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## INTRODUCTION

The Tenth District's interpretation of R.C. 4301.25(A)(1) is correct, as it is consistent with the plain meaning of the statute and with the legislative intent of the statute, which is to preclude liquor permit holders from hiring or retaining as employees persons convicted of felonies. The Appellate Court's interpretation will not, as argued by Appellant, the Ohio Liquor Control Commission (hereinafter referred to variously as "Appellant" or the "Commission") prevent the Commission from holding liquor establishment owners "responsible for illegal conduct taking place on the permitted premises." Appellant's Brief, p. 5. Liquor permit holders will not be able to be tolerant of illegal drug activity on the permit premises or circumvent Ohio's drug laws. R.C. 4301.25(A)(1) is not the only provision regulating illegal drugs in establishments operating under liquor permits. The Commission has its choice of proceeding under R.C. 4301.25(A)(1) or O.A.C. 4301:1-1-52(B)(5), and the permit holder cannot avoid a penalty under the administrative rule by discharging an employee prior to conviction (or as in this case arrest) for a drug offense. The Commission has the same range of penalties for enforcing the administrative rule as it does under the statute. The only real significance between them in terms of enforcement is that in cases proceeding under the administrative rule, the State cannot rely just on a conviction, but must prove the underlying misconduct. At a hearing of a citation issued under the rule, evidence of misconduct can even include proof of the conviction. Therefore, what we are really talking about is requiring the State to do a little extra work under the administrative rule. The overall burden is actually lighter as the burden of proof to obtain the criminal conviction is greater than the preponderance-of-evidence burden required to enforce 4301:1-1-52.

Furthermore, a permit holder would not try to circumvent Ohio's drug laws as the Division of Liquor Control can reject the annual renewal of the permit for "conduct that

demonstrated a disregard for the laws.” R.C. § 4303.292(A)(1)(b). From a public policy viewpoint, it does not make sense to allow the Commission to punish the permit holder for the conviction of a former employee without having to prove misconduct. The permit holder has no control over, or involvement in, the defense to criminal charges leveled against an ex-employee, has no control over plea deals with the prosecutor, and no control over whether the ex-employee should receive diversion in lieu of conviction.

## STATEMENT OF THE CASE AND FACTS

Appellee, WCI, Inc. (“Appellee”) acknowledges that the underlying facts are simple and undisputed. However, the Commission fails to include certain facts which are relevant to the issues in this case. While the Commission discusses some of the facts surrounding the citation brought against Appellee under Administrative Case No. 782-04 following the conviction of Brooke E. Orshoski (“Orshoski”), it fails to discuss all of the facts relevant to that citation, and fails to discuss the citations issued against Appellee presented in Administrative Case No. 783-04.

The following are the additional facts relevant to the citation arising out of the conviction of Orshoski:

- February 6, 2003 -- Undercover police officers make purchase of cocaine from Orshoski at Cheeks, the Permit Premises operated by Appellee. Rule VII Supp. to Brief of Appellee, S-19.
- February 13, 2003 -- Undercover police officers make second purchase of cocaine from Orshoski at Cheeks. Id. at S-26.
- February, 2003 -- Appellee dismisses Orshoski from Cheeks due to suspicion that she was dealing in narcotics, and Appellee issued a Notice of Trespass to Orshoski to bar her from the premises. Id. at S-8, 35, and 36.
- August 5, 2003 -- Orshoski was arrested for trafficking in cocaine. Id. at S-31.
- October 20, 2003 -- Orshoski was convicted for trafficking in cocaine. Id. at S-33.
- January 21, 2004 -- Agents of the Liquor Control Commission served citation upon Appellee based on the conviction of Orshoski. Id. at S-11.

On March 28, 2003, a little over a month after securing undercover purchases of cocaine from Orshoski, a dancer at Cheeks, a detective in another undercover operation purchased Clonazepam from Bobbi Herald ("Herald"), another dancer at Cheeks. Exhibit at Hearing in Case No. 783-04, attached hereto as Appendix, A-3. Although Herald entered a plea of guilty to a charge of trafficking in drugs, the Common Pleas Court stayed all criminal proceedings against her after finding that she was eligible for intervention in lieu of conviction. The Decision and Order staying these proceedings was filed November 14, 2003. Id. at A-9.

On January 21, 2004, an agent for the Ohio Department of Public Safety issued a citation under R.C. 4301.25(A) against Appellee arising out of the cocaine sales by Orshoski, and a citation with two charges under Ohio Admin. Code 4301:1-1-52(B)(5) regarding Herald's sale of Clonazepam. The first charge was for violation of 4301:1-1-52 for possession of dangerous drugs and the second charge was for trafficking in dangerous drugs. Id. at A-3.

An administrative hearing was held for both citation cases. At the hearing, the manager for Cheeks testified that the permit holder maintained a zero tolerance for drugs and that, even before the permit holder became aware of the undercover buys from Orshoski and Herald, the permit holder had terminated both dancers and barred Orshoski from returning as a patron. See Rule VII Supp. to Brief of Appellant, S-7, 8.

Upon the State's Motion, the Commission dismissed the second charge for trafficking in dangerous drugs (Clonazepam). As a result, the Commission issued a ruling on only the first citation as to possession of dangerous drugs (Clonazepam). Order of Commission, Exhibit 5 to Appellant's Brief. Upon appeal to the Franklin County Court of Common Pleas, the trial court vacated the Commission's suspension of Appellant's Liquor Permit for possession of dangerous drugs (Clonazepam) as no evidence was presented that the Clonazepam was obtained illegally rather than through a prescription. Decision and Entry of Court of Common Pleas, p. 5, Exhibit

4 to Appellant's Brief. The Commission did not raise as error the trial court's vacation of this charge through cross-appeal.

## ARGUMENT

### RESPONSE TO PROPOSITION OF LAW:

**The Ohio Liquor Control Commission can only suspend or revoke a liquor permit under R.C. 4301.25(A)(1) when the offense is committed by a person who is an employee or agent of the permit holder at or following the conviction.**

The Commission asserts the following policy without any citation to authority: "Liquor establishment owners must be held responsible for illegal conduct taking place on the permitted premises, especially when that conduct is performed by the permit holder's own employees." Appellant's Brief, p. 5. There is little doubt that through statute, administrative rule and case law, that Ohio has a policy of penalizing the permit holder for misconduct committed by the permit holder's employee on the permit premises. That policy, however, does not warrant misconstruing R.C. 4301.25(A)(1). The Legislature intended this statute as a means of precluding liquor permit holders from hiring or retaining as employees persons with a felony conviction. It is the counterpart to R.C. 4303.29, which seeks to preclude persons with felony convictions from being owners of liquor permits. See Papatheodoro v. State Dept. of Liquor Control (1954 Franklin), 69 Ohio Law Abs. 556 (interpreting the prior version of 4303.29). The current version of 4303.29 still seeks to preclude felons as owners of liquor permits, but only if the felony negatively impacts the person's fitness to operate a liquor permit business. Snyder v. Snyder, 11<sup>th</sup> Dist. 2004-A-0056, 2007-Ohio-122, ¶ 21. Without both statutes (4301.25 and 4303.29), a person might be able to circumvent the restriction as to felons owning liquor permits by putting ownership nominally in someone else's hands and having that person hire them as an employee.

The Commission is correct in asserting that the language in R.C. 4301.25(A)(1) is clear and unambiguous, and the Court should therefore look to the words of the statute in interpreting

its meaning and the intent of the Legislature. Principles of statutory construction require courts to first look at the specific language contained in the statute, and if unambiguous, to then apply the clear meaning of the words used. Roxane Laboratories, Inc. v. Tracy (1996), 75 Ohio St.3d 125, 1996-Ohio-257, p. 127. The version of R.C. 4301.25 in effect at the time of the underlying conviction of Orshoski, states as follows:

(A) The liquor control commission may suspend or revoke any permit issued under this chapter or Chapter 4303 of the Revised Code for the violation of any of the applicable restrictions of either chapter or of any lawful rule of the commission, for other sufficient cause, and for the following causes:

(1) Conviction of the holder or the holder's agent or employee for violating a section of this chapter or Chapter 4303 of the Revised Code or for a felony...

The triggering event is the conviction. However, under the clear language of this statute, if the person convicted is not an employee of the permit holder, then the statute does not provide a basis for suspending or revoking the liquor permit. By definition, a former employee is not an employee. In essence, the Commission seeks to insert words in the statute and change the phrase "holder's agent or employee" to "holder's agent, former agent, employee or former employee". When construing a statute, the court must give effect to words used, and not delete words used or insert words not used. In re: Columbus Skyline Securities, Inc. (1996), 74 Ohio St.3d 495, 1996-Ohio-151, p. 498; In & Out Market, Inc. v. Ohio State Liquor Control Commission (Sept. 18, 2001), 10<sup>th</sup> Dist. No. 01AP-231, p. 3.

The Commission attempts to denigrate the Tenth District's decision below by pointing out how it was based, in part, on dicta in a prior decision of that Court, specifically the decision in Shotz Bar and Grill, Inc. v. Ohio Liquor Control Comm., 10<sup>th</sup> Dist. No. 02AP-1141, 2003-Ohio-2659. Whether or not that is true, however, is irrelevant as the Tenth District below correctly interprets the plain language of 4301.25(A)(1).

As support for its position that the conviction “is not limited by any requirement that the employment status remain the same until the date of conviction”, the Commission makes the following assertion: “R.C. 4301.25(A)(1) unambiguously reflects the Legislature’s intent to have Ohio’s liquor establishment management and representatives be free of felons, whether committed by permit holders, permit holder’s or permit holder’s employees -- or by conveniently – fired recent ex-employees.” Appellant’s Brief, p. 6. While, in the past, Ohio’s Legislature may have expressed an intent that liquor establishment management and representatives “be free of felonies”, that is no longer the case. Prior to the amendment of R.C. 4303.29 through 1994 S.B. No. 167, effective November 1, 1994, that statute provided as follows: “[n]o person heretofore convicted of any felony shall receive or be permitted to retain any [liquor] permit; nor shall such person have an interest, directly or indirectly, in any permit.” That language was construed to mean “that a person convicted of a felony cannot thereafter have an interest in a liquor permit.” Campus Businesses, a Limited Partnership v. Ohio Liquor Control Commission (1992), 82 Ohio App.3d 14, 17. The current version of R.C. 4303.29 provides that “[t]he division [of liquor control] may refuse to issue any [liquor] permit to or refuse to renew any permit of any person convicted of any felony that is reasonably related to the person’s fitness to operate a liquor permit business in this state.” R.C. 4303.29(A). Thus, the fact that an applicant or permit holder has a felony is no longer sufficient justification by itself to preclude issuance or retention of a liquor permit, and the felony must be examined to determine if it is related to the person’s fitness to operate a liquor permit business in Ohio.

Even if the Court finds R.C. 4301.25(A)(1) to be ambiguous, the Court should construe the statute in Appellee’s favor. “[S]ections of the Revised Code defining offenses or penalties shall be strictly construed against the State, and liberally in favor of the accused.” Shotz, supra at ¶ 33 (citing R.C. 2901.04 (A)).

The Commission is correct that “[i]n enacting a statute, it is presumed that ... [a] just and reasonable result as intended.” R.C. 1.47(C). The Commission is also correct in asserting that a court should not interpret a statute so that it results in an absurd meaning. However, the Commission’s arguments based on these propositions of law are without merit. The Commission states that, if you accept the Tenth District’s reading of 4301.25(A)(1), “[t]he convicted individual must have been in the employ of the permit holder on the date of the conviction, regardless of whether the offence [sic] giving rise to the conviction occurred on the permitted premises and regardless of whether the convicted individual was in the permit holder’s employ at the time of the offence [sic] giving rise to the conviction.” Appellant’s Brief, p. 7. Appellant submits that such a reading is consistent with the legislative intent of 4301.25(A)(1) of keeping permit premises free of felons.

The Commission further states that “[b]y making the date of consequence that of the conviction, the Tenth District’s interpretation [of 4301.25] would allow permit holders to tolerate or even condone felonious activity on the permitted premises as long as the permit holder was clever enough to dismiss the convicted individual just before the conviction ... .” Appellant’s Brief, p. 7. If 4301.25(A) was the only statute or rule regulating a permit holder’s conduct, the Commission might have a point. That is not the case. It should be noted that the Ohio Department of Public Safety, Investigative Unit, was not limited to pursuing citations under 4301.25(A) for the misconduct of Orshoski in selling cocaine. It could have issued a citation under O.A.C. 4301:1-1-52(B)(5) as it did for the alleged misconduct of Herald in the other citation case. 4301:1-1-52(B)(5) states as follows:

(B) Prohibited Activities; no permit holder, his agent, or employee shall knowingly or willfully allow in and upon his licensed permit premises any persons to:

\* \* \*

(5) Allow in, upon or about the licensed premises, or engage in or facilitate in, the possession, use, manufacture, transfer, or sale of any dangerous drug, controlled substance, narcotic, harmful intoxicant, counterfeit controlled substance, drug, drug paraphernalia, or drug abuse instrument as said terms are defined in Chapter 2925 of the Revised Code.

Under this rule, the triggering event is the commission of the crime by the permit holder's agent or employee, and whether or not the agent or employee is later convicted is irrelevant. Thus, the permit holder cannot discharge the employee to avoid a penalty. Because the law provides the Commission a great deal of discretion in assigning a penalty to enforce any administrative citations, it would be foolish for a permit holder to engage in any conduct that might be viewed as tolerant of drug activity on the permit premises. See Henry's Café, Inc. v. Board of Liquor Control (1959), 170 Ohio St. 233. Furthermore, if the permit holder was tolerant of drug activity or tried to circumvent Ohio's drug laws, the Division of Liquor Control could reject the annual renewal of the permit for "conduct that demonstrates a disregard for the laws." R.C. 4303.292(A)(1)(b). Thus, there is no "safe harbor" provided to permit holders from the consequences of "on-the-job, on-premises drug sales."

If you accept the Commission's interpretation of 4301.25(A)(1), a permit holder can hire or retain as an employee a convicted felon so long as the underlying offense occurred off the permit premises and is unrelated to the permit premises. This would not be consistent with the legislative intent of keeping liquor permit premises free of convicted felons.

The Commission acknowledges the existence of other statutes or rules that allow for permit suspension or revocation upon the illegal behavior of an employee. In addressing those "other statutes or rules", the Commission, through the following language, tries to imply that these other provisions may require a greater burden of proof: "These other statutes or rules may require different elements to suspend or revoke a permit or may require a different burden of proof for the Commission." Brief of Appellant, p. 8. The overall burden on the State to penalize

the permit holder under 4301:1-1-52 for the criminal misconduct of its employee is actually lighter as the burden of proof to obtain a criminal conviction is greater than the burden required under 4301:1-1-52, which is by a preponderance of the evidence. Twenty Two Fifty, Inc. v. Ohio Liquor Control Comm., 10<sup>th</sup> Dist. No. 06-AP-844, 2007-Ohio-946, ¶ 68. Another advantage of the rule is that because the Commission does not have to wait for a conviction to file a citation under 4301:1-1-52, enforcement of that administrative rule can be brought sooner than under 4301.25(A)(1) when the evidence is fresher in the mind of the witnesses.

The only reason the Commission failed in its prosecution of 4301:-1-1-52 for the alleged misconduct of Herald was because of missteps on the part of the State. For some unknown reason, the State decided to dismiss the citation based on trafficking, and pursue only the violation based on possession. Clonazepam is a drug that is available through prescription. Thus, in order to prove that Herald committed a crime by possessing Clonazepam, the State needed to introduce evidence that Ms. Herald did not have a prescription for the drug, which the State failed to do. Whether or not she had a prescription, it would have been a violation of the law to sell the drug. Thus, had the State not dismissed its citation for trafficking, the State could have prevailed in a citation under 4301:1-1-52 for Herald's trafficking in Clonazepam. The State could also have prevailed below if it had chosen to issue a citation under 4301:1-1-52 for Orshoski's sale of cocaine. The only apparent reason for not pursuing 4301:1-1-52 for Orshoski's crime was that the State hoped to prevail by proving a conviction rather than proving misconduct.

As another basis for arguing that the Tenth District's interpretation of R.C. 4301.25(A)(1) brings about an absurd result, the Commission states that under this interpretation, "nothing in state law would prevent the permit holder from rehiring the individual after acquittal ... ." Appellant's Brief, p.p. 7-8. That is incorrect. The Tenth District's Decision herein is not, as the

Commission asserts, based on the date of the conviction, but the status of the person who was convicted, i.e. status as an employee or agent. The Tenth District made this clear in its prior decision in Waterloo, Inc. v. Liquor Control Commission, 10<sup>th</sup> Dist. App. No. 02AP-1288, 2003-Ohio-3333. In Waterloo, the Ohio Department of Public Safety cited the permit holder for a violation of R.C. 4301.25(A)(1) as a result of the conviction of the permit holder's bookkeeper for violation of federal tax laws. The Tenth District Court in Waterloo stated as follows:

Based upon the identical facts, a majority of this Court in *Shotz Bar & Grill* [Inc. v. Ohio Liquor Control Comm., 10<sup>th</sup> Dist. No. 02AP-1141, 2003-Ohio-2659, ¶51] held that, if the evidence does not establish that the person in question was an employee of the permit holder at the time of the conviction, or that his or her employment with the permit holder continued after the conviction, suspension or revocation of the liquor license, pursuant to R.C. 4301.25(A)(1), is not authorized. *Id.* Therefore, there must be reliable, probative and substantial evidence indicating that Schilero was appellant's employee at the time of her conviction or that she became an employee following her conviction, before the Commission could revoke a liquor permit pursuant to this provision.

Id. at ¶ 10 (emphasis added). Thus, under Waterloo, a permit holder could not rehire an ex-employee following a conviction in order to circumvent 4301.25(A)(1).

R.C. 4301.25(A)(1) does not, as the Commission argues, lose its "effectiveness" under the Tenth District's interpretation. The statute simply may not, under its plain meaning, be an effective tool to penalize permit holders for offenses by employees arising out of activities occurring on the permit premises. It remains effective for precluding permit holders from hiring or retaining as employees convicted felons, which is consistent with the legislative intent of the statute. Through 4301:1-1-52 and 4303.292(A)(1)(b), the State retains effective tools to penalize the permit holder for misconduct occurring on the permit premises.

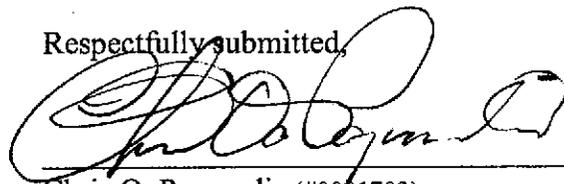
As a matter of public policy, it would be unfair to impose penalties on a permit holder based solely on whether or not there is a conviction of a former employee. A permit holder has no control over the defense put forward by its former employee and is not a party to the criminal

proceedings. Even if the former employee is innocent, the former employee may choose to plead guilty in order to avoid the risk of a conviction to a greater offense or a more severe penalty. The best interest of the permit holder is not a matter that concerns the former employee. It makes little sense that one permit holder should be penalized for the conviction of a former employee on a drug offense when another permit holder escapes punishment because its former employee had the charges dismissed through a plea bargain, was given diversion in lieu of conviction as was done with Herald, or was not convicted for other reasons.

**CONCLUSION**

For the reasons discussed above, this Court should therefore affirm the Decision and Entry of the Tenth District Court of Appeals below.

Respectfully submitted,



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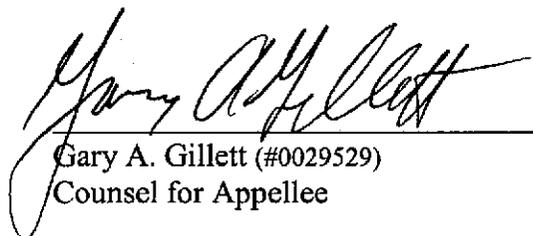
OF COUNSEL:

BUCKLEY KING, LPA

Counsel for Appellee

**CERTIFICATE OF SERVICE**

A copy of the foregoing Merit Brief of Appellee WCI, Inc. d/b/a Cheeks has been sent by regular U.S. mail, postage prepaid, to the Ohio Liquor Control Commission, Counsel for Appellant, 30 East Broad Street, 17<sup>th</sup> Floor, Columbus, Ohio 43215, this 11<sup>th</sup> day of April, 2007.

  
\_\_\_\_\_  
Gary A. Gillett (#0029529)  
Counsel for Appellee

23432\001\MERIT BRIEF.doc

**APPENDIX**

# VIOLATION NOTICE

18246  
No. I-05892 *215*

## INVESTIGATIVE UNIT, OHIO DEPARTMENT OF PUBLIC SAFETY

Name WCI INC. D.B.A. Cheeks  
Permit Address 906 Water Tower Ln. City West Carrollton 45449  
Submitted to Christopher W. Remor Home Address 1705 Woodley Rd. Dayton 45403  
Date of Violation March 28, 2003 Time 12:10 AM  
Date Violation Notice Issued January 21, 2004 Time 2:00 PM Type of Permit D5, D6  
Investigator R. L. Sterling Permit No. 9446906 Exp. Date 06-01-2004

This is to notify you that the above establishment was inspected by Agents of the Investigation Unit, Ohio Department of Public Safety, on the above date, and the following violations were noted:

1. Allowing Improper Conduct (Agent or Employee Trafficking in Drugs)
2. Allowing Improper Conduct (Agent or Employee Possessing Dangerous Drugs)
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. (Montgomery County Sheriff's Office Case)

INV-0008 1/00      White: Permit Holder      Canary: Central Office      Pink: District Office      Goldenrod: Retain in Book

THIS IS A TRUE, CERTIFIED  
COPY FROM THE FILES OF  
THE STATE OF OHIO, LIQUOR  
CONTROL COMMISSION.

SIGNED FR

STATE OF OHIO

IN THE MATTER OF:  
The Permit Holder Listed on  
the attached "Notice of Hearing"

Case No. 783-04  
Appearance Docket No. 5748  
Permit No. 9446906

ORDER

1. This cause came for hearing on May 19, 2004, regarding the Permit Holder and the alleged violation(s) contained in the attached "NOTICE OF HEARING", which is a part of this order.
2. The Permit Holder entered a plea of Denial ~~W/~~Stipulation as to violation(s) 1. The Commission dismisses violation(s) 2 upon motion of the Attorney General.
3. The Commission finds Permit Holder in violation as to violation(s) 1, and not in violation as to violations N/A.
4. The Commission orders subject permit(s) suspended for a period of 30 days, said suspension beginning at noon, July 30, 2004, and ending at noon, August 29, 2004.

NOTICE OF APPEAL RIGHTS

Respondent is hereby notified this Order may be appealed pursuant to Ohio Revised Code Section 119.12 by filing a Notice of Appeal with the Ohio Liquor Control Commission, setting forth the Order appealed from and the grounds of the appeal. A copy of such Notice shall also be filed with the Court of Common Pleas with competent jurisdiction. Such Notices of Appeal must be filed within twenty-one (21) days after the mailing date of this order. The mailing date is shown on the lower, left corner of the order.

STATE OF OHIO  
LIQUOR CONTROL COMMISSION  
77 SOUTH HIGH STREET, 18TH FLOOR  
COLUMBUS, OHIO 43215

*Keith McNamara*  
Keith McNamara Chairman

*Janet C. Howard*  
Janet C. Howard Vice Chair

*Rocco J. Colonna*  
Rocco J. Colonna Member

Concurrent with Case No.(s)	Docket:
Consecutive with Case No.(s) 782-04	Docket: 5748
Immediate Imposition	Counsel: STUMP
Refer to Case No.(s) 782-04	Docket: 5748

Mailing Date: June 2, 2004

THIS IS A TRUE, CERTIFIED COPY FROM THE FILES OF THE STATE OF OHIO, LIQUOR CONTROL COMMISSION.

SIGNED FR



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Case Number

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### 2003 CR 02450

STATE OF OHIO VS. HERALD, BOBBI R.

**\* Imaging is currently under maintenance.**

#### THE DOCKET

Begin Date:  End Date:   Descending

IMAGES DATE/DOCKET ENTRY

07/09/2003 CRIMINAL APPROPRIATE DISPUTE RESOLUTION AND GENERAL SPECIAL PROJECT FEES

CRIMINAL APPROPRIATE DISPUTE RESOLUTION AND GENERAL SPECIAL PROJECT FEES

07/14/2003 GRAND JURY SUBPOENA ISSUED.

GRAND JURY SUBPOENA ISSUED.

07/23/2003 MONTGOMERY COUNTY SHERIFF FEE

MONTGOMERY COUNTY SHERIFF FEE

07/30/2003 INDICTMENT

INDICTMENT FOR TRAFFICKING IN DRUGS (SCH. III, IV, V) FILED.

07/30/2003 ALERT ISSUED

ALERT ISSUED WARRANT ON INDICTMENT issued on: 07/30/2003 For: HERALD, BOBBI R.

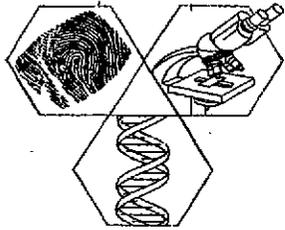
08/13/2003 ENTRY AND ORDER FOR CONTINUANCE FILED,

ENTRY AND ORDER FOR CONTINUANCE FILED, RE-SET 8-26-2003. J. KESSLER

THIS IS A TRUE, CERTIFIED COPY FROM THE FILES OF THE STATE OF OHIO, LIQUOR CONTROL COMMISSION.

SIGNED 





# Miami Valley Regional Crime Laboratory

361 West Third Street, Dayton, Ohio 45402

Phone (937) 225-4990 FAX (937) 496-7916

Kenneth M. Betz, Director

TO: Detective Chad Begley  
MCSO / CANE

June 02, 2003

SUBJECT: Laboratory Case 03-007173 - Narcotics occurring at Water Tower Lane on March 28, 2003 (Agency Case # 03-4089)

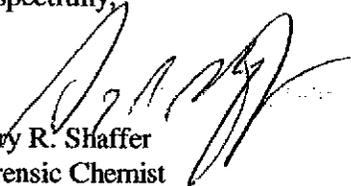
Subject: HERALD, BOBBI R.

The following evidence was received by the Laboratory for analysis:

Submission 001: One manila envelope (MCSO #70999) containing one plastic bag containing 10 yellow tablets marked "R 34"

**The above item was analyzed and found to contain Clonazepam (Sch IV), having a net weight of 1.72 grams.**

Respectfully,

  
Gary R. Shaffer  
Forensic Chemist

*WCF*

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SIGNED *KR*

USER=VANX002  
DATE 01-30-04  
TIME 15:59:37

VIOLATION CASE INQUIRY

PVI09 PAGE 001

COUNTY 57 = MONTGOMERY  
TAXING DISTRICT = 209

9446906

WCI INC  
DBA CHEEKS  
906 WATER TOWER LN  
WEST CARROLLTON OHIO 45449

CLASSES-----> D5 ISSUED REN  
D6 ISSUED REN

CASE	REPORT DATE	LOG DATE	-----V	I O L A T I O N	DESCRIPTION-----
			DATE	CODE	
12	03-28-03	01-21-04	03-28-03	00V9	IMPROPER CONDUCT NOT COVERED BY ABOVE
		01-21-04	03-28-03	0001	IMPROPER CONDUCT ILLEGAL SALE AND/OR POSSESSION OF DANGEROUS DRUGS
11	10-20-03	01-21-04	10-20-03	0020	CONV - FOR A FELONY
*10	01-12-00	01-12-00	01-12-00	00CH	REQUEST FOR EXPANSION RECEIVED
		01-12-00	01-12-00	0277	EXPANSION APPROVED
		01-12-00	01-12-00	0227	CASE TERMINATED CAB
*09	09-20-99	09-20-99	09-20-99	00CH	REQUEST FOR EXPANSION RECEIVED
		10-05-99	10-05-99	0278	EXPANSION DENIED
		11-04-99	11-04-99	0227	CASE TERMINATED CAB
		12-20-99	12-20-99	0230	REACTIVATE TERMINATED CASE CAB
		01-12-00	01-12-00	0227	CASE TERMINATED CAB
*08	03-03-99	03-03-99	03-03-99	00CL	TAX PROBLEM SUB H B 231
		05-25-99	05-25-99	00DC	FULL RENEWAL CASE DISMISSED
*07	01-23-98	01-26-98	01-23-98	00I5	IMPROPER CONDUCT BY GO GO DANCER
		05-12-98	06-03-98	0418	DOCKET 5496 CASE 104698
		07-14-00	02-18-00	0313	COMM REMANDS TO DEPT
		07-14-00	02-18-00	0246	CITATION REVIEW BOARD DISMISSES CASE
					CODE 0000 DATE 021800
		07-14-00	07-14-00	0227	CASE TERMINATED CAC

(\* = INACTIVE CASE)

CONTINUED ON NEXT PAGE

P=N

FOR NEXT PAGE

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CONTROL COMMISSION.



WCI

Kenneth L. Morckel  
Director

**Police Case Instruction Sheet**

Ed Duvall Jr.  
Deputy Director

Montgomery County  
Sheriff's

Police Case

Log # / Case # Jan 04-004 / CGS# 1824

Assigned to: ALANT BERRY STERLING Date Assigned: 1-12-07

Deadline: 1-26-07

Permit Name: WCI INC  
DEA: V CHECKS  
Address: 1906 WATER TOWN LN WEST CARROLLTON 45449  
Permit #: V9446906 Permit Type: VDS, 6  
DOV: 3-28-03 TOV: 1210 AM  
Violations: 28

ALLOWING IMPROPER CONDUCT (AGENT OR EMPLOYEE TRAFFICKING IN DRUGS)  
ALLOWING IMPROPER CONDUCT (AGENT OR EMPLOYEE POSSESSING DANGEROUS DRUGS)

(MONTGOMERY COUNTY SHERIFF'S CASE)

Evidence Instructions:

Special Instructions: SUBPOENA OFFICER, EVIDENCE LAB SHOWS. INCORPORATE IN STATEMENT OF FACTS THAT THE EMPLOYEE PLEAD GUILTY BUT WAS GIVEN INTERVENTION IN LIEU OF CONFINEMENT, A TOTAL DOCUMENT.

Brian O'Donoghue 1-12-07  
Supervisor Signature / date

I have verified the above information with the attached police report and current permit information.

Amy J. Scott 1-13-07  
Name / date

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SIGNED KR



2003 NOV 14 PM 3:48

CLERK OF COURTS  
MONTGOMERY CO., OHIO

THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO

THE STATE OF OHIO,

Case No.: 2003 CR 02450

PLAINTIFF

DECISION AND ORDER OF INTERVENTION IN LIEU OF CONVICTION

-vs-

BOBBI R. HERALD,

DEFENDANT

Effective Date: November 12, 2003

On November 12, 2003, pursuant to the defendant's Application for Intervention in Lieu of Conviction (ILC) filed in accordance with Section 2951.04.1 of the Ohio Revised Code, and the defendant having tendered a plea of guilty to the offense(s) of Trafficking in Drugs (sched. III, IV, V) (FS), under Ohio Revised Code Section 2925.03(A), the Court concludes that the defendant is eligible for Intervention in Lieu of Conviction (ILC), withholds an adjudication of guilt and orders that all criminal proceedings be stayed.

The Court further orders the defendant to undergo a period of rehabilitation not to exceed three (3) years under the control and supervision of the Montgomery County Division of Criminal Justice Services, conditioned upon the defendant's voluntary entrance into an appropriate drug treatment facility or program at which he/she has been accepted, faithful submission to the treatment prescribed by such facility, and faithful adherence to all the rules and regulations of both said facility and the Division of Criminal Justice Services of the Court. Defendant will authorize said facility to release any and all reports prepared by it to the Division of Criminal Justice Services and to the Court, whether or not the same may be considered confidential. The defendant shall be subject to the General Conditions of this Court for probationers and to the following Specific Conditions:

SPECIFIC CONDITIONS

1. A requirement that the offender attend a Crisis Care assessment, provide documentation of this to her Community Control Officer, and successfully complete any treatment recommended by that agency, the Court, or the Division of Criminal Justice Services;
2. A requirement that the offender pay court costs and supervision fee making minimum payments of \$10.00 per month;
3. A requirement that the offender obtain and maintain full-time employment;
4. A requirement that the offender be fingerprinted and photographed at the Montgomery County Jail.

JTC: 9 DAYS

And all General Conditions of Supervision Applicable to Intervention in Lieu of Conviction (ILC) Offenders.

Prescribed method of payment (ORC 2949.111(B)):

- |   |    |                                 |
|---|----|---------------------------------|
| 1. The defendant is ordered to pay restitution in the sum of:     | \$ | <u>None</u>                     |
| 2. The defendant is ordered to pay costs of prosecution taxed at: | \$ | <u>133.50</u> <del>172.50</del> |
| 3. The defendant is ordered to pay a supervision fee of:          | \$ | <u>50.00</u>                    |

If the drug treatment facility or program determines that the defendant is able to pay the costs of his/her treatment and/or rehabilitation, pursuant to Section 2951.04.1(J) of the Ohio Revised Code, the defendant shall be liable for and shall pay said costs or portion of costs as determined by said program or facility. *hereby certify this to be a true*

APPROVED: *[Signature]*  
and correct copy.  
Witness my hand and seal this DEC 10 2003 day of 20  
Judge G. JACK DAVIS

Prepared by the Montgomery County Division of Criminal Justice Services/ajh 11/13/03 / E. Mart  
cc: Montgomery County Prosecutor's Office  
Caseflow Services  
Defense Attorney/Michael Wright  
E:\apn\format\orderof.cite  
9-18-2003

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Clerk of Common Pleas  
Court of Montgomery County, Ohio  
By *[Signature]*  
SIGNED *[Signature]*