

IN THE SUPREME COURT OF MISSOURI

CITY OF SPRINGFIELD

Plaintiff-Respondent

vs.

ADOLPH BELT, JR.

Defendant-Appellant

No. SC 90324

On Appeal from the Circuit Court of Greene County, Missouri
The Honorable Mark Fitzsimmons

SUBSTITUTE BRIEF OF APPELLANT

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TABLE OF CONTENTS

JURISDICTIONAL STATEMENT.....	1
STATEMENT OF FACTS.....	3
POINTS RELIED ON.....	6
POINT I.....	6
POINT II.....	6
ARGUMENT.....	8
.....	
CONCLUSION.....	17
.....	
CERTIFICATE OF COMPLIANCE.....	19
CERTIFICATE OF SERVICE.....	20

TABLE OF AUTHORITIES

STATE CASES

<u>City of El Dorado Springs v. Edmiston</u> , 821 S.W.2d 913 (Mo.App. S.D. 1992)	10
<u>City of Excelsior Springs v. Redford</u> , 795 S.W.2d 123 (Mo.App. W.D. 1990)	9, 10
<u>City of Kansas City v. Dudley</u> , 244 S.W.3d 762 (Mo.App. W.D. 2008)	9, 12, 14
<u>City of Maplewood v. Erickson</u> , 80 S.W.3d 477 (Mo.App. E.D. 2002)	14, 16
<u>City of St. Peters v. Hodak</u> , 125 S.W.3d 892 (Mo.App. E.D. 2004)	14, 16
<u>Kansas City v. Bott</u> , 509 S.W.2d 42 (Mo. banc 1974)	13
<u>Mayes v. Palmer</u> , 103 S.W. 1140, 1142 (Mo. 1907)	16

CONSTITUTIONAL PROVISIONS

Article V, Section 3, Mo. Constitution (as amended 1982)	2
--	---

MISSOURI STATUTES

Mo. Rev. Stat. Section 479.010 (2008)	13, 15
Mo. Rev. Stat. Section 479.020 (2008)	13, 15
Mo. Rev. Stat. Section 479.070 (2008)	13, 15
Mo. Rev. Stat. Section 479.090 (2008)	9, 10, 11, 13, 15, 18
Mo. Rev. Stat. Section 479.120 (2008)	13
Mo. Rev. Stat. Section 479.200 (2008)	14

OTHER AUTHORITIES

Rule 37.33	10, 11
Rule 37.34	9, 10, 11, 15, 18
Rule 37.35	

10, 11

Rule 37.64

14

Springfield, Mo., City Code Section 106-155 (2007)

1, 3, 12, 13, 16

Springfield, Mo., City Code Section 106-161 (2007)

12, 13, 16

JURISDICTIONAL STATEMENT

The nature of this case and, thus, the jurisdiction of this Court is in dispute but so central to the issues at bar, argument related to jurisdiction is more fully addressed in the Argument section of this brief. In short, the City maintains the case at bar is an administrative procedure over which this Court lacks jurisdiction. Mr. Belt maintains this is a quasi-criminal action wherein the City of Springfield alleged, without a complaint, summons or information, "that a motor vehicle registered to [Appellant, Mr. Belt] violated [Springfield Municipal] Code Section 106-155 by entering an intersection when the traffic signal was red" on April 10, 2008. (LF 169). Following an administrative hearing before a municipal court judge for the City of Springfield, perhaps acting as a hearing examiner, Findings of Fact and Conclusions of Law were issued imposing a \$100.00 penalty on Mr. Belt. (LF 158). Mr. Belt timely filed an Application for Trial de Novo. (LF 156). The City filed a Limited Entry of Appearance and Motion to Dismiss (LF 120) which was denied by the circuit court. The City later filed a Motion to Reconsider Motion to Dismiss (LF 063) which was sustained by the circuit court on January 20, 2009, denying Mr. Belt a trial de novo. Mr. Belt timely filed a Notice of Appeal on January 22, 2009.

As this appeal does not involve any of the categories reserved for exclusive

appellate jurisdiction of the Supreme Court of Missouri, the Court of Appeals for the Southern District was vested with initial jurisdiction of this appeal. Article V, Section 3, Mo. Constitution (as amended 1982); Mo. Rev. Stat. Section 477.060 (1986).

The Court of Appeals affirmed the Circuit Court's dismissal of Mr. Belt's application for trial de novo on July 7, 2009. Mr. Belt filed a motion for rehearing and application for transfer in the Court of Appeals on July 21, 2009. The Court of Appeals denied the motion and application on July 28, 2009. On August 10, 2009, Mr. Belt filed an application for transfer in this Court. On October 28, 2009, this Court sustained the application for transfer and entered an order transferring the case.

STATEMENT OF FACTS

The nature of the case at bar is in dispute. Mr. Belt maintains this is a quasi-criminal action involving the alleged violation of a municipal ordinance. The City maintains the case at bar is an administrative procedure. Whatever the nature of the case, it arises from the alleged violation of a municipal ordinance wherein the City of Springfield alleged by way of a violation notice, but without a complaint, summons or information, "that a motor vehicle registered to [Appellant, Mr. Belt] violated [Springfield Municipal] Code Section 106-155 by entering an intersection when the traffic signal was red" on April 10, 2008. (LF 169). The process against Mr. Belt began with a violation notice. The ordinance enacted by the City calls for an administrative hearing to be presided over by a hearing examiner if and only if an accused requests an administrative hearing. If no hearing is requested, the ordinance provides an accused is presumed liable for a civil penalty. Mr. Belt was advised by way of a violation notice that he could request an administrative hearing or be presumed liable for the \$100.00 penalty for the alleged violation. A trial was not offered to Mr. Belt as an alternative. Mr. Belt, acting *pro se*, requested an administrative hearing. A hearing was scheduled for Mr. Belt. Some form of process took place, but whether it was a trial or hearing is in dispute. The trial, or perhaps hearing, that took place was presided over by an individual who at

all times relevant worked, and continues to work, as a municipal court judge for the City of Springfield. Whether the presiding official was acting in his capacity as a municipal court judge or hearing examiner may be in dispute, but the City represented to the Court of Appeals that part of the job description of a municipal court judge is to act as a hearing examiner. Thus, the office of Municipal Court Judge and Hearing Examiner may be one and the same. What office heard the trial/hearing may be a matter for this Court to decide. Whether the trial or hearing took place in the municipal court or before some administrative body is in dispute. As the Municipal Court is not a court of record, Mr. Belt has not provided a transcript of the trial/hearing as a part of the record before this Court, however an audio recording of the proceedings was prepared by the City. During the trial/hearing, evidence was presented by an attorney for the City that also prosecutes ordinance violations before the Springfield Municipal Court. Mr. Belt was offered an opportunity to present evidence. Presiding over the trial/hearing was a municipal court judge/hearing examiner for the City of Springfield, who was a licensed attorney in Missouri at all times relevant. Following the trial/hearing, Findings of Fact and Conclusions of Law were issued imposing a \$100.00 penalty on Mr. Belt. (LF 158). The Findings of Fact and Conclusions of Law indicate the hearing was held in the Springfield Municipal Court but was signed by the

presiding official as a "Hearing Examiner" and the caption of the findings indicated the case was heard by an "Administrative Hearing Tribunal". (LF 158) Following the process, Mr. Belt engaged counsel and filed an Application for Trial de Novo within ten days. (LF 156). Because Mr. Belt anticipated the nature of this case might be a matter of dispute, he also filed a Petition for Judicial Review pursuant to the Missouri Administrative Procedures Act with the Greene County Circuit Court which is presently stayed pending the outcome of this appeal. The City filed a Limited Entry of Appearance and Motion to Dismiss Mr. Belt's Request for Trial de Novo (LF 120) which was denied by the circuit court. The City later filed a Motion to Reconsider Motion to Dismiss (LF 063) which was sustained by the circuit court, denying Mr. Belt a trial de novo. Mr. Belt now seeks review of the failure of the municipal court and circuit court to discharge Mr. Belt for the City's failure to file an information and the circuit court's dismissal of Mr. Belt's trial de novo.

POINTS RELIED ON

POINT I

The municipal court and circuit court erred in not discharging Defendant, because Respondent failed to file a sufficient information conferring jurisdiction on either the municipal court or the circuit court, in that Respondent filed no information and Rule 37.34 and Mo. Rev. Stat. Section 479.090 (2008) require all ordinance violations to be prosecuted by information.

City of El Dorado Springs v. Edmiston, 821 S.W.2d 913 (Mo.App. S.D. 1992)

City of Excelsior Springs v. Redford, 795 S.W.2d 123 (Mo.App. W.D. 1990)

City of Kansas City v. Dudley, 244 S.W.3d 762 (Mo.App. W.D. 2008)

Mo. Rev. Stat. Section 479.090 (2008)

Rule 37.33

Rule 37.34

Rule 37.35

POINT II

The circuit court erred in sustaining Respondent's Motion to Reconsider Motion to Dismiss and dismissing Appellant's Application for Trial de Novo because Appellant was entitled to a trial de novo under Mo. Rev. Stat.

§ 479.200, in that Appellant was penalized \$100.00 by a municipal court judge who is an attorney following a trial and Appellant timely filed an Application for Trial de Novo.

City of Kansas City v. Dudley, 244 S.W.3d 762 (Mo.App. W.D. 2008)

City of Maplewood v. Erickson, 80 S.W.3d 477 (Mo.App. E.D. 2002)

City of St. Peters v. Hodak, 125 S.W.3d 892 (Mo.App. E.D. 2004)

Kansas City v. Bott, 509 S.W.2d 42 (Mo. banc 1974)

Mo. Rev. Stat. Section 479.010 (2008)

Mo. Rev. Stat. Section 479.020 (2008)

Mo. Rev. Stat. Section 479.070 (2008)

Mo. Rev. Stat. Section 479.090 (2008)

Mo. Rev. Stat. Section 479.120 (2008)

Mo. Rev. Stat. Section 479.200 (2008)

Rule 37.64

Springfield, Mo., City Code Section 106-155 (2007)

Springfield, Mo., City Code Section 106-161 (2007)

ARGUMENT

I. The municipal court and circuit court erred in not discharging Appellant, because Respondent failed to file a sufficient information conferring jurisdiction on either the municipal court or the circuit court, in that Respondent filed no information and Rule 37.34 and Mo. Rev. Stat. Section 479.090 (2008) require all ordinance violations to be prosecuted by information.

Standard of Review: Where the essential facts necessary to establish subject matter jurisdiction are not in dispute, a pure question of law is presented and the standard of review is de novo. City of Kansas City v. Dudley, 244 S.W.3d 762.

Under Rule 37.34 and Section 479.090, all ordinance violation prosecutions must be initiated by an information. Because no information was filed in this case, neither the municipal court nor the circuit court was authorized to enter a judgment of conviction against Mr. Belt. Accordingly, the judgment should be reversed.

"The sufficiency of an information in a municipal ordinance violation case may be raised in this court even if not raised in the municipal court or in the circuit court on a trial de novo." City of Excelsior Springs v. Redford, 795 S.W.2d 123

(Mo.App. W.D. 1990). Thus, Mr. Belt's contention that the court erred in entering a judgment against him "is ripe for consideration on this appeal." Id.

Missouri law makes clear that an indispensable prerequisite to the prosecution of an ordinance violation is the filing of an information. Section 479.090 provides: "All prosecutions for the violation of municipal ordinances shall be instituted by information and may be based upon a complaint." Mo. Rev. Stat. § 479.090. Similarly, Supreme Court Rule 37.34 states: "All ordinance violations shall be prosecuted by information." Rule 37.35 requires that "[t]he information shall be... signed by the prosecutor and filed in the court having jurisdiction of the ordinance violation," and "shall be supported by a violation notice as prescribed by Rule 37.33."

"[A]n information which failed to allege facts constituting a violation of the ordinance cannot sustain a conviction." City of Excelsior Springs v. Redford, 795 S.W.2d 123. Where an information does not fulfill this requirement, appellate courts have overturned the conviction and discharged the accused. See, e.g., City of Excelsior Springs v. Redford, 795 S.W. 123; City of Eldorado Springs v. Edmiston, 821 S.W.2d 913 (Mo.App. S.D. 1992). Accordingly, because the prosecutor did not file an information, the judgment of conviction entered in this case should be overturned.

Relying upon a Notice of Contested Hearing on Photo Redlight Violation dated July 11, 2008 (LF 169) and a second notice dated August 5, 2008 (LF 162), the City insists the court had jurisdiction. But the Notice of Contested Hearing on Photo Redlight Violation in no way satisfies the requirements of an information delineated in Chapter 479 and Supreme Court Rule 37. It was not denominated as an "information." It was not signed by the prosecutor or supported by a violation notice as required by Rule 37.35. It alleged no facts that Mr. Belt personally committed any ordinance violation as required by Rule 37.33 but merely indicated that a motor vehicle registered to Mr. Belt violated the ordinance. It contained no notice that false statements therein were punishable by law and forewarned of no legal penalties if Mr. Belt failed to appear as further mandated by Rule 37.33. Thus, the notices cannot serve as a substitute for the information mandated by law.

Because the ordinance violation prosecution in this case was not initiated by the filing of an information as required by Mo. Rev. Stat. § 479.090 and Rule 37.34, the municipal court exceeded its authority in entering a judgment of conviction. Accordingly, this Court should reverse the judgment and order Mr. Belt discharged.

II. The circuit court erred in sustaining Respondent's Motion to Reconsider Motion to Dismiss and dismissing Appellant's Application for Trial de Novo because Appellant was entitled to a trial de novo under Mo. Rev. Stat. § 479.200, in that Appellant was penalized \$100.00 by a municipal court judge who is an attorney following a trial and Appellant timely filed an Application for Trial de Novo.

Standard of Review: Where the essential facts necessary to establish subject matter jurisdiction are not in dispute, a pure question of law is presented and the standard of review is de novo. City of Kansas City v. Dudley, 244 S.W.3d 762 (Mo.App. W.D. 2008).

Mr. Belt is charged with violation of Springfield, Mo., City Code Section 106-155 (2007) which proscribes the running of a red traffic signal by a motorist pursuant to an automated traffic control ordinance featuring "red light cameras." Springfield, Mo., City Code Section 106-161 (2007) and LF 158. The automated traffic control ordinance sets out a civil enforcement scheme featuring a "civil penalty," "an administrative enforcement action," procedures for providing an accused with mailed "notice of violation," a presumption that the owner is the operator, and liability for the fine following the mailing of the notice of violation unless the owner or operator requests a hearing within 30 days. Springfield, Mo.,

City Code Sections 106-155 and 106-161 (2007).

Chapter 479 sets forth the procedure for prosecuting municipal ordinance violations. Violations “shall be heard and determined only before divisions of the circuit court.” Mo. Rev. Stat. Section 479.010 (2008). A municipal judge may not hold any other office in the municipality in which he or she serves as judge. Mo. Rev. Stat. Section 479.020 (2008). The municipal judge is required to “keep a docket in which he shall enter every case commenced before him.” Mo. Rev. Stat. Section 479.070 (2008).

An attorney designated by the municipality is charged with prosecuting violations of the municipality's ordinances before the municipal judges hearing ordinance violations. Mo. Rev. Stat. Section 479.120 (2008). Prosecutions must be commenced by the filing of an information: "All prosecutions for the violation of municipal ordinances shall be instituted by information and may be based upon a complaint". Mo. Rev. Stat. Section 479.090 (2008). Proceedings in municipal courts “shall be in accordance with the supreme court rules governing practice and procedure in proceedings before municipal judges.” Id.

A defendant’s right to certain constitutional protections in a prosecution for a municipal ordinance violation does not “turn on whether the proper label is 'civil' or 'criminal' or another.” Kansas City v. Bott, 509 S.W.2d 42 (Mo. banc 1974). If

a prosecution for a municipal ordinance violation is "solely civil, no fine or imprisonment could be inflicted." Id. When a municipal judge trying a case is licensed to practice law in Missouri, "the defendant shall have a right of trial de novo before a circuit judge." Mo. Rev. Stat. Section 479.200 (2008).

"[A] judgment of conviction 'shall set forth the plea, the verdict or findings, and the adjudication or sentence.'" City of St. Peters v. Hodak, 125 S.W.3d 892 (Mo.App. E.D. 2004)(quoting Rule 37.64(d)). "Generally, a 'final judgment' occurs when a sentence is entered." City of Maplewood v. Erickson, 80 S.W.3d 477 (Mo.App. E.D. 2002).

Mr. Belt was provided a some form of process, perhaps a hearing, a trial or something else. (LF 158). During the proceedings, the City appeared by an Assistant City Attorney who regularly prosecutes for the City of Springfield cases involving municipal ordinance violations. (LF 158). The prosecutor presented evidence and, following the proceedings, the presiding official entered Findings of Fact and Conclusions of Law ordering Mr. Belt to pay a penalty of \$100.00. (LF 158, 160). Accordingly, the proceeding qualified as a trial. See City of Kansas City v. Dudley, 244 S.W.3d 762 ("[F]or a proceeding to qualify as a trial...evidence must be offered by the prosecutor...and the municipal judge must pronounce judgment.").

A municipal court judge for the City of Springfield, who was denominated both as a "judge" and "hearing officer," presided over the case. (LF 157, 158). While the municipal court judge may have been denominated at times as a "hearing officer," any actions he performed in that capacity would either be a nullity or an act in his capacity as a municipal court judge as Section 479.020 provides that "[n]o municipal judge shall hold any other office in the municipality which the municipal judge serves as judge." Mo. Rev. Stat. Section 479.020 (2008). Because "[v]iolations of municipal ordinances shall be heard and determined only before divisions of the circuit court as hereinafter provided in this chapter", any action taken by a hearing officer who also holds the office of municipal court judge would likewise be either a nullity or an act in his capacity as a municipal court judge. Mo. Rev. Stat. Section 479.010 (2008). The presiding official did keep a docket sheet in the case at bar as required of municipal court judges by Mo. Rev. Stat. Section 479.070 (2008). (LF 157). However, there was no information filed as required by Rule 37.34 and Mo. Rev. Stat. Section 479.090 (2008). Either the case was heard by a municipal court judge, satisfying that element of the requirements for an application for trial de novo, or the case was not heard by a municipal court judge, rendering the case a nullity altogether.

The presiding official who heard Mr. Belt's case at trial is and, at all times

relevant, was a municipal court judge and an attorney licensed to practice law in the State of Missouri.¹

The presiding official pronounced judgment following trial. (LF 158). The judgment took the form of Findings of Fact and Conclusions of Law finding that "a violation of 106-161 and 106-155(1)(a) occurred". (LF 159). The presiding official imposed a penalty of \$100.00 against Mr. Belt. Because the Findings of Fact and Conclusions of Law contained the "plea, the verdict or findings, and the adjudication or sentence", it was a final judgment. City of St. Peters v. Hodak, 125 S.W.3d 892. "Generally, a 'final judgment' occurs when a sentence is entered" and Mr. Belt was indeed sentenced to a "penalty" of \$100.00. City of Maplewood v. Erickson, 80 S.W.3d 477 and LF 159.

As Mr. Belt was tried before a municipal court judge licensed to practice law in the state and Mr. Belt timely filed a request for trial de novo, the Circuit Court erred in dismissing Mr. Belt's request for trial de novo. Alternatively, if Mr. Belt was not tried by a municipal court judge but rather a hearing officer, any action

¹ Appellant request this Court to take judicial notice of the fact that the municipal court judge is an attorney licensed to practice in the State of Missouri. See Mayer v. Palmer, 103 S.W. 1140, 1142 (Mo. 1907) (taking judicial notice that H.W. Johnson was appointed and subsequently elected circuit judge.

taken by the hearing officer is violative of Chapter 479 and is therefore a nullity requiring reversal of the penalty and discharge of Mr. Belt.

CONCLUSION

Based on the foregoing, the municipal court and circuit court erred in the following respect:

1. The municipal court and circuit court erred in not discharging Mr. Belt. The prosecutor failed to file an information which would confer jurisdiction on either the municipal court or the circuit court. As Rule 37.34 and Mo. Rev. Stat. § 479.090 require all ordinance violation prosecutions to be initiated by an information, the court had no jurisdiction to proceed against Mr. Belt.

2. The circuit court erred in sustaining the City's Motion to Reconsider Motion to Dismiss. Mr. Belt had a right to a trial de novo because an attorney serving as a municipal court judge, after holding a trial, convicted him of violating a municipal ordinance and imposed a fine of \$100.00.

WHEREFORE, Appellant asks the Court for its Order reversing the \$100.00 penalty imposed and discharge of Appellant, or, in the alternative, for reversal of the circuit court and for its Order remanding this action to the circuit court for a trial de novo, together with such other and further relief as the Court deems just and proper under the circumstances.

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CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that pursuant to Rule 84.06(c), this brief (1) contains the information required by Rule 55.03; (2) complies with the limitations in Rule 84.06(b); and (3) contains 3780 words, exclusive of the sections exempted by Rule 84.06(b), determined using the word count program in OpenOffice. The undersigned counsel further certifies that the accompanying compact disk has been scanned and was found to be virus free pursuant to Rule 84.06(g).

CERTIFICATE OF SERVICE

I certify that two hard copies of this brief and an electronic copy of the brief on a CD-ROM filed pursuant to Rule 84.06 were served on counsel identified below via U.S.

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APPELLANT'S APPENDIX TO SUBSTITUTE BRIEF

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APPELLANT'S APPENDIX TO LEGAL BRIEF

TABLE OF CONTENTS

Judgment of Dismissal.....	A01
Findings of Fact and Conclusions of Law.....	A03
Mo. Rev. Stat. Section 479.010, RSMo. (2008).....	A05
Mo. Rev. Stat. Section 479.020, RSMo. (2008).....	A06
Mo. Rev. Stat. Section 479.070, RSMo. (2008).....	A08
Mo. Rev. Stat. Section 479.090, RSMo. (2008).....	A09
Mo. Rev. Stat. Section 479.120, RSMo. (2008).....	A10
Mo. Rev. Stat. Section 479.200, RSMo. (2008).....	A11
Springfield, Mo., City Code Section 106-155 (2007).....	A12
Springfield, Mo., City Code Section 106-161 (2007).....	A14
Rule 37.33.....	A17
Rule 37.34.....	A19
Rule 37.35.....	A20
Rule 37.64.....	A21

