

[Cite as *State v. Otto*, 2001-Ohio-3193.]

STATE OF OHIO, BELMONT COUNTY
IN THE COURT OF APPEALS
SEVENTH DISTRICT

STATE OF OHIO)	CASE NO. 97-BA-57
)	
PLAINTIFF-APPELLEE)	
)	
VS.)	<u>O P I N I O N</u>
)	
DAVID E. OTTO)	
)	
DEFENDANT-APPELLANT)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from County Court, Eastern Division, Belmont County, Ohio
Case No. 97TRC02381-01

JUDGMENT: Affirmed.

APPEARANCES:

For Plaintiff-Appellant: Atty. Frank Pierce
Prosecuting Attorney
Atty. Thomas M. Ryncarz
Asst. Prosecuting Attorney
147A West Main Street
St. Clairsville, Ohio 43950

For Defendant-Appellee: David E. Otto, Pro Se
51801 Pipe Creek Road
Jacobsburg, Ohio 43933

JUDGES:

Hon. Cheryl L. Waite

Hon. Gene Donofrio
Hon. Joseph J. Vukovich

Dated: March 7, 2001

WAITE, J.

{¶1} This timely appeal arises from Appellant's conviction on charges of driving under the influence and speeding. For the following reasons, we affirm the judgment of the trial court.

{¶2} On September 21, 1997, Appellant, David E. Otto, was stopped by an Ohio State Patrolman for speeding on State Rt. 7 in Mead Township, Belmont County, Ohio. The patrolman noticed a strong odor of alcohol emanating from Appellant and that he had glassy eyes and slurred speech. Appellant failed several field sobriety tests and submitted to a BAC Datamaster test which indicated that Appellant had a blood alcohol content of .183. Appellant was cited for driving under the influence and speeding and summonsed to appear the following day at Belmont County Court, Eastern Division.

{¶3} Appellant appeared at the court the following day and pleaded guilty to driving under the influence, second offense, and speeding. The trial court sentenced Appellant to thirty days incarceration, twenty days suspended, and a \$300.00 fine for driving under the influence. The court also suspended Appellant's license for one year and placed him on probation

for one year. Appellant was fined \$20.00 on the speeding violation.

{¶4} On October 20, 1997, Appellant filed a notice of appeal. The trial court stayed the jail sentence pending appeal. On June 1, 1998, Appellant filed a "memorandum of law" with this Court. The State of Ohio moved to dismiss the appeal on the basis that Appellant failed to timely file a brief. However, on June 18, 1998, this Court construed Appellant's memorandum of law as his brief and overruled the motion to dismiss.

{¶5} Appellant has failed to articulate a specific assignment of error in his disjointed and unintelligible brief. Appellant supports his "argument" in this criminal appeal by citing to the Uniform Commercial Code as found in R.C. Chapter 1303. Appellant also frequently refers to the archaic General Code. As best we can surmise, Appellant argues that his convictions should be reversed for lack of proper venue.

{¶6} Venue is neither a jurisdictional issue nor a material element of a criminal offense. *State v. McCartney* (1988), 55 Ohio App.3d 170, 170. Venue is a personal privilege. *Id.* Proper venue is a fact which the state must prove beyond a reasonable doubt unless waived by the accused. *Id.* citing *State v. Headley* (1983), 6 Ohio St.3d 475, 477. A challenge to

venue must be raised before trial begins, otherwise it is considered waived. *State v. Williams* (1988), 53 Ohio App.3d 1, 5. Moreover, a guilty plea precludes a defendant from challenging the factual issue of venue on appeal. *State v. McCartney*, 170. In the present case, Appellant's guilty plea is a matter of record. Therefore, we are precluded from reviewing this factual issue.

{¶7} Accordingly, Appellant's assignment of error lacks merit and we affirm the judgment of the trial court.

Donofrio, J., concurs.

Vukovich, P.J., concurs.