

IN THE SUPREME COURT OF THE STATE OF OHIO

STATE OF OHIO, *ex rel.*,

RICHARD F. SCHWARTZ, In His Capacity As
The Director Of Law And Prosecuting Attorney
Of The City Of Newton Falls, Ohio
19 North Canal Street
Newton Falls, Ohio 44444

Relator,

vs.

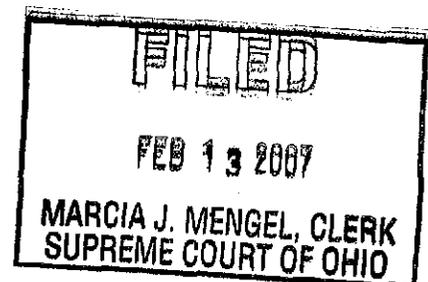
LARRY TURNER, In His Capacity As Judge Of
The Newton Falls Municipal Court
19 North Canal St.
Newton Falls, Ohio 44444

Respondent.

CASE NO.

07 - 0303

**VERIFIED COMPLAINT (ORIGINAL
ACTION FOR WRIT OF PROHIBITION)**



NOW COMES Relator, Richard F. Schwartz, Director of Law and Prosecuting Attorney, City of Newton Falls, Ohio, and pursuant to Rule X of the Rules of Practice of the Ohio Supreme Court, respectfully requests that this Court issue a Writ of Prohibition directed to Respondent, Larry Turner, Judge, Newton Falls Municipal Court, on the following grounds:

Parties, Jurisdiction, and Venue

1. Relator, Richard F. Schwartz, is the Director of Law and Prosecuting Attorney of the City of Newton Falls, Ohio.

2. Respondent, Larry Turner, is the Judge of the Newton Falls Municipal Court, having been appointed to that position by former Governor Robert Taft on or about September 12, 2006 to fill the unexpired term of former Newton Falls Municipal Court Judge Thomas Old, who retired September 1, 2006.

3. Jurisdiction and venue are proper in this Court.

Legal Context

4. The Newton Falls Municipal Court is a municipal court established pursuant to Ohio Revised Code §§ 1921.01, *et seq.*

5. Pursuant to Ohio Revised Code § 1921.02, the Newton Falls Municipal Court has jurisdiction within the municipal corporation of Newton Falls, Ohio, and the townships of Bristol, Bloomfield, Lordstown, Newton, Braceville, Southington, Farmington, and Mesopotamia, Ohio.

6. Pursuant to Ohio Revised Code § 1921.021, a municipal court (such as the Newton Falls Municipal Court) “having territorial jurisdiction outside the corporate limits of the municipal corporation in which it is located may sit outside the corporate limits of the municipal corporation within the area of its territorial jurisdiction.”

Background Facts

7. On or about January 9, 2007, acting *sua sponte* and without soliciting or obtaining input from Relator, Respondent issued a Journal Entry in connection with a proceeding he initiated entitled “In the Matter of: ARRAIGNMENT OF DEFENDANTS IN THE CUSTODY OF THE

TRUMBULL COUNTY SHERIFF,” Case No. GEN-0700001. A copy of that Journal Entry is attached as Exhibit 1 and incorporated herein by reference.

8. In pertinent part, the Journal Entry provided that Respondent “shall hold arraignments of defendants in the custody of the Sheriff’s Department in the Trumbull County Jail on Monday and Thursday afternoon[s] provided such dates are regular business days of the Court.”

9. The Journal Entry further provided in pertinent part that this practice “shall continue (i) so long as the judges of the Warren Municipal Court consent to such arrangement; (ii) so long as the Sheriff’s Department and the Court are in accord to such arrangement and (iii) for six (6) months from the date of this Order.”

10. Acting pursuant to this Journal Entry, Respondent conducted arraignments at the Trumbull County Jail in connection with the cases and on the dates noted in the following non-exhaustive list: *State v. Becker*, Case No. TRC 0700464-A, -B, and -C (January 22, 2007), and *State v. Boyd*, Case Nos. CRA 0700059, 0700060, and 0700061 (January 22, 2007).

11. In addition, although Respondent’s January 9, 2007 order specifically mentioned only arraignments, Respondent has conducted other hearings involving Newton Falls Municipal Court prisoners at the Trumbull County Jail, including probation violation hearings. These include the following non-exhaustive list: *State v. Chambers*, Case No. TRC 0603469 (probation violation hearing on January 18, 2007), and *State v. Lester*, Case No. TRC 0400257 (probation violation hearing on January 18, 2007). Additionally, because the docket of these cases does not specifically reflect that they were conducted at the Trumbull County Jail, a published news account of the probation violation hearing in *State v. Lester*, held at the Trumbull County Jail, is attached as Exhibit 2 and incorporated herein by reference.

12. The Trumbull County Jail is located at 150 High Street, Warren, Ohio 44881. Warren, Ohio is outside the territorial jurisdiction of the Newton Falls Municipal Court.

13. Subsequently, on or about January 22, 2007, Respondent issued another Journal Entry in connection with Case No. GEN-0700001. A copy of that Journal Entry is attached as Exhibit 3 and incorporated herein by reference.

14. The January 22, 2007 Journal Entry temporarily suspended the practice of holding arraignments of Newton Falls Municipal Court prisoners at the Trumbull County Jail “until assurances can be made that all prisoners have a full and open court arraignment.” That Journal Entry plainly indicates Respondent’s intention to resume the practice of conducting arraignments and other hearings involving Newton Falls Municipal Court prisoners at the Trumbull County Jail when various logistical and security concerns can be satisfied.

Statement of Reasons Why A Writ Of Prohibition Should Issue

15. Respondent’s decision to conduct arraignments of Newton Falls Municipal Court prisoners, and other hearings, at a location other than one within the territorial jurisdiction of the Newton Falls Municipal Court is legally impermissible.

16. Pursuant to the above-referenced provisions of the Ohio Revised Code, a Judge of a Municipal Court may only exercise the judicial authority of that Court within the territorial jurisdiction of that Court, as established by statute.

17. Accordingly, conducting arraignments of, and other hearings involving, Newton Falls Municipal Court prisoners at the Trumbull County Jail constitutes an extra-territorial exercise of jurisdiction and is without force or effect.

18. By acting extra-territorially, Respondent has jeopardized the prosecution of individuals not arraigned within the territorial jurisdiction of the Newton Falls Municipal Court.

Furthermore, probation violation hearings and other proceedings conducted outside the territorial jurisdiction of the Newton Falls Municipal Court may constitute a legal nullity.

19. Relator is without an adequate remedy in the ordinary course of law unless Respondent is immediately prohibited from resuming the practice of conducting any judicial proceedings of the Newton Falls Municipal Court outside the territorial jurisdiction of the Newton Falls Municipal Court.

WHEREFORE, Relator respectfully requests that this Court issue a Writ of Prohibition to Respondent on the following terms:

(A) permanently enjoining and prohibiting Respondent from conducting any judicial proceedings of the Newton Falls Municipal Court outside the territorial jurisdiction of the Newton Falls Municipal Court;

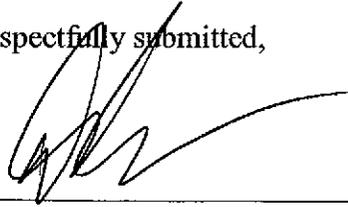
(B) permanently enjoining and prohibiting Respondent from enforcing any provisions of the Journal Entry dated January 9, 2007, filed in connection with “In the Matter of: ARRAIGNMENT OF DEFENDANTS IN THE CUSTODY OF THE TRUMBULL COUNTY SHERIFF,” Newton Falls Municipal Court Case No. GEN-0700001;

(C) granting forthwith an alternative writ to Respondent temporarily enjoining enforcement of any provisions of the Journal Entry dated January 9, 2007, filed in connection with “In the Matter of: ARRAIGNMENT OF DEFENDANTS IN THE CUSTODY OF THE TRUMBULL COUNTY SHERIFF,” Newton Falls Municipal Court Case No. GEN-0700001;

(D) awarding Relator the costs of this action, including reasonable attorneys fees, and

(E) granting such other and further relief as may be warranted.

Respectfully submitted,



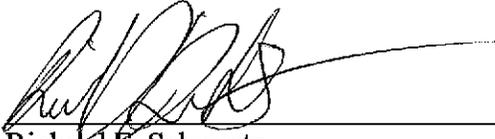
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Attorneys for Relator

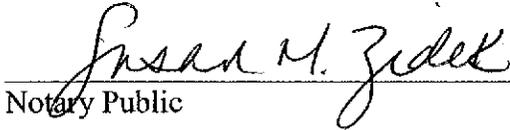
VERIFICATION

Richard F. Schwartz, being first duly sworn, deposes and states that I am over the age of 18 and competent in all respects, and that the allegations and averments set forth in this *Verified Complaint (Original Action for Prohibition)* are based on my personal knowledge and are true as I verily believe.

FURTHER AFFIANT SAYETH NAUGHT.


Richard F. Schwartz

SWORN TO BEFORE ME and subscribed in my presence this 12th day of February, 2007.


Notary Public



SUSAN M. ZIDEK, ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

IN THE NEWTON FALLS MUNICIPAL COURT
TRUMBULL COUNTY, OHIO

In the Matter of:] Case No. GEN-0700001
]]
ARRAIGNMENT OF]
DEFENDANTS IN THE CUSTODY] Journal Entry
OF THE TRUMBULL COUNTY]
SHERIFF]

This matter came on for consideration this 9th day of January 2007 upon the court's motion. It appearing that the current practice of transporting defendants in the custody of the Trumbull County Sheriff is (i) an excessive use of manpower by the Sheriff's Department and other law enforcement agencies; (ii) that such manpower can be far better utilized by these agencies protecting and serving the citizens of Trumbull County patrolling the roads and highways of the county and investigating criminal activity; (iii) there is an inherent danger both to the defendants and the officers transporting them in taking prisoners to and from Court; (iv) the County and its Commissioners have pledged to provide a system of electronic (video arraignments in the near future to the Newton Falls Municipal Court; (v) it is far more fiscally responsible for the Judge—one person—to travel to the county seat and hold arraignments in the Trumbull County Jail than for many deputies transport many defendants to Newton Falls; (vi) the Judge has indicated his agreement to make the travel between the Court and the Jail at his personal expense; (vii) the Trumbull County Jail has accommodations for the holding of arraignments in its "judicial suite"; (viii) no defendant's constitution or civil rights will be prejudiced by holding Newton Falls Municipal Court arraignments in the Trumbull County Jail; (ix) should a defendant object or, sought assigned counsel and that counsel requested re-arraignment, such arraignment would be in the territorial jurisdiction of the Court; and (x) the Warren Municipal Court has consented to this Judge conducting arraignments for Newton Falls Municipal Court defendants within its, Warren Municipal Court's, territorial jurisdiction.

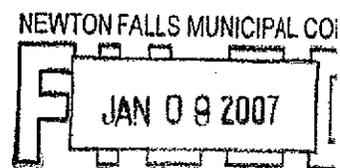
The Court finds that it can schedule its Judge to travel to Warren for the purpose of conducting arraignments of Newton Falls Municipal Court defendants two (2) afternoons per week and suggests that such days and time be, subject to modification for the Court's schedule and the convenience of the Sheriff's Department, initially set for Monday and Thursday of each week at 2 o'clock p.m.

Further, that any financial arrangements normally conducted between defendants and the clerk of the Newton Falls Municipal Court shall be conducted upon the same basis as financial transactions with Courts holding video arraignments.

In consideration whereof, it is, by this Court

In the Matter of Arraignment of Defendants in the Custody of the Page -1 -
Trumbull County Sheriff
Newton Falls Municipal Court
Case No. GEN0700001

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ORDERED that its Judge shall hold arraignments of defendants in the custody of the Sheriff's Department in the Trumbull County Jail on Monday and Thursday afternoon provided such dates are regular business days of the Court. It is further

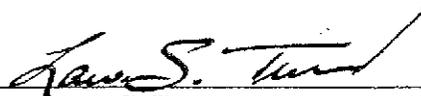
ORDERED that such arrangements do not preclude the Sheriff's Department or other law enforcement agencies from transporting defendants to the Court for arraignments in Newton Falls; nor the Court directing that defendants appear in the Court for arraignment. It is further

ORDERED that this accommodation shall continue (i) so long as the judges of the Warren Municipal Court consent to such arrangement; (ii) so long as the Sheriff's Department and the Court are in accord to such arrangement and (iii) for six (6) months from the date of this Order. At the conclusion of the six (6) month period, the Sheriff's Department and the Court shall review the success of the arrangement, make such modifications thereto as they see fit and continue the program for such additional periods as agreeable. It being expressly understood that the County, Sheriff's Department and the Newton Falls Municipal Court shall work expeditiously toward achieving the electronic capability of conducting video arraignments in the Court. It is further

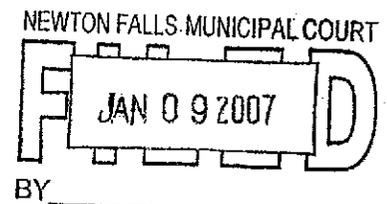
ORDERED that any financial arrangements between the defendants and the Court; such as the posting of bond, payment of costs, etc.; shall be processed under the same guidelines as the Sheriff's Department has with other Courts conducting video arraignments. It is further

ORDERED that this Order shall not affect nor change the current practice of transporting defendants to the Newton Falls Municipal Court for reasons other than arraignments, unless order by this Court.

January 9, 2007


Lawrence S. Turner
Judge

Copy to: Trumbull County Sheriff
Warren Municipal Court





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Judge, sheriff discuss hearings

By **BILL RODGERS** Tribune Chronicle

NEWTON FALLS — Spectators soon could view a video hookup of in-jail arraignments from the jail's lobby or in a borrowed courtroom, depending on how the Newton Falls court and county sheriff plan to reopen a closed court.

Municipal Court Judge Larry Turner said he was meeting with the sheriff's staff to open the closed court at the county jail in Warren, where he wants to hold arraignments and a limited number of other hearings for Newton Falls prisoners.

Turner started the program last week but halted it, citing a conflict between jail security procedures and a defendant's right to a public hearing.

Sheriff Thomas Altieri said the jail's first-floor courtroom is closed to the public for security reasons. Under Ohio law, arraignment hearings are to be held in an open court.

"We're trying to work out a resolution for his (Altieri's) concerns about security and my concerns about having an open court," Turner said. "We're exploring options, trying to see what will accommodate both of those goals."

Turner said he and the staff were considering using the jail's video equipment to broadcast the hearings from the courtroom to the jail's lobby, where the public could watch. Another option, Turner said, was to borrow a courtroom at the Warren Municipal Court. Newton Falls prisoners could be arraigned at the jail via video feed while the judge and the public watches from the Warren courtroom.

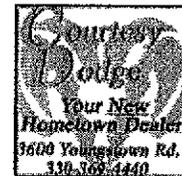
Turner's original plan was to appear at the jail on Monday and Thursday afternoons while the court waits for the county to install a video tower on top of the Ridge Road water tower in Howland. The video hookup would make video arraignments between Newton Falls and the jail possible, saving the county thousands of dollars in prisoner transportation costs and allowing deputies to be on patrol instead of working transport, he said.

Turner said getting the interim plan back on its feet was a priority for he and the sheriff.

"This is continuing to cost the county, the townships and the municipalities money. And we would like some resolution on that. I understand the county is aggressively moving forward (with the video hookup)," Turner said.

But even if Turner overcomes the issue of presiding over a closed court, that

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wouldn't answer the concern of Newton Falls Law Director Richard Schwartz, who contends that the hearings are meaningless and the judge's rulings are moot if the judge holds court outside of his jurisdiction. The jail falls within the jurisdiction of the Warren Municipal Court, where Schwartz claims that Turner has no legal authority.

Turner held two probation violation hearings Jan. 18 and two preliminary hearings and one arraignment on Monday.

Attorney Dan Keating, who represented his Michael Lester at a probation violation hearing Jan. 18, said the in-jail hearing was fine with him.

"I have no plans on objecting to anything that's occurred, even if he (Schwartz) is correct. If the court feels that we need to reappear, that's fine," Keating said.

Before he learned of Turner's order to stall the hearings, Schwartz said he was prepared to seek a stop order from an appeals court.

He did last week send a letter to the judge asking him to cease the hearings. Turner told Schwartz to prepare a legal review, and Tuesday Schwartz submitted a request for review to the county prosecutor's office.

Schwartz could not be reached Thursday for comment.

brodgers@tribune-chronicle.com

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