

This is the cover page. Local Rule 7(A)(1) describes what information should be on the cover page.

**IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
SUMMIT COUNTY, OHIO**

Court of Appeals case number

C.A. No. 98765

Plaintiff's name

CITY OF AKRON

Appellee

v.

Party designation

Defendant's name

NOAH TURNEY

Appellant

APPEAL FROM THE AKRON
MUNICIPAL COURT, CASE
NO. CR 00-00-0000

Trial court and trial court case number

Title of document and the name of the party on whose behalf the document is filed.

BRIEF OF APPELLANT
NOAH TURNEY

ORAL ARGUMENT REQUESTED

If a party wants to present oral argument, the request must appear on the cover of appellant's opening brief or appellee's brief. App.R. 21.

Noah Turney
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Appellant

Information for counsel, including the name of the party represented and registration number, or if a party is unrepresented, information for the party.

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Local Rule 7(A)(9) requires that the Table of Contents include a list of the items in the appendix.

TABLE OF AUTHORITIES

List all pages where the authority is cited.

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ASSIGNMENT OF ERROR

Appellant's conviction for obstructing official business was against the manifest weight of the evidence in violation of Article IV, Section 3, of the Ohio Constitution. (Tr. Passim)

Local Rule 7(A)(3) requires a separate statement listing the assignments of error. An assignment of error is a concise description of a mistake alleged to have been made by the trial court. Detailed reasons why the court erred should not be included in the assignment of error. Many assignments of error begin with the phrase "The trial court erred by"

Page 1 of the brief always begins with the Statement of the Assignments of Error.

ISSUES PRESENTED FOR REVIEW

Mr. Turney and three witnesses testified that Turney did not disobey a police officer or fight with him. The officer testified Turney refused to follow his directions and struggled with him while cuffing him. Was Appellant's conviction for obstructing official business against the manifest weight of the evidence in light of the conflicting evidence on the events that took place during arrest?



Local Rule 7(A)(4) requires a list of the issues presented for review. The issues are the questions that the Court must answer to reach a decision in the case. Appendix B to the Local Rules explains what the Court is looking for in a Statement of the Issues Presented.

Local Rule 7(A)(5) requires a statement of the case, which tells how the case proceeded in the trial court.



STATEMENT OF THE CASE

The city of Akron brought this action against Turney in the Municipal Court of Akron, Summit County, for one count of driving under suspension in violation of Akron City Code 71.07 and one count of obstructing official business in violation of Akron City Code 136.11. The jury convicted Turney on both charges. On November 6, 2002, the trial court ordered Turney to serve 180 days in the Summit County jail. (App. at A-1). Turney timely filed his notice of appeal on November 25, 2002. On December 24, 2002, the trial court released Turney and suspended his sentence.

With the exception of block quotes and footnotes, the text of the brief is to be double-spaced.

If the appendix includes a copy of the item cited, a reference in the brief to the location of the item in the appendix is required.

Local Rule 7(A)(6) requires a statement of the facts, which tells the facts giving rise to the action in the trial court. Only facts relevant to the assignments of error should be included in the statement of facts. There must also have been evidence in the record to support the facts. See Appendix B to the Court’s Local Rules.



STATEMENT OF FACTS

On August 26, 2002, at approximately 8:00 p.m., Turney was driving eastbound on East Market Street in Akron, Ohio. At the same time, a police officer was also traveling eastbound on East Market Street in a marked police vehicle. [Tr. at 79] The officer then followed Turney from Market Street to his home where he initiated a traffic stop. [Tr. at 81, 82] At trial, the officer testified that Turney failed to pull over when he turned on his warning lights, but instead continued to drive about a half of a block where he turned into his driveway at home. Id.

The officer also testified that, after the traffic stop was initiated, Turney refused to shut off his car, used profanity, and told the officer to shut the car off himself. [Tr. at

Local Rule 7(A)(5) requires references to the record, which identify the evidence proving the fact. In this example, “Tr. at 81” refers to a page of the trial transcript.

84] The officer stated that there was a struggle when he attempted to place Turney under arrest. [Tr. at 85-87] The officer handcuffed and then pepper sprayed Turney. [Tr. at 87]

Turney and three other witnesses all testified that the officer did not turn on his warning lights until Turney pulled into the driveway. [Tr. at 142, 160-61, 196] Turney and two of the witnesses testified that the officer pushed Turney against the car while he was attempting to put him in handcuffs. [Tr. at 143, 178, 197] Turney and all three witnesses further testified that, after the officer placed the handcuffs on him, the officer caused Turney to drop to his knees and then pepper sprayed him. [Tr. at 143, 161, 179, 197]

Local Rule 7(A)(7) requires that parties include a section explaining the party's position with respect to the assignments of error and including citations to case law, statutes, and other authorities that support the party's argument.

Each assignment of error should be argued separately. The assignment of error should be stated at the beginning of the argument on that assignment of error.

ARGUMENT AND LAW

ASSIGNMENT OF ERROR

Appellant's conviction for obstructing official business was against the manifest weight of the evidence in violation of Article IV, Section 3, of the Ohio Constitution. (Tr. Passim)

The Ohio Supreme Court set forth the following standard that an appellate court

must use to review a claim that a conviction is against the manifest weight of the

evidence:

Local Rule 7(A)(7) requires the standard of review to be included in the argument.

The court, reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of the witness and determines whether in resolving conflicts in the evidence, the jury clearly

lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered. The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction.

State v. Thompkins (1997), 78 Ohio St.3d 380, 387. Ohio Constitution, Article

Block quotes
should be
single-spaced.

V, Section 3(B) provides that:

No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause.

If all three judges of the appellate court agree that the judgment is against the manifest weight of the evidence, the conviction must be reversed and defendant given a second chance to seek an acquittal through a new trial. See *Thompkins*, 78 Ohio St.3d at 387.

In this case, the conviction for obstruction of official business must be reversed because the evidence did not support one of the elements of the crime. Under Akron City Code Section 136.11, for a person to be guilty of the crime of obstructing official business, that person must, without privilege to do so and with the *purpose* of obstructing the performance of a public official of any authorized act within his official capacity, do an act that hampers or impedes the official in the performance of his lawful duties. Akron City Code, §136.11 (1973). The greater weight of the evidence in this case establishes that Turney did not intend to hamper or impede the officer in performing his duties.

At trial, the officer stated that he decided to arrest Turney for obstruction of official business because he failed to stop immediately when the officer turned on his warning lights, used profanity with the officer and refused to turn off his car after he

had stopped. [Tr. at 81-82.] Turney's witnesses, however, stated that they did not see the officer turn on his warning lights until Turney was at, or almost at, his driveway. [Tr. at 142, 160-61, 196] Even if the jury believed one hundred percent of the testimony of the officer that he turned on his warning lights approximately one half a block before Turney stopped, the city still failed to prove that he noticed that the officer's warning lights were on immediately after he turned them on. For Turney to intend to continue driving and obstruct official business as the city has contended, he would have had to have seen the warning lights several seconds before he actually stopped. The overwhelming weight of the evidence, however, established that he did not fail to stop after he noticed that the warning lights were on.

The officer also indicated at trial that Turney's refusal to shut his car off was another reason why he was arrested for obstructing official business. It is unclear why the refusal to shut off the car would be relevant to a charge of obstructing official business under the circumstances of this case. The officer testified that he had pulled into the driveway behind Turney who had pulled his car all the way to the back of his driveway. Failing to turn off the vehicle did not hamper the officer in conducting his duty as the vehicle was blocked and could not have gone anywhere. Nor would the use of profane language obstruct the officer in his duty. Thus, the evidence failed to establish that the officer was hampered in performing his duties by any of the actions of Turney.

Local Rule 7(A)(8) requires a conclusion stating the relief requested from the Court of Appeals.

CONCLUSION

For the foregoing reasons, Turney prays that this Court reverse the trial court's decision and remand the matter for a new trial.

Noah Turney
Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief and Assignments of Error was sent to Appellee's counsel, John Lawyer, Prosecuting Attorney, 789 His Street, Histown, Ohio 00000, by ordinary U.S. mail on the 20th day of March, 2002.

Noah Turney

Appellate Rule 13(D) requires all documents filed with the Court to include proof of service stating to whom the document has been sent, how it was sent, and when. Proof of service must be separately signed.

The total number of pages, beginning with the assignments of error and ending with the certificate of service, must be less than 30 pages.

Local Rule 7(A)(9) requires an appendix that includes copies of the final judgment entry of the trial court and any orders relevant to the assignments of error, including findings of fact and conclusions of law and magistrate reports. Copies of cases, statutes, rules, regulations, ordinances, and constitutional provisions should not be included in the appendix.

COPY OF THE TRIAL COURT JUDGMENT

Local Rule 7(A)(9) requires the pages of the appendix to be sequentially numbered. Numbering should begin with page one and continue sequentially through the last page in the appendix, for example, A-1, A-2, etc.

A-1

