

ORIGINAL

No. 11-0109

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**IN THE SUPREME COURT OF OHIO**

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THE STATE OF OHIO, *ex rel.*, Michelle BENNER, Mary Pratt, Kara Mumford,  
Nicole Montecalvo, Trisha Narkum, Shannon Surrena, Stephanie Yash,  
Tiffany Smith, Brandi McNair, Amanda Wallace, Loni Fredenburg,  
Jessica Scarsella, Amanda Barbe, Jasmin Roque, April Ellis and Erica Jackson

Relators

vs.

MAHONING COUNTY COURT #4 IN AUSTINTOWN OHIO  
6000 Mahoning Avenue  
Austintown, Ohio 44515

and

HONORABLE JUDGE DAVID A. D'APOLITO  
6000 Mahoning Avenue  
Austintown, Ohio 44515

Respondents

FILED  
JAN 20 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

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**AFFIDAVIT OF COUNSEL IN SUPPORT OF  
COMPLAINT FOR WRIT OF PROHIBITION**

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RECEIVED  
JAN 20 2011  
CLERK OF COURT  
SUPREME COURT OF OHIO

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Counselor for Relators



STATE OF OHIO            )  
  ) SS:  
MAHONING COUNTY        )

I, James Vitullo, first being duly sworn, says that:

1. I am a duly licensed attorney in the State of Ohio and I represent the Relators in this Writ of Prohibition and in the underlying criminal cases at the trial court.

2. I have been practicing law in Mahoning County for twenty-eight years and appear regularly in Mahoning County Court #4 in Austintown, Ohio (“Austintown Court”) and before the Honorable David A. D’Apolito the judge of that court.

3. I have reviewed hundreds of criminal complaints filed in the Austintown County Court during the past decade and each one is conclusory, identical to the complaints attached to this Writ (see Complaint Exhibits 1 and 4) confirming that probable cause was lacking to initiate the arrest and the prosecution in the first instance.

4. Mahoning County employs sixteen judges and eighteen magistrate judges; however, in the Austintown arrest warrants are not presented to judges or magistrates for probable cause determinations, they are issued by deputy clerks. Every arrest warrant issued in the criminal cases underlying this Writ was issued by deputy clerks of the Austintown Court (“Austintown Clerks”).

5. I know the Austintown Clerks personally and while researching the probable cause issues underlying this Writ, I talked to the Austintown Clerks in early November 2010 about their procedure for signing arrest warrants. The Austintown Clerks confirmed that arrest warrants are signed as a clerical matter; that they do not understand nor were they trained in the concept of probable cause; that they are instructed to sign the warrants presented to them;

that the complaints and warrants are not reviewed for probable cause; and that they have signed thousands of warrants in the past decade.

6. While researching the probable cause issues underlying this Writ, I also uncovered that many summonses issued in the Austintown Court are signed by either Sandy Williams, Teresa Drummond, or Susan Cabot, the secretaries employed by the Austintown Police Department and who have been sworn in as deputy clerks for the purpose of signing charges (Compl Ex. 5). These clerks are not neutral or detached and incapable of issuing summonses.

7. I have reviewed the Ohio Supreme Court's statistics regarding the number of criminal cases at the Austintown Court during the past decade and discovered that 19,426 criminal cases were filed in Austintown Court during the past decade: 15,213 misdemeanors and 4,213 felonies. The statistics also show that 99.8% of the misdemeanor charges ended in guilty pleas (12 bench trials and 13 jury trials), which I believe were undertaken without ever having a judicial officer determine that probable cause existed to initiate the arrest and the prosecution in the first instance.

8. I am aware of the sheer volume of cases the Austintown Court must handle and that they are required to process these cases at a brisk pace. Negotiations with prosecutors last literally minutes. One of the reasons for pleas at this level is that defendants lack the financial resources necessary to pursue their case; nonetheless, they are impacted by the conviction.

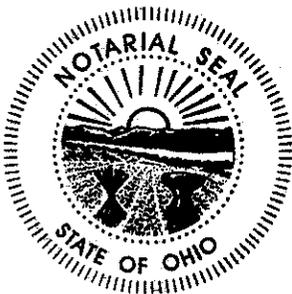
9. A few of the Relators turned themselves in when they were told of the charges underlying this Writ. However, most of the Relators were arrested during routine traffic stops and confined to the local jail for hours, booked, fingerprinted, photographed, and posted bond all without ever having a judicial officer determine if probable cause existed to initiate the misdemeanor arrest outside the officers presence.

10. Some of the Relators were interviewed incident to the arrest. For example, on May 23, 2010 Nicole Montecalvo was arrested during a routine traffic stop. She was handcuffed and transported to the Austintown police station where she was booked, fingerprinted and photographed. At around 4:00 a.m. in the morning she was taken to an interrogation room where the charging officer, Sargent Jeff Solic, questioning her for one hour. The recording of the interview confirms that the charges against all of the Relators are founded on Sargent Jeff Solic's interpretation of a legal lap dance, all of which occurred one year before the charges were filed, outside of Sargent Jeff Solic's presence. The dances are lawful and permitted by business cabaret permit which permits "live entertainment of an erotic nature including exotic dancers, strippers." Austintown Zoning § 1901 ¶ 3(3).

FURTHER AFFIANT SAYETH NAUGHT.

  
James Vitullo

Sworn to and subscribed before me this 19<sup>th</sup> day of January, 2011.



ROBERT NEILL  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
June 24, 2013

  
Notary Public