

[Cite as *Zanesville v. Rouse*, 2009-Ohio-2689.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

CITY OF ZANESVILLE

Plaintiff-Appellee

-vs-

RONALD T. ROUSE, JR.

Defendant-Appellant

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. John W. Wise, J.

Hon. Julie A. Edwards, J.

Case No. CT08-0035

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Zanesville Municipal Court
of Muskingum County, Case No.
06CRB00319

JUDGMENT:

Vacated

DATE OF JUDGMENT ENTRY:

June 3, 2009

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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Hoffman, P.J.

{¶1} Defendant-appellant Ronald T. Rouse, Jr., appeals the June 13, 2008 Amended Judgment Entry entered by the Zanesville Municipal Court, which overruled his motion to dismiss. Plaintiff-appellee is the City of Zanesville.

STATEMENT OF THE CASE AND FACTS

{¶2} On February 27, 2006, Appellant was arrested for domestic violence, in violation of Zanesville Ordinance 537.14A. Appellant was issued a document captioned, "Summons after arrest without warrant and complaint upon such summons". Appellant entered a plea of not guilty at his arraignment on February 28, 2006. The trial court scheduled the matter for trial on April 5, 2006. The trial court also issued a protection order. Appellant appeared before the trial court on April 13, 2006, and entered a plea of guilty to the charge. The trial court stayed the matter until October 26, 2006, to allow Appellant to complete an anger management program.

{¶3} Appellant did not complete the anger management program as he was incarcerated in July, 2006, on unrelated charges. Appellant informed the trial court he still wished to complete the program. Appellant was scheduled to be released from jail in December, 2006. The trial court stayed the matter until July 6, 2007, again giving Appellant time to complete the anger management program.

{¶4} On July 20, 2007, Appellant filed a motion to dismiss, alleging the trial court lacked subject matter jurisdiction to entertain the State's prosecution as a criminal complaint had never been filed. Appellant further argued the temporary protection order was void or unenforceable as a result. The City filed a memorandum contra. Appellant

filed a response thereto, which was followed by the City's response. The trial court conducted a hearing on the motions on June 9, 2008. Via Judgment Entry filed the same day, the trial court overruled Appellant's motion to dismiss.¹ The trial court then proceeded to enter a finding of guilty on Appellant's plea and sentenced him to ten days in jail and imposed a fine of \$50.00. The trial court suspended the jail time and fine as Appellant was serving a fifteen year sentence in a state correctional facility. The trial court memorialized its finding of guilt and sentence via Judgment Entry also filed June 9, 2008.

{¶15} It is from this conviction Appellant appeals, raising the following assignments of error:

{¶16} "I. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO DISMISS APPELLANT'S CASE WITH PREJUDICE, BASED UPON THE FACT THAT THE COMPLAINT HAD NEVER BEEN FILED IN VIOLATION OF DEFENDANT'S FOURTEENTH AMENDMENT RIGHT TO DUE PROCESS OF LAW.

{¶17} "II. THE TRIAL COURT ABUSED ITS DISCRETION BY LITIGATING A MATTER WITH WHICH THE TRIAL COURT DID NOT ENJOY SUBJECT-MATTER JURISDICTION.

{¶18} "III. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO DISMISS APPELLANT'S CASE WITH PREJUDICE, BASED UPON THE FACT THAT THE APPELLANT'S STATUTORY RIGHT TO A SPEEDY TRIAL HAD BEEN VIOLATED.

¹ The trial court filed an Amended Judgment Entry on June 13, 2008, which did not substantially effect the June 9, 2008 Judgment Entry.

{¶19} “IV. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO DISMISS APPELLANT’S CASE WITH PREJUDICE, BASED UPON THE FACT THAT THE APPELLANT’S CONSTITUTIONAL RIGHT TO COUNSEL AND PROTECTIONS UNDER CRIMINAL RULES 11 AND 44 HAD BEEN VIOLATED.

{¶10} “V. IN THE ABSENCE OF AN UNDERLYING CRIMINAL COMPLAINT HAVING BEEN FILED IN THIS CASE, THE LOWER COURT EXCEEDED ITS JURISDICTION UPON A FAILURE TO COMPLY WITH R.C. §2919.26 IN ITS ATTEMPT TO ISSUE A TEMPORARY PROTECTION ORDER AND THUSLY, THAT ATTEMPT IS VOID.

{¶11} “VI. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO FIND THAT THE TEMPORARY PROTECTION ORDER WAS NEVER FILED IN THIS COURT, AND THUSLY HAD NO FORCE OR EFFECT.

{¶12} “VII. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO FIND THAT THE TEMPORARY PROTECTION ORDER WAS INVALID BECAUSE NO MOTION FOR THE TEMPORARY ORDER WAS EVER FILED.”

II

{¶13} For ease of discussion, we shall address Appellant’s second assignment of error first. In his second assignment of error, Appellant maintains the trial court lacked subject matter jurisdiction as the charging instrument was not properly filed.

{¶14} This Court recently addressed this exact issue in *State v. Sharp*, Knox App. Nos. 08CA000002, 08CA000003, 08CA000004, 2009-Ohio-1854. In *Sharp*, we vacated the appellant’s conviction and sentence, finding the trial court did not have

subject matter jurisdiction because the charging document was not noted on the docket nor file stamped.

{¶15} In accordance with *State v. Sharp*, supra, we sustain Appellant's second assignment of error.

I, III, IV

{¶16} In light of our disposition of Appellant's second assignment of error, we find assignments of error I, III, and IV to be moot.

V, VI, VII

{¶17} Because Appellant's remaining three assignments of error involve the temporary protection order, we shall address said assignments of error together. In his fifth assignment of error, Appellant maintains the trial court exceeded its jurisdiction in attempting to issue a temporary protection order when an underlying criminal complaint had not been filed. Appellant concludes the attempt is void. In his sixth assignment of error, Appellant asserts the trial court abused its discretion in failing to find the temporary protection order was never filed; therefore, had no force or effect. In his seventh assignment of error, Appellant argues the trial court abused its discretion in failing to find the temporary protection order was invalid because a motion for such order was never filed.

{¶18} The document at issue herein is captioned "Criminal Temporary Protection Order (TPO) (R.C. 2919.26)".

{¶19} R.C. 2919.26 provides:

{¶20} "Upon the filing of a complaint that alleges a violation of section 2909.06, 2909.07, 2911.12, or 2911.211 of the Revised Code if the alleged victim of the violation

was a family or household member at the time of the violation, a violation of a municipal ordinance that is substantially similar to any of those sections if the alleged victim of the violation was a family or household member at the time of the violation, any offense of violence if the alleged victim of the offense was a family or household member at the time of the commission of the offense, or any sexually oriented offense if the alleged victim of the offense was a family or household member at the time of the commission of the offense, the complainant, the alleged victim, or a family or household member of an alleged victim may file, or, if in an emergency the alleged victim is unable to file, a person who made an arrest for the alleged violation or offense under section 2935.03 of the Revised Code may file on behalf of the alleged victim, a motion that requests the issuance of a temporary protection order as a pretrial condition of release of the alleged offender, in addition to any bail set under Criminal Rule 46. The motion shall be filed with the clerk of the court that has jurisdiction of the case at any time after the filing of the complaint.”

{¶21} Having found in Appellant’s second assignment of error, *supra*, the complaint in the instant matter was never filed, we find the temporary protection order was not filed in compliance with R.C. 2919.26; therefore, is void.

{¶22} We note in this Court’s previous opinion in *State v. Rouse*, Muskingum App. No. CT2007-0036, 2008-Ohio-2975, we found nothing on the face of State’s Exhibit 16 indicated, “The signed protection order was *not* filed in the trial court. At most, it can be said that the protection order appears to lack a contemporaneous file stamp.” *Id.* at para. 40. However, the panel which ruled on that case did not have the benefit of the full record from the municipal court. The record herein affirmatively

demonstrates neither the domestic violence complaint nor the temporary protection order was filed.

{¶23} Based upon the foregoing, we sustain Appellant's V, VI, and VII assignments of error.

{¶24} The judgment of conviction and sentence of the Zanesville Municipal Court is vacated, and the temporary protection is vacated.

By: Hoffman, P.J.

Wise, J. and

Edwards, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ John W. Wise
HON. JOHN W. WISE

s/ Julie A. Edwards
HON. JULIE A. EDWARDS

