

IN THE SUPREME COURT OF OHIO

Daries D. Pemberton, :  
 Relator, :  
 VS :  
 Tammy J. Carter, :  
 & :  
 C. Jeffrey Adkins, :  
 Respondents. :

CASE NO: 12-0547

---

ORIGINAL ACTION COMPLAINT

---

Daries D. Pemberton  
 586-280 R.C.I.  
 P.O. Box 7010  
 Chillicothe, Ohio 45601  
 Relator PRO/SE

Tammy J. Carter  
 1668 Dixon Run Road  
 Jackson, Ohio 45640  
 Respondent

C. Jeffrey Adkins  
 Gallia County Prosecuting Attorney  
 18 Locust Street, Room 1267  
 Gallipolis, Ohio 45631  
 Respondent

**RECEIVED**  
 APR 02 2012  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

**FILED**  
 APR 02 2012  
 CLERK OF COURT  
 SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

Daries D. Pemberton,

Relator,

VS

Tammy J. Carter,

&

C. Jeffrey Adkins,

Respondents.

:  
:  
:  
:  
:  
:  
:

CASE NO: \_\_\_\_\_

SUMMONS

SHEET ONE

To the aboved named Respondents, Tammy J. Carter and C. Jeffrey Adkins.

You are hereby Summons that a Complaint (a copy of which is attached and made a part hereof) has been filed against you in this Court by the Relator named herein.

You are required to serve upon the Relator's Attorney, or upon the Relator if he has no Attorney of record, a copy of your answer to the complaint within 21 days of beening served with this Summons. Said answer must be filed with this Honorable Court within 2 days after service on Relator or his Attorney.

The name and address of the Relator(s) Attorney is as followed:

Daries D. Pemberton  
586-280 R.C.I.  
P.O. Box 7010  
Chillicothe, Ohio 45601

If you fail to defend, Judgment by default will be taken against you for the relief demanded in the Complaint.

DATE: \_\_\_\_\_

\_\_\_\_\_  
CLERK OF COURTS

\_\_\_\_\_  
BY DEPUTY CLERK

IN THE SUPREME COURT OF OHIO

AFFIDAVIT OF DARIES D. PEMBERTON

I, Daries D. Pemberton, PRO/SE do hereby state that the following Events, Documents, are true and accurate copys and are based on peronally knowlegde

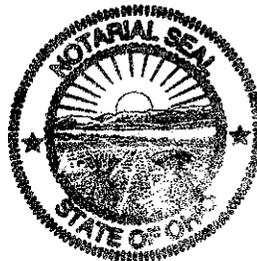
*Daries D Pemberton*

Daries D. Pemberton  
586-280 R.C.I.  
P.O. Box 7010  
Chillicothe, Ohio 45601

Sworn, or affirmed, and subscribed in my presentce this 28 day of March, 2012.

*Janet E Spearry*  
NOTARY PUBLIC

MY COMMISSION EXPIRES: 8/25/2013



Janet E. Spearry  
Notary Public - Ohio  
My Commission Expires 8-25-2013

Now comes Relator, Daries D. Pemberton, inPRO/SE and respectfully submits this Original Complaint Action against Tammy J. Carter and C. Jeffrey Adkins for the acts of Defamation of Character, Falsifying evidence, Falsifying testimony, Obstruction of Justice, Unauthorized possession and Control of anothers property, and Committing Fraud upon the Courts.

On February 22, 2008 Relator was Indicted by the Gallia County Grand Jury (see Exhibit A). On August 6, 2008 Relator entered into a Joint Plea Agreement with the State of Ohio (see Exhibit B), Gallia County Prosecuting Attorney C. Jeffrey Adkins. Relator filed a direct Appeals on September 26, 2008.

In December 2008 Relator sent Christmas cards and letters to his two (2) daughters, that him and Ms. Carter has together, and Ms. Carter's son Tyler Christian Relator's step-son, at their last known address (3291 St. Rt. 233 Patriot, Ohio 45658). Then in January 2009 Relator sent his daughter's Valentine's Day cards and letters.

In March 2009 Relator's court appointed appeal counsel Ms. Claire R. Cahoon of the Ohio Public Defender's Office came to Warren Correctional Institution to speak to him about his appeal options. During her visit she informed Relator to stop writing his daughters and that the no-contact order out of Gallia Co. applied to his children, and the letters that he sent his daughter's and Ms. Carter's son Tyler Christian, was in the Gallia Co. Prosecutor's files.

Relator wrote the Gallia County Prosecutor's Office to see if this no-contact order applied to his daughter's or just his step son Tyler Christian and how and who gave them to the Prosecutor's Office. As of today Relator has not received any response to his request from the Gallia County Prosecutor's Office, Relator filed multiple request for this information. On January 3, 2010 the Gallia County Sheriff's Office responded to one of the Relator's Public Records request (see Exhibit C). They informed him that there is "no records found on file" for his request or any complaints made against him for writing his children.

On November 22, 2010 Respondent Tammy J. Carter's current husband Brian D. Carter

filed a Petition for adoption on relator children within the Jackson County Court of Common Pleas, Juvenile Division. In Mr. Carter's petition he claimed that Relator (father) has failed to communicate and support his children within one (1) year prior to the filing of the Petition of adoption, he claimed that Mr. Pemberton has abandoned his children and his duties as their Father. On December 2, 2010 Mr. Pemberton filed an Objection on the Petition of adoption. At that time the court scheduled a hearing to be held on January 10, 2011 on the Petition for adoption.

On December 8, 2010 Relator wrote Ms. Cahoon and asked her who in Gallia Co. told her to tell Relator to stop writing his children. Exhibit D is Ms. Cahoon's response. In her response she stated that "the Gallia County Prosecutor's file included cards that you sent to your daughter's. Therefore, I thought that it was important to remind you of the no-contact order".

At the hearing on January 10, 2011 Ms. Carter stated during her testimony and while under oath that Gallia County "tried to change you (Relator) with neglect" against his children in 2008 (see Exhibit E). On January 18, 2011 the Jackson County Court of Common Pleas, Juvenile Division made it's ruling and Granted the petition for adoption and said that Mr. Pemberton's consent was not required due to him being incarcerated.

On February 4, 2011 Relator filed a grievance on Respondent C. Jeffrey Adkins with the Supreme Court of Ohio, Disciplinary Counsel. In the complaint Relator explained how Mr. Adkins files includeed the cards and letters that he sent to his children over the past 2 1/2 years, also that Ms. Adkins never informed Relator that the no-contact order applied to his children and that he had in his possession the cards and letters that he sent them in the past. Relator explained to the Disciplinary Counsel that Mr. Adkins knew that he (Relator) was writing his children because he had the cards and letters in his possess. By relator writing his children he was breaking this no-contact order, and that Mr. Adkins, as Gallia Co. Prosecuting Attorney, failed to notify Relator or charge him for breaking this no-contact order

by communicating with his children. Relator included Ms. Cahoon's letter, Exhibit D, with the Grievance. Relator made multiple request on this no-contact order and info on who gave the cards and letters to the Gallia Co. Prosecutor's Office. Mr. Adkins or anyone at the Prosecutor's office <sup>NEVER</sup> responded back to Relator's request until after he filed the grievance on Mr. Adkins.

On February 17, 2011 Relator filed a timely Notice of Appeal within the Fourth District Court of Appeals, Case Nos: 11-CA-5, 11-CA-6. On March 4, 2011 Relator again wrote the Gallia County Prosecuting Attorney's Office trying to obtain any information on that office having the cards and letters that he sent to his kids. Exhibit F, dated March 17, 2011 is the Ohio Supreme Court, Disciplinary Counsel's response to the grievance that Relator filed on Mr. Adkins. In their response they stated " In your complaint, you have alleged what amounts to a claim of prosecutorial misconduct".

Exhibit G is the response dated March 23, 2011 from Ms. Terri James, secretary for the Gallia County prosecuting Attorney's Office. Relator has done wrote both, Gallia Co. Sheriff's Office (see exhibit C) and the Gallia Co. Common Pleas Court as Ms. James insisted him to do. Relator rewrote the Gallia Co. Prosecuting Attorney's Office on March 31, 2011 and addressed it directly to Mr. C. Jeffrey Adkins and sent him a copy of the letter he received from Ms. Cahoon, Exhibit D.

On April 6, 2011 (see Exhibit H) Mr. Adkins (Respondent) responded to Relator March 23 letter. In Mr. Adkins response he stated " If you can provide me with more information as to when we were to have received these cards and letters, maybe it shed some light on this situation". When Relator wrote Mr. Adkins on March 31, 2011 he told Mr. Adkins when he wrote his children, what he sent them and when Ms. Cahoon told him about the prosecutor's file including the cards and letters that he sent, along with Ms. Cahoon's letter, Exhibit D. Mr. Adkins stated " I am not sure where she (Ms. Cahoon) received this information" on the cards and letters being in a

file and being in his office. So Relator rewrote Ms. Cahoon asking how she knew that the Gallia Co. Prosecuting Attorney's Office had the cards and letters in a file, along with Mr. Adkins April 6, 2011 (Exhibit H) letter.

Also on April 6, 2011 Ms. Carter (Respondent) submitted a sworn Affidavit (see Exhibit I) to the Fourth District Court of Appeals. In Ms. Carter's sworn Affidavit she stated " Mr. Pemberton was initially charged with Child Endangerment, but because we all agreed, it was dropped due to his plea bargain". Exhibit A shows and proves that Relator, Mr. Pemberton was not " initially " charged with Child Endangerment against his children and Exhibit B shows and proves that it was not " dropped due to his plea bargain" as Ms. Carter stated. Relator, Mr. Pemberton was never charged with any crimes against his children at any time.

On April 20, 2011 Ms. Cahoon responded to Relator's April 10, 2011 letter (see Exhibit J). Ms. Cahoon states "I have already explained to you that I saw the cards that you sent to your children when I reviewed the prosecutor's file in Gallia Co.". On April 26, 2011 Relator rewrote Mr. Adkins Office and sent Exhibit's D & J (Ms. Cahoon's letters), as of today Relator has not got any response back from Mr. Adkins or his office, Gallia County Prosecuting Attorney's office. By these documents being in the prosecutors file, the Respondents have now committed Mail fraud. The letters in question were addressed directly to the children, not to the Respondents. Ms. Carter as the guardian can open these letters only with the intent of reading them to the recipients, the children. Mr. Adkins can not open or read these letters at all. Therefore, by the Respondents opening, reading, and possessing said letters, without reading these to the children, they have now committed mail fraud.

On December 15, 2011 the Fourth District Court of Appeals rendered its Decision and Judgment on Relator's appeal, Case Nos: 11-CA-5 & 11-CA-6. They ruled in favor with the trial court due to that Relator couldn't produce the documents showing that he had tried to send cards and letters to his children. Relator filed a Motion for Reconsideration on December 28, 2011. On January 27, 2012 Relator filed a timely

Notice of Appeal and Memorandum in Support of Jurisdiction within the Ohio Supreme Court, Case Nos: 12-0183. On February 13, 2012 the Fourth District Court of Appeals ruled on Relator's Motion for Reconsideration (filed Dec 28,2011). The Ohio Supreme Court denied Jurisdiction on Relator's Appeal on March 7, 2012. On March 16, 2012 Relator filed a motion for Reconsideration with the Ohio Supreme Court.

Within the Fourth District Court of Appeals, Decision and Judgment Entry filed on December 15, 2011 the Court rendered it's decision based on the fact that Relator could not provide documentation that correspondence did in fact occur between himself and his children, that a no-contact order provided was not sufficient and the Trial Court refused to obtain a certified copy of said order even though they claimed they would, and because the Relator was not capable of admitting an Officer of the Courts (Ms. Cahoon, Attorney at Law) statement within a letter to verify testimony given. Exhibits K-N, pages from the Fourth Dist. Court of Appeals Decision and Judgment filed on December 15, 2012, page 2,10,11,12.

If the Respondents within this action would not have committed all of the illegal acts as mentioned within this action, the Relator would have in fact been able to provide said proff and documents in order to prevent the ruling mention above. This in fact shows injury upon the Relator, not including the actual injury of loosing his children.

Due to the illeged acts of both Respondents, Tammy J. Carter and C. Jeffrey Adkins, the Relator has suffered great and severe emontional and mental trauma with loosing his parental right's of his children. Therefore, Relator respectfully requests that this Honorable Court will find the respondents guilty of Deflamation of Character, Falsifying evidence and Testimony, Obstruction of Justice, Unauthorized possession and Control of anothers property, Committing Fraud upon the Courts, and Committing Mail Fraud.

The Ralator respectfully requests relief in the amounts of compensation of **ONE (1) MILLION DOLLARS** for Pain and Suffering, **ONE (1) MILLION DOLLARS** for Punitive Damages,

and **ONE (1) MILLION DOLLARS** for Defamation of Character from each Respondents, for a grand total of **SIX (6) MILLION DOLLARS** (Three (3) million from each Respondent).

In addition Relator respectfully requests an Order from this Honorable Court showing that the two (2) Respondents were found guilty of these acts and that Case Nos: 2010-AD-0016 & 2010-AD-0017 within the Jackson County Probate Court should be reversed and overturned.

The Relator prays that this relief is granted in full by all accounts.

Respectfully Submitted,

  
DARIES D. PEMBERTON **PRO/SE**  
RELATOR 586-280  
P.O. Box 7010  
Chillicothe, Ohio 45601

Case No. 08 CR

January Term, 2008

COMMON PLEAS COURT

EXHIBIT A

Gallia County, Ohio

STATE OF OHIO

VS.

DARIES D. PEMBERTON  
3546 County Road 64  
Willow Wood, OH 45696  
SSN 290-72-  
DOB 04/10/76

Indictment for a violation of Section 2923.02 of the Ohio Revised Code, "Attempted Aggravated Murder," (2 counts); a violation of Section 2911.11(A)(1) of the Ohio Revised Code, "Aggravated Burglary," (2 counts); a violation of Section 2903.11(A)(2) of the Ohio Revised Code, "Felonious Assault," (2 counts); and a violation of Section 2905.02(A)(2) of the Ohio Revised Code, "Abduction."

E. A. Tulp  
Asst. Prosecuting Attorney

A TRUE BILL

David H. McQuaid  
Foreman Grand Jury

This Bill of Indictment found upon testimony sworn and sent before the Grand Jury at the request of the Prosecuting Attorney.

David H. McQuaid  
Foreman of the Grand Jury

File \_\_\_\_\_, 20\_\_\_\_

NOREEN M. SAUNDERS  
Clerk

by \_\_\_\_\_  
Deputy

CLERK OF COURTS  
GALLIA COUNTY, OHIO

08 DEC -5 AM 9:13

COURT OF APPEALS

FILED  
CLERK OF COURTS  
GALLIA COUNTY, OHIO

2008 FEB 22 AM 9:05

COMMON PLEAS COURT

IN THE COURT OF COMMON PLEAS, GALLIA COUNTY, OHIO

STATE OF OHIO,

PLAINTIFF,

CASE NO. 08 CR 3

VS.

Daries D. Pemberton ,

DEFENDANT.

GUILTY PLEA

J323 P. 903

I withdraw my former not guilty plea and enter a guilty plea to the following offense:

Count or Specification: Count V  
Count VI  
Count VII

Offense / Specification: Felonious Assault  
Felonious Assault  
Abduction



RECEIVED  
CLERK OF COURTS  
JUL 20 2008 5 AM 8:11

ORC Section 2903.11(A)(2)  
2903.11(A)(2)  
2905.02(A)(2)

Level: Count V, Felony of the second degree.  
Count VI, Felony of the second degree.  
Count VII, Felony of the third degree.

Maximum Penalty: I understand that the maximum penalty as to each count is as

follows:

Offense/Specification: Felonious Assault  
Felonious Assault  
Abduction

Maximum Prison Term (Yrs/Mos): Count V and Count VI, 2, 3, 4, 5, 6, 7, or 8 years  
Count VII, 1, 2, 3, 4, or 5 years

Maximum Fine: Count V and Count VI, \$15,000.00  
Count VII, \$10,000.00

License Suspension:

Prison Term Mandatory/Consecutive: Mandatory gun specification 3 years to run  
consecutive with count V and Count VI.

**Prison Term Presumed Necessary:**

Prison terms for multiple charges, even if consecutive sentences are not mandatory, may be imposed consecutively by the Court.

Court costs, restitution and other financial sanctions including fines, day fines, and reimbursement for the cost of any sanctions may also be imposed.

I understand that if I am now on felony probation, parole, under a community control sanction, or under post release control from prison, this plea may result in revocation proceedings and any new sentence could be imposed consecutively. I know any prison term stated will be served without good time credit.

**Notice to Defendant:** If you are not a citizen of the United States you are hereby advised that conviction of the offense to which you are pleading guilty (or no contest, when applicable) may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

**Post Release Control:** In addition, a period of supervision by the Adult Parole Authority after release from prison may be mandatory. If I am sentenced to prison for a felony 1 or felony sex offense, after my prison release I will have 5 years of post release control under conditions determined by the Parole Board. If I am sentenced to prison for a felony 2 or felony 3 which involved causing or threatening physical harm, I will have mandatory post release control of 3 years. If I receive prison for a felony 3, 4, or 5, I may be given up to 3 years of post release control. A violation of any post-release control rule or condition can result in a more restrictive sanction while I am under post release control, and increased duration of supervision or control, up to the maximum term and re-imprisonment even though I have served the entire stated prison term imposed upon me by this Court for all offenses. If I violate conditions of supervision while under post release control, the Parole Board could return me to prison for up to nine months for each violation, for a total of ½ of my originally stated prison term. If the violation is a

new felony, I could receive a prison term of the greater of one year or the time remaining on post release control, in addition to any other prison term imposed for the offense.

**Community Control:** If this Court is not required by law to impose a prison sanction, it may impose community control sanction or non-prison sanctions upon me. I understand that if I violate the terms or conditions of a community control sanction, the Court may extend the time for which I am subject to this sanction up to a maximum of 5 years, impose a more restrictive sanction, or imprison me for up to the maximum stated term allowed for the offenses as set out above.

I understand the nature of these charges and the possible defenses I might have. I am satisfied with my attorney's advice and competence. I am not under the influence of drugs or alcohol. No threats have been made to me. No promises have been made except as part of this plea agreement stated entirely as follows:

In consideration of the Defendant's plea of guilty to Count V, Felonious Assault, the defendant shall be sentenced to eight (8) years incarceration and admit to a three (3) years gun specification. In consideration of the Defendant's plea of guilty to Count VI, Felonious Assault, the Defendant shall be sentenced to eight (8) years incarceration and admit to a three (3) years gun specification. In consideration of the Defendant's plea of guilty to Count VII, Abduction, the defendant shall be sentenced to one (1) year incarceration to run consecutive to Count 5 and count VI. Count V and Count VI is to run consecutive to each other for a total of twenty two (22) years. The total sentence for all three counts being twenty three (23) years incarceration. Upon Defendant's plea of guilty to Count V, Count VI and Count VII the State dismisses Count I, Count II, Count III and Count IIII of the indictment.

I understand by pleading guilty I give up my right to a jury trial or court trial, where I could confront and have my attorney question witnesses against me, and where I could use the power of the court to call witnesses to testify for me. I know at trial I would not have to take the witness stand and could not be forced to testify against myself and that no one could comment if I chose

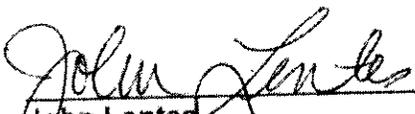
not to testify. I understand I waive my right to have the prosecutor prove my guilt beyond a reasonable doubt on every element of each charge, the right to confront and cross examine the State's witnesses who testify against my interests, and I waive my right to an appeal.

By pleading guilty I admit to committing the offense and will tell the court the facts and circumstances of my guilt. I know the judge may either sentence me today or refer my case for a pre-sentence report. It is my decision to plead guilty thereby placing myself completely and without reservation of any kind upon the mercy of the Court with respect to punishment. ***I understand that the recommendation of the Prosecuting Attorney is not binding upon the Court and that the Court, and the Court alone, determines the appropriate sentence.*** This represents my own will and best judgment. I understand the consequences of a conviction upon me if I am not a U.S. citizen. I enter this plea voluntarily.

Signed and Date:

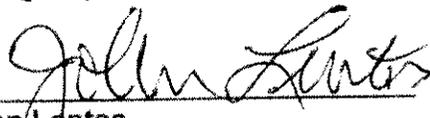
  
\_\_\_\_\_  
Daries D. Pemberton, Defendant

8/5/08  
\_\_\_\_\_  
Date Signed

  
\_\_\_\_\_  
John Lentz  
Attorney for Defendant

  
\_\_\_\_\_  
Jeff Adkins, #0036744  
Prosecuting Attorney  
Gallia County, Ohio

I hereby certify that I have counseled my client to the best of my professional ability with respect to the facts and laws of this case. I have also diligently investigated his cause and assertions and possible defenses. I represent that my client is competent to proceed with this change of plea, as indicated hereinabove, and in my opinion, he acts knowingly, voluntarily and intelligently in such manner.

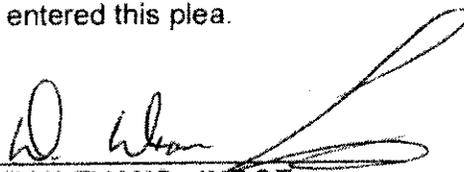


---

**John Lentes**  
Attorney for Defendant

**JUDGMENT ENTRY OF GUILTY**

The Court finds that this day the defendant, in open court, was advised of all constitutional rights and made a knowing, intelligent, and voluntary waiver of those rights pursuant to Criminal Rule 11. The plea is accepted and is ordered filed. The Court finds the defendant guilty of each offense to which defendant has entered this plea.

  
D. DEAN EVANS, JUDGE

Gallia County Sheriff's Office  
Joseph R Browning, Sheriff,  
18 Locust St  
Gallipolis, OH 45631  
740-446-4617

PUBLIC RECORDS REQUEST

I Darries D. Pemberton would like to request the following public records.  
(Printed name of person making request)

Between December 2008 and March 2009 at least one  
complaint was filed against me within your office where  
I had corresponded/communicated with Candence and Makymna,  
Pemberton, as well as Tyler Christian at 3291 St. Rt. 233, in Patriot,  
Ohio, I would like to obtain a copy of all complaints  
that comply with these people even if they are outside  
of the dates mentioned or for a different address.  
THE COMPLAINTS WERE MADE BY EITHER TAMMY CHRISTIAN OR JANICE HAYSLI.  
I understand that there may be a charge for some of the materials requested. I BELIEVE.

James D. Padgett 586-280  
Signature of person making request

12-15-2010 THANK'S  
Date Z

R.C.T. P.O. Box 7010  
Address  
Chillicothe, Ohio 45601

Phone number \_\_\_\_\_

(Sheriff's Office personnel only)

Signature of employee receiving Public Records Request \_\_\_\_\_

Date \_\_\_\_\_

Fee (if any) \_\_\_\_\_

Approved by \_\_\_\_\_

Date \_\_\_\_\_

plcavoto

01-03-10

Completed by \_\_\_\_\_

Date \_\_\_\_\_

NO RECORDS FOUND ON FILE



Office of the Ohio Public Defender  
250 East Broad Street - Suite 1400  
Columbus, Ohio 43215

[www.opd.ohio.gov](http://www.opd.ohio.gov)

(614) 466-5394

Fax (614) 752-5167

TIMOTHY YOUNG  
State Public Defender

December 13, 2010

Daries Pemberton  
586-280  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, Ohio 45601

Dear Mr. Pemberton:

I recently received your letter dated December 8, 2010. In response to your questions, no one at the Gallia County Sheriff's Office told me to tell you to stop contacting your daughters. Rather, when I came to visit you, I reminded you that you were ordered to have no contact with your daughters as a part of your sentence.

The Gallia County Prosecutor's file included cards that you sent to your daughters. Therefore, I thought that it was important to remind you of the no contact order. I do not know who gave those cards to the prosecutor's office.

Your file with this office is closed. I wish you the best of luck in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire R. Cahoon", with a long horizontal flourish extending to the right.

Claire R. Cahoon  
Assistant State Public Defender

IN THE COURT OF COMMON PLEAS  
JACKSON COUNTY, OHIO  
JUVENILE DIVISION

IN THE MATTER OF  
THE ADOPTION OF

Case No. 2010 AD 0016  
2010 AD 0017

MAKYNNA CARTER and  
CADENCE CARTER

TRANSCRIPT OF PROCEEDINGS

This 10th day of January, 2011, this matter came before the Court for hearing on Petitions for Adoption filed by Jill Shriver, attorney for Plaintiff, in Case No. 2010 AD 0016 and 2010 AD 0017, with Stephen D. Michael, Judge, presiding in the Common Pleas Court, Probate Division, Jackson County, Ohio, and the following proceedings were had:

APPEARANCES:

Jill Shriver  
Attorney for Petitioner  
311 Water Street, Suite B  
Jackson, OH 45640

MR. PEMBERTON: No, I understand, that's fine, that's fine, your Honor.

JUDGE MICHAEL: Basically, you can ask questions about what she just testified to...ok.

MR. PEMBERTON: Ok, you said the kids witnessed this, ok?

Was I ever charged with anything to do with my kids? Was it ever brought up, anything at the civil or the criminal...about my kids?

MRS. CARTER: They tried to charge you with neglect...

MR. PEMBERTON: No, they did not, I had the original indictment, your Honor, and...

MRS. CARTER: It was assault, two counts of felonious assault and abduction.

MR. PEMBERTON: And abduction, I was not charged with nothing to do with my kids, no way.

JUDGE MICHAEL: Well, I'm going to...that's fine. No...the issue again...don't confront the witness. Ask her questions. That's fine. You can step down now, ok? Be careful, that's an awkward place to be. Thank you very much. And I'll look at the records.

# Disciplinary Counsel

THE SUPREME COURT OF OHIO

250 CIVIC CENTER DRIVE, SUITE 325  
COLUMBUS, OHIO 43215-7411  
(614) 461-0256  
FAX (614) 461-7205  
1-800-589-5256

March 17, 2011

DISCIPLINARY COUNSEL  
JONATHAN E. COUGHLAN  
CHIEF ASSISTANT DISCIPLINARY COUNSEL  
LORI J. BROWN  
SENIOR ASSISTANT DISCIPLINARY COUNSEL  
ROBERT R. BERGER  
JOSEPH M. CALIGIURI

ASSISTANT DISCIPLINARY COUNSEL  
STACY SOLOCHEK BECKMAN  
CAROL A. COSTA  
HEATHER L. HISSOM  
PHILIP A. KING  
KAREN H. OSMOND  
AMY C. STONE

## PERSONAL AND CONFIDENTIAL

Mr. Daries Pemberton A586-280  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, OH 45601

Re: Charles Jeffrey Adkins, Esq.  
ODC File No. B1-0302

Dear Mr. Pemberton:

Your grievance regarding Attorney Charles Jeffrey Adkins was received in our office on February 4, 2011.

Please be advised that the authority of this office is limited to investigating alleged misconduct and violations of the Code of Professional Responsibility, the Ohio Rules of Professional Conduct and the Code of Judicial Conduct by attorneys and judges. Therefore, only violations of specific rules governing the conduct of attorneys and judges can be addressed by this office.

In your complaint, you have alleged what amounts to a claim of prosecutorial misconduct. Please be advised that prosecutorial misconduct is a claim that must be raised on appeal. Once you have fully litigated this claim and have achieved a judicial finding of misconduct, you may send us a certified copy of the judgment entry. We will reopen our investigation at that time.

For the aforementioned reasons, your complaint is dismissed, and our file on this matter is closed.

Sincerely,



Amy C. Stone  
Assistant Disciplinary Counsel

---

ACS/em

cc: Charles Jeffrey Adkins, Esq.



JEFF ADKINS  
GALLIA COUNTY PROSECUTING ATTORNEY

GALLIA COUNTY COURTHOUSE  
18 LOCUST STREET, ROOM 1267  
GALLIPOLIS, OHIO 45631-1267

740-446-0018  
FAX 740-441-2050

SUE E. MCKITRICK  
INVESTIGATOR

LISA E. REUTER  
DIRECTOR  
VICTIM'S ASSISTANCE

ASSISTANTS  
ERIC R. MULFORD  
PAT STORY

March 23, 2011

Daries Pemberton #586-280  
Ross Correctional Institution  
16149 State Route 104, North  
P.O. Box 7010  
Chillicothe, OH 45601

Dear Mr. Pemberton:

This letter is in response to your letter of March 4, 2011 in which you requested information you believe to be in our records. We have searched through your file more than once and we have not been able to locate the letter(s) and/or card(s) you are requesting. You may wish to direct your request to the Sheriff's Office or the Gallia County Common Pleas Court as they may have retained these documents in their files.

Please be advised if we had this information we would gladly forward copies to you. If you have any further questions, please contact this office.

Sincerely,

Terri James  
Secretary



JEFF ADKINS  
GALLIA COUNTY PROSECUTING ATTORNEY

GALLIA COUNTY COURTHOUSE  
18 LOCUST STREET, ROOM 1267  
GALLIPOLIS, OHIO 45631-1267

740-446-0018  
FAX 740-441-2050

SUE E. MCKITRICK  
INVESTIGATOR

LISA E. REUTER  
DIRECTOR  
VICTIM'S ASSISTANCE

ASSISTANTS  
ERIC R. MULFORD  
PAT STORY

April 6, 2011

Daries D. Pemberton, #586-280  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, OH 45601

Dear Mr. Pemberton:

I have received your letter of March 31, 2010, requesting cards and letters you believe to be in the possession of the Prosecutor's Office. As I told you before, we do not have these items you are requesting. We have thoroughly went through your file and have been unable to locate these items. In your letter you state that Ms. Cahoon, Assistant State Public Defender told you that these items were in the possession of my office. I am not sure where she received this information.

If you can provide me with more information as to when we were to have received these cards and letters, maybe it will shed some light on this situation. I am not sure why you think these items were provided to my office for keeping. Once again, unless these items have been misplaced, we do not have them.

Sincerely,

Jeff Adkins  
Prosecuting Attorney  
Gallia County, Ohio

JA/tlj

AFFIDAVIT of, TAMMY JANE CARTER

**EXHIBIT I**

STATE of OHIO            )  
                                  )    SS.  
COUNTY of JACKSON    )

I Tammy Jane Carter, do hereby certify under the penalty of perjury that the information in this affidavit is True and Correct to the best of my knowledge.

The child support order in question was lifted because Mr. Pemberton and I lived in the same household and holds no relevance to this adoption case.

The D.N.A test that Mr. Pemberton payed for , was for his benefit, there was never a doubt to me as to who Cadence Carter belongs to. This also has nothing to do with this adoption case.

Brian and I did not and does not want child support from Daries Pemberton, I think he has misunderstood why this adoption has taken place, it has nothing to do with money.

Mr. Carter loves and supports C.C. and M.C. and they love him, he (Brian) is all they know as Daddy and they too wanted for him to adopt them, so that they could have our last name. Makynna does not have any memory of Mr. Pemberton and what memory Cadence has of him, she simply states him as "that bad guy".

I have not had any contact with Mr. Pembertons family and to my knowledge my family has no contact with them either.

Daries claims that he has sent Cadence and Makynna cards and letters and that they were sent to the Gallia County Prosecuters Office, I have not seen any of these things and I have been in contact with the GCPO and they say no such items exist , that they also have not seen them.

The No Contact Order was put in place because of the crime that Daries D. Pemberton committed, in which Cadence and Makynna was there in the car twelve inches away from where he started, when he held a 12 guage shotgun to my head and threatened to kill me, and pulled me by the hair of my head into the residence. (My son was also in the vehicle). C.C. , M.C. and Tyler were all taken from the scene to the Gallia County Sherriffs Office, where my family memeber Ralph Denver Viars had to pick them up. See Exhibit A. Mr. Pemberton was intially charged with Child Endangerment, but because we all agreed , it was dropped due to his plea bargain.

Mr. Pemberton claims that Cadence and Makynna Carter are the most important thing in his life, but they were the least of his worries when he committed his crime, and tried to kill their mother and grandfather. To claim that he is not guilty of the crime he committed is absurd, he was caught at the scene. See Exhibit B

The fact that his Attorney , John Lenten was disbarred also had nothing to do with Daries D. Pemberton

Futhermore, I do feel it is in the best interest of Cadence Nikole Carter and Makynna Dawn Carter for this adoption to stay as is and to allow Brian Carter to raise them as his. Brian is a wonderful Father to C.C and M.C. and loves them as his own, he is their father and we are a family. I am asking that you not take that away from them, they were so happy when we told them that the adoption went through and we have already changed everything with their names on them legally.

As I have already stated if Mr. Pemberton was truly worried about these two little girls and loved them as he states, he would have never committed the crime in which he is imprisoned for , for now the next 20 years (23 total). Cadence and Makynna will be adults.

We are asking the Court not to overturn this adoption, Cadence and Makynna have been traumatized and scarred enough already because of Mr. Daries D. Pemberton, please allow these children to try to live a happy life and put this incident behind them. We feel it is in their best interest.

Respectfully,

*Sammy Carter*  
Signature

Before me a Notary Public in and said County and State. Personally appeared was the above , who acknowledged that she did sign the foregoing document and that the same is is her free and voluntary act.

In testimony whereof , I have here unto set my hand and official seal on this

6 day of April, 2011



Michele L. Buckler  
Notary Public, State of Ohio  
My Commission Expires  
October 28, 2015

*Michele L. Buckler*  
Notary Republic



Office of the Ohio Public Defender  
250 East Broad Street - Suite 1400  
Columbus, Ohio 43215

[www.opd.ohio.gov](http://www.opd.ohio.gov)

(614) 466-5394

Fax (614) 752-5167

TIMOTHY YOUNG  
State Public Defender

April 20, 2011

Daries Pemberton  
586-280  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, Ohio 45601

Dear Mr. Pemberton:

I recently received your letter dated April 10, 2011. I have enclosed a copy of your indictment at your request. In the future, please direct requests for documents to the Clerk of Courts, Gallia County Courthouse, 18 Locust Street, Room 1290, Gallipolis, Ohio 45631.

Regarding your other questions, I have already explained to you that I saw the cards that you sent to your children when I reviewed the prosecutor's file in Gallia County. In fact, I explained that to you in my December 13, 2010 letter when you asked. I told you that again in March of this year when I mailed a copy of that letter to you at your request.

I cannot answer general legal questions about your pro se litigation, as I do not represent you in those cases. Your file with this office is closed, and I wish you good luck in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Claire R. Cahoon", written over a horizontal line.

Claire R. Cahoon  
Assistant State Public Defender

~~the court denied him access to the folder during a hearing on the petition.~~ Father argues that the court violated his "Sixth Amendment" right to "conduct his own defense." However, the Sixth Amendment applies to criminal prosecutions, not adoption proceedings. ~~Moreover, there is no evidence the court denied Father access to the folder as opposed to Father simply forgetting to bring it to the hearing.~~ In fact, the court allowed Father to submit the folder after the hearing concluded. Therefore, we reject this argument.

{13} Father also contends that the trial court erred when it found his consent to the adoptions was not required because there was no justifiable cause for his failure to contact the children in the year immediately preceding the filing of the petitions. Father claims he tried to send the children letters and cards but the Gallia County Prosecutor's Office seized these items under a "no contact" order stemming from his criminal case involving the children's mother and maternal grandfather. In other words, Father argues his failure to communicate with the children is justified. However, the only evidence that supports Father's contentions is his own self-serving testimony, which the trial court was free to disbelieve. Thus, we cannot say that the court's finding was against the manifest weight of the evidence. This decision renders moot Father's additional contention that the court erred when it found his consent was also not required because there was no justifiable cause for his failure to provide maintenance and support for the children in the requisite one-year period.

{14} Finally, Father complains that the trial court failed to conduct a best interest hearing or make a best interest finding before it granted the adoption petitions. However, it is apparent from the record that the trial court conducted the best interest

parental consent is unnecessary for an adoption unless it is against the manifest weight of the evidence. *S.L.N.* at ¶22, citing *Bovett* at paragraph four of the syllabus. “In other words, if the trial court’s finding is supported by some competent credible evidence, that decision will survive appellate review.” *Id.*, citing *Shemo v. Mayfield Hts.*, 88 Ohio St.3d 7, 10, 2000-Ohio-258, 722 N.E.2d 1018.

{¶19} We recognize that the trial court, as trier of fact, “is obviously in a better position than the appellate court to view the witnesses and to observe their demeanor, gestures and voice inflections, and to use those observations in weighing the credibility of the proffered testimony.” *Id.* at ¶23, citing *Myers v. Garson*, 66 Ohio St.3d 610, 615, 1993-Ohio-9, 614 N.E.2d 742. “Accordingly, we defer to the trial court on issues of weight and credibility.” *Id.* A trial court is “free to believe all, part, or none of the testimony of any witness who appears before it.” *Id.*, citing *Rogers v. Hill* (1998), 124 Ohio App.3d 468, 470, 706 N.E.2d 438.

{¶20} Although Father contends that he sent the children letters and cards during the year preceding the filing of the adoption petition, he appears to concede that the children never received these communications. Therefore, he does not contend that the petitioner failed to establish by clear and convincing evidence that he failed to contact his children during the year preceding the filing of the petition. However, Father claims the Gallia County Prosecutor’s Office intercepted the letters and cards based on a “no contact” order stemming from his criminal case involving T.C. and the children’s maternal grandfather. Thus, Father contends that he had a justifiable cause for not communicating with the children.

{¶21} Father claims a “no contact” order prohibits contact with T.C.’s “immediate

family," which includes the children.<sup>4</sup> Some courts have held that a "no contact" court order is justifiable cause for a parent's failure to communicate with his children. *In re K.K.*, Lorain App. Nos. 05CA008849 & 05CA008850, 2006-Ohio-1488, at ¶19. However, the only evidence that supports Father's claim that this order existed or that the Gallia County Prosecutor's Office in fact seized letters and cards is Father's testimony.

{122} After the hearing on the petition, Father submitted a folder containing other "evidence" to the trial court. This folder included a letter purportedly sent by an Assistant State Public Defender stating that Father was "ordered to have no contact with [his] daughters" and that the Gallia County Prosecutor's Office had a file that "included cards that [Father] sent to [his] daughters." The trial court found that none of the documents Father submitted were "relevant" and "did not consider them in making its findings." We disagree with the court's relevancy finding concerning the letter because it tends to make the existence of the no contact order and confiscated communications more probable. See Evid.R. 401. However, the letter clearly constitutes inadmissible hearsay. See Evid.R. 801(C). Moreover, it does not appear that the petitioner ever received a copy of the documents Father submitted or had an opportunity to object to them.

{123} Father attached what appears to be a copy of the alleged "no contact" order to his appellate brief. However, he did not offer the order as evidence at the trial level. Therefore, it is not part of the trial record, and we cannot consider it. See App.R.

9.5

<sup>4</sup> At the hearing on the petition, Father indicated he believed the order did not include his children and the prosecutor's office improperly seized the letters and cards.

<sup>5</sup> The parties included many other documents in their briefs that we cannot consider because they are not part of the record. Father, T.C., and B.C. submitted affidavits. Father also submitted a copy of a docket

{124} Thus the only evidence of the "no contact" order and confiscated cards and letters was Father's own self-serving testimony, which the trial court was free to disbelieve. See *S.L.N.*, supra, at ¶23. Therefore, the trial court's finding that Father's consent to the adoption was unnecessary because he failed, without justifiable cause, to communicate with his children for the requisite time period was not against the manifest weight of the evidence. We overrule Father's first assignment of error to the extent it challenges this finding. This decision renders moot Father's additional contention that the court erred when it found that his consent was not required because he failed, without justifiable cause, to provide for the maintenance and support of the children for the requisite time period.

#### VI. Best Interest

{125} In his third assignment of error, Father contends that the trial court never held a best interest hearing and never made a best interest finding before it granted the adoption petitions. R.C. 3107.11(A) provides:

After the filing of a petition to adopt an adult or a minor, the court shall fix a time and place for hearing the petition. \* \* \* At least twenty days before the date of hearing, notice of the filing of the petition and of the time and place of hearing shall be given by the court to all of the following:

- (1) Any \* \* \* person whose consent to the adoption is required by this chapter but who has not consented;
- (2) A person whose consent is not required as provided by division (A), (G), (H), or (I) of section 3107.07 of the Revised Code and has not consented;

\* \* \*

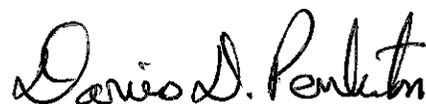
{126} R.C. 3107.14(C) provides:

If, at the conclusion of the hearing, the court finds that the required

CERTIFICATE OF SERVICE

I, Daries D. Pemberton, certify that a true copy of this ORIGINAL ACTION COMPLAINT was sent by ordinary U.S. mail to the OHIO SUPREME COURTS, CLERK OF COURT on this 29 day of March, 2012. Relator is requesting the Clerk of Courts to serve the Respondents by certified mail, Tammy J. Carter at 1668 Dixon Run Road Jackson, Ohio 45640 and C. Jeffrey Adkins at 18 Locust Street, Room 1267 Gallipolis, Ohio 45631 and to forward Relator a copy of the returned signed Certified mail slip showing that Respondents was served.

Respectfully Submitted,



Daries D. Pemberton PRO/SE  
Relator 586-280  
P.O. Box 7010  
Chillicothe, Ohio 45601