

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE EX REL.
TRACIE M. HUNTER
c/o David A. Singleton
Ohio Justice & Policy Center
215 East 9th Street
Suite 601
Cincinnati, Ohio 45202,

Relator,

vs.

HON. PENELOPE CUNNINGHAM:
Presiding Judge
First District Court of Appeals
230 E. 9th Street, 12th Floor
Cincinnati, Ohio 45202,

FIRST DISTRICT COURT OF
APPEALS
230 E. 9th Street, 12th Floor,
Cincinnati, Ohio 45202,

and

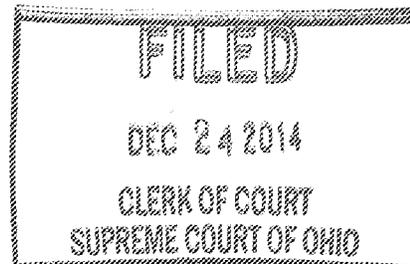
HON. JIM NEIL
Sheriff, Hamilton County, Ohio
1000 Sycamore Street, Suite 110
Cincinnati, Ohio 45202

Respondents.

Case No.

14-2223

**ORIGINAL ACTION IN HABEAS,
MANDAMUS, AND PROHIBITION**



**EMERGENCY COMPLAINT FOR WRITS OF MANDAMUS, PROHIBITION
AND HABEAS AND AFFIDAVIT IN SUPPORT**

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**EMERGENCY COMPLAINT FOR WRITS OF MANDAMUS, PROHIBITION
AND HABEAS**

PRELIMINARY STATEMENT

1. Tracie M. Hunter is a suspended judge who was convicted of a fourth degree felony (Having an Unlawful Interest in a Public Contract) and sentenced to six months in the Hamilton County Justice Center (hereafter, the "Jail"). Although the trial court allowed Judge Hunter to remain free for three weeks on her own recognizance after it imposed sentence, ordering her to begin serving her sentence on December 29, 2014, the court denied her Motion for Bail and Suspension of Execution of Sentence (hereafter, "motion for a stay" or "stay motion"). The trial court denied her motion for a stay even though Judge Hunter (1) poses no risk of flight, (2) is not a danger to the community, (3) is likely to prevail on the merits of her appeal (as will be explained more fully below), and (4) will have completed her sentence by the time her likely meritorious appeal is resolved.

2. Judge Hunter then sought a stay from the First District Court of Appeals. Without articulating its reasoning beyond concluding that the motion was not "well taken" the court of appeals denied Judge Hunter's stay motion.

3. Judge Hunter has no adequate remedies at law. Unless this Court grants the relief requested in this action, Judge Hunter will begin serving her six-month sentence on December 29, 2014 for a conviction likely to be reversed on appeal. Unfortunately, by the time the appeal is resolved, Judge Hunter will have already completed her sentence.

JURISDICTION

4. The Court has jurisdiction to issue writs of habeas corpus, mandamus and prohibition pursuant to Article IV, Section 2(B)(1)(b)-(d) of the Constitution of the State of Ohio.

THE PARTIES

5. Relator Tracie M. Hunter was convicted of one count of Having an Unlawful Interest in a Public Contract. The trial court sentenced her to six months in the Hamilton County Justice Center (hereinafter, the "Jail"). Judge Hunter sought bail and a suspension of execution of sentence in both the trial court and First District Court of Appeals. Each court denied her request for a stay.

6. Respondent Penelope Cunningham is the Presiding Judge of the First District Court of Appeals located in Hamilton County, Ohio. Without explanation of the court of appeals' reasoning, Judge Cunningham signed the order denying Judge Hunter's request for a stay in that court.

7. Respondent First District Court of Appeals is located in Cincinnati, Ohio and hears appeals of cases adjudicated in the trial courts of Hamilton County. The First District Court of Appeals denied Judge Hunter's motion for a stay.

8. Respondent Jim Neil is the Sheriff of Hamilton County, Ohio. One of Sheriff Neil's responsibilities is the operation of the Jail, where Judge Hunter has been ordered to serve her six-month sentence.

FACTS

The Trial, Verdict and Post-Trial Motion for a New Trial

9. The grand jury indicted Judge Hunter on nine counts alleging various offenses, including Count Six: Having Unlawful Interest in a Public Contract. Trial commenced on September 8, 2014, and concluded on October 14, 2014.

10. The jury began deliberating on October 8, 2014. Two days later, on October 10, 2014, the jury announced that it had reached a verdict on Count Six but had not yet reached a verdict on the remaining counts. Without announcing in open court what that verdict was, the court asked each juror if he or she agreed with the verdict, and each juror at that time answered affirmatively. The court then sealed the verdict and instructed the jury to resume deliberations on the remaining counts.

11. On October 14, 2014, the jury indicated through a note that it was deadlocked on the remaining eight counts and that further deliberation would be fruitless. The court then brought the jury back into open court. After ascertaining that that the jury was in fact unable to reach a unanimous verdict, the court then instructed the bailiff to read the sealed verdict on Count Six. The verdict, as read by the bailiff, was “guilty.”

12. After the verdict was announced, defense counsel requested that the jurors be polled, but the trial court denied the request claiming that he had polled the jurors on October 10, 2014 before sealing the verdict.

13. On October 20, 2014, two jurors signed affidavits indicating that “guilty” was not their true verdict on Count Six, and that they would have said so if polled after the verdict was read in open court on October 14, 2014.

14. Thereafter, the defense timely filed a motion for a new trial based on the court's failure to conduct a poll at the time the verdict was announced. Citing Rule 31(D) of the Ohio Rules of Criminal Procedure, which imposes upon the trial court a mandatory obligation to poll the jury upon request of either party, Judge Hunter argued that the trial court erred by not polling the jury at defense counsel's request after the verdict was announced in open court.

15. In support of her argument that the poll the trial court conducted when sealing the verdict was a legal nullity and that the court was required to poll the jury when the verdict was publicly announced, Judge Hunter cited two Ohio Supreme Court cases: *State v. Williams*, 99 Ohio St.3d 493, 2003-Ohio-4396, 794 N.E.2d 27, and *State v. Engle*, 13 Ohio 490, 494 (1844).

16. *Williams* stands for the proposition that under Ohio law, a juror may repudiate a verdict until the time the verdict becomes final. *Williams*, at ¶34. Moreover, a verdict is final only if ““(1) the deliberations are over, (2) **the result is announced in open court**, and (3) the jury is polled and no dissent is registered.”” *Id.* (emphasis added) (quoting *United States v. White*, 972 F.2d 590, 595 (5th Cir. 1992)).

17. In *State v. Engle*, 13 Ohio 490, 494 (1844), this Court explained why a privy (or sealed) verdict must be revealed in open court with the opportunity to conduct a poll before the verdict became final: “The reason why a privy verdict could not be taken was[] that it deprived the prisoner of meeting the jury face to face and demanding of each his separate verdict. The privy verdict was of no force unless afterward publicly affirmed **by a public verdict in open court, wherein the jury might, if they pleased, vary from the privy verdict.**” (emphasis added).

18. Judge Hunter, through counsel, supplemented her motion for a new trial with the affidavit of a third juror who had since come forward to say that she, too, would have indicated that “guilty” was not her true verdict if polled on October 14th when the verdict was read in open court.

19. In the supplemental motion, Judge Hunter also cited a federal court of appeals’ decision directly on point: *Miranda v. United States*, 255 F.2d 9 (1st Cir. 1958). There, the trial court polled the jury before the verdict was announced in open court and then denied the defense request for a poll when the verdict was later read aloud. In reversing, the *Miranda* Court explained, “[w]e think that the record conclusively demonstrates that the defendant was denied a reasonable opportunity to have the jury polled. It was not enough that the trial judge had asked th0e jurors in a body whether the written verdict which had been returned by their foreman but which had not yet been read aloud in their presence, was the unanimous verdict of all of them and that their foreman had answered that it was. *For the right to poll the jury is the right to require each juror individually to state publicly his assent to or dissent from the returned verdict which has been announced in open court in his presence. Obviously the right cannot be exercised intelligently until after the verdict has been announced in open court so that the defendant and all others present may know what it is.*” *Id.* at 21. (emphasis added). According to the First Circuit, the trial court’s polling of the jury before the verdict was announced was “premature.” *Id.*

20. On November 20, 2014, the trial court denied the defense motion for a new trial on the polling issue.

The Sentencing Hearing and Stay Motions

21. On December 5, 2014, the court held a sentencing hearing in Judge Hunter's case. The defense called eighteen witnesses who testified about Judge Hunter's character and her deep and substantial ties to the community, including her work for the past few years pastoring a local church. After hearing from the witnesses and counsel, the court sentenced Judge Hunter to six months incarceration in the Jail. Rather than taking her into custody immediately, the court ordered Ms. Hunter to report on December 29, 2014, to begin serving her sentence.

22. At the conclusion of the sentencing hearing, defense counsel handed the court a written motion for a stay of sentence, which defense counsel had filed earlier that morning. On December 9, 2014, the trial court issued a written denial of the defense motion for a stay.

23. On December 12, 2014, Judge Hunter, through counsel, filed a motion for a stay of sentence in the First District Court of Appeals. In that motion, Judge Hunter argued that she (1) posed no flight risk in light of her deep and substantial community ties, which the trial judge obviously took into account in allowing her to report to begin serving time three weeks after her sentencing hearing; (2) was not a danger to the community; and (3) had a strong likelihood of success on the merits of her appeal, which will include the polling issue.

24. As grounds for a stay, Judge Hunter also cited serious ongoing medical issues and a shortage of beds for females at the Jail. With respect to the latter point, Judge Hunter attached a letter from Major Charmaine McGuffey at the Jail indicating that the Jail's inmate population was "at critical mass," and that with respect to female inmates

the Jail could house only 104 women at a time. The letter also indicated that because of Judge Hunter's status as a high profile prisoner, the Jail would have to either put Judge Hunter in a pod by herself, which would require emptying the pod of other inmates, or put her in a cell where she would spend 23 hours a day in isolation.

25. In her motion, Judge Hunter asked the court of appeals to release her on her own recognizance pending resolution of her appeal.

26. The special prosecutors who tried Judge Hunter opposed her motion in the court of appeals for a stay. Beyond their conclusory assertion that they "strongly believe that there is no likelihood she will prevail on appeal," the special prosecutors did not address the Ohio Supreme Court and other case law that indicates that Judge Hunter has a very strong likelihood of prevailing on the polling issue.

27. On December 22, 2014, Respondent Cunningham, as Presiding Judge of the First District Court of Appeals, signed an entry overruling Judge Hunter's stay motion. The entry Presiding Judge Cunningham signed states in its entirety: "This matter came to be considered upon the appellant's motion for release on bail and for suspension of execution of her sentence while her appeal is pending and upon the response and reply. The Court finds that the motion is not well taken and is overruled."

COUNT I – WRIT OF HABEAS CORPUS

28. Judge Hunter incorporates and re-alleges the above paragraphs.

29. Habeas corpus is the appropriate vehicle to challenge a court's refusal to set bail after judgment of conviction. *State ex rel. Pirman v. Money*, 69 Ohio St.3d 591, 594, 635 N.E.2d 26 (1994).

30. The First District Court of Appeals erred when it denied Judge Hunter bail without giving any explanation other than that “the motion is not well taken and is overruled,” in light of the fact that Judge Hunter (1) poses no risk of flight, (2) is not a danger to the community, (3) is likely to prevail on her appeal regarding the refusal of the trial judge to poll the jury when the verdict was publicly announced, and (4) will have completed her sentence by the time her likely meritorious appeal is resolved.

31. *In re Liles*, 35 Ohio St.3d 610, 520 N.E.2d 183 (1988), is instructive. There Liles sought a stay of sentence in the court of appeals. The court of appeals denied the motion finding that “said motion is not well taken [and] that no condition of release will reasonably assure that the appellant will not flee.” *Id.* Liles then brought an original action in habeas corpus in the Ohio Supreme Court, seeking a release bond. *Id.*

32. The Ohio Supreme Court concluded that the failure of the court of appeals to articulate its reasoning in denying bond “provides no information upon which this court can properly determine petitioner’s requested habeas corpus relief. In fact, the record before this court indicates that petitioner was released after sentencing by the trial court on his own recognizance for three days and during said period did not flee; and that petitioner and his wife have operated a business in Glen Falls, New York for a period of three years” *Id.* Accordingly, the Ohio Supreme Court remanded the case to the court of appeals for further consideration of Liles’s request for bail pending appeal.

33. Judge Hunter’s argument for bail is far stronger than Liles’s. Because of her community ties, the trial judge allowed Judge Hunter to report to the Jail three weeks after he sentenced her, powerful evidence that he believed she posed no flight risk. Additionally, Judge Hunter is the devoted pastor of a church she would never abandon to

avoid serving a six-month sentence. Finally, although the strength of appellate issues was not a factor considered by this Court in *Liles*, that factor clearly cuts in Judge Hunter's favor in this case, for the reasons explained earlier.

34. Finally, there is no adequate remedy at law. By the time the court of appeals decides Judge Hunter's appeal, she will have fully served her sentence, a sentence that would be unjustified if she wins her appeal.

35. Accordingly, this Court should grant Judge Hunter's petition for a writ of habeas corpus.

COUNT II – WRIT OF MANDAMUS

36. Judge Hunter incorporates and re-alleges the above paragraphs.

37. In addition to seeking a writ of habeas corpus, Judge Hunter alternatively seeks a writ of mandamus.

38. In light of this Court's decision in *Liles*, Judge Hunter is entitled to have the First District Court of Appeals articulate its reasoning for denying bond in light of the facts that she fact that Judge Hunter (1) poses no risk of flight, (2) is not a danger to the community, (3) is likely to prevail on her appeal regarding the refusal of the trial judge to poll the jury when the verdict was publicly announced, and (4) will have completed her sentence by the time her likely meritorious appeal is resolved. *See Liles*, 35 Ohio St.3d 610, 520 N.E.2d 183.

39. Accordingly, this Court should stay Judge Hunter's sentence, and remand the case back to the court of appeals with the instruction to re-evaluate her motion for bail and articulate its reasoning should it decide not to grant the motion.

COUNT III – WRIT OF PROHIBITION

40. Judge Hunter incorporates and re-alleges the above paragraphs.

41. In addition to seek writs of habeas corpus and mandamus, Judge Hunter also seeks a writ of prohibition to restrain Sheriff Neil from admitting her into the Jail pending the court of appeals' reconsideration of the question of whether Judge Hunter's motion for a stay should be granted.

PRAYER FOR RELIEF

WHEREFORE, Relator Tracie M. Hunter requests this Honorable Court to:

1. Issue a peremptory writ of habeas corpus, or at a minimum, an alternative writ, immediately staying Judge Hunter's sentence until the Court of Appeals is able to re-evaluate her suitability.

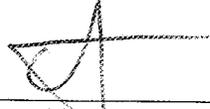
2. Issue a peremptory writ of mandamus, or at a minimum, an alternative writ, requiring the First District Court of Appeals to reconsider Judge Hunter's motion for a stay pending appeal and to articulate fully its reasoning should it determine again that bail should be denied.

3. Issue a peremptory writ of prohibition, or at a minimum, an alternative writ, prohibiting Sheriff Neil from taking Judge Hunter into custody until the First District Court of Appeals has the opportunity to reconsider Judge Hunter's motion for a stay pending appeal.

4. Award to Realtor costs and expenses, including reasonable attorney fees, incurred in the pursuit of this action.

5. Award such other relief as the Court deems necessary and proper.

Respectfully submitted,



DAVID A. SINGLETON (0074556)

Co-counsel for Relator

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4. Judge Hunter has appealed her conviction. A copy of her notice of appeal is attached as Exhibit 2.

5. Judge Hunter moved the trial court to grant bail and suspend execution of sentence pending appeal. A copy of that stay motion is attached as Exhibit 3.

6. The trial judge denied Judge Hunter's motion for a stay. The trial court's entry denying Judge Hunter's motion is attached as Exhibit 4.

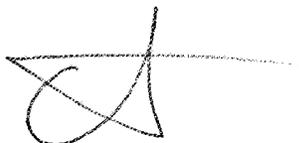
7. Judge Hunter then moved for a stay in the First District Court of Appeals. A copy of that motion is attached as Exhibit 5.

8. The state opposed Judge Hunter's stay motion in the First District Court of Appeals. A copy of the state's response is attached as Exhibit 6.

9. Judge Hunter's reply to the state's response to her stay motion is attached as Exhibit 7.

10. The First District Court of Appeals denied Judge Hunter's stay motion. A copy of the entry denying the motion is attached as Exhibit 8.

FURTHER AFFIANT SAYETH NAUGHT.



David A. Singleton (0074556)

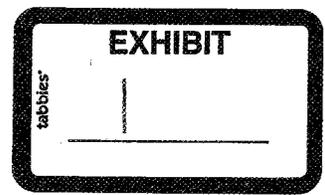
Sworn to before me and subscribed in my presence this 24th day of December, 2014.

DAVID J. WALL, Attorney at Law
Notary Public - State of Ohio
My Commission Expires on 03/31/2015
Sec. 147.02 B.C.



Notary Public

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS



date: 12/05/2014
code: GJCH
judge: 109

ENTERED
DEC 19 2014


Judge: NORBERT A NADEL

NO: B 1400110

STATE OF OHIO
VS.
TRACIE HUNTER

JUDGMENT ENTRY: SENTENCE
TO COMMUNITY CONTROL

Defendant was present in open Court with Counsel **CLYDE BENNETT II** on the 5th day of **December 2014** for sentence.

The court informed the defendant that, as the defendant well knew, the defendant had pleaded guilty, and had been found guilty of the offense(s) of:

count 6: HAVING AN UNLAWFUL INTEREST IN A PUBLIC CONTRACT 2921-42A1/ORCN,F4

The Court held a sentencing hearing during which the Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of sentence. The State's representative also had the opportunity to address the Court.

count 6: CONFINEMENT: 6 Mos
HAMILTON COUNTY JUSTICE CENTER (CUSTODY OF THE SHERIFF)

After considering the risk that defendant will commit another offense, the need for protecting the public therefrom, the nature of circumstances of the offense(s), and the defendant's history, character and condition, the Court hereby orders the defendant placed on Community Control on condition that defendant comply with the general conditions of Community Control established by this Court, and further:

count 6: COMMUNITY CONTROL:1 Yrs
NON-REPORTING.

THE DEFENDANT IS TO PAY COURT COSTS.

THE DEFENDANT IS NOT TO VIOLATE ANY LAWS.

**THE DEFENDANT IS TO REPORT FOR EXECUTION OF SENTENCE ON
DECEMBER 29, 2014 AT 8:30 A.M. AT THE SHERIFFS OFFICE IN ROOM 260
OF THE HAMILTON COUNTY COURTHOUSE.**



D108967976

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

date: 12/05/2014
code: GJCH
judge: 109


Judge: NORBERT A NADEL

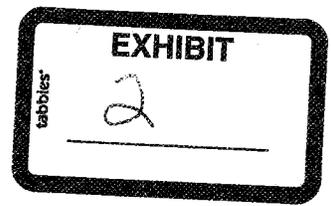
NO: B 1400110

STATE OF OHIO
VS.
TRACIE HUNTER

JUDGMENT ENTRY: SENTENCE
TO COMMUNITY CONTROL

THE COURT ALSO ADVISED THE DEFENDANT THAT IF HE / SHE VIOLATES THE TERMS AND CONDITIONS OF COMMUNITY CONTROL, THE COURT WOULD IMPOSE A PRISON TERM OF EIGHTEEN (18) MONTHS LESS CREDIT TIME SERVED IN THE DEPARTMENT OF CORRECTIONS.

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE COLLECTED AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR IF AT ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW. IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.



IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO,
Plaintiff-Appellee,

v.

TRACIE M. HUNTER,
Defendant-Appellant.

: Appeal No. **C1400717**
:
: No. B 1400110
:
:
:
:
: NOTICE OF APPEAL

Now comes Tracie M. Hunter, by and through counsel, and hereby gives notice of appeal to the First District Court of Appeals from the judgment entered by the trial court on December 5, 2014.

FILED

2014 DEC 10 A 11:22

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH

Respectfully Submitted,

David A. Singleton, #0074556
Counsel for Tracie Hunter
Ohio, Justice and Policy Center
215 East 9th Street, Suite 601
Cincinnati, OH 45202
Phone: 421-1108 ext. 20
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FILED
COURT OF APPEALS

DEC 10 2014

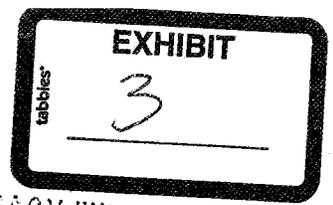
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY

CERTIFICATE OF SERVICE



I hereby certify that a true and accurate copy of the foregoing Notice of Appeal was served by facsimile to Merlyn Shiverdecker at (513) 345-5565 and R. Scott Crosswell III at (513) 929-3473 on December 10, 2014.

David A. Singleton



COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO
GENERAL DIVISION

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH

2014 DEC -5 A 9 22

FILED

STATE OF OHIO,

Plaintiff,

v.

TRACIE M. HUNTER,

Defendant.

: Case No. B1400110
:
: Judge Norbert Nadel
:
:
:
:
: APPLICATION FOR RELEASE ON
: BAIL AND SUSPENSION OF
: EXECUTION OF SENTENCE

I. Introduction

On October 14, 2014, a jury convicted Tracie Hunter of unlawful interest in a public contract. The trial court sentenced Tracie Hunter on December 5, 2014. Pursuant to R.C. 2953.09, Crim.R. 46, and App.R. 8, Tracie Hunter respectfully requests this Court to grant bail and suspend execution of the sentence pending her appeals to the First District Court of Appeals.

II. Background

On October 22, 2014, Tracie Hunter filed a motion for a new trial under Crim.R. 33 because the jury was not polled upon request after the verdict was read in open court. This Court denied that motion, and Tracie Hunter filed a notice of appeal in Case No. C 1400684. On November 17, 2014, Tracie Hunter filed a second motion for a new trial based on juror misconduct because the jury foreperson failed to disclose her status as a victim of sexual abuse by her former minister and her extreme bias towards ministers and the Church. After that motion was denied, Tracie Hunter appealed that order in Case No. C 1400704.



D108799886

After sentencing, Tracie Hunter will file a third appeal. While these appeals are pending, Tracie Hunter respectfully requests bail for the following reasons: 1) her attendance at trial and continued presence in Hamilton County upon conviction, as well as her strong community ties within the county, do not indicate a danger of flight; 2) Tracie Hunter remains a pastor with strong family and community ties who may not justifiably be viewed as a danger to the community; 4) Tracie Hunter is currently undergoing medical treatment in the community that includes physical therapy; and 5) Tracie Hunter is likely to prevail on appeal. Tracie Hunter respectfully asks this Court to exercise its discretion and grant her request for an appeal bond.

III. Argument

Trial courts have the statutory authority to grant bail pending appeal. *State ex rel. Pirman v. Money*, 69 Ohio St. 3d 591, 594, 635 N.E.2d 26 (1994). Upon the filing of a notice of appeal, the court "may suspend execution of sentence or judgment during the pendency of the appeal and shall determine whether that defendant is entitled to bail...." R.C. 2953.09(A)(2)(a). In determining bail, the court should consider all relevant information including risk of flight and risk of danger to the community. Crim.R. 46(C).

Tracie Hunter is not a flight risk. She has strong family, social, and professional ties within the Hamilton County community. She has lived in Cincinnati her entire life, and her mother, brother, and sister also live in the area. She has been a minister for 25 years, and the pastor at Western Hills Brethren in Christ Church since 2009. She operated a local Christian radio station for almost 15 years. She has organized and participated in over 200 prayer walks in high crime areas of the city focusing on areas with particularly violent crimes. Her community connections show her willingness to remain in Hamilton County.

In addition to her lifelong and extensive community ties, Tracie Hunter has serious health concerns stemming from a car accident when she was a student at Miami University. She is currently under the care of several local doctors and will need to begin physical therapy soon.

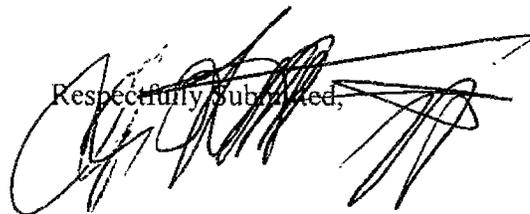
She has attended all of the criminal proceedings including a lengthy trial. As such, the court, in exercising its discretionary power to grant bail pending appeal, should not find any grounds for denial as a flight risk.

Additionally, Tracie Hunter poses absolutely no threat of danger to the community. She has not been convicted of a crime which lends itself to a finding of dangerousness, and she has no prior convictions and no criminal history. Tracie Hunter remains a pastor with strong family and community ties who cannot justifiably be viewed as a danger to the community.

Finally, Tracie Hunter is likely to prevail on appeal. Since her conviction, Tracie Hunter has filed two notices of appeal based on the denial of her requests for a new trial. One of the appeals appears to be an issue of first impression in Ohio regarding the proper procedure for polling a jury and the other concerns juror misconduct. A third appeal will be filed when the sentencing has been completed. Tracie Hunter intends to diligently and timely pursue these appeals.

IV. Conclusion

For the reasons stated above, this Court should grant Tracie Hunter's request for bail and suspend the execution of the sentence because she is not a flight risk or a danger to the community.

Respectfully Submitted,


Clyde Bennett II (0059910)
Attorney for Tracie Hunter

119 East Court Street
Cincinnati, OH 45202
Direct Phone: (513) 233-5555
Office Phone: (513) 632-9503
Fax: (513) 721-5824
Email: clyde@clydebennettthelaw.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing application for release on bail and suspension of execution of sentence was served by hand delivery upon the special prosecutors on December 5, 2014.


Clyde Bennett II

EXHIBIT
tabbles
4

ENTERED
DEC 09 2014

COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

STATE OF OHIO, : Case No. B-1400110

Plaintiff,

ORDER

VS.

TRACIE HUNTER, : Judge Norbert A. Nadel

Defendant

It is hereby ordered as follows:

1. Tracie Hunter's application for release on bail and suspension of execution of sentence pending appeal is hereby denied.
2. Tracie Hunter is to report on December 29, 2014 at 8:30 A.M. for execution of sentence.
3. On that date and time, Tracie Hunter shall report to Captain Jeffery Carroll of the Hamilton County Sheriff's Office in Room 260 of the Hamilton County Courthouse.

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
2014 DEC 9 AM 9:03

Norbert A. Nadel

Norbert A. Nadel

Date 12/9/14



D108834253

Copies to:

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Cincinnati, Ohio 45202

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R. Scott Crowell, III
1208 Sycamore Street
Cincinnati, Ohio 45202

Captain Jeffrey Carroll
Hamilton County Sheriff's Office
Room 260
1000 Main Street
Cincinnati, Ohio 45202

FILED
COURT OF APPEALS

DEC 15 2014

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

TRACIE M. HUNTER,

Defendant-Appellant

: Case No. C 1400717¹
:
: Trial No. B1400110
:
: MOTION FOR RELEASE ON
: BAIL AND SUSPENSION OF EXECUTION
: OF SENTENCE
:
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:



D108902213

Defendant-Appellant Tracie Hunter respectfully requests this Court to grant her motion for release on bail and suspend the execution of her six-month jail sentence pending the resolution of her appeal pursuant to App.R. 8. As will be explained more fully in the attached Memorandum of Law, staying execution of sentence is appropriate in this case for several reasons, including the facts that Ms. Hunter does not pose a risk of flight or danger to the community and has a strong likelihood of success on the merits of her appeal.

FILED
2014 DEC 15 A 10:34
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH

Respectfully submitted,

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Counsel for Tracie M. Hunter

¹ This appeal has not yet been consolidated with related appeals C 1400684 and C 1400704, which are appeals from the denials of two motions for a new trial.

MEMORANDUM OF LAW

I. STATEMENT OF FACTS

The grand jury indicted Ms. Hunter on nine counts alleging that she broke the law in her official capacity as a judge. Trial began on September 8, 2014. On Friday, October 10, 2014, the jury indicated it had reached a verdict on Count Six of the indictment, which charged Ms. Hunter with Having Unlawful Interest in a Public Contract,² but was deadlocked on the remaining eight counts. The trial court did not announce the verdict in open court, but instead sealed it. Before doing so, the court, without revealing the verdict to the parties or the public, asked each juror if he or she agreed with it. After sealing the verdict, the court then dismissed the jurors for the day and instructed them to return the following Tuesday, October 14, 2014, to resume deliberations on the remaining counts.

On October 14th, the jury resumed deliberations but could not reach agreement on the other eight counts. After receiving a note that the jury was hopelessly deadlocked, the trial judge brought the jury into the courtroom so that the jury's verdict on Count Six could be unsealed and read in open court. After the clerk announced that the verdict on Count Six was "guilty," defense counsel asked the court to poll the jury. However, the court refused to do so, stating the poll it conducted when sealing the verdict was sufficient and that there was no need to conduct another poll.

On October 20, 2014, two jurors signed affidavits indicating that "guilty" was not their true verdict on Count Six, and that they would have said so if polled after the verdict was read in open court on October 14, 2014. Thereafter, the defense timely filed a motion for a new trial

² The state's theory of prosecution on this count was that Ms. Hunter used her power as a judge to obtain a document she later gave her brother to help him appeal his termination from employment as a juvenile correctional officer. As will be explained below, Ms. Hunter has a strong argument that the evidence was legally insufficient to support a conviction on this charge.

based on the court's failure to conduct a poll at the time the verdict was announced. Citing Rule 31(D) of the Ohio Rules of Criminal Procedure, which imposes upon the trial court a mandatory obligation to poll the jury upon request of either party, and two Ohio Supreme Court cases, *State v. Williams*³ and *State v. Engle*⁴, which make clear that a verdict is not final until read in open court with the opportunity for a poll, the defense argued that the poll the court conducted when sealing the verdict was a legal nullity, and that the court erred by not polling the jury at defense counsel's request after the verdict was announced in open court. After filing the motion, the defense supplemented it with the affidavit of a third juror who had since come forward to say that she, too, would have indicated that "guilty" was not her true verdict if polled on October 14th when the verdict was read in open court..

On November 20, 2014, the trial court denied the defense motion for a new trial, stating in a two-sentence ruling: "1. Once a Jury has been polled, a juror may not later rescind the verdict. 2. To rule otherwise would cause chaos by jeopardizing the integrity of jury deliberations and the finality of jury verdicts." In so ruling, the court did not address the defense's main point – that the poll must be done when the verdict is announced publicly – and failed to analyze any of the cases the defense cited in its motion. Ms. Hunter then filed a notice of appeal of the denial of the motion for new trial on the jury poll issue.⁵

³ 99 Ohio St.3d 493, 2003-Ohio-4396, 794 N.E.2d 27.

⁴ 13 Ohio 490, 494 (1844).

⁵ C 1400684. Ms. Hunter also filed two other post-trial motions: (1) a Rule 29(c) motion for judgment of acquittal based primarily on the failure of the prosecution to establish the identity of the document former Judge Hunter gave her brother in advance of his termination hearing; and (2) a motion for new trial based on a juror's failure to disclose that she was the victim of a sexual crime committed by a minister, which the defense argued was relevant given Ms. Hunter's status as a pastor. The trial court denied both motions. With respect to the denial of the second of these two motions, the defense filed a separate notice of appeal (Case No. C 1400704).

On December 5, 2014, the court held a sentencing hearing in Ms. Hunter's case. The defense called eighteen witnesses who testified about Ms. Hunter's character and her deep and substantial ties to the community, including her work for the past few years pastoring a local church. After hearing from the witnesses and counsel, the court sentenced Ms. Hunter to six months incarceration at the Hamilton County Justice System to be followed by one year of non-reporting community control. Rather than immediately take her into custody, the court ordered Ms. Hunter to report on December 29, 2014, to begin serving her sentence.

After sentence was pronounced, defense counsel handed the court a written motion for a stay of sentence pending appeal, which defense counsel had filed earlier that morning. On December 9, 2014, the trial court issued a written denial of the defense motion for a stay (Stay Denial, attached as Exhibit A).

II. ARGUMENT

Courts have the statutory authority to grant bail pending appeal. *State ex rel. Pirman v. Money*, 69 Ohio St. 3d 591, 594, 635 N.E.2d 26 (1994). Upon the filing of a notice of appeal, the court "may suspend execution of sentence or judgment during the pendency of the appeal and shall determine whether that defendant is entitled to bail...." R.C. 2953.09(A)(2)(a). In determining bail, the court should consider all relevant information including risk of flight and risk of danger to the community. Crim.R. 46(C).

Here, a stay of sentence pending appeal is appropriate for the following reasons: (1) Ms. Hunter poses no flight risk; (2) Ms. Hunter is not a danger to the community; (3) Ms. Hunter has a strong likelihood of prevailing on the merits of her appeal, which will raise several issues including whether the trial court erred by refusing to poll the jury when the verdict was read in open court; (4) Ms. Hunter has serious medical issues that will be difficult to manage in the

Hamilton County Justice Center (hereinafter, the "Jail"); and (5) there is a shortage of bed space at the Jail, especially for female prisoners. These circumstances, considered as a whole, militate in favor of staying Ms. Hunter's sentence until the appeal can be resolved on the merits.

A. Ms. Hunter Is Not a Flight Risk and Would Eventually Report for Sentencing if Her Conviction is Affirmed.

Ms. Hunter is not a flight risk. She has strong family, social, and professional ties within Hamilton County. Ms. Hunter has lived in Cincinnati her entire life, and her mother, brother, and sister also live in the area. She has been a minister for twenty-five years, and has been the pastor at Western Hills Brethren in Christ Church since 2009. Additionally, Ms. Hunter has organized and participated in over 200 prayer walks in high crime areas of the city.

Ms. Hunter's community connections show her willingness to remain in Hamilton County. In fact, Judge Nadel obviously took Ms. Hunter's strong community ties into account in deciding to allow her to report for sentencing on December 29, 2014. Judge Nadel's confidence that Ms. Hunter will return for sentencing should give this Court confidence that she would report for sentencing should this Court eventually affirm her conviction.

B. Ms. Hunter Poses No Danger to the Community.

This factor can be dispensed with quickly: Ms. Hunter poses no danger to the community. The conviction in this case, for a non-violent offense, is her first contact with the criminal justice system as a defendant. In light of the substantial evidence of her good character introduced at the sentencing hearing, nothing in her background suggests that she needs to be incapacitated to protect the public from future harm.

C. Ms. Hunter Has a Strong Likelihood of Success on the Merits of Her Appeal.

Ms. Hunter will raise several issues on appeal, including (1) whether the trial court erred in refusing to poll the jury when the verdict was read in open court; and (2) whether the evidence was legally sufficient to prove the elements of Having Unlawful Interest in a Public Contract.⁶ Ms. Hunter is likely to succeed on both of these issues.

1. The trial court erred by refusing to poll the jury when the sealed verdict was publicly announced.

Ohio Rule of Criminal Procedure Rule 31(D) imposes a mandatory obligation upon the court. Specifically, Rule 31(D) reads: “When a verdict is returned and before it is accepted the jury *shall* be polled at the request of any party or upon the court’s own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or

⁶One additional and very troubling issue is the special prosecutor’s closing argument, during which he told the jury that the state did not want to see Ms. Hunter incarcerated and only wanted her convicted of a felony so that she would be removed from the bench. As rookie prosecutors and defense counsel know, it is improper, except where the jury has a role in sentencing, for the lawyers to argue the issue of punishment to the jury. *See State v. Brown*, 38 Ohio St.3d 305, 316, 528 N.E.2d 523 (1988) (“As a general rule, counsel should not comment on matters not at issue in the trial,” such as questions of punishment.); *State v. Hicks*, 43 Ohio St.3d 72, 75, 538 N.E.2d 1030 (1989) (“The prosecutor told the jury: ‘We are trying to take this man’s life.’ This was error: questions of punishment have no place in the trial of guilt or innocence.”); *see also U.S. v. Chesney*, 86 F.3d 564, 574 (6th Cir. 1996) (“[U]nless juries have roles in sentencing . . . juries should be instructed not to consider defendants’ possible sentences during deliberations. It is well established that when a jury has no sentencing function, it should be admonished to reach its verdict without regard to what sentence might be imposed. . . . In Chesney’s trial, the jury had no sentencing function, and no statute required that the jury be informed of the consequences of its verdict. Thus, argument about possible punishment in Chesney’s case is foreclosed by well-settled precedent, and the district court did not err in refusing to permit Chesney to argue about his possible punishment.”).

It is particularly problematic for a prosecutor to do what the special prosecutor did here – tell the jury that the state would not seek incarceration – which may have made some jurors feel better about voting to convict. Even more disturbing is that the special prosecutor went back on his pledge not to seek jail time, asking at sentencing for a “substantial period” of incarceration. The prosecutor’s improper punishment argument, and its bait-and-switch tactics, denied Ms. Hunter a fair trial. Counsel will develop this argument more fully in Ms. Hunter’s appellate brief.

may be discharged.” (emphasis added).⁷ Here, the court, on its own initiative, purported to poll the jury on October 10, 2014, before the sealed verdict was announced in open court on October 14, 2014. That poll, however, was a legal nullity.

Under Ohio law, a juror may repudiate a verdict until the time the verdict becomes final. *Williams*, at ¶34. In Ohio, a verdict is final only if “(1) the deliberations are over, (2) **the result is announced in open court**, and (3) the jury is polled and no dissent is registered.” *Id.* (emphasis added) (quoting *United States v. White*, 972 F.2d 590, 595 (5th Cir. 1992)). Moreover, the requirement that the defense have the opportunity to poll the jury *after* the verdict is announced publicly is well-established in Ohio. In *State v. Engle*, 13 Ohio 490, 494 (1844), the Ohio Supreme Court explained why a privy (or sealed) verdict must be revealed in open court with the opportunity to conduct a poll before the verdict became final: “The reason why a privy verdict could not be taken was[] that it deprived the prisoner of meeting the jury face to face and demanding of each his separate verdict. The privy verdict was of no force unless afterward publicly affirmed **by a public verdict in open court, wherein the jury might, if they pleased, vary from the privy verdict.**”

Other courts that have considered the specific issue presented here, agree. The First Circuit’s decision in *Miranda v. United States*, 255 F.2d 9 (1st Cir. 1958) is one example. There, the trial court attempted to poll the jurors before the verdict had been read in open court. The following colloquy occurred seconds before the verdict was announced in open court:

“The Clerk: Mr. Foreman, have you agreed upon a verdict?”

The Foreman: We have.

The Court: Is this the unanimous verdict of all you jurors? So say you all?

⁷ Rule 31(D) derives from Ohio Rev. Code §2945.77, which authorizes the court to conduct a jury poll upon the announcement of the verdict.

The Foreman: Yes, your Honor.

The Court: I order that the verdict be read and entered.” *Id.* at 19-20.

Shortly, thereafter, the trial court denied Miranda’s request to poll the jurors after the verdict was read in open court. *Id.* at 20.

As the *Miranda* Court succinctly explained, “[w]e think that the record conclusively demonstrates that the defendant was denied a reasonable opportunity to have the jury polled. It was not enough that the trial judge had asked the jurors in a body whether the written verdict which had been returned by their foreman but which had not yet been read aloud in their presence, was the unanimous verdict of all of them and that their foreman had answered that it was. *For the right to poll the jury is the right to require each juror individually to state publicly his assent to or dissent from the returned verdict which has been announced in open court in his presence. Obviously the right cannot be exercised intelligently until after the verdict has been announced in open court so that the defendant and all others present may know what it is.*” *Id.* at 21 (citing *Tilton v. State*, 52 Ga. 478 (1874) (emphasis added)). The First Circuit further explained that attempting to poll the jury before the verdict is announced “would be premature.” *Id.* (citing *State v. Brooks*, 59 N.M. 130, 279 P.2d 1048, 1050 (1955) (reversed on other grounds)).⁸

⁸Ms. Hunter anticipates that the state will rely, as it did below, on *State v. Bradley*, 8th Dist. Cuyahoga No. 79354, 2002-Ohio-3895. In that case, the trial judge polled the jury before the verdict was announced in open court, and the Eighth District refused to reverse when Bradley argued on appeal that the trial judge should have polled the jury after the verdict was revealed. *Id.* at ¶66. However, the state’s reliance on *Bradley* is misplaced. There, unlike here, Bradley’s lawyer never asked the trial court to poll the jury after the verdict was read. This was a significant failure on Bradley’s lawyer’s part. As the Eighth District observed, “no objection to the court’s procedure appears in the record, which would have given the trial court an opportunity to correct the matter at the time.” *Id.* Here, by contrast, Ms. Hunter’s lawyer specifically requested the trial court to poll the jury after the verdict was announced in open court, thereby giving the trial judge an opportunity to address the issue.

Here, defense counsel requested the court to poll the jury after the verdict on Count Six was read in open court. Up until that point, the jury's verdict was not final because the result of its deliberations – a finding of “guilty” on Count Six – had not been announced in open court with the opportunity for the jurors to voice dissent if polled. Until the time when the verdict was read publicly by the clerk, the jurors were free to change their minds. *See Williams*, at ¶34; *State v. Brown*, 110 Ohio App. 57, 61, 168 N.E.2d 419 (9th Dist. 1953) (“A juror may, after coming into court, change his vote, and so express himself to the court when the poll is taken.”); *see also Mapes v. Coyle* 171 F.3d 408, 422 (6th Cir. 1999) (interpreting Ohio law to be that “a juror may change his mind between the jury room and the court room”).

Had the court polled the jury after the verdict on Count Six was announced in open court, at least three jurors would have dissented from the verdict. The court's failure to poll the jury at defense counsel's request after the verdict was announced publicly violated Ms. Hunter's right to a fair trial. *See City of Dayton v. Allen*, 200 N.E.2d 356, 358, 365, 366 (Montgomery Cty. Ct. of Comm. Pleas 1959) (reversing conviction and granting new trial where neither the clerk nor the court granted defense counsel's request that the jury be polled after verdict announced in open court).

Although premature for this court to decide at this time whether the trial judge committed reversible error by refusing to poll the jury when the verdict was announced publicly, this issue is a potentially meritorious one. Requiring Ms. Hunter to serve her sentence during the pendency of her appeal would be unfair given the strength of this appellate issue.

2. The evidence was legally insufficient to support the conviction.

The state argued to the jury in closing that former Judge Hunter interfered in her brother's employment termination appeal hearing by providing him with a document, one they

argued she obtained in her official capacity as a judge. However, because the state failed to identify the document, there was no permissible basis for the jury to conclude that Ms. Hunter used the power of her office to help her brother with his employment appeal.

Establishing the identity of the document Ms. Hunter gave her brother was necessary for two reasons. First, without knowing the identity of the document, it was impossible for the jury to know how she obtained it. And without knowing how she accessed the document, it is impossible to conclude that she improperly used her authority as a judge or the influence of her office to acquire it, a required element of the offense. If, on the one hand, the document former Judge Hunter gave her brother was private, unavailable to the public, and obtained only through her work at the court, then perhaps the jury could reasonably infer that she impermissibly used her authority or the influence of her office to obtain the document. But on the other hand, if the record in question was publicly available, then there would be an insufficient basis to conclude that Ms. Hunter obtained it through the authority or influence of her office. In short, the trial record does not establish what document Ms. Hunter gave her brother, which is necessary to know whether she used her authority as a judge or the influence of her office to obtain the document, which is a required element of the offense the jury convicted her of committing.

Second, without a description of the document, there was an inadequate basis for the jury to conclude that Ms. Hunter sought to influence the outcome of her brother's hearing. If the document was relevant, helpful and otherwise unavailable to her brother, then perhaps the jury could draw a reasonable inference that she sought to help him with his appeal. But if the document was publicly available and in no way helpful to the appeal, then it would be unreasonable to infer that Ms. Hunter sought to influence the appeal.

There are additional reasons why the evidence was legally insufficient to support a conviction on Count Six, which counsel will articulate during appellate briefing. But at this juncture, there is an ample basis to be concerned that the jury convicted Ms. Hunter on evidence that was legally insufficient to support the conviction. Thus, it would be unfair to require her to begin serving her sentence until this court has an opportunity to fully consider this and other appellate issues.

D. Ms. Hunter Has Serious Medical Problems.

Ms. Hunter has serious health issues stemming from a car accident when she was a student at Miami University. She is currently under the care of several local doctors and will need to begin physical therapy soon. According to her treating physician, Ms. Hunter has metal rods in her back, suffers from “significant arthritis of the lower back” and has “stenosis of the cervical spine.” (Letter from Dr. Ramona Gaines, December 4, 2014, attached as Exhibit B). As a result of Ms. Hunter’s condition, Dr. Gaines “cautioned against” Ms. Hunter “being in an environment where she would not be free to see the orthopedic specialist and go for physical therapy.” *Id.*

It will be difficult for the Jail to provide appropriate medical treatment for Ms. Hunter. Although Ms. Hunter may one day have to serve her sentence, her medical condition is an additional factor which makes the granting of a stay appropriate in this case.

E. There Is a Shortage of Bed Space for Female Inmates at the Jail.

The Jail has the capacity to house only 104 women at a time. (Letter from Major Charmaine McGuffey, Hamilton County Justice Center, December 12, 2014, attached as Exhibit C). Compounding the bed-space shortage are the security problems the Jail would encounter

housing a high-profile prisoner like former Judge Hunter, who would need to be protected from other inmates.

According to Major McGuffey, who runs the Jail, there would be two options: (1) either put Ms. Hunter into an eight-bed pod by herself and “empty the unit of other inmates;” or (2) put her in a special lockdown unit where “she would potentially be spending 23 hours a day inside her cell.” *Id.* The second option, which is normally reserved for inmates who pose discipline problems, would be extreme given the severe isolation Ms. Hunter would have to experience.

In light of these challenges, it would be appropriate to stay Ms. Hunter’s sentence until her appeal is resolved. If she wins her appeal, then an unnecessary, expensive and burdensome jail sentence would be avoided. If she loses her appeal, then she will report for sentencing and the Jail will do its best to accommodate her.

IV. CONCLUSION

There may come a time when Ms. Hunter has to serve her sentence. But for the reasons stated above, this Court should grant her request for bail and suspend the execution of her sentence. Given Ms. Hunter’s strong community ties, she requests that bail be set at \$0.00 and that she remain free on her own recognizance during the pendency of her appeal.

Respectfully submitted,



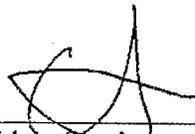
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CERTIFICATE OF SERVICE

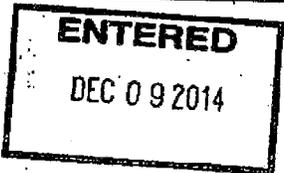
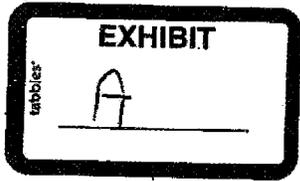
I certify that this Motion was served upon each party of record in this case by hand on the
15th day of December, 2014 addressed to:

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David A. Singleton



**COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO**

STATE OF OHIO,

Case No. B-1400110

Plaintiff,

ORDER

vs.

TRACIE HUNTER,

Judge Norbert A. Nadel

Defendant

It is hereby ordered as follows:

1. Tracie Hunter's application for release on bail and suspension of execution of sentence pending appeal is hereby denied.
2. Tracie Hunter is to report on December 29, 2014 at 8:30 A.M. for execution of sentence.
3. On that date and time, Tracie Hunter shall report to Captain Jeffery Carroll of the Hamilton County Sheriff's Office in Room 260 of the Hamilton County Courthouse.

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
DEC 9 9 03

Norbert A. Nadel

Norbert A. Nadel

Date 12/9/14



D108834253

Copies to:

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Captain Jeffrey Carroll
Hamilton County Sheriff's Office
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Regional Office Contact

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Cincinnati OH 45239
Phone: 513-853-5393
Fax: 513-853-7797

JUANITA RAMONA GAINES, MD

December 4, 2014

Patient: **Tracie M Hunter**
Date of Birth: **11/11/1966**
Date of Visit: **12/4/2014**

To Whom It May Concern:

Tracie Hunter is being treated for chronic neck, arm and low back pain that varies from level 3 to 8-9 through out the day. The neck and radicular arm pain is due to C5-6 mild to moderate spinal stenosis and moderate right and mild left uncovertebral arthrosis. Also there is right neural foraminal encroachment. Patient also has significant arthritis of the lower back. She has metal rods in her Thoracolumbar spine as a result of a remote automobile accident. Patient takes anti inflammatory medication and as needed nightly muscle relaxants to control the pain. After consultation with Dr. Jacquemin, orthopedic surgeon, she was referred for cervical myelogram and physical therapy in September of 2014. She had the CT myelogram on 11/05/14.

Due to the spinal stenosis of the cervical spine, the patient was cautioned against being in an environment where she would not be free to see the orthopedic specialist and go for physical therapy or would be in danger of further neck trauma.

If you have any questions or concerns, please don't hesitate to call.

Respectfully submitted,


JUANITA RAMONA GAINES, MD

Hamilton County Justice Center**Female Population Overview**

The Hamilton County Justice Center's inmate population is at critical mass. That is to say that, the Jail struggles with adequately housing individuals who have been sentenced to jail, by the judicial system.

Currently the female unit of the jail has the capacity to house only 104 women. The Female pod is separated into 4 units. Each unit has a determined number of cells and a certain classification of prisoner. Some of the units are double bunked that is to say that, there are two beds in each cell. The doubling bunking of cells allows for increased capacity of that unit. In total, there are only 104 beds on the female unit. The following is a breakdown of each unit and the number of beds available for that unit, along with a description of what classification of prisoner can be housed in each unit.

December 12th, 2014

Female Housing North Building 3rd floor

A unit – 8 bed unit that is designated to house mental health inmates

B unit – 8 cell / 16 beds doubled celled designated to house overflow from medical & mental health/disciplinary lock in/ Administrative segregation/ Protective custody

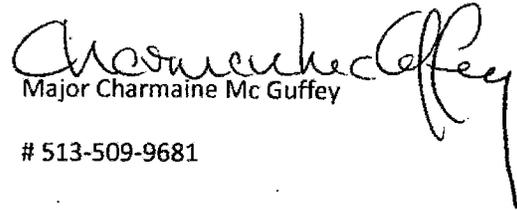
C unit – 24 cell doubled bunked with 48 bed capacity – General Population

D unit – 16 cell doubled bunked with 32 bed capacity – General Population

In planning for a high profile prisoner such as former Judge Traci Hunter, there would be the concern for protective custody. Protective custody designations mean that the prisoner is isolated from contact with the general population. To protect Ms. Hunter adequately inside the jail, there are two possible options:

1. The first option would be to house her in the 8 bed , A unit. To accomplish that , we would empty the unit of other inmates. This would mean the loss of 7 beds.
2. The second option is to house Ms. Hunter in B Unit. Given the demography of B unit, the reality for Traci Hunter is that she would potentially be spending 23 hours a day inside her cell while housed in Unit B. She would be afforded one hour out each day to shower, make phone calls and have general access to the open unit for recreation.

The prospect of allowing her to mingle with the general population of any female unit would have the potential to be dangerous to her, given her status as a former judge. It is also important to note that as the population rises the Sheriff may be forced to release any of the lower level classified prisoners. In favor of maintaining incarceration for the prisoner who are a threat to society.


Major Charmaine Mc Guffey

513-509-9681

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	Case No. C 1400717
	:	
Plaintiff-Appellee,	:	Trial No. B1400110
	:	
v.	:	
	:	
	:	
TRACIE M. HUNTER,	:	
	:	
Defendant-Appellant	:	

ENTRY AND ORDER

Having considered Defendant-Appellant's Motion for Release on Bail and Suspension of Execution of Sentence, and any opposition thereto, it is hereby ORDERED that said motion be GRANTED. Accordingly, Defendant-Appellant's sentence is hereby STAYED until the merits of her appeal are decided. Moreover, in light of Defendant-Appellant's ties to the community and her lack of a prior criminal record, bail is set in the amount of \$0.00.

It is so ORDERED.

First District Court of Appeals



IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

FILED

2014 DEC 19 A 11:43

STATE OF OHIO
Plaintiff-Appellee,

Case No.: C 1400717¹
Trial No.: B1400110

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH.

v.

TRACIE M. HUNTER,
Defendant-Appellant

APPELLEE'S RESPONSE TO
APPELLANT'S MOTION FOR
RELEASE ON BAIL AND
SUSPENSION OF EXECUTION
OF SENTENCE PENDING APPEAL

Plaintiff- Appellee respectfully objects to Defendant-Appellant's request of this Court to grant a stay of execution and permit her to remain free on bail pending the resolution of her appeal. Appellee disputes Appellant's assertion that she does not pose a risk of flight or that she has a strong likelihood of success on the merits of her appeal.

MEMORANDUM

Tracie Hunter is now a convicted felon and as such no longer enjoys the presumption that she will honor her obligation to voluntarily surrender to serve her sentence is she fails to prevail on her appeal. Tracie Hunter has a long history of ignoring authority and repeatedly, over the course of her tenure as Judge of the Juvenile Court, ignored and otherwise failed to follow and obey the orders of superior courts.

During the course of her trial, she conducted herself in a manner that showed not only an arrogant attitude, but also contempt for our system of justice. She arrived late for court on a daily basis, was surrounded by "bodyguards", commandeered elevators, interrupted the trial judge and otherwise displayed an attitude of utter contempt for our system of justice.



FILED
COURT OF APPEALS

DEC 19 2014

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY

After the verdict, she failed to accept responsibility for her actions and further failed to show any remorse for her conduct as evidenced by her attacks on a juror in this case.

Tracie Hunter's Motion for Stay Pending Appeal was denied by Judge Nadel and he has ordered her to report for sentencing on December 29, 2014. Judge Nadel presided over her trial and observed her conduct throughout. He is in the best position to make a determination if there is a risk that Tracie Hunter will fail to honor her obligation to the Court. There is no indication that Judge Nadel abused his discretion when he denied her request for a stay pending appeal.

Indeed his wisdom was confirmed when, after his denial of her request for stay, Tracie Hunter, through her supporters, staged a protest on the courthouse steps impliedly threatening some sort of retribution if she was incarcerated on December 29, 2014 pursuant to Judge Nadel's order.

Because of Tracie Hunter's conduct before, during and after the verdict, there has been a circuslike atmosphere created which is damaging to our system of justice. Just within the last two days, the news media has toured the Hamilton County Justice Center showing film clips of the bed Tracie Hunter will sleep in when incarcerated, the view from the window in her room and even the food she will eat. It is time for the circus to end and the only way for it to end is for Tracie Hunter to immediately serve the sentence imposed by Judge Nadel.

Counsel for Tracie Hunter suggests that there is a high likelihood that she will prevail on appeal. We respectfully disagree with that assertion and strongly believe that there is no likelihood she will prevail on appeal.

There is no merit to Appellant's criticism of the method and manner in which the jury was polled. The jury was polled when they rendered a verdict on October 10, 2014. The fact that the verdict was not read until October 14, 2014 is of no consequence.

Appellant argues that the evidence was legally insufficient to support a conviction. This is merely a manifest weight of evidence argument and it has no merit. A jury of Tracie Hunter's peers has already made the determination that there were facts sufficient to prove beyond a reasonable doubt that Tracie Hunter committed the offense of conviction. There is no reasonable likelihood that this court will determine that there was insufficient evidence to convict Tracie Hunter.

Appellant argues that she has severe medical problems. The Hamilton County Justice Center is fully capable of dealing with any real or perceived medical problem that Tracie Hunter or any other inmate suffers from.

Lastly, Appellant argues that there is a shortage of jail space for female inmates at the jail. This argument has no merit or relevance.

Over the past two years, Tracie Hunter has defied the authority of higher courts and in the process, has not only made a fool of herself, but has committed criminal offenses as a result of her conduct. Sadly, she has made a mockery of our system of justice in the process. While she asks this court to give her some consideration, she has earned none.

Over the past two years, Tracie Hunter has loudly and proudly proclaimed that she was willing to go to jail "for the children." Although she has apparently had a change of heart, it is indeed time for her to serve the sentence imposed by Judge Nadel.

We respectfully object to any stay of execution in the service of the sentence imposed in this case.

s/Merlyn D. Shiverdecker
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Special Prosecutor for State of Ohio

s/R. Scott Croswell, III
R. Scott Croswell, III
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Special Prosecutor for State of Ohio

CERTIFICATION OF SERVICE

I hereby certify that a copy of the foregoing instrument was delivered by regular U.S. Mail to David A. Singleton, Ohio Justice & Policy Center, 215 East 9th Street, Suite 601, Cincinnati, Ohio 45202, *Attorney for the Defendant*, 119 E. Court Street, Cincinnati, Ohio 45202 this 19th day of December, 2014.

s/R. Scott Croswell
R. Scott Croswell III
Special Prosecutor for State of Ohio

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO**

STATE OF OHIO	:	Case No.: C 1400717 ¹
	:	
Plaintiff-Appellee,	:	Trial No.: B1400110
	:	
v.	:	<u>ENTRY AND ORDER</u>
	:	
TRACIE M. HUNTER,	:	
	:	
Defendant-Appellant	:	

Having considered Defendant- Appellant's Motion for Release on Bail and Suspension of Execution of Sentence, it is hereby ORDERED that said Motion be DENIED.

Accordingly, Defendant-Appellant is ordered to report to Captain Jeffery Carroll of the Hamilton County Sheriff's office in Room 260 of the Hamilton County Justice Center on December 29, 2014 at 8:30 a.m., to commence the execution of her sentence.

Judge

FILED
COURT OF APPEALS

DEC 22 2014

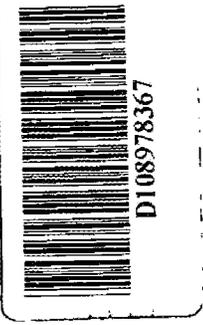
TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT
HAMILTON COUNTY, OHIO

FILED
2014 DEC 22 A 8:21

TRACY WINKLER
CLERK OF COURTS
HAMILTON COUNTY, OH
C-140684
C-140704
C-140717

EXHIBIT
7



STATE OF OHIO,

Plaintiff-Appellee,

TRACIE M. HUNTER,

Defendant-Appellant

: Case Nos. C-140684
:
:
:
: APPELLANT'S REPLY TO APPELLEE'S
: RESPONSE TO APPELLANT'S MOTION
: FOR RELEASE ON BAIL AND
: SUSPENSION OF EXECUTION OF
: SENTENCE PENDING APPEAL
:
:

The State's response to Tracie Hunter's Motion for Release on Bail and Suspension of Execution of Sentence Pending Appeal is replete with falsehoods, inflammatory statements and irrelevant information that have no bearing on whether this Court should grant her motion for a stay. For example, the State alleges that Ms. Hunter "arrived late for court on a daily basis,"¹ did not show remorse "as evidenced by her attacks on a juror in this case,"² and "through her supporters, staged a protest on the courthouse steps impliedly threatening some sort of retribution

¹ Although false, this allegation has been widely reported by the media as if it were the gospel. To the contrary, Ms. Hunter was on time each day but waited in the jury room until Judge Nadel completed his morning docket.

² Here, the special prosecutors are referring to the defense motion for a new trial based on a juror's failure to disclose that she was the victim of a sexual crime committed by a minister, information that was relevant to whether the juror was biased in light of Ms. Hunter's status as a pastor. It is inflammatory and unfair for the special prosecutors to claim that defense counsel's good faith filing of a potentially meritorious motion constitutes an "attack" by Ms. Hunter on a juror, especially where the juror in question talked freely about her sexual assault on the internet. Regardless of how one characterizes the motion, the fact of its filing is hardly relevant to whether the Court should stay Ms. Hunter's sentence pending appeal.

if she was incarcerated on December 29, 2014.”³ (Appellee’s Response at 1-2). The special prosecutors even go so far as to argue that Ms. Hunter should be locked up on December 29th because the case has become a circus and “the only way to end it is for Tracie Hunter to immediately serve the sentence imposed by Judge Nadel.”⁴ (*Id.* at 2).

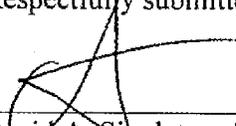
But when it comes to whether Ms. Hunter is likely to prevail on the merits of her appeals, the special prosecutors have almost nothing to say beyond their conclusory statement that they “strongly believe that there is no likelihood she will prevail on appeal.” (*Id.*) More to the point, nowhere in their response do the special prosecutors discuss the Ohio Supreme Court and other precedent Ms. Hunter cites on the polling issue, case law that demonstrates she is likely to win that issue. Moreover, with respect to the sufficiency argument, the special prosecutors do not address any of Ms. Hunter’s contentions, instead asserting, again in a conclusory manner, that “[t]here is no reasonable likelihood that this court will determine that there was insufficient evidence to convict Tracie Hunter.” (*Id.* at 3).

For the reasons stated in Ms. Hunter’s motion for a stay, and because the special prosecutors set forth no relevant and persuasive arguments why the requested stay should be denied, this Court should grant Ms. Hunter bail and stay the execution of her sentence pending resolution of her consolidated appeals.

³ This statement contains false, inflammatory and irrelevant information. The rally the special prosecutors are referring to was organized not by Ms. Hunter but by clergy acting on their own initiative. Additionally, no threats were made at what was, by all credible accounts, a peaceful gathering. Moreover, it is inflammatory, not to mention unfair, for the State to criticize Ms. Hunter’s supporters for engaging in constitutionally protected free expression. Finally, the fact that a segment of the community disagrees with the verdict in this case, as evidenced by a peaceful rally supporting Ms. Hunter, provides no legally relevant basis to deny her motion for a stay.

⁴ In addition to being beyond Ms. Hunter’s control, the media’s interest in the case is wholly irrelevant to whether a stay should be granted.

Respectfully submitted,



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Counsel for Tracie M. Hunter

CERTIFICATE OF SERVICE

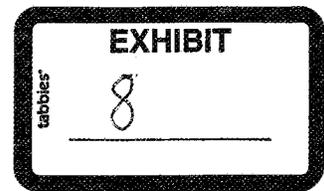
I certify that this Reply was served upon each party of record in this case by fax on the 22nd day of December, 2014 addressed to:

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David A. Singleton



IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,

APPEAL NOS. C-140684
C-140704
C-140717
TRIAL NO. B-1400110

Appellee,

v.

ENTRY OVERRULING MOTION
FOR RELEASE ON BAIL AND
SUSPENSION OF EXECUTION OF
SENTENCE

TRACIE M. HUNTER,

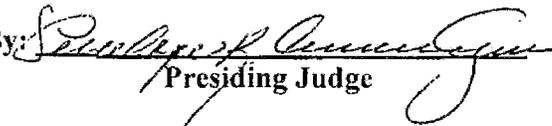
Appellant.

This matter came to be considered upon the appellant's motion for release on bail and for suspension of execution of her sentence while her appeal is pending and upon the response and the reply.

The Court finds that the motion is not well taken and is overruled.

To The Clerk:

Enter upon the Journal of the Court on DEC 22 2014 per order of the Court.

By: 
Presiding Judge

(Copies sent to all counsel)