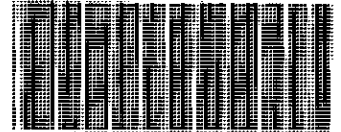


COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO



D69940538

FRANCIS M. HYLE, LAW DIRECTOR : NO. C-0500768
GREEN TOWNSHIP :
Plaintiff-Appellee : Trial Court Case No. A-0506155
vs. :
GERRY R. PORTER, JR. :
Defendant-Appellant :

SUPPLEMENTAL BRIEF OF PLAINTIFF-APPELLEE

FILED

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SECTION 28, ARTICLE II OF THE OHIO CONSTITUTION. 1.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

The Court of Appeals will not consider an assignment of error that was not
raised and decided in the trial court. 1.

AUTHORITIES CITED:

State v. Spencer, Medina App. No. 03CA0126-M, 2004-Ohio-1751 1.
State v. Awan (1986), 22 Ohio St.3d 120, 489 N.E.2d 277 1.
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COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

FRANCIS M. HYLE : NO. C-0500768
LAW DIRECTOR OF GREEN TOWNSHIP :
 :
Plaintiff-Appellee :
vs. :
 : SUPPLEMENTAL BRIEF OF
GERRY R. PORTER, JR. : PLAINTIFF-APPELLEE
 :
Defendant-Appellant :

SUPPLEMENTAL ASSIGNMENT OF ERROR

APPLICATION OF R.C. § 2950.031 TO APPELLANT VIOLATES SECTION 28, ARTICLE II OF THE OHIO CONSTITUTION.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

An appellate court will not consider an assignment of error that was not raised and decided in the trial court.

ARGUMENT

Even if Porter's Ohio state constitutional challenge to the R.C. 2950.031 was ripe, he failed to raise it below. A defendant may not raise, and the Court will not consider, constitutional errors on appeal unless such were specifically found to have been raised below.¹ It is therefore waived.

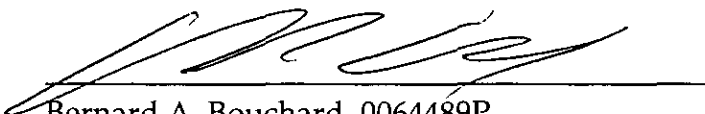
¹*State v. Spencer*, Medina App. No. 03CA0126-M, 2004-Ohio-1751; *State v. Awan* (1986), 22 Ohio St.3d 120, 489 N.E.2d 277; *State v. Williams* (1977), 51 Ohio St. 2d 112,364 N.E.2d 1364; 4 O. Jur.3d, Appellate Review, Section 137 (1978)

No mention of any Ohio state constitutional challenge to R.C. 2950.031 was made below. Instead, Porter chose to base his challenges on federal constitutional claims that the statute violated due process and was *ex post facto*. He concedes as much in his supplemental brief when he states on page 1, "The issue of whether R.C. 2950.031 violates the Section 28, Article II of the Ohio Constitution was not raised below." He cannot now change that decision.

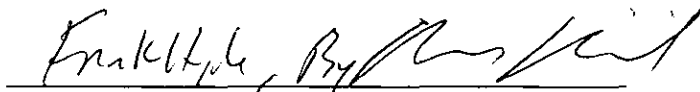
CONCLUSION

Appellee's supplemental assignment of error is not properly before this court and must be denied.

Respectfully submitted,



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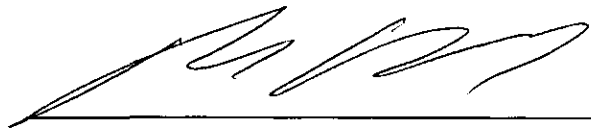
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CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2006, the foregoing Supplemental Brief of Plaintiff-Appellee was served by facsimile and regular U.S. mail upon:

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