

[Cite as *State v. Brack*, 2005-Ohio-48.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO
STATE OF OHIO :

Plaintiff-Appellee : C.A. CASE NO. 20415
vs. : T.C. CASE NO. 03CRB112542
STEVEN SAMUEL BRACK : (Criminal Appeal from
Municipal Court)
Defendant-Appellant :

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O P I N I O N

Rendered on the 7th day of January, 2005.

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Patrick J. Bonfield, Director of Law; Deirdre Logan, Chief
Prosecutor; Edward C. Utacht, II, Asst. City Prosecutor, 335
W. Third Street, Room 372, Dayton, Ohio 45402, Atty. Reg.
No. 0022225
Attorney for Plaintiff-Appellee

Steven Samuel Brack, 4253 Amston Drive, Dayton, Ohio 45424
Defendant-Appellant, pro se

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GRADY, J.

{¶1} Defendant, Steven Brack, appeals from his
conviction and sentence for disorderly conduct.

{¶2} On November 17, 2003, Defendant was charged by
complaint in Dayton Municipal Court with one count of
domestic violence, R.C. 2919.25(A)(1), and one count of
assault, R.C. 2903.13(A). Following a trial on February 9,
2004, Defendant was found not guilty of both domestic
violence and assault but guilty of disorderly conduct, R.C.

2917.11, as a lesser included offense of assault. The trial court fined Defendant one hundred dollars plus court costs. Defendant timely appealed to this court from his conviction and sentence.

{¶ 3} Defendant filed a pro se appellate brief arguing that the trial court erred in convicting him of disorderly conduct because that offense is not a lesser included offense of assault.

{¶ 4} After reviewing our decisions in *State v. Ocasio* (November 21, 2003), Montgomery App. No. 19859, 2003-Ohio-6240 and *State v. Schaefer* (April 28, 2000), Greene App. No. 99CA88, wherein this court held that disorderly conduct is not a lesser included offense of either assault or domestic violence, the State filed a brief in this appeal conceding error. The State admits that disorderly conduct is not a lesser included offense of assault, and therefore that the trial court erred in convicting Defendant of disorderly conduct. We agree.

{¶ 5} Upon the authority of our recent decision in *State v. Ocasio, supra*, Defendant's assignment of error is sustained. Defendant's conviction for disorderly conduct will be reversed and vacated. Defendant will be discharged on the charges against him.

BROGAN, J. and YOUNG, J., concur.

Copies mailed to:

Edward C. Utacht, II, Esq.
Steven Samuel Brack
Hon. James F. Cannon