

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT**

JEFFREY E. BROWN

:

Appellant/defendant

: Case No. TRD 0910285
: Appeal Case No. 9-10-012
: Regular Calendar

-vs-

:

STATE OF OHIO (Osp)

:

Appellee/Plaintiff

:

APPELLANTS MOTION, OFFER OF PROOF

Jeffrey E. Brown, Pro Se
XXXXXXXXXX Ave
Columbus Ohio xxxxx
xxx-xxx-xxxx

Clerk of Courts
Marion County Courthouse
100 North Main St.
Marion Ohio 43302

City of Marion Law Director
233 West Center Street
Marion Ohio, 43302

Court of Appeals of Ohio
Third Appellate District
204 N. Main St
Lima Ohio 45801

MEMORANDUM

On 1/21/10, Appellant Jeffrey E. Brown appeared before the Marion Municipal Court. There was no court reporter on duty however; the City records their hearings as an audio file, which the appellant ordered.

On February 17, 2010 Appellant filed a notice of appeal regarding the above named case and included this audio file on CD attached to the notice of appeal including all copies noticed to opposing counsel and this honorable court and noted on his Praeceptum that he was including this as part of the record on appeal. The City of Marion made no objection.

Appellant has since been made aware of Local Rule (E)

(E) In appeals of proceedings not attended by a court reporter the parties shall proceed under App.R. 9(A) when the proceedings were recorded by means of videotape and the parties shall proceed under App.R. 9(C) when the proceedings were recorded by means of audiotape.

In turn, App. R. 9(C) provides that:

“If no report of the evidence or proceedings at a hearing or trial was made, or if a transcript is unavailable, the appellant may prepare a statement of the evidence or proceedings from the best available means, including the appellant’s recollection.”

The best available means the appellant has, is the audio file from which he has made a partial transcript, which is the entire argument made by the City of Marion prosecutor before the court. As this was not filed at the time of the appeal, the appellant respectfully submits this as an offer of proof.

Respectfully.

Jeffrey E. Brown, Pro Se
xxxxxxxxx Avenue

Columbus Ohio xxxxxx,
xxx-xxx-xxxx

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was delivered by US Mail to:

Clerk of Courts
Marion County Courthouse
100 North Main St.
Lima Ohio 43302

on the 19th day of May 2010.

Jeffrey E. Brown, Pro Se
XXXXXXXXXX Avenue
Columbus Ohio xxxxxx,
xxx-xxx-xxxx

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PARTIAL TRANSCRIPT

Jeffrey E. Brown, Pro Se

XXXXXXXXXX

Columbus Ohio xxxxx

xxx-xxx-xxxx

City of Marion Law Director

233 West Center Street

Marion Ohio, 43302

ARGUMENT TRANSCRIPT

Jason D. Warner, #0066451, Chief Prosecutor
City of Marion Law Director's Office

Marion Municipal Court
1/21/10
Honorable Judge Teresa L. Ballinger

Thank you your honor, (inaudible) kind of interesting Mr. Brown wants to put into the record what opposing counsel will likely argue, I'm not interested in arguing about any of these things that he's brought forward. I would suggest, suggest in fact that none of the stuff he brought forward with regard to his aunt's medical condition or his previous testimony in hearings regarding OVI's has any relevance whatsoever, whatsoever to these proceedings.

Uh, our response very simply, plainly, and clearly, to his motion to dismiss this charge is that, statutes are, as he has already pointed out, presumed to be constitutional. I'm not going to get in a big argument like he's seemingly trying to bait me into with regards to separation of powers, on whose job it is to make the laws, he wants to argue that it's the courts job to make that laws, when I think very clearly that your honor is well aware that legislatures make laws, courts interpret laws and enforce laws.

Our response to his motion to dismiss is simply that we believe that the seat belt statute is in fact constitutional. That legislation which promotes the state's interest in protecting health, safety and welfare of its citizens is a proper exercise of the states police power. We're going to ask that the court to overrule the motion to dismiss and we be allowed to proceed. END

I Jeffrey E. Brown, do hereby certify that the foregoing, consisting of one page, is a true partial transcript as transcribed by me of the proceedings conducted in that court on the day of, 1/21/10, before the Honorable , Judge Teresa L. Ballinger of said Court, including the total argument from the City of Marion as presented by Jason Warner #0066451, Chief Prosecutor. Regarding appellant's motion to dismiss but excluding everything else. And I do further certify that I was personally present in the courtroom during all of the proceedings so transcribed.

Jeffrey E. Brown, Pro Se
XXXXXXXXXX Avenue
Columbus Ohio xxxxxx,
xxx-xxx-xxxx