ORIGINAL

THE SUPREME COURT OF OHIO

STATE OF OHIO	:	Case Nos. 2011-1504 2011-1593
Appellee	:	
vs.	:	On Appeal from the Summit County Court of Appeals,
JILLIAN D. HOBBS	:	Ninth Judicial District Case No. 25379
Appellant	:	

FILED
NOV 01 2012
CLERK OF COURT
SUPREME COURT OF OHIO

APPELLANT'S MOTION FOR EXTRAORDINARY FEES

On August 5, 2011 the court of appeals issued a Journal Entry finding conflict; a copy was filed here on September 2, 2011 in Case No. 2011-1504. On September 19, 2011 a separate notice of discretionary appeal with memorandum in support of jurisdiction was filed in Case No. 2011-1593. On October 19, 2011 this Court determined that a conflict existed and on November 22, 2011 the discretionary appeal was accepted and briefing consolidated with 2011-1504. On December 15, 2011 the undersigned was privileged to be appointed by this Court as appellant's counsel in the consolidated cases. A decision issued August 29, 2012 and motions for reconsideration were denied October 24, 2012.

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Movant seeks an award of fees in excess of the maximum assigned counsel fees.

Local Rule 8.04(D) (10) of the Summit County Court of Common Pleas (available on its website) provides for $1250.00 for appellate representation. It does not distinguish between appeals to the Ninth District and appeals to this Court. Local Rule 8.04(D) (15) provides for "additional compensation for felony or misdemeanor cases in excess of the maximum ...in extraordinary cases....not (to) exceed fifty (50%) of the maximum scheduled fees.." (The Rule does not state if the 50% limitation applies to appeals.)

Movant submits that extraordinary fees are appropriate in this matter. Throughout these proceedings the State continued to claim that one officer could act as a neutral and detached magistrate to determine probable cause to issue a warrant despite contrary rulings of both the trial and appellate courts. This Court's unanimous opinion stated that such a practice cannot continue. While officials have elsewhere asserted that the practice has ended, that changed *after* the practice was challenged. The State's final argument here was that the practice was permissible under Eighth District case law. Appellee Merit Brief, p.12.

It is not extraordinary that a decision of this Court has significant impact on our jurisprudence, but the work required to convince the State of Ohio that the practice was contrary to law was extraordinary. As a result this Court's decision has affirmed fundamental constitutional and criminal rule protections for all citizens. Award of extraordinary fees should be approved. E.g., *State v Barker* Case No. 2010-1448, September 12, 2011 Entry. Summit County Local Rule 8.04 (D). R. C. 2941.51

WHEREFORE movant respectfully requests an award of fees in excess of the maximum allowed pursuant to Summit County Common Pleas Local Rule.

(Counsel has separately submitted this Court's form "Motion, Entry and Certification for Appointed Counsel Fees in each case 2011-1504 and 2011-1593. The time is divided between those cases and not duplicated. Time expended for the discretionary appeal and motions for reconsideration is contained in 2011-1593. Initial time concerning certification of the conflict and all other time after the Court's November 22, 2011 Entry consolidated the cases until the August 29, 2012 decision is set forth in Case 2011-1504. 40 hours were voluntarily deducted from all time expended. Movant submits that *if* this Court follows the trial court's Local Rule's 50% limit on extraordinary fees ***each*** case could total $1875.00 plus expenses. All expenses are reported under 2011-1593 with receipts. The 14 cent per mile charitable reimbursement rate is used for mileage)

WHEREFORE movant asks for awards of fees and all expenses at the maximum the Court deems appropriate.

Respectfully submitted

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PROOF OF SERVICE

I certify that a copy of this motion was sent by regular mail to the office of Heaven DiMartino Counsel for Appellee State of Ohio on October 31, 2012.

Mark H. Ludwig