

This is the cover page. Local Rule 16(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. 28765

Plaintiff's name

CITY OF AKRON

Appellee

v.

Party designation

Defendant's name

ROBERT WORK

Appellant

APPEAL FROM THE AKRON MUNICIPAL COURT, CASE NO. CR 17-04-4525

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
ROBERT WORK

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; Loc.R. 21.

Robert Work
456 4th St.
Akron, Ohio 44308
(330) 555-1212

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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TABLE OF AUTHORITIES

List all pages where the authority is cited.



CASES

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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 16(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. Work and three witnesses testified that Work did not disobey a police officer or fight with him. The officer testified Work 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 16(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. The Issue Presented for Review may be single-spaced.

Local Rule 16(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 Work 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 Work on both charges. On November 6, 2016, the trial court ordered Work to serve 180 days in the Summit County jail. (App. at A-1). Work timely filed his notice of appeal on November 25, 2016. On December 24, 2016, the trial court released Work and suspended his sentence.

Local Rule 16(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, 2016, at approximately 8:00 p.m., Work 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 Work from Market Street to his home where he initiated a traffic stop. (Tr. at 81, 82). At trial, the officer testified that Work 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, Work refused to shut off his car, used profanity, and told the officer to shut the car off himself. (Tr. at 84). The officer stated that there was a struggle when he attempted to place Work under

With the exception of block quotes, 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 16(A)(6) 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.

arrest. (Tr. at 85-87). The officer handcuffed and then pepper sprayed Work. (Tr. at 87).

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

Local Rule 16(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 16(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, 78 Ohio St.3d 380, 387 (1997). Ohio Constitution, Article IV, Section 3(B) provides that:

Block quotes should be single-spaced.

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)¹. The greater weight of the evidence in this case establishes that Work did not intend to hamper or impede the officer in performing his duties.

¹ This provision is identical to R.C. 2921.31, Obstructing Official Business, and cases interpreting it are applicable to this case.

Footnotes must be double spaced and appear in the same size font as the text in the body of the brief. Loc.R. 16(A)(4).

At trial, the officer stated that he decided to arrest Work 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). Work's witnesses, however, stated that they did not see the officer turn on his warning lights until Work 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 Work 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 Work 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 Work'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 Work 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 Work.

Local Rule 16(A)(8) requires a conclusion stating the relief requested from the Court of Appeals.

CONCLUSION

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

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. The Certificate of Service must be separately signed. *See, also*, Local Rule 16(A)(10).

Robert Work
Appellant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was sent to Appellee's counsel, Elizabeth Burns, Prosecuting Attorney, 789 Main Street, Akron, Ohio 44308, by ordinary U.S. mail on the 20th day of March, 2017.

Robert Work

The total number of pages, beginning with the assignments of error and ending with the certificate of service, must be less than 30 pages. Loc.R. 19(B)(1). In the alternative, briefs can comply with the word count provision of Local Rule 19(B)(2).

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Local Rule 16(A)(11) 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 16(A)(11)(b) 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

