

[Cite as *State v. Denman*, 2002-Ohio-3078.]

COURT OF APPEALS
MUSKINGUM COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. William B. Hoffman, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	
-vs-	:	
	:	Case No. CT2001-0052
JERRY DENMAN	:	
	:	
Defendant-Appellant	:	
	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Criminal appeal from the Municipal Court of the City of Zanesville, Case No. 01CRB01259

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: June 13, 2002

APPEARANCES:

For Plaintiff-Appellee
SUSAN SMALL
City Prosecutor
825 Adair Avenue
Zanesville, OH 43701

For Defendant-Appellant
W. JEFFREY MOORE
326 S. High St., Ste. 300
Columbus, OH 43215

Gwin, J.

{¶1} Defendant Jerry Denman appeals a judgment of the Municipal Court of Zanesville, Muskingum County, Ohio, which convicted and sentenced him for four counts of criminal simulation in violation of Zanesville Ordinance No. 545.13. Appellant assigns two errors to the trial court:

ASSIGNMENTS OF ERROR

{¶2} "I. THE TRIAL COURT VIOLATED THE DEFENDANTS RIGHTS SECURED BY THE 5TH, 6TH AND 14TH AMENDMENTS TO THE UNITED STATES CONSTITUTION, ARTICLE I 1,5, AND 10, THE CONSTITUTION OF THE STATE OF OHIO, AND OHIO RULES OF CRIMINAL PROCEDURE 4,10,22, 23, 32, AND 44.

{¶3} "THE TRIAL COURT ERRED IN PROSECUTING THE APPELLANT WITH DEFECTIVE AFFIDAVITS AND/OR CHARGES."

{¶4} This case has an unusual procedural history in the court of appeals. Appellant filed a timely brief; the City of Zanesville chose not to file an answer brief. Instead, appellee City moved to dismiss the appeal. In its memorandum in support the City stated it had informed appellant through counsel it would not oppose appellant's motion for a new trial. Appellant refused to settle the matter in this way. The City has declared its intention not to proceed to trial in the event of our reversal.

{¶5} This court overruled the motion to dismiss as inappropriate.

{¶6} App. R. 18 (C) outlines the consequences of failure to file a brief. The Rule permits this court, in the absence of an appellee's brief, to accept the appellant's statement of facts and issues as correct, and reverse the judgment if appellant's brief

reasonably appears to warrant it.

{¶7} In light of the City's representations in its motion and at oral argument, and because we find appellant's brief reasonably warrants it, we sustain both assignments of error.

{¶8} For the foregoing reasons, the judgment of the Municipal Court of Zanesville, Muskingum County, Ohio, is reversed, and the cause is remanded to that court for further proceedings in accord with law and consistent with this opinion.

By Gwin, J.,

Hoffman, P.J., and

Wise, J., concur