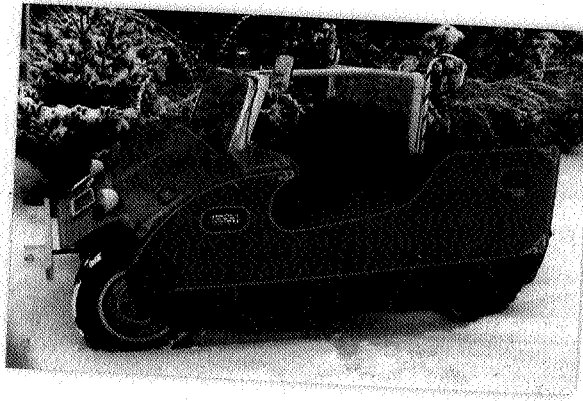


## The Santa Case

### Yule Be Sleighed by This Old Car Tale



**Y**es, Virginia, there is a Santa Claus. And he drives an old car.

For a bit of holiday diversion, this month we present the unique case of *State of Ohio v. Warren J. Hays, a.k.a. Santa Claus*, which was decided by the Warren (no relation) Ohio Municipal Court, Trumbull County, on July 1, 2002 (as corrected on October 28, 2002).

Fasten your seat belts.

According to the Court, in an opinion by Judge Thomas P. Gysegem, "the defendant, Warren J. Hays, hereinafter referred to as Santa Claus," owned a 1965 Volkswagen two-door sedan.

On December 20, 2001, Santa, no doubt somewhat preoccupied with other time-pressing matters, while driving his VW unfortunately was involved in a "minor fender bender" (presumably including at least one Nick). Santa, of course cognizant of who in that situation from a vehicular operational and traffic regulatory standpoint had been naughty and who had been nice, and consistent with his legendary generosity, whipped out his Santa Claus bank account checkbook and "paid cash money on the spot to the individual whose car he had hit."

Warren patrolman Eric Merkel saw Santa's Ohio Identification Card, which indicated it was issued by the state of Ohio to "Santa Claus," residing at "1 Noel Drive, North Pole USA." In a Scrooge-like determination, Santa was charged with a first-degree misdemeanor violation for allegedly displaying or possessing an identification card knowing the same to be fictitious.

Responding with the legal equivalent of a hearty "Ho, ho, ho," Santa filed a motion to dismiss the charges. Returning the blessing traditionally bestowed upon millions of children for generations, Judge Gysegem delivered to Santa what he wanted. The opinion opened with four lines of rhyme that set the stage for what was to come:

*"Jolly old Saint Nicholas, lean your ear this way!  
You tell every single soul what I'm going to say;  
Trial day is coming soon; Now you dear old man,  
Concerning BMV and you—I'll tell you best I can!"*

The Court then turned to the law and the facts. "It is well settled that an individual is prohibited from possessing both an Ohio driver's license and an Ohio Identification Card at the same time. Warren Hays is an Ohio licensed driver who does not have an Ohio Identification Card. Santa is not an

Ohio licensed driver who does have an Ohio Identification Card. Because Warren Hays is a licensed Ohio Driver, the state charged Santa with displaying a "fictitious" identification card. State's Exhibit A is a copy of Santa's December 20, 2000 application for an Ohio Identification Card. Santa's Ohio Identification Card expires on December 25, 2003. Exhibit A contains a box wherein the applicant (Santa) checked the box that he did not possess a current driver's license.

"On April 25, 2002, a hearing was held pursuant to Santa's motion to dismiss (filed April 12) and the state's response thereto (filed the day of hearing). No witnesses testified, but Santa produced 8 documents in support of his oral argument that were marked and admitted without objection as "Court's Exhibits AA-HH," respectively.

"Due to the nature of the charge and the facts and circumstances at issue, the court finds that the exhibits in question are quite relevant to the issues at hand:

"Exhibit AA is a copy of a 'Certificate of Birth' for one Santa Claus born at the North Pole December 25th in the year 383 A.D. to Mr. Claus and Holly Noel with Dr. Snowflake attending;

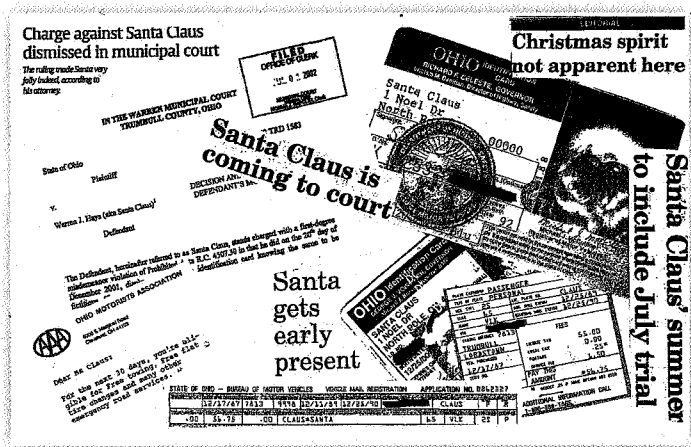
"Exhibit BB contains copies of Ohio Identification Cards with photos of Santa for the years 1996 and 1997 issued to Santa Claus by the state of Ohio, indicating residence at 1 Noel Drive, North Pole OH 44481, as well as a copy of AAA Temporary Membership card for the year 1995;

"Exhibit CC contains copies of Ohio Identification Cards with photos of Santa for the years 1985-1990 and 1988-1992 issued to Santa Claus by the state of Ohio, indicating residence at 1 Noel Drive, North Pole USA, as well as a copy of certificate of title issued to Santa Claus on December 17, 1987, by the state of Ohio for one 1965 Volkswagen 2-Door Sedan;

"Exhibit DD contains copies of Ohio identification Cards with photos of Santa for the years 1982-1986 and 1985-1988 issued to Santa Claus by the state of Ohio, indicating residence at 1 Noel Drive, North Pole USA, as well, as a copy of a blank check No. 117 on the account of Santa Claus and Mrs. Santa Claus No. 115\*\*\* with the Second National Bank of Warren;

"Exhibit EE is an actual vehicle registration CV\*\*\* issued to Santa Claus for \$60.15 on October 31, 1992, by the state of Ohio for the 1965 Volkswagen mentioned in Exhibit CC;

"Exhibit FF is an actual vehicle registration BB\*\*\* is-



sued to Santa Claus for \$56.75 on December 11, 1989, by the state of Ohio for the 1965 Volkswagen mentioned in Exhibit CC;

“Exhibit GG is an actual vehicle registration expiration notice for the registration issued in Exhibit FF mailed to Santa Claus by the state of Ohio for the 1965 Volkswagen mentioned in Exhibit CC; and

“Exhibit HH is an actual vehicle registration A\*\*\*-NA issued to Santa Claus for \$58.15 on December 20, 2001, by the state of Ohio for the 1965 Volkswagen mentioned in Exhibit CC.

“In essence, this case reveals a situation where an individual is going by more than one name. It has long been established in Ohio that a person may change his or her name either by petitioning the probate court or by the simple expedient of adopting and using a new one. Both procedures are equally valid in the eyes of the law. A person may change his name at any time or even use several different names, so long as he does not do so for a fraudulent purpose.

“There can be no doubt based on the aforesaid exhibits that Santa and the Bureau of Motor Vehicles (‘BMV’) have had a solid and ongoing relationship for 20 years. Santa has applied for and been issued numerous state photo identification cards, certificates of title, and applications for vehicle registration.

The Ohio Supreme Court’s decision in *State v. Hashmall* (1954)... is therefore dispositive. In *Hashmall*, the Supreme Court interpreted former General Code 6290-16, which forbade the use in an application for a motor vehicle certificate of a ‘false or fictitious name.’ The court held that ‘the statutory words “uses a false or fictitious name” necessarily refer to the use of a name for a fraudulent purpose.’

“In this case, there is no evidence that Santa adopted his name for the purpose of avoiding any just debt or the payment of taxes. To the contrary, Santa routinely paid (and the state of Ohio accepted) taxes and registration fees under the name of Santa for many years. Consequently, Santa’s use of his appellation can in no sense be viewed as fraudulent.

“The court understands the state’s position in this matter. In light of the tragedies of September 11, the citizens of Ohio should be most appreciative of the ‘tight ship’ under which the Ohio Bureau of Motor Vehicles operates. This state’s BMV requires stringent forms of identification before it issues any form of its own official identification. Without such strict efforts on BMV’s part, it would be

much easier for would-be terrorists or criminals to obtain much sought-after fraudulent identification that could more easily enable them to act out ghastly plans of skull-duggery. As well, this court is continuously made aware of the excellent efforts of the Warren Police Department at enforcing the traffic and criminal laws and ordinances of this state and city.

“In short, the court’s dilemma is whether Santa’s act of displaying this identification card under these circumstances and with this history (noted above) violated the law, to wit, Was this identification card ‘fictitious’?

“Webster’s Seventh New Collegiate Dictionary defines ‘fictitious.’ Its analysis of the word includes a synonym comparison with ‘fabulous,’ ‘legendary,’ ‘mythical,’ and ‘apocryphal’: ‘Fabulous stresses the marvelous or incredible character of something without distinctly implying impossibility or actual nonexistence; Legendary suggests the elaboration of invented details and distortion of historical facts produced by popular tradition; Mythical implies a purely fanciful explanation of facts or the creation of beings and, events out of the, imagination; Apocryphal implies an unknown or dubious source or origin for an account circulated, as true or genuine. \*\*\* Fictitious implies fabrication and suggests artificiality or contrivance more than deliberate falsification or deception.’

“Fortunately, this court is not called upon to reach an ultimate determination of the issue as to the actual existence of Santa Claus. The acts here in question are indeed ‘fabulous,’ as this court finds the Santa to be an ‘incredible character.’ Santa’s course of conduct with the BMV is tantamount to ‘legendary’ in that his acts ‘produced by popular tradition’ are found to have ‘invented details and distortion of historical facts,’ to wit, a birth occurring in 385 A.D. Indeed, Santa may well be ‘mythical’ as this whole rendition originated from a creation of beings and events out of the imagination. And finally the ‘unknown or dubious source’ for the origin of this story makes for an ‘apocryphal’ scenario.

“Had Santa been charged with being ‘fabulous, legendary, mythical or apocryphal,’ he might well indeed be guilty facing up to 180 days in jail and a \$1,000 fine. However, to sustain the burden of going forward, the state must make a showing that Santa knowingly displayed an identification card that was ‘fictitious.’ This the state has not done. The fact that Santa had an ongoing relationship for 20 years with the BMV is not indicative of ‘artificiality or contrivance,’ for, in fact, under the publicly held records of the Ohio Bureau of Motor Vehicles, Santa has been a ‘real person’ since as early as 1982.

“In the case at bar, Santa has been a registered name with the BMV since 1982. This court finds that Santa’s act of dis-

...continued on page 57

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playing his Ohio Identification Card to the officer can in no way be construed to be a violation . . . .

*"The court grants Santa's motion.*

*He sees you when you're sleeping*


*He knows when you're awake*

*He knows if you've been bad or good*

*So be good for goodness sake!"*

The state did not appeal the ruling.

But the court decision only tells part of the story. As Santa advised me, upon the death of his father in 1980, he had modified the VW to make it into a sleigh, to the delight of his children, nieces and nephews. Dressed in a red suit purchased by his mother, Santa began more than 20 years of spreading the holiday spirit and cheer throughout numerous states east of the Mississippi River. News reports indicate that he has spent over \$100,000 of his own money in this noble effort, without ever accepting any compensation for his appearances. The accident occurred just after Santa finished passing out candy to gleeful children in downtown Warren.

But even Santa cannot avoid the tinkering bug. "After 22 years of use, the Elves decided in the spring of 2002 that it was time for a new body shell, nearly identical, but with upgrades. They added outside dual stainless steel rear-view mirrors, a new sound system, a new CB radio and PA system, fog lights, a back-up warning system with high intensity back up lights, additional new strobe lights for a total of eleven, and new paint and pinstriping. . . . This spring (2003) a new G.P.S. has been added and the Elves are working on a hydrogen induction system that will improve efficiency and performance, adding quite a few additional reindeer power." 

A Note to Readers: As this is the last Old Cars In Law column, I wanted to take this opportunity to thank you for your interest, and my Editor Dennis Adler and Publisher Jeff Broadus (and their predecessors) for their support, over the past 12 and a half years and 146 installments. It has been a great ride. —Lawrence Savell.

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Beginning in 2004, Savell will begin writing feature articles on important aspects of law as they apply to collector car purchases, restoration, and ownership. —Ed.