

IN THE SUPREME COURT OF OHIO

Case No: _____

16-1225

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	
-VS-	:	On Appeal From The
SUNY VICTOR,	:	Geauga County Court of Appeals
	:	Eleventh Appellate District
Defendant-Appellant,	:	
	:	Case No: <u>2014-G-003220</u>
	:	Case No: <u>2014-G-003241</u>
	:	Case No: <u>2015-G-000010</u>

DEFENDANT-APPELLANT'S PRO SE

PETITION FOR COURT-ORDERED REINSTATEMENT OF DEFENDANT'S STATE DRIVERS LICENSE

NOW COMES, SUNY VICTOR, Defendant-Appellant presently filing in Forma Pauperis Who hereby moves this Honorable Ohio Supreme Court, pursuant to S.Ct.Prac.R. 4.01; ORC ORC 4510.021, 4510.13, 4511.197 et seq, and any/all other applicable OCR/ORC on the above captioned misdemeanor offense by filing Defendant-Appellant's Pro Se Petition For Court-Ordered Reinstatement of Defendant's State Driver's License, based upon any/all of the following:

HISTORY OF CASE/APPEAL AND LACK OF CORPUS DELECTI

(1) That on January 11, 2014, at approximately 11:00 PM until approximately January 12, 2014, 1:00 am, Defendant-Appellant(ie, Suny Victor) was involved in a accident for deer running out in front of her vehicle and unknown Kirtland PD et al responded more than 3-Miles outside their Jurisdiction within the City of Chardon, County of Geauga, Ohio, based upon the Chardon PD and Geauga Co Sheriff Dept Gross Negligence, Deliberate Indifference, and Discrimination against this Pro Se Defendant-Appellant based upon her Gender/Sex as Female Citizen as secured on Kirtland PD 911-Emergency Calls. The Plaintiff- Ohio State Trooper John Nemastil responded in fully marked police car with Emergency Lights and Dashcam activated, and this Defendant-Appellant was falsely/wrongfully charged for committed the misdemeanor criminal offenses, contrary to ORC 4511.19A1A, "OVI-

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ALCOHOL/DRUGS(FIRST OFFENSE-OVI)"; and ORC 4511.202 "FAILURE TO CONTROL".

(2) That on June 20,2014, This Pro Se Defendant-Appellant was wrongfully convicted by Jury Trial for the alleged first misdemeanor ORC 4511.19A1A, "OVI-ALCOHOL/DRUGS(FIRST OFFENSE-OVI)" and ORC 4511.202 "FAILURE TO CONTROL" without ALL the mandatory elements(ie, Corpus Delecti) of the crime even being proven beyond a reasonable doubt in a light most favorable to the prosecution, based upon the unambiguous uncontested fact. That the Plaintiff-Appellees unlawfully convicted this Pro Se Defendant-Appellant representing herself under her Federal Constitutional Right to Self-Representation for alleged First Offense OVI(and not for OVI Refusal with NO prior OVI within past 20-years). After Defendant-Appellant lawfully refused to submit to a Voluntary BAC Test and Ohio State Police Trooper failed to ever obtain a Search Warrant based upon probable cause to obtain mandatory BAC Test Results of Defendant's Blood Alcohol Percentage within 2-Hours, in order, to charge, prosecute, convict and sentence this Defendant-Appellant for OVI First Offense. See Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560;(1979); State v. Jenks, 61 Ohio St.3d 259(1991); State v. Thompkins(1997), 78 Ohio St.3d 380, 386; State v. McKnight, 107 Ohio St.3d 101, 2005-Ohio-6046, 837 N.E.2d 315, ¶ 70.

(NOTE: Pursuant to clearly established Ohio Revised Codes at Section (D)(1)(b) of ORC 4511.19 "Operating vehicle under the influence of alcohol or drugs – OVI", clearly says: The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division when a person submits to a blood, breath, urine, or other bodily substance test at the request of a law enforcement officer under section 4511.191 of the Revised Code or a blood or urine sample is obtained pursuant to a search warrant.

(3) Further, Pursuant to clearly established Ohio State Highway Patrol Policy- OPS 902.20 "Alcohol and Drug Driver Enforcement" that on Page 5 of 17 of Ohio State Police Policy OSP-Number 902.20, Sections 6(a) through 6(c) clearly says that Troopers are required to get a search warrant, if someone refuses a test, and that if Trooper cannot get a warrant. That Trooper are authorized to use whatever reasonable means is necessary to get a chemical test from suspect or the driver at a hospital or doctor. See Division (B) of ORC 4511.192).

(4) On the case at bar, This Pro Se Defendant-Appellant has been charged/convicted with OVI, not OVI-Refusal. The Honorable Ohio Supreme Court clearly established, and held in State v. Miller,

2012-Ohio-997, that: "Both OVI and OVI-Refusal are first-degree misdemeanors, subject to the same maximum fine and the same maximum jail term. The additional element of refusal with a prior conviction elevates the mandatory minimum sentence only. It does not change the level/degree of offense is unchanged by the prior conviction, the prior conviction is not an essential element of the case". Now pay attention to the difference between being convicted and charged for OVI and OVI-Refusal

(5) Under Ohio Law, In order to prove a simple OVI under R.C. 4511.19(A)(1)(a), The state is required to prove that the defendant was operating a vehicle under the influence of drugs, alcohol or a combination of both. State v. Hoover, 123 Ohio St.3d 418, 2009-Ohio-4993, ¶ 13. That provides: "No person shall operate any vehicle * * * if, at the time of the operation, * * * the person is under the influence of alcohol, a drug of abuse, or a combination of them." R.C. 4511.19(A)(1)(a).

(6) However, In order to prove a OVI-Refusal under R.C. 4511.19(A)(2), The State must prove three elements: "(1) a DUI conviction within 20 years of the current violation, (2) operation of a motor vehicle while under the influence of alcohol or drugs, and (3) a refusal to submit to a chemical test while under arrest for the current DUI." Hoover at ¶ 13.

(7) The Honorable Supreme Court of Ohio made it clear in Hoover that a prior OVI conviction is an essential element under R.C. 4511.19(A)(2). There, the Court stated: "A person's refusal to take a chemical test is simply an additional element that must be proven beyond a reasonable doubt along with the person's previous DUI conviction to distinguish the offense from a violation of R.C. 4511.19(A)(1)(a)." (Emphasis added.) Id. At ¶ 21. Thus, Plaintiff-Appellee has failed to prove Corpus Delicti, or what us Laymans in area of law call "ELEMENTS OF THE OFFENSE".

(8) In State v. Latham, 2012-Ohio-2106, ¶ 18, As the Ohio Supreme Court has further previously noted: In reviewing a claim of insufficient evidence, "the relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." State v. Jenks, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following Jackson v. Virginia (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560. Also see State v. Thompkins (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541. State v. McKnight, 107 Ohio St.3d 101, 2005-Ohio-6046, 837 N.E.2d 315, ¶ 70.

(9) The Corpus Delicti of a crime consists of two elements, The act and the criminal agency of

the act. State v. Van Hook (1988), 39 Ohio St.3d 256, 261; State v. Maranda (1916), 94 Ohio St. 364, paragraph one of the syllabus. Before an alleged confession is/admitted, there must be "some evidence outside of the confession that tends to prove some material element of the crime charged." Maranda, 94 Ohio St. 364 at paragraph two of the syllabus. This independent evidence need not equal proof beyond a reasonable doubt. Id. See State v. Black (1978), 54 Ohio St.2d 304; State v. Bencic (May 3, 1995), 9th Dist. No. 16895, at 17. See State v. Goff, 2003-Ohio-1134 ¶11.

(10) Although the Corpus Delicti rule is well established in Ohio, the practicality of the rule has come into question in light of the modern procedural safeguards afforded to criminal defendants as set forth in State v. Edwards (1976), 49 Ohio St.2d 31, 35-36. As such, the courts do not apply the rule with "dogmatic vengeance." Id. at 36. The burden on the state to produce "some evidence" of the corpus delicti is minimal. Van Hook, 39 Ohio St.3d at 261-62.

(11) Further, This Pro Se Defendant-Appellant was arrested/charged on January 11, 2014, and the Defendant-Appellant was entitled by State/Federal Right to a Speedy Trial within 90-Days of Arrest(or service of summons) from January 11, 2014. See ORC 2945.71(B)(2),(D); State v. Williams, 9th Dist. Lorain No. 11CA010026, 2012-Ohio-3417, ¶ 25. Thereby establishing a claim for immediate discharge of Defendant-Appellant's conviction and sentence with prejudice. See ORC 2945.73(B); Akron v. Newman, 9th Dist. Summit No. 14169, 1989 WL 126307, *1 (Oct. 25, 1989); State v. Troutman, 9th Dist. Lorain No. 09CA009590, 2010-Ohio-39, ¶ 20, quoting State v. King, 70 Ohio St.3d 158, 160 (1994). Also see BARKER V WINGO, 407 US 514(1972); DOGGETT V U.S., 505 US 647(1992); ZENDER V U.S., 547 US 489(2006). This Defendant-Appellant demands/requests that this conviction/charge be DISMISSED WITH PREJUDICE, and this Defendant-Appellants Driver's License privilege be immediately REINSTATED with any/all court fees and costs be accessed against the State or Chardon Police Prosecutor as a matter of Law and Justice.

(12) That this Pro Se Defendant claims/states that since date of arrest that this Pro Se Defendant has appeared before this Honorable Court to be Arraigned/Tried/Sentence on said alleged misdemeanor offenses/charges; That this Pro Se Defendant has NO History of Alcohol/Substance Abuse; That this Pro Se Defendant has NO prior arrests/convictions for OVI; and has done everything possible to expedite the immediate resolution of this case/appeal with the Plaintiff/State to no avail. This Pro Se Defendant maintains, and has proven her ACTUAL INNOCENCE on the charges against her

as mandated under both State and Federal Law. See SCLEP V DELO, 513 US 289, 325; 115 Sct 851(1995); BOUSLEY V U.S., 523 US 614, 623; 118 Sct 1604; 140 LEd2d 828(1998). Also see MILLER V FRANCIS, 269, F3d 609, 614(6th Cir.2001); SIMPSON V JONES, 238 F3d 399, 405(6th Cir.2000).

(13) That this Pro Se Plaintiff-Appellant states as her claim upon which relief should be granted is based upon the fact. That the Defendants Chardon Municipal Court Judge Terri Stupica and Chardon "Police" Prosecutor Prosecutor James Gillette et al still continues to blatantly violate, conspire to violate, and to DENY to Reinstate this Defendant-Appellant's Drivers License beyond the 30-Day Suspension Period in violation of clearly established ORC 4511.192 "Advice to OVI Arrestee" Section (D)(1)(a), and in violation of Defendant's clearly established Federal Constitutional Rights to Life, Liberty, Travel, Freedom of Movement, and to engage/exercise his Right to Interstate Travel and Commerce protected under the "Privileges, Immunities and Comity Clause" of Article 1, Section 8, Clause 3; Article 6, Section 2, Clause 1; and First and Fourteenth Amendments of the US Constitution as determined by the US. Supreme Court in Paul v. Virginia, 75 U.S. 168 (1869); Zobel v. Williams, 457 U.S. 55, 66 and 79(1982). Also see State v. Hollaender, 2014-Ohio-1782; Eastlake v. Komes, 2010-Ohio-2411; State v. Williams, 11th Dist. No. 2001-P-0112, 2002-Ohio-6920, Williams at ¶9- ¶10; State v. Ritch, 4th Dist. Scioto No. 99 CA 2634, 1999 WL 787924, *2 (Sept. 21, 1999); State v. Carter, 124 Ohio App.3d 423, 428 (2d Dist.1997); Bur. of Motor Vehicles v. Hesson, 4th Dist. Washington No. 85 X 13, 1986 WL 3414.

(14) Thus, This Defendant-Appellant will suffer a actual prejudicial "Irreparable Harm/Injury"(ie, Right to Liberty/Freedom for being unable to provide for her two little girls, will loose her job/house, and will suffer a actual significant financial hardship. That is NOT correctable or available while waiting for any decision on "Appeal By Right") by being unlawfully "in custody" in the Geauga County Jail for said unlawful First Offense OVI conviction/sentence. That was unlawfully obtained without any of the mandatory BAC Blood Alcohol Test Results ever being obtained by Plaintiff-Appellee or Law Enforcement either by this Defendant-Appellant submitting Voluntarily BAC Test OR by obtaining a Search Warrant according to Ohio State Police Policies/Procedures and State/Federal Law.

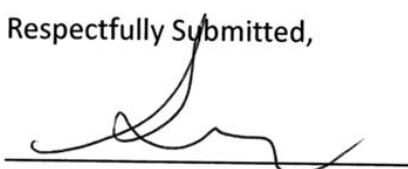
(15) In conclusion, This Pro Se Autodidact Defendant claims/stipulates that the herein pro se pleadings cannot be held same standards as those drafted by attorney as held/ruled in clearly

established and binding U.S. Supreme Court cases entitled ERICKSON V PARDUS, 551 US 89, 94(2007); Hughes v. Rowe, 449 U.S. 5, 9-10, 101 S.Ct. 173, 175-76, 66 L.Ed.2d 163 (1980); Boag v. MacDougall, 454 U.S. 364, 365 (1982); Haines V Kerner, 404 US 519, 521(1972); and accept must accept Pro Se Litigants allegations as true, unless they are clearly irrational or wholly incredible. Denton v. Hernandez, 504 U.S. 25, 33 (1992). Also see inferior Ohio Case Law almost in compliance with Federal Law as determined by Ohio Appellate Courts. Henderson V Henderson, 11th District Geauga No: 2013G-3118, 2013-Ohio-2820, citing In Re Rickels, 3rd Dist. Paulding No: 11-03-13, 2004-Ohio-2353; State V Chilcutt, 3rd Dist. Crawford Nos: 3-03-16 and 3-03-17, 2003-Ohio-6705; State ex rel Karmasu V Tate, 83 Ohio App.3d 199, 206(4th Dist.1992); In Re Paxton, 4th Dist/ No: 91-CA2008(June 30,1992).

WHEREFORE, This Pro Se Defendant requests/prays that this Honorable Ohio Supreme Court honors/grants this Defendant-Appellant's Pro Se Petition For Court-Ordered Reinstatement of Defendant's State Driver's License. By issuing an Order GRANTING this Defendant-Appellant's Pro Se Petition For Court-Ordered Reinstatement of Defendant's State Driver's License, pursuant to ORC 4510.021, 4510.13, and 4511.197 et seq; and Order that this Defendant's State Driver's License privileges/rights be immediately REINSTATED with any/all court fees, costs, and have any/all required Ohio DMV fees/costs be accessed against the State of Ohio and/or the Chardon "Police Prosecutor" as a matter of Law, Truth, and Justice for Unlawful OVI Conviction/Sentence, or this Pro Se Defendant will file another Federal Class Action Lawsuit immediately to assure that Rule of Law is honor/respected in the State of Ohio, as all circumstances should dictate and Justice would so demand.

Date: 7-25-14

Respectfully Submitted,


DEFENDANT FILING IN PRO PER
SUNY VICTOR
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(440) 547-6944

XC: Chardon Police Prosecutor
File

IN THE SUPREME COURT OF OHIO

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STATE OF OHIO, :
: Plaintiff-Appellee, :
-VS- : On Appeal From The
: Geauga County Court of Appeals
SUNY VICTOR, : Eleventh Appellate District
: Defendant-Appellant, :
: Case No: 2014-G-003220
: Case No: 2014-G-003241
: Case No: 2015-G-000010

STATE OF OHIO)
)SS.
COUNTY OF LAKE)

CERTIFICATE OF SERVICE

On July 25 2016, The undersigned served a copy of this Defendant-Appellant's Notice For Appeal of Appellant Suny Victor; Memorandum In Support of Jurisdiction of Defendant-Appellant Suny Victor; Defendant-Appellant's Pro Se Petition For Court-Ordered Reinstatement of Defendant's State Driver's License; Defendant-Appellant Pro Se Motion To Stay Enforcement of Judgement; Affidavit of Indigence; and Certificate of Service. Upon the Plaintiff-Appellee Chardon Police Prosecutor, James M. Gillette, PNC Bank Bldg., 117 South Street, Suite #208, Chardon, Ohio 44024. By placing a copy of said documents in a sealed envelope, properly addressed with First Class US Postage being fully prepaid and depositing it in the US Mail.

I declare that the above statements are true to the best of my knowledge, information, and belief.

Date: 7-25-16

Respectfully Submitted,



XC: Chardon Police Prosecutor
File

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