

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
BUTLER COUNTY

STATE OF OHIO/CITY OF HAMILTON, :  
 :  
 Plaintiff-Appellee, : CASE NO. CA2010-12-322  
 :  
 - vs - : OPINION  
 : 11/7/2011  
 :  
 LISA SHORT, :  
 :  
 Defendant-Appellant. :

CRIMINAL APPEAL FROM HAMILTON MUNICIPAL COURT  
Case No. 10CRB03785

Mary K. Dudley, Hamilton City Prosecutor, 345 High Street, 7<sup>th</sup> Floor, Hamilton, Ohio 45011,  
for plaintiff-appellee

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defendant-appellant

**PIPER, J.**

{¶1} Defendant-appellant, Lisa Short, appeals her conviction and sentence in the Hamilton Municipal Court for one count of domestic violence.<sup>1</sup>

{¶2} On August 24, 2010, Officer Lenny Ash and his partner Officer Richard

1. The Hamilton City Prosecutor did not file a brief opposing the arguments advanced by appellant, as is frequently the case.

Cardwell were dispatched to Short's home due to a domestic violence situation. Once the officers arrived at Short's home, they found Short, Carlos Adams, their children, and Short's mother. Ash observed Adams gathering bags and placing them outside the home, and saw that Adams had an "abrasion or scratch like a welt" under his left eye and blood in his left nostril. While Cardwell talked to Short, Ash took Adams aside and spoke with him. During this time, Short's mother was gathering the children's belongings and preparing to take her grandchildren with her.

{¶3} Ash testified that when he saw Short, she had a small mark on her forearm that he described as an "O" shaped "little small bruise." The bruise was small enough that it did not stand out to the officer initially, and he did not think that it required a picture or other documentation due to its small size. Ash did not observe any other abrasions on Short.

{¶4} Officer Cardwell testified that upon his arrival, he walked into Short's home and observed Short and Adams arguing, although he could not hear what they were saying. Cardwell noticed a small reddish-purple mark on Short's arm, and Short told Cardwell that the mark was from Adams grabbing her around the arm. However, Cardwell did not see any corresponding marks on Short's arm where fingers would have left marks if she had been grabbed. Cardwell did not observe any other marks on Short's body, even subsequently when examining and filling out medical reports at the police station. Cardwell testified that Short told him that she had kicked and struck Adams while the two were in the bedroom of the house.

{¶5} According to Short's testimony, she had worked the night shift and returned home to sleep on the morning of August 24, 2010. Short stated that she was unable to sleep because Adams was combing their daughter's hair and that the child was screaming. She came out of the bedroom and told Adams that she would comb the child's hair, and the two began arguing over Adams' accusation that Short was cheating on him. Short stated that

she returned to the bedroom, and soon Adams came into the bedroom, grabbed her, threw her on the bed, called her a "whore" and put his arm to her throat and started punching her. Short testified that she began kicking in order to get Adams off of her, and that in the process, she "might have gotten him in the private" area. Short testified that once she was able to get off of the bed, Adams pinned her against the wall and held her there until their oldest daughter came into the room and said, "daddy stop hitting mommy." Short stated that once she was freed, she called 911 to report that Adams had hit her.

{¶6} Officers Ash and Cardwell arrested both Short and Adams. The state did not pursue charges against Adams, but proceeded on the charges against Short. Short pled not guilty to the charge and the issue proceeded to trial. A jury found Short guilty of domestic violence against Adams. Short now appeals, raising the following assignments of error.

{¶7} Assignment of Error No. 1:

{¶8} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT DID NOT HAVE JURISDICTION TO ALLOW THE PROSECUTION TO PROCEED."

{¶9} Short argues in her first assignment of error that the trial court did not have jurisdiction to hear the case against her because the state failed to file a proper complaint.

{¶10} Short first argues that the trial court did not have jurisdiction to hear the case against her because a complaint was never filed against her. Although there is a complaint in the file, the complaint was not time-stamped by the clerk of courts.

{¶11} Municipal courts are created and have their subject matter jurisdiction determined by statute. R.C. 1901.01. A municipal court in Ohio has jurisdiction over misdemeanors occurring within its territorial jurisdiction. R.C. 1901.20(A)(1). The filing of a complaint invokes the jurisdiction of the municipal court. *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880, ¶12. "It follows that if a complaint is not filed in a case, the trial court

has not obtained jurisdiction over it." *City of Zanesville v. Rouse*, 126 Ohio St.3d 1, 2010-Ohio-2218, ¶5. "A document is 'filed' when it is deposited properly for filing with the clerk of courts. \* \* \* Thus, a party 'files' by depositing a document with the clerk of court, and then the clerk's duty is to certify the act of filing." *Id.* at ¶7. As explained in *Rouse*, the file stamp or date stamp is not "the filing" and such a stamp is not a jurisdictional prerequisite.

{¶12} In *Rouse*, the Ohio Supreme Court noted the difference between filing and certification of filing. The complaint in *Rouse* had no file stamp; however, there was a certification at the bottom of the complaint. While a file stamp may be evidence of filing, it is not the only or exclusive way to establish that a filing occurred. *Rouse* argued that his conviction for domestic violence was void because the complaint against him was not properly filed and because it did not bear a mark from the clerk's office indicating when it was filed. However, the court noted that "when a document is filed, the clerk's failure to file-stamp it does not create a jurisdictional defect." *Id.* at ¶8. Instead, the court looked to "whether there is sufficient evidence from which a court may determine that the document actually was filed," and noted that "when a document lacks an endorsement from the clerk of courts indicating that it has been filed, filing may be proved by other means." *Id.* at ¶10.

{¶13} The court in *Rouse* determined that there was sufficient evidence that the complaint against *Rouse* had in fact been filed properly. The court considered that the state provided a printout of the electronic docket sheet and an affidavit from the clerk of courts to prove that the complaint was filed. The court also considered as other evidence of filing that it was the clerk's practice to create a new case file and corresponding electronic docket upon receipt of a complaint, coupled with the fact that such a file and docket were created. The court therefore found "sufficient evidence that the complaint was deposited with the clerk of courts." *Id.*

{¶14} Short does not argue on appeal that the complaint was not properly deposited

with the court, only that the complaint was never "filed" by evidence of a time stamp. However, notwithstanding Short's failure to assert that the complaint was not deposited, there is sufficient evidence in the record to demonstrate that the complaint against Short was properly deposited with the clerk of courts. Although the file does not contain reference to filing the complaint on the electronic docket sheet, or an affidavit from the clerk of courts, there is sufficient "other" evidence that the complaint was filed. The "other evidence" used in *Rouse* is not the exclusive means of "other evidence" used to establish that a filing occurred. In the case at bar, a file was opened and several acts of the clerk of courts were electronically docketed specific to the domestic violence charge. The electronic docket sheet also lists a "file date" as August 24, 2010, the same date that Short was arraigned and appeared before the Hamilton Municipal Court's Clerk of Courts.

{¶15} Furthermore, Short's attorney also filed a jury demand on September 10, 2010, and even filed a request for bill of particulars that specifically referenced the complaint. In Short's request for a bill of particulars, counsel indicated, "the Defendant states that the complaint is vague and indefinite. Further, the complaint does not reasonably inform the Defendant of the nature of the charge against him [sic]. Because of the lack of specificity of the complaint, the Defendant is unable to prepare an intelligent defense to the complaint." Short's attorney went on to request discovery and disclosed evidence in Short's defense, subpoenas were issued, and a jury trial was held to determine Short's guilt. When defense counsel specifically represented to the court that a defense was being prepared to challenge the allegations in the complaint, it is certainly another piece of "other evidence" that defense counsel had reviewed the complaint deposited within the court's file.

{¶16} There is sufficient evidence to establish that the complaint was properly deposited with the clerk of courts, and thus was filed. The fact that the complaint does not contain a time-stamp does not render the filing improper, nor does the lack of a time stamp

create a jurisdictional issue.

{¶17} Short next argues that the complaint, even if filed properly, failed to contain essential facts and was therefore a due process violation. According to Crim.R. 3, "the complaint is a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths."

{¶18} According to Crim.R. 12(C) "prior to trial, any party may raise by motion any defense, objection, evidentiary issue, or request that is capable of determination without the trial of the general issue. The following must be raised before trial: (1) defenses and objections based on defects in the institution of the prosecution; (2) defenses and objections based on defects in the indictment, information, or complaint (other than failure to show jurisdiction in the court or to charge an offense, which objections shall be noticed by the court at any time during the pendency of the proceeding)." Crim.R. 12(H) states, "failure by the defendant to raise defenses or objections or to make requests that must be made prior to trial, \* \* \* shall constitute waiver of the defenses or objections, but the court for good cause shown may grant relief from the waiver."

{¶19} Short failed to object to the complaint or to make a Crim.R. 12(C) motion before the trial court, and has therefore waived the issue of whether the complaint properly set forth the essential facts. Even so, we find that the complaint comported with Crim.R. 3, and contained the essential facts and elements constituting the offense charged.

{¶20} This court has held that "the purpose of a criminal complaint is to inform the accused of the identity and essential facts constituting the offense charged." *State v. Broughton* (1988), 51 Ohio App.3d 10, 11. "A complaint is sufficient if an individual of ordinary intelligence would not have to guess as to the type and scope of the conduct prohibited." *State v. Doans*, Butler App. No. CA2007-10-258, 2008-Ohio-5423, ¶8. "While all

the specific facts relied upon to sustain the charge need not be recited in the complaint, all the material elements of the crime must." *State v. Skerbec*, Guernsey App. No. 08 CA 07, 2008-Ohio-4987, ¶11.

{¶21} Short was charged with a single count of domestic violence in violation of R.C. 2919.25, which states, "(A) no person shall knowingly cause or attempt to cause physical harm to a family or household member." The complaint states that "LISA SHORT did knowingly cause or attempt to cause physical harm to a family or household member; To Wit: MS. SHORT SCRATCHED THE VICTIM, HIT HIM IN THE FACE WITH AN OPEN HAND AND KICKED HIM IN THE HEAD." (Capitalization in original.)

{¶22} While Short argues that the complaint provides no essential facts describing who the victim is or how he may be a family or household member, the complaint recited all of the material elements of the crime and sufficiently informed Short of the charges against her. The complaint did not specifically state that the victim was Carlos Adams, but a complaint need not recite all of the facts relied on in order to sustain the charge. Upon review, we hold the complaint at issue properly set forth the material elements of domestic violence and was in compliance with Crim.R. 3.

{¶23} Having found that the complaint was properly filed and otherwise comported with Crim.R. 3, and that no due process violation occurred, Short's first assignment of error is overruled.

{¶24} Assignment of Error No. 2:

{¶25} "THERE WAS INSUFFICIENT EVIDENCE TO JUSTIFY A CONVICTION FOR DOMESTIC VIOLENCE."

{¶26} Short argues in her second assignment of error that there was insufficient evidence to convict her of domestic violence.

{¶27} When reviewing the sufficiency of evidence underlying a criminal conviction, an

appellate court examines the evidence in order to determine whether such evidence, if believed, would support a conviction. *State v. Wilson*, Warren App. No. CA2006-01-007, 2007-Ohio-2298. Therefore, "the relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

{¶28} According to R.C. 2919.25(A)<sup>2</sup> "no person shall knowingly cause or attempt to cause physical harm to a family or household member." R.C. 2919.25(F)(1) defines "family or household member" as "(a) any of the following who is residing or has resided with the offender: (i) A spouse, a person living as a spouse, or a former spouse of the offender \* \* \* (b) The natural parent of any child of whom the offender is the other natural parent or is the putative other natural parent." "The offense of domestic violence, as expressed in R.C. 2919.25(E)(1)(a) and related statutes, arises out of the relationship of the parties rather than their exact living circumstances." *State v. Williams*, 79 Ohio St.3d 459, 463-464, 1997-Ohio-79.

{¶29} Short argues that the state failed to produce any evidence that Carlos Adams was a family or household member, and therefore failed to produce sufficient evidence to prove the elements of R.C. 2919.25(A). However, the record reveals otherwise.

{¶30} Evidence established that Adams is the natural parent or putative natural parent of Short's two children who were home during the altercation. During the testimony of Officer Ash, he described Adams as the father of Short's children. Short's mother also testified that she came to pick up her grandchildren and verified that the children belonged to Short and

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2. We sua sponte note that the complaint properly lists R.C. 2919.25 as the domestic violence statute, but the trial court's judgment entry mistakenly references R.C. 2907.25, which is a prostitution statute. However, the error is harmless because the judgment entry correctly titles the charge as domestic violence and correctly refers to Short's conviction for domestic violence.



Adams. Short also testified that during the altercation, her daughter came into the room and stated to Adams, "daddy, stop hitting mommy." Short also testified that the children belonged to her and Adams. Regarding a person living as a spouse in the residence, Short testified that when she works the night shift, Adams takes care of the children, and does so in her home, and that she and Adams share a bedroom in the home. We also note that it is reasonable to assume that Adams and Short continued to have a committed and intimate relationship, as it was Adams' accusations of infidelity that led to the disagreement and resulting altercation.

{¶31} After viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of domestic violence proven beyond a reasonable doubt. Short's second assignment of error is overruled.

{¶32} Assignment of Error No. 3:

{¶33} "THE TRIAL COURT ERRED TO THE PREJUDICE OF DEFENDANT-APPELLANT WHEN IT PROVIDED INCOMPLETE JURY INSTRUCTIONS."

{¶34} Short argues in her final assignment of error that the trial court erred in providing an incomplete definition of self-defense in the jury instructions.

{¶35} The record is clear that Short did not object to the jury instructions, even after the trial court specifically gave the parties an opportunity to make suggestions or challenge the instructions *before* they were read and given to the jury. Therefore, Short has waived all but plain error on appeal.

{¶36} According to Crim.R. 52(B), "plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." "An alleged error does not constitute plain error unless, but for the error, the outcome of the trial clearly would have been otherwise. \* \* \* Notice of plain error must be taken with utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice."

*State v. Baldev*, Butler App. No. CA2004-05-106, 2005-Ohio-2369, ¶12.

{¶37} Short argues that the trial court failed to give the proper jury instruction on self-defense. The trial court instructed the jury that Short "claims to have acted in self-defense. To establish self-defense the defendant must show that (1) she was not at fault in creating the violent situation; (2) she had a reasonable and honest belief, even if mistaken, that she was in imminent danger of bodily harm." Short claims that the proper jury instruction for self-defense should have included an additional line to the second component, as well as a third requirement. Although Short agrees with the way the trial court states the first component of the defense, she now argues on appeal that the second should have been, "that the defendant had a bona fide belief that he [sic] was in imminent danger of death or great bodily harm and that his [sic] only means of escape from such danger was in the use of such force," and that the third component of the defense should have read, "that the defendant did not violate any duty to retreat or avoid the danger."

{¶38} However, we fail to see how adding extra components and different verbiage would have resulted in a different outcome, or how a simpler definition of self-defense prejudiced Short who had the burden of proof on the affirmative defense. The record indicates that the jury considered Short's argument of self-defense, as it asked a question directed to the defense during its deliberations. The jury, however, chose to disregard the defense, and by virtue of its verdict, determined that Short had failed to prove that she acted in self-defense. Had the jury been given the definition Short now espouses, Short would have been required to prove two additional elements, first that her only means of escape from danger was in the use of force against Adams, and second that she did not violate any duty to retreat or avoid the danger. Short was unable to prove that she acted in self-defense based on the simplified version of the defense presented to the jury in the court's instructions, and we cannot say that the outcome of the trial clearly would have been

otherwise had the jury been instructed as Short asserts.

{¶39} Having found no plain error in the trial court's jury instructions, Short's final assignment of error is overruled.

{¶40} Judgment affirmed.

POWELL, P.J., concurs.

HUTZEL, J., dissents.

**HUTZEL, J., dissenting.**

{¶41} Because I believe the complaint charging Short with domestic violence was not properly filed, I respectfully dissent from the majority's decision under Short's first assignment of error.

{¶42} Subject-matter jurisdiction of a court "connotes the power to hear and decide a case upon its merits." *In re J.J.*, 111 Ohio St.3d 205, 2006-Ohio-5484, ¶11. As the majority correctly states, the filing of a complaint invokes the jurisdiction of a municipal court. *Mbodji*, 2011-Ohio-2880 at ¶12. "It follows that if a complaint is not filed in a case, the trial court has not obtained jurisdiction over it." *Rouse*, 2010-Ohio-2218 at ¶5.

{¶43} "Under several Ohio statutes, the clerk of a municipal court is required to maintain a docket for each case, enter, when each document is filed, the date of filing for each document on that docket, and endorse [ ] the time or date of filing on each document." *Id.* at ¶6. "A document is 'filed' when it is deposited properly for filing with the clerk of courts. \* \* \* Thus, a party 'files' by depositing a document with the clerk of court, and then the clerk's duty is to certify the act of filing." *Id.* at ¶7. See, also, *Welsh Dev. Co., Inc. v. Warren Cty. Regional Planning Comm.*, 128 Ohio St.3d 471, 2011-Ohio-1604, ¶36 (filing is actual delivery and means taking a document to a clerk of courts for file-stamping as a court record; a filing

can only be accomplished by bringing the paper to the notice of the officer, so that it can be accepted by him as official custodian). In other words, to constitute filing, a document must be actually delivered and received by the official custodian. See *Rouse* at ¶8.

{¶44} As the majority correctly asserts, following *Rouse*, a time stamp or date stamp is not "the filing." Nor does a clerk's failure to time or date stamp a document create a jurisdictional defect. See *id.* at ¶7-8. Further, "when a document lacks an endorsement from the clerk of courts indicating that it has been filed, filing may be proved by other means." *Id.* at ¶10.

{¶45} In the case at bar, there is no dispute that the complaint is physically located in the record. However, it bears no mark (date stamp or time stamp) from the clerk's office. Nor is it signed and dated by the clerk of courts or a deputy clerk. Thus, the complaint bears no mark from the clerk's office indicating when it was filed. Unlike in *Rouse*, we do not have an affidavit from the clerk of courts. While we have a printout of the electronic docket sheet, it contains absolutely no reference to the complaint. On the day of the incident (August 24, 2010), the first entry on the electronic docket cryptically states, "Printed the letter titled: DOMESTIC VIOLENCE 2919.25."

{¶46} The majority nonetheless asserts that "there is sufficient 'other' evidence that the complaint was filed" because a file was opened, several acts of the clerk of courts are on the electronic docket sheet specific to the domestic violence charge, the electronic docket sheet lists a "file date" as August 24, 2010, the same date Short was arraigned and appeared before the clerk of courts, and pleadings subsequently filed by defense counsel and arguments made to the court by defense counsel reference the complaint.

{¶47} I agree that the "other evidence" used in *Rouse* is not necessarily the exclusive means of "other evidence" to be used to establish that a complaint was filed. However, unlike the "other evidence" relied upon by the majority, the type of evidence used in *Rouse*

clearly showed that the complaint against Rouse had in fact been *deposited with and received by the clerk of courts*, and thus had been filed. As the supreme court found, "the docketing of the case shows that the clerk actually received the complaint." *Rouse*, 2010-Ohio-2218 at ¶11.

{¶48} While defense counsel's various pleadings and arguments to the court show that he reviewed the complaint which was physically located in the record, this does not prove the complaint was actually received by the clerk of courts. Likewise, the fact a file was opened, a date of August 24, 2010 is the very first date on the electronic docket sheet and is subsequently listed several times, and references on the docket sheet for August 24, 2010 are made regarding other documents (such as a time waiver, continuance of the case to retain counsel, bond, and issuance of a temporary protection order) does not establish the complaint was actually received by the clerk of court on August 24, 2010 or at any time.

{¶49} As noted earlier, the first entry on the electronic docket on August 24, 2010, cryptically states, "Printed the letter titled: DOMESTIC VIOLENCE 2919.25." The cryptic phrase "printed the letter titled" is used several times in the electronic docket sheet to reference, inter alia, "TPO criminal DVTPO," subpoenas, and jury venire and seating list. The majority speculates that the very first entry necessarily means it is a pleading, specifically the complaint charging Short with domestic violence. However, one could as easily speculate it means something else given the fact other documents were given proper captions while others had a specific caption following the cryptic phrase (for example, printed the letter titled: subpoena). We cannot presume the complaint was properly filed, and thus was properly before the trial court, simply because the first date on the electronic docket sheet is the date of the incident, Short was prosecuted for and ultimately found guilty of domestic violence, and/or the fact the complaint was not filed went unnoticed throughout the proceedings below.

{¶50} However hurried a clerk of court may be, the simple act of either file-stamping the complaint or having the clerk of court sign and date the complaint would clearly establish the specific date the complaint was filed without any undue burden on the trial court and thus would avoid the necessity of this court engaging in speculation and conjecture as to what happened. See *State v. Dickey* (1991), 74 Ohio App.3d 587, 589. "However hurried a court may be in its efforts to reach the merits of a controversy, the integrity of \* \* \* rules is dependent upon consistent enforcement because the only fair and reasonable alternative thereto is complete abandonment." *Miller v. Lint* (1980), 62 Ohio St.2d 209, 215.

{¶51} Accordingly, I respectfully dissent from the majority's decision and would find that the trial court did not obtain jurisdiction over the complaint charging Short with domestic violence because the record does not establish that the complaint was actually received by the clerk of court, and thus, that it was filed.