

**IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT
HYBRID COUNTY, OHIO**

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

JOHN DOE,

Defendant-Appellant.

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:
:
:

App. Case No. CA2002-04-033

(Accelerated Calendar)

BRIEF OF DEFENDANT-APPELLANT, JOHN DOE

Filed pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396

APPEAL FROM THE HYBRID COUNTY COURT OF COMMON PLEAS
Trial Court Case No. CR02-00561

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I. STATEMENT OF THE CASE

A. Procedural Posture

The Hybrid County Grand Jury issued an indictment charging defendant-appellant, John Doe, with two felony counts of driving under the influence of alcohol in violation of R.C. 4511.19(A)(1) and (A)(3), and one count of failure to drive in marked lanes in violation of R.C. 4511.33(A). (T.d. 1). After an exchange of discovery, appellant filed a motion to suppress, claiming the arresting officer did not have probable cause to make the traffic stop leading to the arrest. (T.d. 4). Following a hearing, the trial court denied appellant's motion. (T.d. 7). Appellant changed his plea to no contest and was found guilty on all charges and sentenced of record. (T.d. 10). A timely notice of appeal was filed. (T.d. 11).

B. Statement of the Facts

On the evening of January 5, 2002, Hybrid County Deputy Sheriff Dave Jester was on patrol on State Route 888 when he observed appellant's vehicle weaving in its lane of travel. (Motion to Suppress Transcript of Proceeding 8). Deputy Jester testified that appellant was not weaving "too much" but did drive outside his lane of traffic. (T.p. Mot.Supp. 10). Deputy Jester stopped appellant's vehicle and observed that appellant had bleary eyes and slurred speech. (T.p. Mot.Supp. 12). Appellant exited his vehicle, and the deputy administered field sobriety tests. Jester testified that after appellant performed poorly on the tests, he decided to make an arrest. (T.p. Mot.Supp. 15). Appellant made an oral statement, summarized in writing by Deputy Jester, in which he stated, "I guess I shouldn't have had those twenty-six Zimas . . . I thought they were sparkling waters (hic)." (T.p. Mot.Supp. 16). Appellant registered .190 on a BAC Datamaster test. (T.p. Mot.Supp. 20).

II. ARGUMENT AND POTENTIAL ASSIGNMENTS OF ERROR

Counsel has reviewed the original court file, as well as the transcript of proceedings prepared in this case, and can find no error by the trial court prejudicial to the rights of appellant which may be argued to this court on appeal.

Pursuant to *Anders v. California* (1967), 386 U.S. 738, 87 S.Ct. 1396, Counsel respectfully requests this court to independently review the transcript of proceedings and case file to determine whether any possible error exists. Specifically, counsel would ask the appeals court to review the following potential assignments of error: (1) whether the trial court erred by improperly denying appellant's motion to suppress; and (2) whether the trial court erred by failing to comply with Crim.R. 11 in accepting appellant's plea.

Counsel also requests permission to withdraw as counsel for appellant on the basis that the appeal is frivolous.

Finally, counsel certifies that a copy of this brief has been sent to appellant, with instructions that he may file his own brief with the court if he so chooses, at P.O. Box 1000, Prison City, Ohio 12345.

Respectfully submitted,
Defense & Defense
Counsel for Defendant-Appellant,
John Doe

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III. CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing brief was served upon the following persons by regular U.S. Mail, postage prepaid, this 4th day of May, 2002:

Percy Prosecutor (#00000000)
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IV. APPENDIX

p.6 Trial Court's Sentencing Entry

The appendix must include all materials that are required to be attached by the local appellate rules.

See Local Appellate Rule 11(D)

COURT OF COMMON PLEAS
HYBRID COUNTY, OHIO

STATE OF OHIO, :
 :
 Plaintiff, : Case No. CR02-00561
 :
 - vs - :
 : JUDGMENT OF CONVICTION
 JOHN DOE, : AND SENTENCING ENTRY
 :
 Defendant. :

This matter came before the court for sentencing on April 1, 2002. Present were the defendant and defense counsel, Dillon Defense. The defendant was afforded all rights pursuant to Crim.R. 32.

The court has considered everything required by law and finds that the defendant has been found guilty of:

Count One: DUI, a violation of R.C. 4511.19(A)(3), a felony of the fourth degree as defendant has been convicted of three other violations of R.C. 4511.19 during the previous six year period prior to this offense.

Count Two: DUI, a violation of R.C. 4511.19(A)(1), a felony of the fourth degree as defendant has been convicted of three other violations of R.C. 4511.19 during the previous six year period prior to this offense.

Count Three: Failure to drive in marked lanes, a violation of R.C. 4511.33(A), a minor misdemeanor.

It is therefore ORDERED that the defendant be sentenced as follows:

Count One: 15 months incarceration in the state prison system; \$2,000.00 fine; mandatory attendance of an alcohol and drug addiction program; forfeiture of the motor vehicle involved; a permanent revocation of defendant's driving privileges; court costs.

Count Two: 15 months incarceration in the state prison system; \$2,000.00 fine; mandatory attendance of an alcohol and drug addiction program; forfeiture of the motor vehicle involved; a permanent revocation of defendant's driving privileges; court costs. The sentence in Count Two

shall be served concurrent with the sentence in Count One.

Count Three: \$50 fine.

PEABODY, J.

SAMPLE