

[Cite as *State v. Labiaux*, 2017-Ohio-7760.]

STATE OF OHIO, HARRISON COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

STATE OF OHIO	)	CASE NO. 16 HA 0016
	)	
PLAINTIFF-APPELLEE	)	
	)	
VS.	)	OPINION
	)	
FRANK H. LABIAUX, JR.	)	
	)	
DEFENDANT-APPELLANT	)	

CHARACTER OF PROCEEDINGS: Criminal Appeal from the County Court of Harrison County, Ohio  
Case No. TRD 1601167

JUDGMENT: Affirmed. Remanded.

APPEARANCES:

For Plaintiff-Appellee: Atty. T. Owen Beetham  
Harrison County Prosecutor  
Atty. Jack L. Felgenhauer  
Assistant Prosecuting Attorney  
111 W. Warren Street  
P.O. Box 248  
Cadiz, Ohio 43907

For Defendant-Appellant: Frank Labiaux, *Pro se*  
P.O. Box 44  
Hopedale, Ohio 43976

JUDGES:

Hon. Cheryl L. Waite  
Hon. Gene Donofrio  
Hon. Carol Ann Robb

Dated: September 18, 2017

[Cite as *State v. Labiaux*, 2017-Ohio-7760.]  
WAITE, J.

{¶1} Appellant Frank Labiaux appeals a Harrison County Court declaration of forfeiture of July 5, 2016. Appellant presents several assignments of error in his non-conforming brief in which he collectively appears to argue that forfeiture of his driver's license was improper pursuant to UCC 1-308. He also contends that his fine is excessive. For the reasons that follow, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

#### Factual and Procedural History

{¶2} Appellant's vehicle was pulled over in Cadiz, Ohio and he was cited for driving without a license. The ticket specified that Appellant was required to appear before the trial court. Appellant received a notice ordering him to appear at an arraignment on June 21, 2016. When Appellant failed to enter an appearance, the court gave him additional time to appear and scheduled a second arraignment for July 5, 2016. When Appellant again failed to appear, the court issued a declaration of forfeiture of his driver's license.

{¶3} On July 8, 2016, the clerk mailed Appellant a copy of the declaration of forfeiture, however, the docket sheet reveals that the envelope was returned as undeliverable. The docket sheet indicated that the declaration would be sent to Appellant's post office box, and it was mailed there on July 27, 2016. Appellant admittedly received the declaration of forfeiture.

{¶4} Throughout the proceedings, Appellant filed several "motions" with the trial court. In each of these, he asserted that he had returned all court-related documents within three days of receiving them and that he signed them pursuant to

UCC 1-308. As such, he believes that he removed his consent to be tried under the court's jurisdiction. The court did not specifically rule on these motions when entering the declaration of forfeiture. This timely appeal followed.

{¶15} On August 2, 2016, Appellant requested a stay of execution of his sentence. We denied his request.

#### Non-Conforming Brief

{¶16} Appellant has filed three documents with this Court. On October 24, 2016, Appellant filed two documents titled, "Assignment of Errors" and "Index." He later filed a reply "brief" erroneously labeled as a cross-appeal. The "Assignments of Error" does list six assignments but contains no further discussion. The "Index" more closely resembles a brief, as it includes a fact section and an argument section. Together, the two initial filings comprise most of the essential elements of a brief. However, his argument section consists only of several paragraphs which mostly relate to a separate case in Pennsylvania. Only one paragraph addresses one of his assignments of error. It merely states that Appellant signed all correspondence from the court pursuant to UCC 1-308 and that he returned the documents within three days of receipt. As such, his brief does not comport with appellate rules. Regardless, we will attempt to address his concerns on appeal.

#### ASSIGNMENT OF ERROR NO. 1

COURT ERRED IN DISREGARDING ALL APPELLANTS [SIC] PRE-  
TRIAL MOTIONS AND FILINGS.

{¶7} While Appellant complains that the trial court disregarded his pre-trial motions, he does not provide a specific argument. The state does not respond to this assignment.

{¶8} On May 26, 2016, Appellant filed a document titled “RETURN OF PRESENTATION.” He attached his copy of the traffic ticket and marked the ticket “RETURN FOR CAUSE, AND DISCHARGE, WITH NO RECOURSE.” He signed it, and included a cite to UCC 1-308. On June 7, 2016, Appellant filed a “NOTICE TO COUNTY CLERK” informing the clerks that a failure to record his filings would constitute a crime. Also on June 7, 2016, Appellant returned the court’s notice of hearing and marked the document “RETURN FOR CAUSE, AND DISCHARGE, (WITHOUT RECOURSE) UCC 1-308 WITHOUT PREJUDICE.” On June 14, 2016, Appellant filed a motion to dismiss, citing “UCC 1-308” as its basis. Also on June 14, 2016, Appellant filed a “JURISDICTION CHALLENGE” in which he appears to argue that the court was deprived of jurisdiction over him because he returned all court documents within three days.

{¶9} If a trial court has failed to rule on a motion at the time the case is disposed, an appellate court will presume that the motion was overruled. *Cherol v. Sieben Invests.*, 7th Dist. No. 05 MA 112, 2006-Ohio-7048, ¶ 18.

{¶10} The trial court did not explicitly rule on Appellant’s filings in this matter. As such, it is presumed that the court overruled those motions. Thus, Appellant’s argument that the trial court “disregarded” these filings is without merit. Accordingly, his first assignment of error is overruled.

ASSIGNMENT OF ERROR NO. 2

FAILED TO NOTIFY APPELLANT OF HIS RIGHT OF APPEAL.

{¶11} Appellant argues that the trial court failed to inform him of his right of appeal. The state does not respond to this argument.

{¶12} A trial court is required to notify a defendant of his right to appeal “[a]fter imposing sentence in a serious offense that has gone to trial.” Crim.R. 32(B)(1). There is no such rule for traffic cases. Even so, the declaration of forfeiture did not become final and appealable until July 27, 2016. While the court filed the original declaration of forfeiture on July 8, 2016, the section pertaining to his fine was blank. On July 27, 2016, the trial court filed a *nunc pro tunc* correcting the error, resulting in a final appealable order. As the declaration of forfeiture became a final appealable order on July 27, 2016, Appellant’s has timely exercised his right to appeal. Appellant’s second assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 3

COURT LACKED JURISDICTION.

{¶13} Appellant argues that the trial court lacked personal jurisdiction. He claims that he did not receive any document from the court ordering him to appear. Rather, he asserts that he received notices which he describes as an attempt to “lure” him into the court’s jurisdiction. He also argues that he returned all notices from the court within three days of receiving them and after signing them, cited to UCC 1-308. He thus believes that he has removed himself from the court’s jurisdiction.

{¶14} The record reveals that Appellant’s ticket includes a summons where a box was checked mandating a personal appearance. The ticket stated, “[i]f you fail to appear at this time and place you may be arrested or your license may be cancelled. This summons served personally on the defendant on 05/23/2016.” On May 26, 2016 and June 23, 2016, Appellant received a “NOTICE OF HEARING,” which stated: “**NOTICE:** Your appearance at the scheduled proceedings in your case is **required**. If you fail to appear as required, a warrant can be issued for your arrest.” (Emphasis sic.)

{¶15} Based on these documents, Appellant was in fact ordered to appear in court. As for his remaining argument, there is no rule that allows a criminal defendant to avoid the court’s jurisdiction by simply returning all court notices within three days. His baffling reliance on the UCC is unfounded. We also note that a defendant’s “consent is unnecessary and irrelevant to a court’s jurisdiction.” *State v. Matthews*, 2d Dist. No. 2015-CA-73, 2016-Ohio-5055, ¶ 5. As such, Appellant’s third assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 4

EXCESSIVE FINES NOT TO BE IMPOSED, (SSI, APPELLANTS  
SOLE SOURCE OF INCOME IS UNCOLLECTIBLE).

{¶16} Appellant argues that his fines are excessive. Without providing further argument, he states that a person’s sole source of income may not be collected against. The state does not respond to this argument.

{¶17} We note that Appellant failed to attend the court proceedings and so, did not challenge the court's fine and did not submit any proof of his income for purposes of the record. Thus, he is subject to a plain error review. As Appellant has not included any documentation regarding his income for this record, we are unable to confirm his argument. Regardless, Appellant has been fined \$185 for the costs of his ticket and court fees. There is nothing within this record to demonstrate that the fine and court fees are excessive. As such, Appellant's fourth assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 5

OTHER ERROR UNDER UCC 1-103,(b). [SIC], (SUPPLEMENTAL PRINCIPLES OF LAW).

{¶18} Appellant argues that the trial court erroneously failed to dismiss his ticket pursuant to UCC 1-308. Appellant believes that his inclusion of UCC 1-308 language on the ticket is sufficient to warrant dismissal. In response, the state argues that the UCC does not apply to criminal cases.

{¶19} Appellant's case is criminal in nature. "[T]he UCC has no bearing on criminal subject matter jurisdiction." *Matthews, supra*, ¶ 8. See also *State v. Gunnell*, 10th Dist. No. 13CA-90, 2013-Ohio-3928.

{¶20} As such, Appellant's fifth assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 6

ABUSE OF AUTHORITY.

{¶21} Appellant does not provide any argument under this assignment and merely asserts “Abuse of authority.” Based on the limited record before us, we must presume the regularity of the trial court’s actions, and overrule this assignment.

#### Declaration of Forfeiture

{¶22} When a defendant in a traffic matter fails to appear in court, a trial court may declare his driver’s license forfeited through a declaration of forfeiture. R.C. 4510.22(A). Here, the declaration of forfeiture states that Appellant forfeited his license pursuant to R.C. 4507.168. However, this statute was repealed for purposes of adopting new section numbers. As a result, the forfeiture of a driver’s license for failure to appear in court is now governed by R.C. 4510.22, effective 2004. It is obvious from this record that the trial court issued his forfeiture pursuant to this statute. As such, the declaration of forfeiture in this matter contains a clerical error. Accordingly, we *sua sponte* remand the matter solely for purposes of correcting the error.

#### Conclusion

{¶23} Appellant argues that forfeiture of his license is improper pursuant to UCC 1-308. He further argues that his fine is excessive. However, the UCC does not apply to offenses that are criminal in nature. Further, Appellant has not shown that his fine was excessive. As such, Appellant’s arguments are without merit and the judgment of the trial court is affirmed. However, the forfeiture order does contain a clerical error and we *sua sponte* remand for correction.

Donofrio, J., concurs.



Robb, P.J., concurs.