

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

State of Ohio,	:	
	:	No. 13AP-90
Plaintiff-Appellee,	:	(M.C. No. 2012 TR D 202804)
v.	:	
	:	(ACCELERATED CALENDAR)
Kevin B. Gunnell,	:	
	:	
Defendant-Appellant.	:	

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D E C I S I O N

Rendered on September 12, 2013

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*Richard C. Pfeiffer, Jr.*, City Attorney, *Lara N. Baker*, City Prosecutor, and *Orly Ahroni*, for appellee.

*Kevin B. Gunnell*, pro se.

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APPEAL from the Franklin County Municipal Court.

BROWN, J.

{¶ 1} This is an appeal by defendant-appellant, Kevin B. Gunnell, from a judgment of the Franklin County Municipal Court sentencing appellant following his plea of no contest to one count of failing to register a motor vehicle.

{¶ 2} On November 30, 2012, appellant was cited for failure to register a motor vehicle in violation of R.C. 4503.11. On December 7, 2012, appellant entered a not guilty plea. On December 10, 2012, appellant filed a pro se motion to dismiss for lack of subject-matter jurisdiction. On January 2, 2013, appellant entered a plea of no contest to the charge. The trial court filed a sentencing entry on that date, finding appellant guilty and ordering him to pay a fine of \$25 and court costs.

{¶ 3} On appeal, appellant sets forth the following two assignments of error for this court's review:

ASSIGNMENT OF ERROR NO. 1

WHETHER THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION PERSONAL JURISDICTION; ALTRA VIRES ITS AUTHORITY TO USE A CONSTITUTIONAL STATE STATUTE TO FORCE UPON A CITIZEN FOR EXERCISING HIS RIGHT TO TRAVEL BY AUTO VEHICLE UPON THE PUBLIC HIGHWAYS, ROADS AND STREETS, PROTECTED BY THE PRIVILEGE AND IMMUNITY CLAUSE.

ASSIGNMENT OF ERROR NO. 2

WHETHER THE TRIAL COURT LACKED SUBJECT MATTER JURIDICION AND PERSONAL JURIDICION, ULTRA VIRES ITS AUTHORITY FOR SUBROGATING THE NATURAL PERSON FOR THE ARTIFICIAL PERSON WHEN THE NATURAL PERSON NEVER GAVE CONSENT, PROTESTED AND HAD ENFORCEABLE CONTRACTS UNDER THE UCC AS AN REBULTTAL, A COUNTERCLAIM IN ADMIRALTY JURISDICTION.

(Sic Passim.)

{¶ 4} We will address appellant's assignments of error in inverse order. Under his second assignment of error, appellant argues that the trial court lacked subject-matter and personal jurisdiction with respect to his conviction.

{¶ 5} In his pro se brief, appellant maintains that he never gave the trial court "consent to proceed" with a trial against him. As argued in his motions filed before the trial court, appellant cites to a Uniform Commercial Code ("UCC") filing (a UCC-1 financing statement) in which the name of the debtor is listed as "KEVIN BRIAN GUNNELL" and the name of the secured party is listed as "Kevin Brian Gunnell." Appellant refers to the all capital letters "KEVIN BRIAN GUNNELL" as an "[a]rtificial [p]erson," separate and distinct from "Kevin B. Gunnell, secure party creditor, natural man, sovereign." In his motion to dismiss, appellant argued that "Kevin B. Gunnell, secure party creditor, took control of the ALL-CAPS strawman name, KEVIN B.

GUNNELL, by recording a lien against it, that's superior to the lien that the corporate government had against the strawman name."

{¶ 6} We note that similar "sovereign citizen" arguments have been raised in various federal court actions by pro se litigants, albeit unsuccessfully. *See, e.g., United States v. Benabe*, 654 F.3d 753, 767 (7th Cir.2011) ("Regardless of an individual's claimed status of descent, be it as a 'sovereign citizen,' a 'secured-party creditor,' or a 'flesh-and-blood human being,' that person is not beyond the jurisdiction of the courts"); *Black v. Florida*, N.D.Fla. No. 4:09cv30-SPM/WCS (June 4, 2009) (Petitioner's act of "writing his name in all capital letters does not change him from a human, natural person to a legal entity thus depriving the state court of jurisdiction to prosecute him for criminal offenses"); *United States v. Curry*, D.Md. No. WDQ-12-0163 (Mar. 19, 2013) (rejecting defendant's claim that "the use of capital letters means that the defendant 'is an artificial or fictitious person.' [Defendant's] capital-letter argument is \* \* \* unavailing and frivolous"); *United States v. Delatorre*, N.D.Ill. No. 03 CR 90 (Jan. 30, 2008) ("This court's jurisdiction over Mr. Delatorre remains valid whether his name is written in all capital letters or a mix of capital and lower case letters, or whether he identifies himself as: a 'real flesh and blood man, in his private capacity,' [or] a 'sovereign secured party creditor' ").

{¶ 7} Furthermore, "the U.C.C. has no bearing on criminal subject matter jurisdiction." *United States v. Mitchell*, 405 F.Supp.2d 602 (D.Md.2005). *See also Van Hazel v. Luoma*, E.D.Mich. No. 05-CV-73401-DT (Oct. 27, 2005) (noting that other courts have rejected similar jurisdictional claims as frivolous, and holding that "Petitioner cannot divest the State of Michigan of jurisdiction to prosecute him of a criminal offense simply by declaring a security interest in himself pursuant to the Uniform Commercial Code").

{¶ 8} Ohio municipal courts "are created by statute, R.C. 1901.01, and their subject-matter jurisdiction is also set by statute." *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, ¶ 11. An Ohio Municipal Court "has jurisdiction over misdemeanors occurring within its territorial jurisdiction." *Id.*, citing R.C. 1901.20(A)(1). The filing of a complaint invokes the jurisdiction of a municipal court. *Id.* at ¶ 12.

{¶ 9} Here, the offense at issue, failure to register a motor vehicle, is a misdemeanor offense (R.C. 4503.11(D)). Because the instant case involved an alleged misdemeanor violation occurring within Franklin County, the trial court had subject-matter jurisdiction over the offense. *Id.* at ¶ 11, citing R.C. 1901.02(A)(2) and (B).

{¶ 10} Similarly, the court had personal jurisdiction over appellant. *See* Traf.R. 3(A) ("In traffic cases, the complaint and summons shall be the 'Ohio Uniform Traffic Ticket' "); *State v. Yoder*, 6th Dist. No. F-94-020 (June 7, 1995) ("Since appellant was properly served two traffic citations and summons for misdemeanor offenses, we find that the Fulton County Western District Court, has jurisdiction over the person of appellant"). Further, as noted by plaintiff-appellee, the State of Ohio, appellant did not raise the issue of lack of personal jurisdiction until after he entered his initial plea (of not guilty on December 7, 2012). Under Ohio law, "[a] defendant in a traffic case must raise any defenses or objections based on defects in the institution of the proceedings before the entry of a plea." *Columbus v. Ford*, 10th Dist. No. 04AP-260, 2004-Ohio-5715, ¶ 7, citing Traf.R. 11(B). Thus, "a defendant waives any objections to the trial court's exercise of personal jurisdiction by failing to assert such objections at the time the defendant appears in the trial court and enters a not guilty plea." *Id.* Accordingly, appellant's jurisdictional arguments are without merit, and the second assignment of error is overruled.

{¶ 11} Under his first assignment of error, appellant contends that R.C. 4503.11 is unconstitutional. More specifically, he argues that the statute's registration requirement prevents him from exercising his right to travel by car on the public highways, roads, and streets.

{¶ 12} Appellant did not directly challenge the constitutionality of R.C. 4503.11 in the proceedings before the trial court, and therefore he has not preserved this issue for appellate review. *Clark v. Malicote*, 12th Dist. No. CA2010-07-049, 2011-Ohio-1874, ¶ 29, citing *Lay v. Chamberlain*, 12th Dist. No. CA99-11-030 (Dec. 11, 2000). *See also State v. Dent*, 9th Dist. No. 23855, 2008-Ohio-660, ¶ 7 (Because defendant did not challenge constitutionality of statute in the trial court "he has forfeited the issue and we decline to address it for the first time on appeal").

{¶ 13} Even had appellant preserved this issue for review, it fails on the merits as "there is no fundamental right to drive a motor vehicle," and "[a] burden on a single mode

of transportation simply does not implicate the right to interstate travel." *Duncan v. Cone*, 6th Cir. No. 00-5705 (Dec. 7, 2000). *See also Aziza El v. Southfield*, E.D.Mich. No. 09-11569 (Mar. 22, 2010) ("Plaintiff does not have a constitutional right to operate a motor vehicle and state licensure and registration requirements do not violate an individual's constitutional right to travel"); *McGhee v. McCall*, W.D.Mich. No. 1:10-cv-333 (Apr. 19, 2010) (noting that "federal courts uniformly reject suits by plaintiffs who seek vindication of their nonexistent 'right' to operate motor vehicles without complying with state licensing laws"). Appellant's first assignment of error is without merit and is overruled.

{¶ 14} Based upon the foregoing, appellant's first and second assignments of error are overruled, and the judgment of the Franklin Municipal Court is hereby affirmed.

*Judgment affirmed.*

CONNOR and DORRIAN, JJ., concur.

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