

[Cite as *State v. Jacobucci*, 2003-Ohio-6177.]

COURT OF APPEALS OF OHIO, EIGHTH DISTRICT

COUNTY OF CUYAHOGA

NO. 82813

STATE OF OHIO - ORANGE	:	
	:	ACCELERATED DOCKET
Plaintiff-Appellee	:	
	:	JOURNAL ENTRY
	:	
vs.	:	and
	:	
	:	OPINION
DANIEL J. JACOBUCCI	:	
	:	
Defendant-Appellant	:	

DATE OF ANNOUNCEMENT
OF DECISION: November 20, 2003

CHARACTER OF PROCEEDING: Criminal appeal from
Bedford Municipal Court
Case No. 03 TRD 00351

JUDGMENT: JUDGMENT REVERSED;
CONVICTION VACATED;
DEFENDANT DISCHARGED.

DATE OF JOURNALIZATION: _____

APPEARANCES:

For Plaintiff-Appellee: BLAIR MELLING
Prosecutor
City of Solon
32 Columbus Road
Bedford, Ohio 44146

For Defendant-Appellant: J. JEFFREY CHURCH
Solon Professional Building
32915 Aurora Road
Suite 180

ANTHONY O. CALABRESE, JR., J.

{¶1} This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1, the record from the lower court, the briefs, and the oral arguments of counsel.

{¶2} Defendant-appellant Daniel J. Jacobucci (“appellant”) appeals the decision of the Bedford Municipal Court finding him guilty of the offense of failure to control a motor vehicle resulting in a crash. For the reasons stated below, we reverse the trial court’s judgment, vacate appellant’s conviction, and discharge him.

I

{¶3} We review appellant’s second assignment of error first. In his second assignment of error, appellant argues that the “trial court violated Traffic Rule 18 in granting the prosecution an oral continuance on the day of trial.” We agree.

{¶4} Traffic Rule 18 states that “continuances shall be granted only upon a written motion which states the grounds for the requested continuance.” The transcript reveals that the state made its motion on the day of trial orally, stating: “I would request that this matter be continued.” There is no indication from the record that the state filed the requisite written motion.¹

{¶5} We have previously found that it was within a court’s discretion to deny motions for continuance based upon the defendant’s failure to comply with Traf.R. 18. *Cleveland v. Black*

¹The state failed to file an appellate brief.

(1985), Cuyahoga App. No. 48351. Compliance with Traffic Rule 18 is a burden shared equally between the defendant and the state.

{¶6} The language of Traffic Rule 18 is clear. The state failed to set forth, in writing, its reasons for the requested continuance. The court abused its discretion by granting the state's oral motion for continuance on the day of trial.²

{¶7} Appellant's second assignment of error is affirmed.

II

{¶8} Because appellant's second assignment of error has been sustained, we need not address his first assignment of error. App.R. 12(A)(1)(c).

Judgment reversed,
conviction vacated
and defendant discharged.

The judgment is reversed, the conviction is vacated, and the defendant ordered discharged.

It is, therefore, considered that said appellant recover of said appellee costs herein.

It is ordered that a special mandate issue out of this court

²For discussion of the abuse of discretion standard, see, generally, *Nakoff v. Fairview Gen. Hosp.* (1996), 75 Ohio St.3d 254.

directing the Bedford Municipal Court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

ANTHONY O. CALABRESE, JR.
JUDGE

PATRICIA A. BLACKMON, P.J. and

SEAN C. GALLAGHER, J. CONCUR.

N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also S.Ct.Prac.R. II, Section 2(A)(1).