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Alabama Court of Criminal Appeals

OCTOBER TERM, 2023-2024

CR-2023-0348

City of Huntsville

v.

Brodrick D. Fearn

Appeal from Madison Circuit Court
(CC-22-4774)

CR-2023-0349

City of Huntsville

v.

Dillon Barrett

Appeal from Madison Circuit Court
(CC-22-3440)

CR-2023-0353

City of Huntsville

v.

Curtis E. Tanner

**Appeal from Madison Circuit Court
(CC-23-464)**

CR-2023-0354

City of Huntsville

v.

John Sandifer

**Appeal from Madison Circuit Court
(CC-22-3285)**

CR-2023-0355

City of Huntsville

v.

Justin Bell

**Appeal from Madison Circuit Court
(CC-22-4788)**

COLE, Judge.

The City of Huntsville successfully prosecuted Brodrick D. Fearn, Dillon Barrett, Curtis E. Tanner, John Sandifer, and Justin Bell in the Huntsville Municipal Court. Then Fearn, Barrett, Tanner, Sandifer, and Bell all appealed their municipal-court convictions to the Madison Circuit Court for de novo jury trials, but their cases never proceeded to trial. Instead, each defendant -- without first raising any arguments in the municipal court about the complaints filed against them -- moved the circuit court to dismiss their charges based on alleged defects in the charging complaints. Although the arguments about their complaints varied slightly, each defendant claimed that, because the complaints filed against them in the municipal court contained defects, the circuit court did not have subject-matter jurisdiction over their respective cases and, thus, the charges against them should be dismissed. The circuit court agreed with each defendant and dismissed the charges. The City timely appealed the circuit court's judgment in each case. See Rule 15.7, Ala. R.

Crim. P. This Court has consolidated the City's five appeals for the purpose of issuing one opinion.

In each appeal, the City argues that pleading deficiencies in a municipal-court complaint do not deprive a circuit court of its appellate jurisdiction. At most, the City says, pleading deficiencies in a municipal-court complaint concern matters of personal jurisdiction that are waived if not timely raised. The City asserts that, because the defendants waited to raise their defective-complaint arguments until their cases were docketed in the circuit court, they waived their arguments. Before we address the City's arguments on appeal, we set out the procedural history of each of the five appeals before us.

Procedural History

I. Brodrick D. Fearn

On February 2, 2021, Joseph Patterson swore out a complaint alleging that, on January 22, 2021, Fearn committed the offense of menacing within the City of Huntsville. The complaint provided that Fearn "did by physical action, intentionally place or attempt to place another person in fear of imminent serious physical injury, in that he/she during an altercation did point a handgun at the complainant (Joseph

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Patterson) causing him to fear being shot." (Record in CR-2023-0348, C. 9.) The complaint further provided that Fearn did so "[i]n violation of city ordinance 17-1(a) adopting [C]ode of Alabama, 13A-6-23." (Record in CR-2023-0348, C. 9.)

On October 7, 2022, Fearn appeared in municipal court and pleaded not guilty to the charge in the complaint. After a trial, the municipal court found Fearn guilty of the charged offense. The municipal court then sentenced him to 45 days in the city jail. (Record in CR-2023-0348, C. 8.) At no point during the municipal-court proceedings did Fearn argue that the complaint filed against him was defective.

On the same day he was convicted, Fearn appealed to the circuit court for a trial de novo, and he demanded a jury trial. (Record in CR-2023-0348, C. 10.) After his appeal was docketed in the circuit court, Fearn moved to dismiss the complaint filed against him, arguing for the first time that the "Municipal Complaint alleges that [he] committed the offense of menacing 'In violation of city ordinance 17-1(a) adopting [C]ode of Alabama, 13A-6-23,' but does not allege that the ordinance had been duly adopted prior to the acts alleged in the complaint." (Record in CR-2023-0348, C. 21.) Fearn, relying on Harris v. City of Vestavia Hills, 269

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So. 2d 626, 627 (Ala. Crim. App. 1972), argued that, because "[t]he complaint in this case omits an averment of authorized ordination by the municipality and therefore fails to charge an offense," the City "does not have jurisdiction to prosecute and [the circuit court] does not have subject-matter jurisdiction," and, thus, his "charge is due to be dismissed." (Record in CR-2023-0348, C. 22.)

The City, in response, argued that Fearn's reliance on Harris "is misguided" and that, as "long as the City adequately pleads and proves at trial de novo the fact that the ordinance had been duly adopted prior to the acts alleged in the complaint, the city has satisfied the requirements of [R]ule 2.3, AL Rule Crim. Pro." (Record in CR-2023-0348, C. 24.) The City attached to its response in the circuit court a copy of Ordinance No. 17-1, which shows that the ordinance was first adopted in 1982 and was last amended on April 26, 2018. (Record in CR-2023-0348, C. 25.)

Fearn, in reply, argued that a municipal-court complaint must include "an averment of authorized ordination by the municipality," and that the failure to include such an "averment of ordination" in the complaint filed against him deprived the circuit court of subject-matter

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jurisdiction and, thus, he argued, his menacing "charge is due to be dismissed." (Record in CR-2023-0348, C. 28.)

On May 11, 2023, the circuit court issued an order dismissing Fearn's menacing charge and finding that "the complaint as filed fails to confer jurisdiction on this Court." (Record in CR-2023-0348, C. 32.)

II. Dillon Barrett

On March 30, 2021, B.L. swore out a complaint against Barrett alleging that, on March 21, 2021, Barrett violated a "protection order" within the City of Huntsville. (Record in CR-2023-0349, C. 13.) The complaint provided that Barrett

"[d]id violate any provision of a valid protection order issued by a court of competent jurisdiction, whether temporary or permanent, the purpose of which was to prohibit him/her from harassing, annoying, alarming, intimidating, assaulting, communicating with or otherwise bothering [B.L.] in that he/she did enter the complainants placed of employment ... while the complainant ... was present, the defendant then lurked in the area of the store-front and circled the complainant's vehicle. This is in violation of DR-20-193."

(Record in CR-2023-0349, C. 13.) The complaint further provided that Barrett did so "[i]n violation of city ordinance 17-1(a) adopting [C]ode of Alabama, 13A-6-142(c)(1)." (Record in CR-2023-0349, C. 13.)

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On August 25, 2022, Barrett appeared in municipal court and pleaded not guilty to the charged offense. After a trial, the municipal court found Barrett guilty of the charged offense. The municipal court then sentenced him to 365 days in the city jail, but it suspended 350 days of his sentence and placed him on 24 months of probation. (Record in CR-2023-0349, C. 12.) At no point during the municipal-court proceedings did Barrett argue that the complaint filed against him was defective.

On the same day Barrett was convicted, he appealed to the circuit court for a trial de novo, and he demanded a jury trial. (Record in CR-2023-0349, C. 14.) After his appeal was docketed in the circuit court, Barrett moved to dismiss the complaint filed against him, arguing for the first time that "the charging instrument fails to allege each material element of an offense," and, thus, "the charging instrument does not adequately apprise [him] of an offense." (Record in CR-2023-0349, C. 26.)

After his counsel filed the motion to dismiss, the circuit court set Barrett's case on its docket for March 30, 2023. Barrett, however, failed to appear at that time, and the circuit court issued a warrant for his arrest. (Record in CR-2023-0349, C. 36.) Thereafter, Barrett's counsel moved to withdraw from his case, and the circuit court granted that

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motion. (Record in CR-2023-0349, C. 33, 35.) On April 24, 2023, Barrett's new counsel filed a notice of appearance in Barrett's case.

On May 5, 2023, Barrett's new counsel moved to dismiss Barrett's case, arguing for the first time that the complaint filed against Barrett alleged that he had "violated a protection order 'In violation of city ordinance 17-1(a) adopting [C]ode of Alabama, 13A-6-142(c)(1)," which "does not exist." (Record in CR-2023-0349, C. 55.) Barrett explained that "[§] 13A-6-142(c) does not enumerate a crime and there is no subsection (1)." (Record in CR-2023-0349, C. 55.) Barrett, relying on Harris, supra, argued that the City "is attempting to prosecute based on a municipal ordinance purporting to adopt a non-existent section of the Alabama Code." (Record in CR-2023-0349, C. 56.) Barrett further argued that the "complaint also omits an averment of authorized ordination by the municipality and therefore fails to charge an offense." (Record in CR-2023-0349, C. 57.) Thus, Barrett said, the circuit court does not have subject-matter jurisdiction over his case and his "charge is due to be dismissed." (Record in CR-2023-0349, C. 57.)

The City, in response, conceded that "13A-6-142(c)(1) does not exist," but argued that the reference to that nonexistent code section in

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the complaint filed against Barrett "amounts to a harmless clerical error that does not render the complaint void since [the complaint] adequately informs [Barrett] of the offense he is charged with committing." (Record in CR-2023-0349, C. 62.) The City further argued that this error "can be cured by allowing the City to amend the charge to the correct code section." (Record in CR-2023-0349, C. 62.) The City also argued that Barrett's reliance on Harris is incorrect and that, as "long as the City adequately pleads and proves at trial de novo the fact that the ordinance had been duly adopted prior to the acts alleged in the complaint, the city has satisfied the requirements of [R]ule 2.3, AL Rule Crim. Pro." (Record in CR-2023-0349, C. 63.) The City filed a motion to amend the complaint contemporaneously with its response to Barrett's motion, asking the court to change the reference to § 13A-6-142(c)(1) in the complaint to § 13A-6-142(a). (Record in CR-2023-0349, C. 65.)

Barrett, in reply, objected to the City's motion to amend the complaint filed against him and argued that the complaint was defective and that the charge against him is due to be dismissed. (Record in CR-2023-0349, C. 67-69.)

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On May 11, 2023, the circuit court issued an order dismissing the charge against Barrett and finding that "the complaint as filed fails to confer jurisdiction on this Court." (Record in CR-2023-0349, C. 70.)

III. Curtis E. Tanner

On October 5, 2022, Jerry Jones swore out a complaint against Tanner, alleging that, on September 23, 2022, Tanner had committed a third-degree assault on him in the City of Huntsville. The complaint provided that Tanner, "with the intent to cause physical injury to another person, ... caused physical injury to any person, to wit: while working with an accomplice, did strike the complainant (Jerry Jones) multiple times causing a busted lip." (Record in CR-2023-0353, C. 11.) The complaint further provided that Tanner's actions were "[i]n violation of city ordinance 17-1(a) adopting [C]ode of Alabama, 13A-6-22(a)(1)." (Record in CR-2023-0353, C. 11.)

On February 2, 2023, Tanner appeared in municipal court and pleaded not guilty to the charged offense. After a trial, the municipal court found him guilty. The municipal court then sentenced Tanner to 365 days in the city jail, but it suspended that sentence and placed him on probation for 24 months. (Record in CR-2023-0353, C. 10.) At no point

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during the municipal-court proceedings did Tanner argue that the complaint filed against him was defective.

On the same day he was convicted, Tanner appealed to the circuit court for a trial de novo, and he demanded a jury trial. (Record in CR-2023-0353, C. 12.) After his appeal was docketed in the circuit court, Tanner moved to dismiss the complaint filed against him, arguing for the first time that "[t]he complaint in this case omits an averment of authorized ordination by the municipality and therefore fails to charge an offense." (Record in CR-2023-0353, C. 23.) According to Tanner, the City did "not have jurisdiction to prosecute and [the circuit court] does not have subject-matter jurisdiction," and, thus, the assault "charge is due to be dismissed." (Record in CR-2023-0353, C. 23.)

The City, in response, argued that the complaint filed against Tanner was "sufficient to proceed with prosecution" because, contrary to Tanner's argument in his motion to dismiss, "[i]t is not incumbent on the prosecution to set out the ordinance or its substance in the complaint." (Record in CR-2023-0353, C. 31-32.)

On May 16, 2023, the circuit court issued an order granting Tanner's motion to dismiss. (Record in CR-2023-0353, C. 34.)

IV. John Sandifer

On September 14, 2021, Cora Jordan swore out a complaint against Sandifer, alleging that, on July 24, 2021, Sandifer committed the offense of "disturbing the peace" in the City of Huntsville when he

"did willfully disturb the peace of others by violence, offensive, boisterous, or tumultuous conduct or carriage or by language calculated to provoke a breach of the peace, in that he/she, while standing in the street outside the complainant's home, did repeatedly yell and shout curse words which disturbed the peace of the complainant (Cora Jordan)."

(Record in CR-2023-0354, C. 8.) The complaint further provided that Sandifer's actions were "[i]n violation of city ordinance 17-102 adopting [C]ode of Alabama,11-45-1."¹ (Record in CR-2023-0354, C. 8.)

On August 1, 2022, Sandifer appeared in municipal court and pleaded not guilty to the charged offense. After a trial, the municipal court found Sandifer guilty of disturbing the peace. The municipal court then sentenced Sandifer to 30 days in the city jail. (Record in CR-2023-0354, C. 7.) At no point during the municipal-court proceedings did Sandifer argue that the complaint filed against him was defective.

¹Section 11-45-1 authorizes municipalities to adopt ordinances "not inconsistent with the laws of the state." It does not establish an offense.

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On August 2, 2022, Sandifer appealed to the circuit court for a trial de novo, and he demanded a jury trial. (Record in CR-2023-0354, C. 9.) After his appeal was docketed in the circuit court, Sandifer moved to dismiss the complaint filed against him, arguing for the first time that the "City is attempting to prosecute [him] based on a municipal ordinance purporting to adopt a section of the Alabama Code that does not enumerate a crime." (Record in CR-2023-0354, C. 26.) Sandifer also argued that "the complaint in this case omits an averment of authorized ordination by the municipality." (Record in CR-2023-0354, C. 26.) Sandifer claimed that, based on these defects in the complaint, the City did "not have jurisdiction to prosecute and [the circuit court] does not have subject-matter jurisdiction," and, thus, that the "charge is due to be dismissed." (Record in CR-2023-0354, C. 26.)

The City, in response, argued that "Code section 17-102 that is cited in the complaint is the municipal ordinance violation for the offense of Disturbing the Peace, which is the offense that the defendant is being charged with." (Record in CR-2023-0353, C. 30.) The City attached to its response a copy of Ordinance No. 17-102, which provides that "[i]t shall be unlawful for any person willfully to disturb the peace of others by

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violence, offensive, boisterous, or tumultuous conduct or carriage or by language calculated to provoke a breach of the peace, or to create or aid in a rout or riot within the city," which references § 13A-11-7, Ala. Code 1975. (Record in CR-2023-0353, C. 32.) The City concluded that Sandifer's argument was "without merit and inapplicable." (C. 30.)

On May 17, 2023, the circuit court issued an order granting Sandifer's motion to dismiss. (Record in CR-2023-0354, C. 33.)

V. Justin Bell

On April 28, 2022, Lenika Stewart swore out a complaint against Bell for committing the offense of third-degree criminal mischief in the City of Huntsville on November 13, 2021, and alleged that Bell "did unlawfully and with intent to damage property and having no right to do so or any reasonable ground to believe that he/she had such a right, inflicted damages to said property in an amount not exceeding \$500" by "intentionally strik[ing] (2) glass windows on the complainant's residence." (Record in CR-2023-0355, C. 11.) The complaint further alleged that Bell's actions were "[i]n violation of city ordinance 17-1(a) adopting [C]ode of Alabama, 13A-7-23(A)." (Record in CR-2023-0355, C. 11.)

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On September 29, 2022, Bell appeared in municipal court and pleaded not guilty to the charged offense. After a trial, the municipal court found Bell guilty of the charged offense. The municipal court then sentenced Bell to 60 days in jail, but it suspended that sentence and placed him on probation for 12 months. (Record in CR-2023-0355, C. 10.) At no point during the municipal-court proceedings did Bell argue that the complaint filed against him was defective.

On October 11, 2022, Bell appealed to the circuit court for a trial de novo, and he demanded a jury trial. (Record in CR-2023-0355, C. 12.) After his appeal was docketed in the circuit court, Bell moved to dismiss the complaint filed against him, arguing for the first time that the "City is attempting to prosecute [him] based on a municipal ordinance purporting to adopt a section of the Alabama Code that omits an averment of authorized ordination by the municipality in its complaint." (Record in CR-2023-0355, C. 26.) Bell claimed that, because the complaint was deficiently pleaded, the City did "not have jurisdiction to prosecute and [the circuit court] does not have subject-matter jurisdiction," and, thus, that his "charge is due to be dismissed." (Record in CR-2023-0355, C. 26.)

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The City, in response, argued that "an alleged defective complaint does not compromise the subject matter jurisdiction of the circuit court;" therefore, Bell's argument is without merit. (Record in CR-2023-0355, C. 42.)

On May 17, 2023, the circuit court issued an order granting Bell's motion to dismiss. (Record in CR-2023-0355, C. 45.)

Discussion

As detailed above, each defendant argued in the circuit court that defects in their respective municipal-court complaints deprived the circuit court of subject-matter jurisdiction over the appeals from their municipal-court convictions, and thus that the circuit court should dismiss the charges against them. The circuit court did so, and the City appealed the circuit court's judgment in each case.

On appeal, the City argues, as it did in the circuit court, that defects in a charging instrument do not deprive a circuit court of its subject-matter jurisdiction over an appeal for a trial de novo from a municipal-court conviction because a circuit court does not derive its subject-matter jurisdiction from a municipal-court complaint. Rather, the City says, a circuit court gets its subject-matter jurisdiction over an appeal from a

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municipal-court conviction from § 12-11-30(3), Ala. Code 1975. In other words, it is the statute setting out a circuit court's appellate jurisdiction -- not the charging instrument -- that is the source of the circuit court's subject-matter jurisdiction in an appeal from a municipal-court conviction. We agree with the City of Huntsville.

This Court has long held that defects in a complaint do not deprive a circuit court of subject-matter jurisdiction over an appeal for a trial de novo from a municipal-court conviction. See, e.g., Moyer v. City of Foley, 632 So. 2d 1012 (Ala. Crim. App. 1993) (rejecting Moyer's argument that defects in the solicitor's complaints filed against him divested the circuit court of subject-matter jurisdiction over his appeal for a trial de novo). This is because a court's subject-matter jurisdiction "is derived from the Alabama Constitution and the Alabama Code." Ex parte Seymour, 946 So. 2d 536, 538 (Ala. 2006) (citing United States v. Cotton, 535 U.S. 625, 630-31, 122 S. Ct. 1781, 152 L. Ed. 2d 860 (2002)). Simply put, the validity of a charging instrument "is irrelevant to whether the circuit court had jurisdiction over the subject matter" of a case. Id. at 539. Although a defect in a charging instrument "may be error ... -- or even

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constitutional error -- ... the defect does not divest the circuit court of the power to try the case." Id. at 539.

The Alabama Code vests circuit courts with subject-matter jurisdiction over appeals from municipal-court convictions. Indeed, § 12-11-30(3), Ala. Code 1975, provides that circuit courts have appellate jurisdiction over "prosecutions for ordinance violations in municipal courts" and that "[a]ppeals to the circuit court shall be tried de novo, with or without a jury, as provided by law."

Here, Fearn, Barrett, Tanner, and Bell were all charged by way of complaint in the Huntsville Municipal Court for violating city ordinances that had adopted misdemeanor offenses from the Alabama Code, and, after having trials, each of them was convicted in municipal court. Sandifer was convicted in municipal court of violating a municipal ordinance, but later asserted that his conviction was based upon a municipal ordinance that had adopted a misdemeanor offense from the Alabama Code. Thereafter, Fearn, Barrett, Tanner, Sandifer, and Bell each appealed their municipal-court convictions to the circuit court pursuant to § 12-11-30(3), Ala. Code 1975. The circuit court had subject-matter jurisdiction to hear these cases based upon § 12-11-30, not based

upon the allegations included in the complaint transferred from the municipal court to the circuit court. So, "[i]n accordance with § 12-11-30(3), Ala. Code 1975, and Ex parte Seymour, the circuit court had subject-matter jurisdiction over [these] case[s]." State v. Simmons, 179 So. 3d 249, 250 (Ala. 2014.) Accordingly, the circuit court erred when it dismissed the charges against Fearn, Barrett, Tanner, Sandifer, and Bell based on a lack of subject-matter jurisdiction over their appeals.

What is more, although the circuit court improperly dismissed the charges against Fearn, Barrett, Tanner, Sandifer, and Bell based on a lack of subject-matter jurisdiction over their de novo appeals, the motions to dismiss their charges based on defects in their original charging instruments² was also not properly before the circuit court for review because each defendant waived his argument concerning defects in his municipal-court complaint when he did not raise any objections to his complaint in the municipal court.

²Rule 2.2(d), Ala. R. Crim. P., provides, in relevant part, that "[c]riminal proceedings prosecuted in the ... municipal court, from conviction of which the defendant has appealed for trial de novo in the circuit court, shall be prosecuted in the circuit court on the original charging instrument."

In Hosmer v. City of Mountain Brook, 507 So. 2d 1038 (Ala. Crim. App. 1987), this Court explained:

"In Ex parte City of Dothan, 501 So. 2d 1136 (Ala. 1986), the Alabama Supreme Court reviewed its prior decision in Ex parte Dison, 469 So. 2d 662 (Ala. 1984), and determined that Dison had been incorrectly decided. In overruling Dison, the court, in City of Dothan, discussed a number of cases dealing with prosecution initiated at an inferior trial court level and appealed for a trial de novo. The court noted, as follows:

"A similar line of cases has held that, where a defendant has proceeded to trial in an inferior court without demanding a written complaint of the accusation against him, then that defect in the proceeding is deemed to have been waived. In the case of Aderhold v. City of Anniston, 99 Ala. 521, 12 So. 472 (1892), the defendant was arrested without any affidavit being made or an arrest warrant being issued. In the recorder's court (the inferior trial court), the defendant pleaded not guilty, was tried, and was convicted. On appeal to the city court, the defendant argued for the first time that because the prosecution was begun without an affidavit or warrant he could not be tried for the offense. This Court held that, "not having raised those objections in the Recorder's Court, but having there voluntarily appeared to answer the charge, and having pleaded and gone to trial, the defendant waived them ..." 99 Ala. at 523, 12 So. at 472. Accord, City of Birmingham v. O'Hearn, 149 Ala. 307, 309-310, 42 So. 836, 836-37 (1906); Brooks v. City of Birmingham, 31 Ala. App. 579, 581-82, 20 So. 2d 115, 116-17 (1944).'

"After a review of various other authorities, the court concluded, '[T]he cases we have cited stand for the proposition that a defendant can waive his right to have an affidavit free from irregularities and can waive his right to have any written statement informing him of the accusation against him, if he does not object to those defects at trial.' Id.

"Among the cases cited as authority for the decision in City of Dothan is Blankenshire v. State, 70 Ala. 10, 11 (1881), in which the affidavit and warrant failed 'to charge any offense known to the law.' No objections were raised regarding the affidavit and warrant in the inferior court trial. Id. In the de novo trial in the county court, the solicitor was allowed, over the defendant's objection, to file a properly stated complaint which charged an offense. Id. The Alabama Supreme Court held 'that "no objection could be made to any inaccuracy or imperfection in the proceedings before the primary court."' Id. at 12.

"In the present case, appellant voluntarily appeared in district court, pleaded not guilty, and proceeded to trial. From the record before us, we find no objection to the inconsistency between the court's [Uniform Traffic Ticket and Complaint] form and the one given to appellant until after the cause had been appealed to the circuit court for a trial de novo and a proper complaint had been filed by the district attorney. The court noted in City of Dothan, 501 So. 2d at 1138, relying on Chaney v. City of Birmingham, 246 Ala. 147, 151, 21 So. 2d 263, 267-68 (1944):] "'In order to abate the proceedings in the appellate court because of the lack of an affidavit before the recorder the transcript must affirmatively show that objection to trial without one was seasonably interposed when the accused was arraigned and tried in the recorder's court.'"

"Based on the foregoing authorities, we hold that appellant waived any possible objections to the form of the

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defendant's personal copy of the U.T.T.C. and, therefore, we decline to address the issue raised by appellant at this time."

Hosmer, 507 So. 2d at 1039-40.

Because, as explained above, defects in a municipal-court complaint do not divest a court of subject-matter jurisdiction over a case, Fearn, Barrett, Tanner, Sandifer, and Bell had to raise their arguments concerning the alleged defects in their complaints in a pretrial motion in the municipal court, see Rule 15.2(a), Ala. R. Crim. P., and they had to make their motions "at the time of or before entering a plea." See Rule 15.3(a), Ala. R. Crim. P.

Here, just as in Hosmer, Fearn, Barrett, Tanner, Sandifer, and Bell all voluntarily appeared in the Huntsville Municipal Court, all pleaded not guilty to their charged offenses, and all proceeded to trial. And, as detailed above, the record before this Court does not reflect that any of them raised any argument concerning a defect in his municipal-court complaint until after the de novo appeal in the circuit court had been docketed in the circuit court. So, just as in Hosmer, Fearn, Barrett, Tanner, Sandifer, and Bell have all waived their arguments concerning

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the alleged defects in their municipal-court complaints, and their arguments were not properly before the circuit court.

Furthermore, even if Fearn, Barrett, Tanner, Sandifer, and Bell had timely raised their arguments concerning the alleged defects in their charging instruments, none of them would be entitled to relief.

Rule 2.1, Ala. R. Crim. P., provides that "[a]ll criminal proceedings shall be commenced either by indictment or complaint." Complaints must set "forth essential facts constituting an offense and alleging that the defendant committed the offense." Rule 2.3, Ala. R. Crim. P. See also Rule 13.1(c), Ala. R. Crim. P. Although, historically, complaints alleging a violation of a municipal ordinance had to contain certain formalities such as alleging that the ordinance had been adopted before the commission of the offense to show that there had not been an ex post facto violation, see, e.g., Harris v. City of Vestavia Hills, 49 Ala. App. 171, 173-74, 269 So. 2d 626, 627-28 (1972), the Committee Comments to Rule 13.2, Ala. R. Crim. P., explained that the rule-based pleading requirements were "designed to simplify the pleading in criminal matters ... and [to] eliminate[] the necessity of formal averments." Furthermore, Rule 13.2(d), Ala. R. Crim. P., which states that an indictment or charging

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instrument does not "need [to] negative any defense or affirmative defense contained in any statute creating or defining the offense charged," also supports the conclusion that the City was not required to anticipate the issues raised by the appellees and preemptively disprove the defense by including an allegation in each complaint that the applicable ordinances had been adopted prior to the acts alleged in the complaints.

In fact, all that is required for a charging instrument to be valid under the Alabama Rules of Criminal Procedure is that the charging instrument include a "plain, concise statement of the charge in ordinary language sufficiently definite to inform a defendant of common understanding of the offense charged and with that degree of certainty which will enable the court, upon conviction, to pronounce the proper judgment." Rule 13.2(a), Ala. R. Crim. P. See also State v. Thomas, 200 So. 3d 35, 40 (Ala. Crim. App. 2015) ("The accused is entitled to "a plain, concise statement of the [charge] in ordinary language sufficiently definite to inform a defendant of common understanding of the offense charged." [Rule 13.2(a), Ala. R. Crim. P.]'") (quoting Corum v. City of Huntsville, 491 So. 2d 1091, 1092 (Ala. Crim. App. 1986)).

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Charging instruments that comply with Rule 13.2(a), Ala. R. Crim. P., are sufficient to satisfy the due-process requirement of informing the accused of the charges against him or her, even if it does not cite a specific statute (or incorrectly cites a statute). See Thomas, 200 So. 3d at 42 (holding that a Uniform Traffic Ticket and Complaint was not defective even though it did not cite a specific section of the Alabama Code that had been violated), see also Whitt v. State, 827 So. 2d 869, 877 (Ala. Crim. App. 2001) ("Where an indictment contains language which conveys the meaning of a statute, see § 15-8-21, Code of Alabama (1975), the violation of a code section may be satisfactorily charged despite the failure to cite the statute." Raper v. State, 584 So. 2d 544, 548 (Ala. Crim. App. 1991) (quoting Carroll v. City of Huntsville, 505 So. 2d 389, 391 (Ala. Crim. App. 1987))).

Here, as set out above, the municipal complaint in each of the cases before us is written in terms that would properly inform a defendant of the offenses charged. So, contrary to the arguments raised by Fearn, Barrett, Tanner, Sandifer, and Bell, the municipal complaints in these cases are not so defective as warrant the appellees any relief. See, e.g., Moye, 632 So. 2d at 1015-15 (holding that the municipal-court complaints

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filed against Moye "fully comply with the requirement of Rule 13.2(a), Ala. R Crim. P.," and thus were "sufficient to provide the appellant with the required notice").

Conclusion

Because a defect in a municipal-court complaint does not divest a circuit court of its subject-matter jurisdiction over an appeal for a trial de novo, because the appellees waived their arguments concerning defects in their municipal-court complaints by not raising those arguments in the municipal court, and because the complaints at issue in these appeals are not defective, the circuit court erred when it granted the motions to dismiss the charges against Fearn, Barrett, Tanner, Sandifer, and Bell. Therefore, the circuit court's judgments dismissing the charges against Fearn, Barrett, Tanner, Sandifer, and Bell are reversed, and their cases are remanded to the circuit court for that court to restore the cases to its docket.

CR-2023-0348 -- REVERSED AND REMANDED.

CR-2023-0349 -- REVERSED AND REMANDED.

CR-2023-0353 -- REVERSED AND REMANDED.

CR-2023-0354 -- REVERSED AND REMANDED.

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CR-2023-0355 -- REVERSED AND REMANDED.

Windom, P.J., and Kellum, McCool, and Minor, JJ., concur.