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Document: State v. Green, 548 N.E.2d 334

**State v. Green, 548 N.E.2d 334**

Court of Appeals of Ohio, Eleventh Appellate District, Portage County

September 12, 1988, Decided

No. 1892

**Reporter**

48 Ohio App. 3d 121 \* | **548 N.E.2d 334** \*\* | 1988 Ohio App. LEXIS 3631 \*\*\*

THE STATE OF OHIO, APPELLEE, v. GREEN, APPELLANT

**Prior History:**

[\*\*\*1] APPEAL: Court of Appeals for Portage County.

**Disposition:**

*Judgment accordingly.*

**Core Terms**

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disorderly conduct, assigned error, trial court, incarceration, misdemeanor, sentenced, menacing, argues, fine, void

## Case Summary

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### Procedural Posture

Defendant sought review of a judgment of conviction from the Ravenna Municipal Court (Ohio) for disorderly conduct in violation of Ohio Rev. Code Ann. § 2917.11(B)(2) .

### Overview

Defendant was charged with disorderly conduct and menacing. He pled no contest to the disorderly conduct charge and the menacing charge was dismissed. The trial court found defendant guilty and sentenced him to three days of incarceration. Defendant appealed and claimed that it was error to sentence him to a term of incarceration for a minor misdemeanor. The court found that the parties stipulated that defendant was convicted of a minor misdemeanor. Thus, the court held that it could have deleted the jail time and otherwise affirmed the trial court's judgment as modified. However, defendant also argued that the complaint was defective because it had not been properly made under oath in accordance with Ohio R. Crim. P. 3 . The court agreed and reversed the trial court's

judgment and entered final judgment in favor of defendant. The charging officer failed to sign the jurat on the complaint. Thus, the complaint was void and the conviction that resulted therefrom was also void.

### Outcome

The court reversed the trial court's judgment, entered judgment in favor of defendant and dismissed the charge.

### LexisNexis® Headnotes

• Criminal Law & Procedure > ... > Accusatory Instruments > Complaints > General

Overview

### *HNI* Accusatory Instruments, Complaints

Pursuant to Ohio R. Crim. P. 3, a complaint must be made upon oath before any person

authorized by law to administer oaths.

More like this Headnote

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• Criminal Law & Procedure > ... > Accusatory Instruments > Complaints > General

Overview

**HN2**      **Accusatory Instruments, Complaints**

The failure to comply with Ohio R. Crim. P. 3 is that there is no criminal complaint.

Such a complaint is void and any conviction resulting therefrom would be void also.

More like this Headnote

*Shepardize* - Narrow by this Headnote (6)      1

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## Headnotes/Summary

### Headnotes

*Criminal law -- Complaint filed without execution of jurat -- Complaint and conviction resulting therefrom are void -- Crim. R. 3 .*

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### Syllabus



Where a charging officer signs a complaint but fails to execute the jurat, such a complaint is void and any conviction resulting therefrom is also void. (Crim. R. 3, applied.)

**Counsel:** *John Plough*, prosecuting attorney, and *Kenneth Bailey*, for appellee.

*Antonios Scavdis*, for appellant.

**Judges:** Christley, J. Ford, P.J., and Cook, J., concur.

**Opinion by:** CHRISTLEY

## Opinion

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[\*121] [\*\*334] On March 23, 1987, defendant-appellant Ronald E. Green was charged with disorderly conduct, R.C. 2917.11(B)(2), and menacing, R.C. 2903.22. On August 10, 1987, in the Ravenna Municipal Court, appellant pleaded "no contest" to the charge of disorderly conduct and the court dismissed the charge of menacing. The court found appellant guilty and sentenced him to three days' incarceration and a fine of \$ 100 plus court costs. On September 8, 1987, the court issued a stay order. On September 8, 1987, appellant timely filed this notice of appeal. There is no showing that the fine has been paid or that this case is moot.

Appellant [\*\*\*2] argues in his first assignment that the trial court erred when it sentenced the appellant to a term of incarceration for a minor misdemeanor.

Following the oral hearing in this matter, the parties submitted a written stipulation to this court that the appellant was convicted of a minor misdemeanor. If there were no other grounds for reversal in this matter, this court could simply delete the jail time and affirm the judgment as modified. [\*\*335] However, that is not the case because of the second assignment of error.

In his second assignment of error, appellant argues that the complaint was defective because it was not made "under oath."

Pursuant to Crim. R. 3, *HNI* a complaint must be " \* \* \* made upon oath before any person authorized by law to administer oaths."

An inspection of the complaint shows that although the charging officer signed the complaint, he did not sign the jurat.

**HN2** There is therefore no criminal complaint because of the failure to comply with Crim. R. 3. Under *State v. Coldwell* (1982), 3 Ohio App. 3d 283, 3 OBR 328, 445 N.E. 2d 257, such a complaint [\*122] is void and any conviction resulting therefrom would be void also.

For an excellent discussion of the proposition [\*\*\*3] that the filing of a valid affidavit is a necessary prerequisite to a court's acquiring jurisdiction, see *South Euclid v. Samartini* (M.C. 1965), 5 Ohio Misc. 38, 31 O.O. 2d 87, 204 N.E. 2d 425.

The judgment of the trial court in this matter is therefore reversed, final judgment is entered for appellant and the charge against the appellant is hereby dismissed.

**Content Type:** Cases

**Terms:** 548 n.e 2nd 334

**Narrow By:** -None-

**Date and Time:** Sep 09, 2019 08:06:52 a.m. EDT

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