

# MUNICIPAL COURT PRACTICE UPDATES

**David J. Canupp**, Lanier Ford Shaver & Payne, P.C.

**Eddie Blair**, Assistant City Attorney, Huntsville, AL

# AGENDA

- Opening Comments / Overview
- Basics of a criminal complaint
- Averments of “Authorized ordination”
- Waiver of certain defenses and impact on jurisdiction on appeal

# PLEADING A CRIMINAL COMPLAINT

The Alabama Rules of Criminal Procedure were adopted in 1990, and effective in 1991.

A stated purpose of the Rules was “to **simplify** the pleading in criminal matters, much the same as the simplification of pleading in civil actions, and it eliminates the necessity of formal averments.” Ala. R. Crim. P. 13.2, Committee Comments.

The Rules Committee made explicit that the intent of the new Rules was to “**safeguard against the longstanding common law rules of pleading with which Alabama criminal procedure has been burdened.**” Ala. R. Crim. P. 13.2, Committee Comments.

It opined that the Rules “should work to **eliminate** most circumstances where the state is precluded from prosecuting a defendant due to a pleading technicality.” Ala. R. Crim. P. 13.2, Committee Comments.

# PLEADING A CRIMINAL COMPLAINT: RULE BY RULE

“The rules of criminal procedure have established a standard for the sufficiency of a complaint, which is virtually indistinguishable from the standard used to determine the sufficiency of an indictment.”

Ex parte Young, 611 So. 2d 414 (Ala. 1992) (Bowen, J., concurring)

A complaint is a statement made upon oath before a judge, magistrate, or official authorized by law to issue warrants of arrest, **setting forth essential facts** constituting an offense and **alleging that the defendant committed the offense**. The complaint may be written, typed, electronic, or computer-generated.

Ala. R. Crim. P. 2.3

The indictment or information shall be a **plain, concise statement of the charge in ordinary language** sufficiently definite to inform a defendant of common understanding of the offense charged and with that degree of certainty which will enable the court, upon conviction, to pronounce the proper judgment.

Ala. R. Crim. P. 13.2

# PLEADING A CRIMINAL COMPLAINT: RULE BY RULE

The indictment or information shall state for each separate offense, other than lesser included offenses, the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

Ala. R. Crim. P. 13.2

**BUT:** “[T]his Court has consistently held that a charging instrument is sufficient if it conveys the **meaning** of a statute despite the failure to cite the statute.”

State v. Thomas, 200 So. 3d 35, 42 (Ala. Crim. App. 2015)

# PLEADING A CRIMINAL COMPLAINT: RULE BY RULE

An indictment or information which is in conformity with sections (a) and (b) shall be sufficient. The indictment or information need not contain a formal commencement, a formal conclusion, or any other matter not necessary to the statement of facts, nor need it negative any defense or affirmative defense contained in any statute creating or defining the offense charged. Presumptions of law and matters of which judicial notice is taken need not be stated. It is not necessary to state the precise time or date at which or on which the offense is alleged to have been committed, or the place where the offense is alleged to have been committed unless the time or place is a material element of the offense. **Unnecessary allegations may be disregarded as surplusage, and, on motion of the defendant, shall be stricken by the court if prejudicial or prolix.**

Ala. R. Crim. P. 13.2

See also Bexley v. State, 705 So. 2d 549, 552 (Ala. Crim. App. 1997) (“**[A]ny miscitation of the applicable Code section was ‘mere surplusage.’**”)

# PLEADING A CRIMINAL COMPLAINT: RULE BY RULE

A motion for more definite statement may be made at any time prior to entry of the defendant's plea, which motion shall be granted for good cause shown. A statement filed in compliance with a motion for more definite statement may be thereafter amended at any time subject to such conditions as justice requires.

Ala. R. Crim. P. 13.2

# PLEADING A CRIMINAL COMPLAINT: RULE BY RULE

No charge shall be deemed invalid, nor shall the trial, judgment, or other proceedings thereon be stayed, arrested, or in any manner affected, for any defect or imperfection in the charge which does not tend to prejudice the substantial rights of the defendant upon the merits.

Ala. R. Crim. P. 13.5

The court may permit a charge to be amended without the defendant's consent, at any time before verdict or finding, if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

Ala. R. Crim. P. 13.5

# APPELLATE JURISDICTION

“The circuit court shall have appellate jurisdiction of civil, criminal, and juvenile cases in district court and prosecutions for ordinance violations in municipal courts, except in cases in which direct appeal to the Courts of Civil or Criminal Appeals is provided by law or rule. Appeals to the circuit court shall be **tried de novo**, with or without a jury, as provided by law.”

Ala. Code § 12-11-30

“Criminal proceedings prosecuted in the district or the municipal court, from conviction of which the defendant has appealed for trial de novo in the circuit court, **shall be prosecuted in the circuit court on the original charging instrument**, which shall include the Uniform Traffic Ticket and Complaint (UTTC) in traffic cases.”

Ala. R. Crim. P. 2.2

“While § 12-22-113 requires the prosecuting attorney to make a *brief statement* of the cause and complaint, this is a notice requirement and not a requirement for a new complaint.”

Young v. City of Hokes Bluff, 611 So. 2d 401, 403 (Ala. Crim. App.), aff'd sub nom. Ex parte Young, 611 So. 2d 414 (Ala. 1992)

# CHARACTER OF APPELLATE PROSECUTIONS

“[T]he appeal to the circuit court for a trial de novo is but a continuation of that prosecution.” Young v. City of Hokes Bluff, 611 So. 2d 401, 403 (Ala. Crim. App.), aff'd sub nom. Ex parte Young, 611 So. 2d 414 (Ala. 1992)

Trial de novo “does not mean that the slate is thrown away.” Woodruff v. State, 347 So. 3d 281, 287 (Ala. Crim. App. 2020)

Woods v. State, 261 So. 3d 491, 494 (Ala. 2016): Explaining that since a “trial de novo in the circuit court provides a defendant with a clean slate” only “with regard to a determination of whether he or she is guilty of the offense charged,” it is only that judgment of the earlier proceeding – but not matters like entry of a guilty plea – that is prohibited from introduction at the trial de novo.

# WAIVER OF DEFENSES IN APPELLATE PROCEEDINGS

## *Defects in Charges as Impacting Personal Jurisdiction*

“The complaint is a statutory right of the accused that can be waived.” Ex parte Young, 611 So. 2d 414, 415 (Ala. 1992)

City of Dothan v. Holloway, 501 So. 2d 1136, 1138 (Ala. 1986): “[W]here a defendant has proceeded to trial in an inferior court without demanding a written complaint of the accusation against him, then that defect in the proceedings is deemed to have been waived.”

City of Foley v. Collier, 586 So. 2d 1011, 1012-13 (Ala. Crim. App. 1991) (finding defendant who failed to object to lack of written complaint in municipal court waived ability to raise issue on appeal, specifically noting his motion to dismiss, filed “after the jury had been struck and sworn on the first day of trial . . . was untimely”)

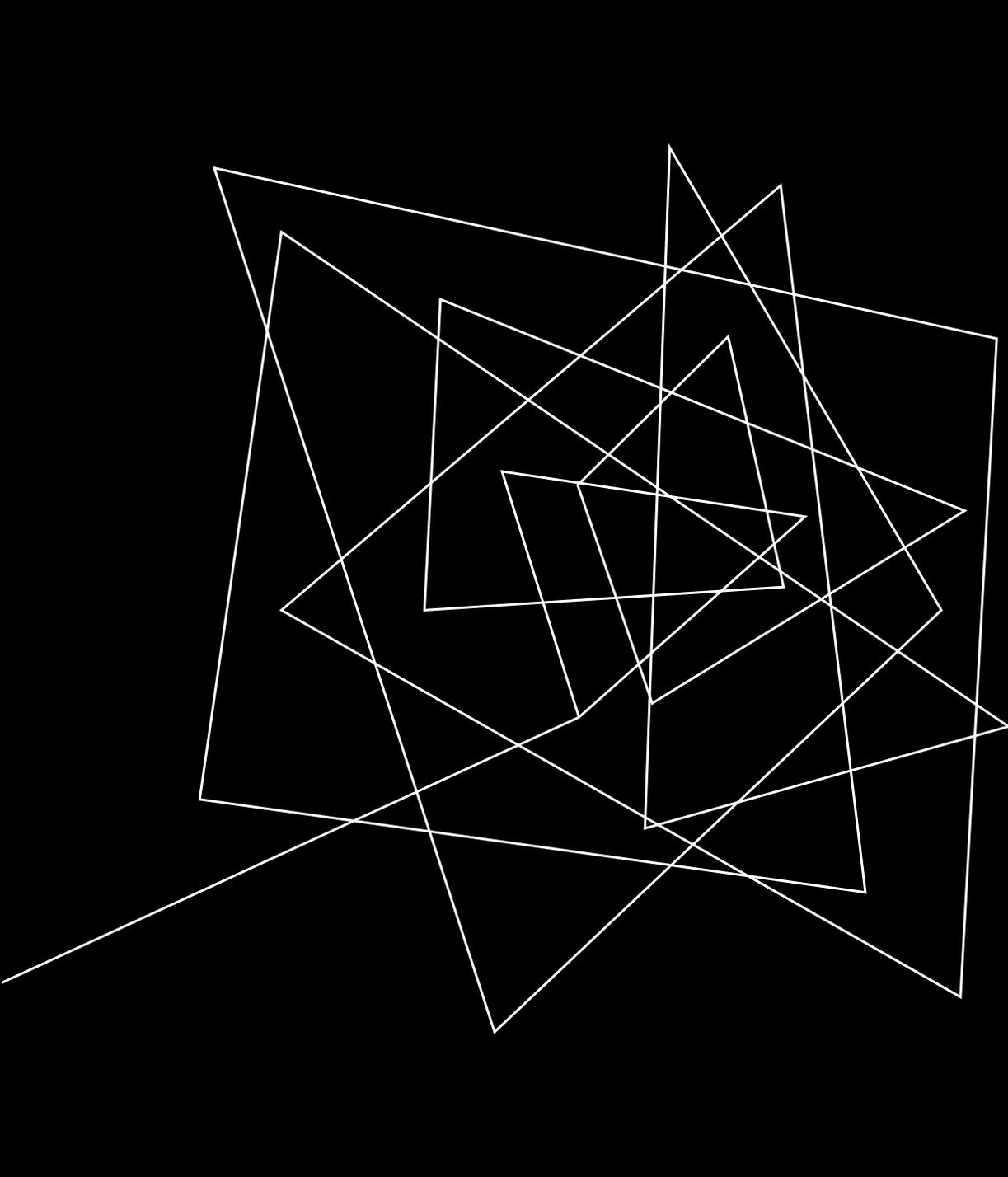
Hopper v. City of Prattville, 781 So. 2d 346, 353 (Ala. Crim. App. 2000) (“Because there is nothing in the record showing that Hopper objected to the UTTC until he filed his motion to dismiss in the circuit court, he is deemed to have waived any irregularities in the UTTC.”).

# WAIVER OF DEFENSES IN APPELLATE PROCEEDINGS

## ***Defects in Charges Do Not Implicate Subject Matter Jurisdiction***

“[A] circuit court has subject-matter jurisdiction over a felony prosecution, even if that prosecution is based on a defective indictment.” Ex parte Seymour, 946 So. 2d 536, 539 (Ala. 2006)

“When Simmons filed his notice of appeal for a trial de novo in the circuit court, the circuit court's jurisdiction over his appeal for a trial de novo ‘attached,’ and the fact that the case was not prosecuted using the original charging instrument from the district court did not affect the circuit court's jurisdiction.” State v. Simmons, 179 So. 3d 249, 252 (Ala. 2014)



# PLEADING A MUNICIPAL ORDINANCE VIOLATION

*Common Law Pleading vs. Rules of Criminal  
Procedure*

# “AUTHORIZED ORDINATION”

Before the advent of the Rules of Criminal Procedure, an abundance of case law required that all complaints in municipal court contain averment that an ordinance of the municipality adopted a section of the Alabama Code, that ordinance’s number, the substance of the ordinance, and a statement that the ordinance was duly adopted and in effect at the time of the commission of the violation.

Harris v. City of Vestavia Hills, 269 So. 2d 626, 627 (Ala. Crim. App. 1972); Miles v. City of Montgomery, 81 So. 351, 352 (Ala. App. 1919); Rosenberg v. City of Selma, 52 So. 742, 742-43 (Ala. 1910); Town of Lineville v. Gauntt, 101 So. 154, 155 (Ala. App. 1924)

In part, this appears to stem from the historical fact that courts do not take judicial notice of most municipal ordinances. In part, it appears to simply be a requirement of common law pleading. And, in part, this appears to flow from the fact that proof of the existence of the ordinance is an essential element of a violation at trial.

# “AUTHORIZED ORDINATION”

“The gist of claimed error is said to lie in the failure of the complaint (1) to aver the terms of the ordinance, and (2) to allege that it was duly adopted.

We take judicial notice of ordinances of some cities including Birmingham, but no statute extends this aid to the by-laws of Vestavia Hills. . . .

The foregoing authorities, and numerous others of like import, expressly hold it is essential in a complaint of this character to aver, not only the facts constituting the violation of the ordinance in question, but in the complaint there must be set out the provisions or substance thereof and it must be averred That the ordinance was duly adopted and ordained prior to the commission of the offense, by the proper municipal authorities. The mere statement, as a legal conclusion, that the acts of the accused were committed ‘in violation of an ordinance,’ will not suffice. . . .

Here, for aught appearing in the complaint, the City council could have adopted the ordinance averred therein ex post facto the violation charged. Hence, it was error to overrule the demurrer.”

Harris v. City of Vestavia Hills, 269 So. 2d 626 (Ala. Crim. App. 1972)

# CONTRAST WITH THE MODERN RULES OF CRIMINAL PROCEDURE

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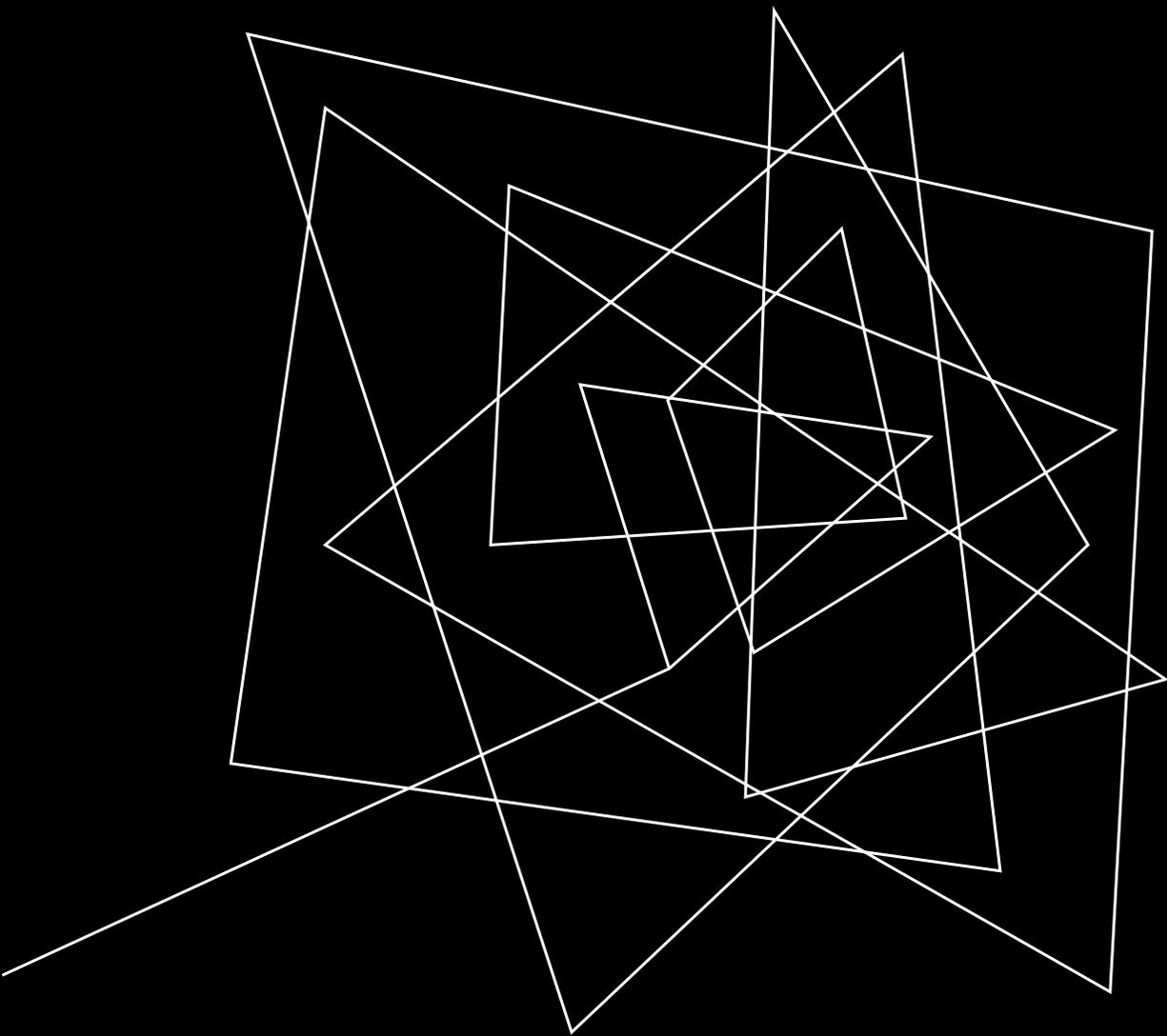
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Ala. R. Crim. P. 13.2



# CASE IN POINT

*An example from Huntsville*

Case Number

11175076

Warrant Number

523619

## Complaint

Amount of bond

\$1,000.00

Incident Offense Report No

202128997

In the Municipal Court of the City of Huntsville, County of Madison, State of Alabama, and before me, magistrate of said court, personally appeared this day LENIKA D STEWART who, upon first being duly sworn, states on oath that he/she has probable cause for believing and does believe that one JUSTIN BELL, M, BL, 11/8/1987, whose name is otherwise unknown to the complainant, did, on to wit: November 13, 2021, within twelve months making this complaint and within the City of Huntsville, Alabama, commit the offense of CRIMINAL MISCHIEF THIRD DEGREE, at to wit: ATTUCT, located within the City of Huntsville, Alabama, in that he/she did.

DID UNLAWFULLY AND WITH INTENT TO DAMAGE PROPERTY AND HAVING NO RIGHT TO DO SO OR ANY REASONABLE GROUND TO BELIEVE THAT HE/SHE HAD SUCH A RIGHT, INFLICTED DAMAGES TO SAID PROPERTY IN AN AMOUNT NOT EXCEEDING \$500. TO WIT: DID INTENTIONALLY STRIKE (2) GLASS WINDOWS ON THE COMPLAINANTS RESIDENCE CAUSING LESS THAN \$500.00 IN DAMAGE. THE COMPLAINANT/ LEASEE : LENIKA STEWART.

In violation of city ordinance 17-1(a) adopting code of Alabama, 13A-7-23(A).

Sworn to and subscribed before me

April 28, 2022

Magistrate

Complainant:

Address:

Phone:



# PROCEDURAL HISTORY OF HUNTSVILLE V. BELL

Complaint signed by complainant before a magistrate

Charges criminal mischief third

Bell never raises any objection to municipal court charging instrument.

Bell convicted in municipal court.

Bell appeals to circuit court and, for the first time, submits a Motion to Dismiss arguing Harris v. City of Vestavia Hills.

Specifically, Bell argues “the City is attempting to prosecute based on a municipal ordinance purporting to adopt a section of the Alabama Code that omits an averment of authorized ordination by the municipality in its complaint.”

Circuit Court grants motion to dismiss over City’s objection.

City of Huntsville’s appeal now pending before Court of Criminal Appeals.

# RELATED CASES

The City of Huntsville has four other pending appeals addressing this very same issue.

In some of the appeals, the City actually moved to amend its complaint before the Circuit Court but the Circuit Court granted dismissal anyway, without ruling on the motion to amend.

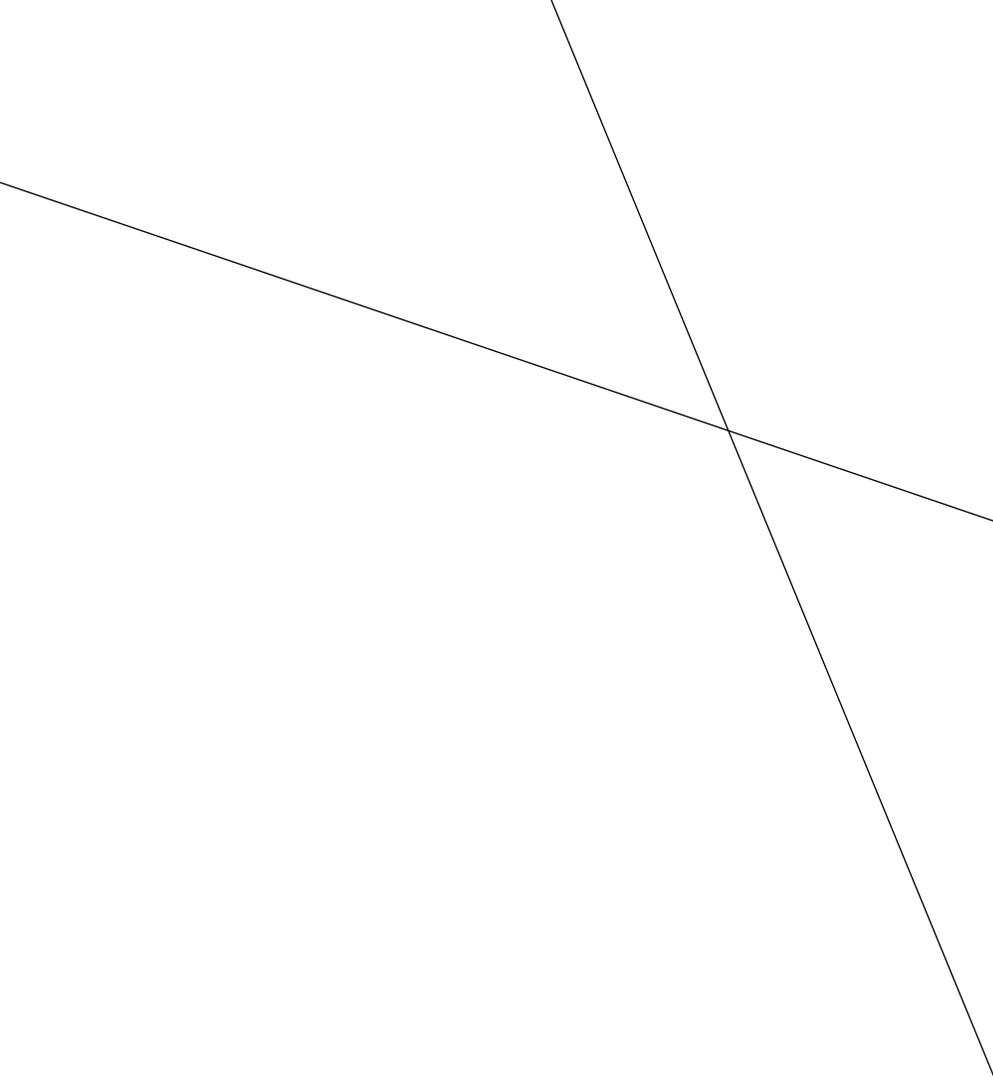
In at least one case, the City actually filed a certified copy of the municipal ordinance with the Circuit Court, but it still dismissed the charges.

The City argues in all three cases that the application of this ancient rule is improper in view of the enactment in 1991 of the Rules of Criminal Procedure.

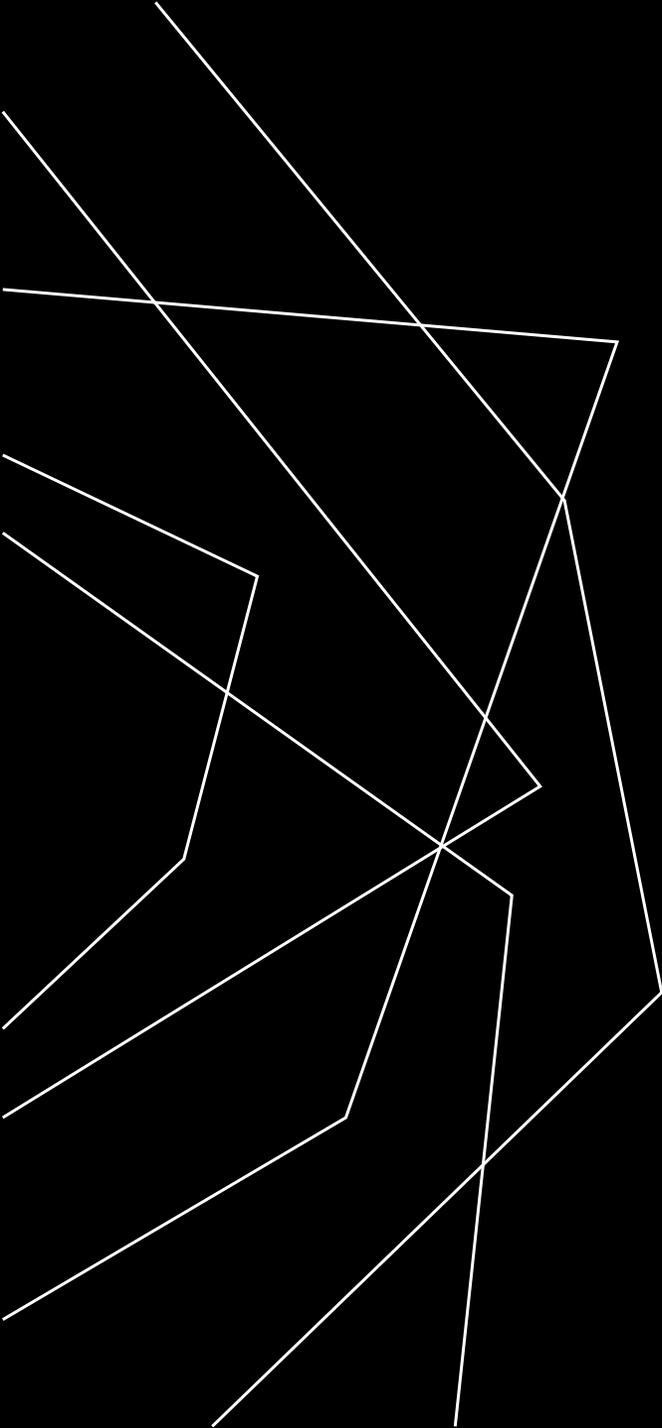
The City asserts this common law pleading rule elevates form over substance in defiance of the Rules Committee's intent, and allows the guilty to go free despite no actual prejudice to them in connection with the offense charged.

Court of Criminal Appeals briefing has just closed. The cases are awaiting decisions.

Meanwhile, the City of Huntsville alone has this issue still pending in numerous cases before the Circuit Court of Madison County.



# SUMMARY AND TIDBITS



# THANK YOU

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