistently holding that Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution and Section 10, Article I of the Ohio Constitution are coextensive. *State v. Brewer*, 121 Ohio St. 3d 202, 2009-Ohio-593 ¶ 14.

Yet it is less clear how to determine when jeopardy attaches after a defendant pleads guilty or no contest. The U.S. Supreme Court has never answered the question directly, but has “assumed that jeopardy attache[s] *at least* when” a defendant is sentenced. *Ricketts v. Adamson*, 483 U.S. 1, 8, (1987) (emphasis added). The closest it has come to providing an answer was in *Ohio v. Johnson*, 467 U.S. 493 (1984). In that case, an Ohio trial court had accepted, over the State’s objection, a defendant’s guilty plea to a lesser-included offense that was part of an indictment charging both greater and lesser-included offenses. *Id.* at 494. The defendant argued that jeopardy attached to *all* of the offenses once he pleaded guilty to the lesser-included ones and that the Double Jeopardy Clause therefore prevented trial on the greater-included offense. The Supreme Court rejected that argument. *Id.* at 500-01. In doing so, it noted that “the taking of a guilty plea is not the same as an adjudication on the merits after a full trial,” *id.* at 500 n.9, and concluded that applying a double jeopardy bar “would deny the State its right to one full and fair opportunity to convict those who have violated its laws.” *Id.* at 502. It held that defendants “should not be entitled to use the Double Jeopardy Clause as a sword to prevent the State from completing its prosecution.” *Id.* at 502.

Before *Johnson*, this Court had concluded that jeopardy attaches when a court *accepts* a plea. See *State ex rel. Sawyer v. O’Connor*, 54 Ohio St. 2d 380, 382-83 (1978); see also *State ex rel. Leis v. Gusweiler*, 65 Ohio St.2d 60, 61 (1981). Many courts had reached a similar

conclusion and had likewise held that “[j]eopardy ordinarily attaches as to [a] crime upon acceptance of the plea by the court.” *United States v. Vaughan*, 715 F.2d 1373, 1378 n.2 (9th Cir. 1983); *United States v. Hecht*, 638 F.2d 651, 657 (3rd Cir. 1981).

Following *Johnson*, however, courts have questioned whether decisions measuring jeopardy from the acceptance of a plea remain good law. See *United States v. Patterson* (“*Patterson II*”), 406 F.3d 1095, 1100-01 (2005) (Kozinski, J., dissenting from denial of rehearing en banc) (collecting cases). At both the state and federal level, there are a growing number of courts that have “questioned the rationale of cases holding that jeopardy attaches upon acceptance of a guilty plea.” See *Bally v. Kemna*, 65 F.3d 104, 108 (8th Cir. 1995). Instead, many courts have reasoned that acceptance of a guilty plea is legally different from a conviction based on a jury’s verdict, and have more recently held that “the acceptance of a defendant’s guilty plea should not trigger double jeopardy protection unless the facts and circumstances surrounding the guilty plea implicate the policy considerations underlying the double jeopardy clause.” *State v. Thomas*, 995 A.2d 65, 73-78 (Conn. 2010); see also *Gilmore v. Zimmerman*, 793 F.2d 564, 568-71 (3d Cir. 1986); *United States v. Santiago Soto*, 825 F.2d 616, 618-20 (1st Cir. 1987); *State v. Martinez-Mendoza*, 804 N.W.2d 1, 10-14 (Minn. 2011) (Gildea, J. dissenting). At least some of these courts have concluded that when a defendant pleads guilty, jeopardy does not attach until sentencing. See *State v. Angel*, 51 P.3d 1155, 1157-59 (N.M. 2002).

In Ohio as well, courts have questioned the continuing validity of the *Sawyer* and *Leis* decisions following *Johnson*. Appellate courts have continued to follow those decisions because this Court “has not, to date, changed its holdings that a plea of no contest, once filed and accepted, constitutes jeopardy under any and all circumstances.” *State v. Rader*, 55 Ohio App.3d

102, 105 n.4 (1988). But they have nevertheless suggested that the precedential value of the decisions “seem[s] questionable . . . in view of *Ohio v. Johnson* . . . which held that a guilty plea to a lesser included offense does not bar trial for a pending greater offense.” *State v. Conti*, 57 Ohio App. 3d 36, 36 (1989) *see also Rader*, 55 Ohio App. 3d at 105 n.4 (noting that *Johnson* “appears to us to hold that there are instances when the acceptance of a plea to lesser charges does not preclude a trial of the greater charges”); *State v. Knaff*, 128 Ohio App. 3d 90, 96-99 (1st Dist. 1998) (Hildebrandt, J. dissenting).

2. The *Johnson* decision requires the Court to reconsider its prior statements about when jeopardy attaches after a defendant pleads guilty or no contest

To the extent that this Court has previously adopted a bright-line rule that jeopardy attaches immediately upon acceptance of a guilty plea, the Supreme Court’s later *Johnson* decision requires the Court to revisit that rule. *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 469, 2007-Ohio-6948, ¶¶ 94-95 (revisiting prior decisions in light of U.S. Supreme Court precedent). For at least two reasons, the Court should now hold that jeopardy never attached in this case *even if* Jones entered a plea of no contest to the charged offense. *First*, this case and *Johnson* are similar in legally significant ways. *Second*, this case does not implicate the reasons why the Double Jeopardy Clause prohibits multiple prosecutions.

Consider the similarities to *Johnson*. As the defendant did in *Johnson*, Jones seeks here to “use the Double Jeopardy Clause as a sword to prevent the State from completing its prosecution on the remaining charges.” *Johnson*, 467 U.S. at 502. In that case, the defendant attempted to avoid prosecution for the greater-charged offenses by offering to plead guilty only to the lesser-included offenses contained in the indictment. In this one, Jones attempted to avoid the greater offense by offering to plead no contest after the municipal court indicated that it was going to give him “the benefit of the doubt” and find him guilty of a lesser offense. Tr. at 16.

By pleading no contest *after* the municipal court expressed its intent, Jones—like the defendant in *Johnson*—effectively “offered only to resolve part of the charges against him.” *Johnson*, 467 U.S. at 501. So even if the factual and procedural postures of this case are not *literally* the same as those in *Johnson*, they are *functionally* the same. The only real difference is that in *Johnson* it was the form of the indictment that provided the defendant with the opportunity to use the Double Jeopardy clause offensively instead of defensively and in this case it was the *municipal court itself* that provided the opportunity.

Permitting the City to pursue the originally charged offense also does not offend the principles or purposes of the Double Jeopardy Clause. The Double Jeopardy Clause prohibits multiple attempts to convict a defendant because of the “embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as enhancing the possibility that even though innocent he may be found guilty.” *See Wilson*, 420 U.S. at 343. None of those factors are applicable here. This is not a case where the City has had “the opportunity to marshal its evidence and resources more than once or to hone its presentation of its case through a trial.” *See Johnson*, 467 U.S. at 501. The City is not seeking a *second* opportunity to convict Jones, instead it is seeking only what it has always sought—a *first* opportunity to present its evidence that Jones was operating a motor vehicle while under the influence. It should not be denied its “right to have a criminal trial conducted according to the proper procedure as established by the Criminal Rules, by the Constitutions of the United States and of Ohio, and by applicable provisions in the Revised Code.” *See State v. Richter*, 92 Ohio App. 3d 395, 399 (6th Dist. 1993).

Nor is this a case where Jones had any expectation of finality in the municipal court’s finding of guilty on only a reduced charge. Here, the City made clear that it was not amending

the charges against Jones and that the municipal court lacked the authority to do so on its own; without authority there can be no finality. When a defendant pleads no contest to a misdemeanor, R.C. 2937.07 states that the plea “shall constitute an admission of the truth of the facts alleged in the complaint.” R.C. 2937.07. With respect to minor misdemeanors, like the one at issue here, the statute gives a court only two options: accepting the charged facts as true, it may either find a defendant guilty or not guilty. *Id.* The statute does not give a court the power to independently weigh the facts or consider facts other than those alleged by the State. *See generally id.* And it does not permit a court to enter a finding of guilty on anything other than the charged offense. *Id.* All it does is allow a court to test the facts alleged in a complaint and determine, assuming that they are true, whether those facts are “sufficient to justify conviction of the offense charged.” *See State ex rel. Stern v. Mascio*, 75 Ohio St. 3d 422, 423-24 (1996) (discussing acceptance of a felony plea pursuant to Crim. R. 11) and *id.* at n.1 (noting that the same rule applies to misdemeanors pursuant to R.C. 2937.07).

Finally, this Court’s *Sawyer* decision does not stand for the proposition that a trial court may find a defendant guilty of a lesser offense even when a complaint alleges sufficient facts to support a charged offense. The Court in *Sawyer* held that if the facts alleged in a complaint *do not* support a charged offense, a trial court upon receiving a no-contest plea may consider whether those facts support any lesser included offenses. *See Sawyer*, 54 Ohio St. 2d at 382; *see also State ex rel. Leis*, 65 Ohio St. 3d at 60 (applying *Sawyer* to proceedings where a defendant “contended the admitted facts more accurately described” a lesser offense). But that holding does not mean that a trial court has the power to consider a lesser offense when the alleged facts *do* support a complaint. Indeed, the *Sawyer* decision sharply criticized the trial court for doing just that; it found that the lower court “simply failed to follow the law” when it considered facts

other than those alleged as the basis for finding the defendant guilty of a lesser offense. *Sawyer*, 54 Ohio St. 2d at 383-84.

The only reason that the trial court's decision remained undisturbed in *Sawyer* was because the Court believed that the Double Jeopardy clause prevented it from granting relief. *Id.* at 383-84. *Johnson*, however, has now clarified that double jeopardy imposes no such bar. *See Johnson*, 467 U.S. at 502; *see also People ex rel. Daley v. Suria*, 490 N.E.2d 1288 (Ill. 1989) (relying on *Johnson* to find no double jeopardy bar after a trial court exceed its authority and found defendants guilty of a lesser offense). *Johnson* thus makes clear that the Court is free in this case to correct the municipal court's failure to follow the law.

B. Even if jeopardy attached, the City may pursue the originally charged offense on remand because the charged offense was dismissed otherwise than on the merits

Even assuming that jeopardy attached when Jones entered his no-contest plea, the City should nevertheless be free to pursue the original operating-while-intoxicated charge on remand. Whether jeopardy has attached “begins, rather than ends, the inquiry as to whether the Double Jeopardy Clause bars retrial.” *Illinois v. Somerville*, 410 U.S. 458, 467 (1973). The “remaining question is whether the jeopardy ended in such a manner that the defendant may not be retried.” *Martinez*, 134 S. Ct. at 2075. As this Court has held, “[t]he purpose of the Double Jeopardy clause is to preserve for the defendant acquittals or favorable factual determinations but not to shield from appellate review erroneous legal conclusions not predicated on any factual determinations.” *State v. Calhoun*, 18 Ohio St. 3d 373, 377 (1985). The “relevant distinction is between judicial determinations that go to ‘the criminal defendant’s lack of criminal culpability,’ and those that hold ‘that a defendant, although criminally culpable, may not be punished because of a supposed’ procedural error.” *Evans v. Michigan*, 133 S. Ct. 1069, 1077 (2013). What

matters for double jeopardy purposes is not the form of a trial court's action, but its substance. *Id.* at 1078.

An example of a procedural dismissal is one premised on a faulty indictment. *See Lee v. United States*, 432 U.S. 23 (1977). In *Lee*, the defendant moved to dismiss an information because it failed to allege the specific intent required by law. *Id.* at 25-26. The trial court did not immediately rule on the motion, but instead granted it only after a brief bench trial. *Id.* at 26-27. The United States Supreme Court rejected Lee's argument that he could not be retried, holding that the Double Jeopardy clause created no barrier to further proceedings because the defective charging document was "the only obstacle to a conviction" and was akin to a mistrial granted on procedural grounds. *Id.* at 30-32.

The facts of this case are functionally equivalent to *Lee*, and compel a similar result. As in *Lee*, the substantive basis for the municipal court's decision below was necessarily a procedural rather than factual one. As discussed above, once Jones entered a plea of no contest, the municipal court's only available option was to consider the sufficiency of the facts alleged in the charging document. *See* R.C. 2937.07. It was authorized by law to reject Jones's no contest plea on the charged offense only if it concluded that the prosecutor had failed to allege sufficient facts. *See Sawyer*, 54 Ohio St. 2d at 382. If anything, this case is more clear-cut than *Lee* because the City was never provided with the opportunity to introduce any evidence in support of its complaint below. The municipal court's decision therefore cannot be said to have evaluated any of the City's evidence, nor can it be said to have determined that the evidence was insufficient to support the charge against Jones. *Cf. Evans*, 133 S. Ct. at 1075 (finding a Double Jeopardy bar because the trial court had evaluated the State's evidence and found it lacking).

In the alternative, if the Court believes that the municipal court *did* consider facts other than those alleged in the complaint, then it exceeded its legal authority and its decision can only be said to have been a form of judicial nullification. But in that case, it is unclear whether the test announced in *Evans* would apply. That decision provides no guidance about the double jeopardy effects of judicial nullification; it “reject[ed] the premise” that nullification might ever occur and instead presumed that “courts exercise their duties in good faith.” *See Evans*, 133 S. Ct. at 1079 *but see id.* at 1081 n.10 (suggesting that a violation of a state procedural rule would not affect a double jeopardy analysis). If anything, *Johnson*’s prohibition on using the Double Jeopardy clause as a “sword to prevent the State from completing its prosecution” would suggest that in such a case the municipal court’s decision would create no barrier to pursuing the originally charged offense on remand. *See Johnson*, 467 U.S. at 502.

* * *

Although the Eighth District reversed and remanded the municipal court’s decision, its reasons for doing so are unclear. After all, the court of appeals held that “[t]here was no majority opinion” in this case and that the panel members reached “no consensus” about the basis for their decision. Order Denying Motion for Rehearing En Banc, *State v. Jones*, No. 100598 (8th Dist. Mar. 6, 2014). It further stated that “there was no consensus about . . . whether double jeopardy would bar further prosecution.” *Id.* The lack of a controlling legal question suggests that this case should be dismissed as having been improvidently allowed. *See Lee v. Cardington*, 142 Ohio St. 3d 488, 2014-Ohio-5458, ¶ 33 (Pfeifer J., dissenting) (case should have been “dismissed as improvidently accepted” because it was “highly fact specific and [did] not involve an important or novel legal question”). Failing that, the Court should hold that R.C. 2945.67(A) permitted the City to appeal and that the Double Jeopardy Clause does not prevent it from pursuing the originally charged offense on remand.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision of the Eighth District.

Respectfully submitted,

MICHAEL DEWINE
Attorney General of Ohio

/s Eric E. Murphy
ERIC E. MURPHY* (0083284)
State Solicitor
**Counsel of Record*
SAMUEL C. PETERSON (0081432)
Deputy Solicitor
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax
eric.murphy@ohioattorneygeneral.gov
Counsel for *Amicus Curiae*
Ohio Attorney General Michael DeWine

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Brief of *Amicus Curiae* Ohio Attorney General Michael DeWine in Support of Appellee City of Cleveland was served via ordinary mail this 8th day of December, 2015 upon the following counsel:

Robert L. Tobik
Chief Public Defender
Cullen Sweeney
Assistant Public Defender
310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113

Counsel for Appellant
Troussaint Jones

Barbara A. Langhenry
Director of Law
Bridget E. Hopp
Assistant Prosecuting Attorney
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

Counsel for Appellee
City of Cleveland

/s Eric E. Murphy
Eric E. Murphy
State Solicitor