

ORIGINAL

IN THE SUPREME COURT OHIO

Case No: 2015-0586

State of Ohio ex rel JOHN MARK ANDREWS, :

Relator, :

-VS- :

PAINESVILLE MUNICIPAL COURT :

HONORABLE JUDGE MICHAEL A. CICCONE, :

Respondent, :

FILED

MAY 05 2015

CLERK OF COURT
SUPREME COURT OF OHIO

RELATOR'S PRO SE
MEMORANDUM IN OPPOSITION TO RESPONDENTS' MOTIONS TO DISMISS

NOW COMES, JOHN MARK ANDREWS, Relator presently filing in Pro Per, Who hereby moves this Honorable Ohio Supreme Court, pursuant to clearly established Ohio S.Ct. Prac. R. 10.5(B) et al; and any/all other Ohio Appellate Court Rules, by timely filing Relator's "Memorandum In Opposition To Respondents Motions To Dismiss", based upon any/all of the following:

(1) That on APRIL 13,2015, This Pro Se Relator filed the herein Sworn Notarized Original Action COMPLAINT FOR WRIT OF PROHIBITION against the Respondent Painesville Municipal Court Judge MICHAEL A. CICCONE and Respondent Painesville Prosecutor and Law Director JOSEPH GURLEY for unambiguously "abusing and usurping" their Judicial Functions, based upon the fact. That Relator is NOT using Writ of Prohibition as a substitute for Appeal By Right, and Respondent Michael Cicconetti "abusing and usurping" his Judicial Functions to allow/condone Respondent Joseph Gurley to waste precious judicial resources to Maliciously Prosecute Relator without mandatory OVI Corpus Delecti.

(2) This Pro Se Relator states that the Respondents vague and inapplicable "Motion To Dismiss"

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must be denied/dismissed, based upon the fact. That this Pro Se Relator has complied with Rule X of Ohio Supreme Court Rules of Practice in his Writ of Prohibition with a "specific statement of facts" setting forth that he entitled to full relief under Ohio Writ of Prohibition; and that there exists no available remedy state available. Since both the Respondent Painesville Municipal Trial Court Judge MICHAEL A. CICCONE, and Respondent Painesville Prosecutor and Law Director JOSEPH GURLEY are "abusing and usurping" his Judicial Functions, in order, for this Relator to suffer a actual prejudicial "irreparable injury/harm", and violation of Relator's clearly established Federal Constitutional Rights to Life, Liberty, Travel, Freedom of Movement, and to engage/exercise his Right to Interstate Travel and Commerce protected under the "Privileges, Immunities and Comity Clause" of Article 1, Section 8, Clause 3; Article 6, Section 2, Clause 1; and First and Fourteenth Amendments of the US Constitution as determined by the United States Supreme Court. The purpose of a Writ of Prohibition is to prevent the unlawful usurpation of judicial authority. Further, the Writ is to be here there is no other regular, ordinary and adequate remedy at law. State ex rel. Nolan v. Clendenen, 93 Ohio St.264 (1915).

(3) Further, This Relator's Writ of Prohibition must be Granted based upon the Respondent Prosecutor JOSEPH GURLEY response/admission that this Relator's is being charged/convicted for FIRST Offense OVI with no prior arrests/conviction for OVI within past 20-years. Respondent Painesville Municipal Trial Court Judge MICHAEL A. CICCONE is "abusing and usurping" his Judicial Functions to follow through on Respondent Joseph Gurley Malicious Prosecution without the mandatory BAC Alcohol Tests ever being obtained by the Ohio State Trooper either Voluntarily or by Search Warrant to obtain a unlawful/wrong OVI Conviction in violation of clearly established and binding case law precedent by the State/US Supreme Court that charges must be dropped and case dismissed. The follow law is plagiarized directly from lawbooks and not some "quasi legal theories.

(4) In Ricciardi v. D'Apolito, 2010-Ohio-1016 {¶12} A writ of prohibition is an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior tribunal commanding it to cease abusing or usurping judicial functions. State ex rel. Jones v. Suster(1998), 84 Ohio St.3d 70, 73, 701 N.E.2d 1002. In order to obtain a writ of prohibition, the petitioner must prove: (1) that the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power; (2) the exercise of that power is unauthorized by law; and (3) denying a writ will result in injury for which no other adequate remedy exists in the ordinary course of law. State ex rel. White v. Junkin(1997), 80 Ohio St.3d 335, 336, 686 N.E.2d 267. If a lower court patently and unambiguously lacks jurisdiction over the cause, prohibition will issue to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions. State ex rel. Fraternal Order of Police, Ohio Labor Council, Inc. v. Franklin Cty. Court of Common Pleas(1996), 76 Ohio St.3d 287, 289, 667 N.E.2d 929.

FACTS AND CASE HISTORY

(5) On FEBRUARY 25,2015, This Pro Se Relator claims/states that he received a erroneous Letter and Notification from the Ohio Department of Motor Vehicles(DMV) advising him that his Ohio Drivers License(he doesnt have Commercial Driver's License) was SUSPENDED over a inapplicable OVI Charge (not OVI-Refusal due to a OVI arrest/conviction within past 20-years as required under State Law); and Respondent- Ohio DMV advised this Relator to Appeal to Petition/Appeal the Painesville Municipal Court Trial Court to issue an Order To Reinstate this Pro Se Relator Driver's License pending Defendant's Right to a Jury Trial.

(6) That on FEBRUARY 1,2015, at approximately 23:33, This Pro Se Relator was involved in a Traffic Stop with Ohio State Police in a fully marked OSP Cruizer(NOTE: OSP Dashcams automatically

activates/records video/audio), for which, I was allegedly/erroneously charged for committed the misdemeanor offenses, OVI(NOT OVI-Refusal), ORC 4511.19A1A; and "Cross Div. Hwy", ORC 4511.35.

(7) That this Pro Se Relator was wrongfully/unlawfully charged for the alleged committing the misdemeanor offenses, OVI(not OVI-Refusal), ORC 4511.19A1A; and "Cross Div. Hwy", ORC 4511.35 without ALL the mandatory elements(ie, Corpus Delecti) of the crime ever being proven beyond a reasonable doubt in a light most favorable to the prosecution, based upon the unambiguous uncontested fact.

(8) That this Pro Se Relator lawfully refused to submit to a Voluntary BAC Test and the Ohio State Police Trooper failed to ever obtain a Search Warrant based upon probable cause to obtain mandatory BAC Test Results of Relator's Blood Alcohol Percentage within 2-Hours, in order, to charge, prosecute, convict and sentence this Relator for OVI First Offense. See Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560;(1979); State v. Jenks, 61 Ohio St.3d 259(1991); State v. Thompkins(1997), 78 Ohio St.3d 380, 386; State v. McKnight, 107 Ohio St.3d 101, 2005-Ohio-6046, 837 N.E.2d 315, ¶ 70.

(NOTE: Pursuant to clearly established Ohio Revised Codes at Section (D)(1)(b) of ORC 4511.19 "Operating vehicle under the influence of alcohol or drugs – OVI", clearly says: The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division when a person submits to a blood, breath, urine, or other bodily substance test at the request of a law enforcement officer under section 4511.191 of the Revised Code or a blood or urine sample is obtained pursuant to a search warrant. On the case at bar, The Respondents and State Police have no BAC Test Results obtained Voluntarily or Search in order to convict, but Respondent Prosecutor(Law Director) has adamantly made repeated futile attempts to coerce and extort this

Relator into pleading Guilty to anything or lesser included/unrelated charge for this Relator to get his State Driver's License back instead of dismissing charge.

(9) Further, Pursuant to clearly established Ohio State Highway Patrol Policy- OPS 902.20 "Alcohol and Drug Driver Enforcement" that on Page 5 of 17 of Ohio State Police Policy OSP-Number 902.20, Sections 6(a) through 6(c) clearly says that Troopers are required to get a search warrant, if someone refuses a test, and that if Trooper cannot get a warrant. That Trooper are authorized to use whatever reasonable means is necessary to get a chemical test from suspect or the driver at a hospital or doctor. See Division (B) of ORC 4511.192).

(10) On the case at bar, This Pro Se Relator has been charged with First Offense OVI, not OVI-Refusal. The Ohio Supreme Court clearly established in State v. Miller, 2012-Ohio-997, that: "Both OVI and OVI-Refusal are first-degree misdemeanors, subject to the same maximum fine and the same maximum jail term. The additional element of refusal with a prior conviction elevates the mandatory minimum sentence only. It does not change the level/degree of offense is unchanged by the prior conviction, the prior conviction is not an essential element of the case". Now pay attention to the difference between being convicted and charged for OVI and OVI-Refusal.

(11) "In Maumee v. Anistik, 69 Ohio St.3d 339 (1994), The Ohio Supreme Court held that a trial court may issue a refusal instruction to the jury if a person arrested for an OVI refuses to submit to chemical testing "and the reason given for the refusal is conditional, unequivocal, or a combination thereof * * *." The Court then approved specific language for such an instruction. Id. Moreover, we do not agree that R.C. 4511.19(A)(2) supplants the refusal instruction in Maumee as a matter of course. In addition to requiring the State to prove a Relator's refusal, R.C. 4511.19(A)(2) also requires the State to prove that a Relator "previously has been convicted of or pleaded guilty to a violation of this

division, a violation of [R.C. 4511.19](A)(1) or (B) * * *, or any other equivalent offense * * *." ***The statute does not criminalize all refusals because it only applies to repeat offenders.*** Both the refusal element and the repeat offender element distinguish R.C. 4511.19(A)(2) from R.C. 4511.19(A)(1)(a), the only OVI statute upon which Simin went to trial". See State v. Simin, 2012-Ohio-4389, ¶40.

(12) Under Ohio Law, In order to prove a simple OVI under R.C. 4511.19(A)(1)(a), The state is required to prove that the Relator was operating a vehicle under the influence of drugs, alcohol or a combination of both. State v. Hoover, 123 Ohio St.3d 418, 2009-Ohio-4993, ¶ 13. That provides: "No person shall operate any vehicle * * * if, at the time of the operation, * * * the person is under the influence of alcohol, a drug of abuse, or a combination of them." R.C. 4511.19(A)(1)(a). The State Police Report and Ticket has no BAC Test Result-

(13) However, In order to prove a **OVI-Refusal** under R.C. 4511.19(A)(2), The State must prove **Three Elements**: "(1) a DUI conviction within 20 years of the current violation, (2) operation of a motor vehicle while under the influence of alcohol or drugs, and (3) a refusal to submit to a chemical test while under arrest for the current DUI." Hoover at ¶ 13.

(14) The Ohio Supreme Court made it clear in Hoover that a prior OVI conviction is an essential element under R.C. 4511.19(A)(2). There, the Court stated: "A person's refusal to take a chemical test is simply an additional element that must be proven beyond a reasonable doubt along with the person's previous DUI conviction to distinguish the offense from a violation of R.C. 4511.19(A)(1)(a)." (Emphasis added.) Id. At ¶ 21. Thus, Respondent complete lack Corpus Delecti in order to ever charge/prosecute/convict, or what us Laymans call "ELEMENTS OF THE OFFENSE". This Pro Se Relator hereby educates/admonishes the Respondent Judge and Prosecutor.

(15) In State v. Latham, 2012-Ohio-2106, ¶ 18, As the Ohio Supreme Court has further

previously noted: In reviewing a claim of insufficient evidence, “the relevant inquiry is whether, after reviewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” State v. Jenks, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus, following Jackson v. Virginia (1979), 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560. Also see State v. Thompkins (1997), 78 Ohio St.3d 380, 386, 678 N.E.2d 541. State v. McKnight, 107 Ohio St.3d 101, 2005-Ohio-6046, 837 N.E.2d 315, ¶ 70.

(16) The Corpus Delicti of a crime consists of Two Elements, The act and the criminal agency of the act. State v. Van Hook (1988), 39 Ohio St.3d 256, 261; State v. Maranda (1916), 94 Ohio St. 364, paragraph one of the syllabus. Before an alleged confession is/admitted, there must be “some evidence outside of the confession that tends to prove some material element of the crime charged.” Maranda, 94 Ohio St. 364 at paragraph two of the syllabus. This independent evidence need not equal proof beyond a reasonable doubt. Id. See State v. Black (1978), 54 Ohio St.2d 304; State v. Bencic (May 3, 1995), 9th Dist. No. 16895, at 17. See State v. Goff, 2003-Ohio-1134 ¶11.

(17) Although the Corpus Delicti rule is well established in Ohio, the practicality of the rule has come into question in light of the modern procedural safeguards afforded to criminal Relators as setforth in State v. Edwards (1976), 49 Ohio St.2d 31, 35-36. As such, the courts do not apply the rule with “dogmatic vengeance.” Id. at 36. The burden on the state to produce “some evidence” of the corpus delicti is minimal. Van Hook, 39 Ohio St.3d at 261-62.

(18) That this Pro Se Relator claims/states that since date of arrest he has appeared before this Trial Court to be Arraigned on said alleged misdemeanor charges; That this Pro Se Relator has NO History of Alcohol/Substance Abuse; That this Pro Se Relator has NO prior convictions for OVI; and has

done everything possible to expedite the immediate resolution of this case/appeal with the Plaintiff/State to no avail. This Pro Se Relator maintains, and has proven his ACTUAL INNOCENCE on the charges against him as mandated under both State and Federal Law. See SCLEP V DELO, 513 US 289, 325; 115 Sct 851(1995); BOUSLEY V U.S., 523 US 614, 623; 118 Sct 1604; 140 LEd2d 828(1998). Also see MILLER V FRANCIS, 269, F3d 609, 614(6th Cir.2001); SIMPSON V JONES, 238 F3d 399, 405(6th Cir.2000).

(19) That this Relator states that since this Relator that lives where no public transportation runs. That this Pro Se Relator Petition the Respondent Judge Michael Cicconetti to have his State Driver's Licensed Privileges fully Reinstated or have Limited Driver's License Privileges reinstated before depriving him of the fundamental Federal Constitutional Rights to Life, Liberty, Travel, Freedom of Movement, and to engage/exercise his Right to Interstate Travel and Commerce protected under the "Privileges, Immunities and Comity Clause" of Article 1, Section 8, Clause 3; Article 6, Section 2, Clause 1; and First and Fourteenth Amendments of the US Constitution, in order, to provide financial support for this Pro Sec Relator's Right to Property and Pursuit of Happiness to provide for his family by being able to drive to work, go to doctors appointments, imminent courtdates, grocery store to shop for food, etc. as determined by the United States Supreme Court in Paul v. Virginia, 75 U.S. 168 (1869); Zobel v. Williams, 457 U.S. 55, 66 and 79(1982). Also see State v. Hollaender, 2014-Ohio-1782; Eastlake v. Komes, 2010-Ohio-2411; State v. Williams, 11th Dist. No. 2001-P-0112, 2002-Ohio-6920, Williams at ¶9- ¶10; State v. Ritch, 4th Dist. Scioto No. 99 CA 2634, 1999 WL 787924, *2 (Sept. 21, 1999); State v. Carter, 124 Ohio App.3d 423, 428 (2d Dist.1997); Bur. of Motor Vehicles v. Hesson, 4th Dist. Washington No. 85 X 13, 1986 WL 3414. This Relator hereby advises the Respondent Prosecutor JOSEPH GURLEY of his manifest Malicious Prosecution, and that Pro Se Relator will be filing a Federal

Complaint For Civil Action Action and will have the Federal Court hold case in Abeyance pending Relator's Acquittal by Jury Trial. The Respondent/Prosecutor Joseph Gurley WILL NOT be entitled to absolute Prosecutorial Immunity. See HECK v. HUMPHREY et al., 512 U.S. 477(1994).

(20) Thus, This Pro Se Relator will suffer a actual prejudicial "Irreparable Harm/Injury"(ie, Right to Liberty/Freedom for being unable to provide for his family, will loose his job/house, and will suffer a actual significant financial hardship. That is NOT correctable or available while waiting for any decision at Jury Trial(or Appeal By Right) by being unlawfully "in custody" for said unlawful First Offense OVI Charge. That was unlawfully obtained without any of the mandatory BAC Blood Alcohol Test Results ever being obtained by either the Plaintiff or Law Enforcement of this Relator submitting Voluntarily BAC Test OR by obtaining a Search Warrant according to Ohio State Police Policies/Procedures and State/Federal Law.

(21) That Relator claims/states that Ohio State Police Dashcam Video/Audio on said snowy winter night and of me being processed by Unknown Ohio Highway Patrol Trooper and other Unknown Officer(s) has Ohio State Trooper advising me on video that my refusal is not evidence for Jury Trial. See State v. Orians, 179 Ohio App. 3D 701, 2008-Ohio-6185(Where the Trial Court erroneously used an instruction linking refusal to take a test to consciousness of guilt that made repeated reference to intoxication, which is not an element of OVI, and informed the jury that the failure to provide an explanation for the refusal when asked for one could be considered as well).

(22) Upon simple review of clearly established In ORC 4501:1-1-25 "Report of peace officer; Request of **Commercial Motor Vehicle Driver** to submit to Blood, Breath or Urine Test(s) for Alcohol Concentration or Controlled Substances". It clearly says in Section (7) If the driver refused to submit to the requested test or tests, a statement that the driver refused to submit to the requested test or

tests; and, Section(B) The driver's signature on the report shall constitute evidence of the fact that the peace officer read and showed the statement to the driver, **but shall not constitute evidence of whether or not the driver refused to submit to the requested test** or tests. If the driver refuses to sign acknowledging that the peace officer read and showed the statement to the driver, the peace officer shall note the driver's refusal to sign. The driver's refusal to sign shall not affect the validity or enforceability of the peace officer's report.

(23) In Section (D) If the report of the peace officer states that the driver refused to submit to the requested test or tests or states that the driver submitted to the requested test or tests which disclosed the presence of a controlled substance or an alcohol concentration of four hundredths of one per cent or more, the registrar shall notify the driver, by regular mail to the address stated on the report, that the driver will be disqualified from driving a **commercial motor** vehicle for the period required by section 4506.16 of the Revised Code.

(24) Further, In ORC 4511.19 "Operating vehicle under the influence of alcohol or drugs – OVI", it clearly says in Section (D)(1)(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section or for an equivalent offense that is vehicle-related, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the Relator's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within three hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two-hour time limit specified in division (A) of section 4511.192 of the Revised Code as the maximum period of time during which a person may consent to a chemical test or

tests as described in that section. The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division **when a person submits to a blood, breath, urine, or other bodily substance test at the request of a law enforcement officer under section 4511.191 of the Revised Code **or a blood or urine sample is obtained pursuant to a search warrant.**** Only a physician, a registered nurse, an emergency medical technician-intermediate, an emergency medical technician-paramedic, or a qualified technician, chemist, or phlebotomist shall withdraw a blood sample for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this division may refuse to withdraw blood under this division, if in that person's opinion, the physical welfare of the person would be endangered by the withdrawing of blood”(End Quote. Emphasis Added).

(25) According to ORC 4511.191 “Implied Consent” it clearly states in:

“Section (2) Any person who operates a vehicle, streetcar, or trackless trolley upon a highway or any public or private property used by the public for vehicular travel or parking within this state or who is in physical control of a vehicle, streetcar, or trackless trolley **shall be deemed to have given consent to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine to determine the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine if arrested for a violation of division (A) or (B) of section 4511.19 of the Revised Code, section 4511.194 of the Revised Code or a substantially equivalent municipal ordinance, or a municipal OVI ordinance.**

Section (3) The chemical test or tests under division (A)(2) of this section **shall be administered at the**

request of a law enforcement officer having reasonable grounds to believe the person was operating or in physical control of a vehicle, streetcar, or trackless trolley in violation of a division, section, or ordinance identified in division (A)(2) of this section. The law enforcement agency by which the officer is employed shall designate which of the tests shall be administered.

(a) If a law enforcement officer arrests a person for a violation of division (A) or (B) of section 4511.19 of the Revised Code, section 4511.194 of the Revised Code or a substantially equivalent municipal ordinance, or a municipal OVI ordinance and if the person if convicted would be required to be sentenced under division (G)(1)(c), (d), or (e) of section 4511.19 of the Revised Code, the law enforcement officer shall request the person to submit, and the person shall submit, to a chemical test or tests of the person's whole blood, blood serum or plasma, breath, or urine for the purpose of determining the alcohol, drug of abuse, controlled substance, metabolite of a controlled substance, or combination content of the person's whole blood, blood serum or plasma, breath, or urine. A law enforcement officer who makes a request pursuant to this division that a person submit to a chemical test or tests is not required to advise the person of the consequences of submitting to, or refusing to submit to, the test or tests and is not required to give the person the form described in division (B) of section 4511.192 of the Revised Code, but the officer shall advise the person at the time of the arrest that if the person refuses to take a chemical test the officer may employ whatever reasonable means are necessary to ensure that the person submits to a chemical test of the person's whole blood or blood serum or plasma(End Quote, Emphasis Added).

(26) That this Pro Se Relator claims/states that he has demanded exculpatory discovery material information, and demanded the mandatory BAC Test Results in order to convict this Relator for a First Offense DUI. That the Plaintiff must produce the following mandatory BAC Alcohol Evidence

against the Relator in order to convict as setforth pursuant to O.R.C. 4511.19(A)(1):

- (f) The person has a concentration of seventeen-hundredths of one per cent or more by weight per unit volume of alcohol in the person's whole blood.
- (g) The person has a concentration of two hundred four-thousandths of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma.
- (h) The person has a concentration of seventeen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath.
- The person has a concentration of two hundred thirty-eight-thousandths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine.

(27) That Relator claims/states that the Prosecute, State Police, and Trial Court needs to come up with the mandatory/required CONCENTRATION OF ALCOHOL in this Relator's Blood, Breath, Urine etc and the Prosecute, Police, and Courts needs to compensate this Relator now or we can get all this Published in the State/Federal Lawbooks and I will provide DOZENS of innocent citizens/defendants to withdraw their Illusionary Guilty Pleas based upon Actual Innocence Defense, and/or the Respondents complete Lack of Corpus Delicti by Ineffective Public Defender merely Representing defendant/people in name only to preserve the Status Quo and Legalized Court OVI Racketeering in Respondents Court.

(28) That Relator claims/states that he has a Federal Constitution Right under Equal Protection procedural Due Process of Law, Access to the Courts, and to Fair Trial to said exculpatory Discovery, in order, to present a valid/meritorious "Actual Innocence Defense", and/or to use said requested exculpatory Discovery to impeach/rebut any the credibility of witnesses and evidence against this

Relator as clearly established by the U.S. Supreme Court Justices in Napue v. Illinois, 360 US 264(1959); Brady v. Maryland - 373 U.S. 83(1963); Giglio v. United States - 405 U.S. 150 (1972); Moore v. Illinois, 408 U. S. 786, 810(1972); United States v. Agurs, 427 U.S. 97 (1976); U.S. V BAGLEY, 473 US 667; 105 Sct 3375; 87 LEd2d 481(1985); and/or Ohio Appellate Courts in State v. Lawson (1992), 64 Ohio St.3d 336, 343; State v. Parrish (1991), 71 Ohio App.3d 659, and Columbus v. Hamilton (1992), 78 Ohio App.3d 653.

(29) This Pro Se Relator claims/states that the Respondent Painesville Prosecutor Joseph Gurley is intentionally and in bad faith committing Prosecution Misconduct to violate my Federal Equal Protection Right to a Fair Jury Trial. Because the Respondent Prosecutor Joseph Gurley (and brags he "knows the law" and has been "practicing law" for 28-years). Thus, Prosecutor Joseph Gurly should know or reasonably should know that "The purpose of Trial is as much the acquittal of an innocent person as it is the conviction of a guilty one." Application of Kapatos, 208 F.Supp. 883, 888 (SDNY 1962); Giles v. Maryland, 386 U. S. 66, 98(1967) ("The State's obligation is not to convict, but to see that, so far as possible, truth emerges"). When evidence favorable to the Relator is known to exist, disclosure only enhances the quest for truth; it takes no direct toll on that inquiry. Moreover, the existence of any small piece of evidence favorable to the defense may, in a particular case, create just the doubt that prevents the jury from returning a verdict of guilty. The private whys and wherefores of jury deliberations pose an impenetrable barrier to our ability to know just which piece of information might make, or might have made, a difference. Id 693.

(30) That this Pro Se Relator claims/states that Respondent Painesville Municipal Court Judge Michael A. Ciccoinetti is "abusing or usurping judicial functions" by refusing to reinstate this Relator's State Driver's License after 30-Day Maximum Suspension Period within the Painesville Municipal Court

in violation of 4511.197 Appeal of implied consent suspension, and Respondent Judge Cicconetti abusing usurping his judicial function that Relator's Driver's License will be suspended for a year. Also see State v. Hollaender, 2014-Ohio-1782 ¶23; Smith v. Smith, 3d Dist. Wyandot No. 16-01-03, 2001 WL 929375, *1 (Aug. 16, 2001); State v. Ritch, 4th Dist. Scioto No. 99 CA 2634, 1999 WL 787924, *2 (Sept. 21, 1999); State v. Carter, 124 Ohio App.3d 423, 428 (2d Dist.1997); Bur. of Motor Vehicles v. Hesson, 4th Dist. Washington No. 85 X 13, 1986 WL 3414, *2 (Mar. 20, 1986). This Defendant timely appealed from DMV Letter/advise.

(31) Thus, Respondent Painesville Municipal Trial Court Judge Michael Cicconetti is blatantly “abusing or usurping judicial functions” by disregarding clearly established Federal Law by issuing the Final Judgment Entry to DENY to Reinstate Relator's Drivers License beyond the 30-Day Suspension Period in violation of ORC 4511.192 “Advice to OVI Arrestee” at Section (D)(1)(a); and in violation of Relator's Federal Constitutional Rights to Life, Liberty, Travel, Freedom of Movement, and to engage/exercise his Federal Right to engage in Interstate Travel and Commerce protected under the Privileges, Immunities and Comity Clause of Article 1, Section 8, Clause 3; Article 6, Section 2, Clause 1; Federal Supremacy Clause; and the First and Fourteenth Amendments of the US Constitution, in order, to provide financial support for this Pro Sec Relator-Appellant’s Right to Property and Pursuit of Happiness to provide for her family by being able to drive to work, go to doctors appointments, imminent courtdates, grocery store to shop for food, etc. as determined by the United States Supreme Court. Paul v. Virginia, 75 U.S. 168 (1869); Zobel v. Williams, 457 U.S. 55, 66 and 79(1982). Also see State v. Hollaender, 2014-Ohio-1782; Eastlake v. Komes, 2010-Ohio-2411; State v. Williams, 11th Dist. No. 2001-P-0112, 2002-Ohio-6920, Williams at ¶9- ¶10; State v. Ritch, 4th Dist. Scioto No. 99 CA 2634, 1999 WL 787924, *2 (Sept. 21, 1999); State v. Carter, 124 Ohio App.3d 423, 428 (2d Dist.1997); Bur. of

Motor Vehicles v. Hesson, 4th Dist. Washington No. 85 X 13, 1986 WL 3414.

(32) "An abuse of discretion involves far more than a difference in opinion. The term discretion itself involves the idea of choice, of an exercise of will, of a determination, made between competing considerations. In order to have an 'abuse' in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but the perversity of will, not the exercise of judgment but the defiance thereof, not the exercise of reason but rather of passion or bias." Huffman v. Hair Surgeon, Inc. (1985), 19 Ohio St.3d 83, 87, 482 N.E.2d 1248. To constitute an abuse of discretion, the ruling must be more than legal error; it must be unreasonable, arbitrary, or unconscionable. Blakemore v. Blakemore(1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

(33) In United States v. Carmack, 329 U.S. 230 (1946) clearly established, that, "Arbitrary" is defined as: "without adequate determining principle; Fixed or arrived at through an exercise of will or by caprice, without consideration or adjustment with reference to principles, circumstances, or significance, . . . decisive but unreasoned. . . ."; "Capricious" is defined as: "apt to change suddenly; freakish; whimsical; humorsome."

(34) On APRIL 22, 2015, at Approximately 5:30 PM, This Pro Se Relator claims/states that he was pulled over by the Chardon Police Dept based upon the Chardon PD unlawfully using LEIN/LEADS in non-emergency situation, in violation of Chardon PD Policy, and State/Federal Law. Said Unknown Chardon PD Officer said that he was randomly running license plates, and saw that my Driver's License was suspended based upon Painesville Municipal Court Judge Michael Cicconetti suspending my Driver's License. Thus, The Painesville Municipal Court Judge's Ad Hoc Final Decision to suspend my Driver's License for One Year without ever being convicted for OVI, and without mandatory/required

BAC Test Results is in violation of both State/Federal OVI Laws and numerous State/Federal case law precedence unambiguously violates my Federal Constitutional Rights to Life, Liberty, Travel, Freedom of Movement, and to engage/exercise his Federal Right to engage in Interstate Travel and Commerce; Privileges, Immunities and Comity Clause protected under the Federal Supremacy Clause and Article 1, Section 8, Clause 3; Article 6, Section 2, Clause 1; and the First and Fourteenth Amendments of the US Constitution as determined by the US Supreme Court

(35) This Pro Se Relator claims/states that if this Writ of Prohibition is denied by this Honorable Ohio Supreme Court this Relator will seek Federal Judicial Review on herein clearly established Federal Questions of Law and Federal Constitutional Rights being violated by State Malicious Prosecution, and based upon the fact the State Appellate Court have declined to rule on Federal Questions of Law.

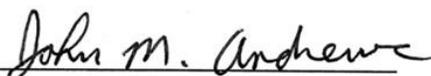
(36) In conclusion, That this Relator's pro se pleadings cannot be held same standards as those drafted by attorney as held/ruled by the United States Supreme Court in Cooper v. Pate, 378 U. S. 546 (1964); Hughes v. Rowe, 449 U.S. 5, 9-10, 101 S.Ct. 173, 175-76, 66 L.Ed.2d 163 (1980); Boag v. MacDougall, 454 U.S. 364, 365(1982); Haines V Kerner, 404 US 519, 521(1972); and accept Relator's allegations as true, unless they are clearly irrational or wholly incredible. Denton v. Hernandez, 504 U.S. 25, 33(1992) unless it appears 'beyond doubt that the Relator(pro se litigant) can prove no set of facts in support of his claim which would entitle him/her to relief.' Conley v. Gibson, 355 U. S. 41, 355 U. S. 45-46 (1957).

WHEREFORE, This Pro Se Relator prays/requests that this Honorable Ohio Supreme Court honors/grants the Relator's Pro Se "Memorandum In Opposition To Respondent's Motion To Dismiss". By issuing an Order DENYING Respondents Motion To Dismiss; and issue a Order GRANTING Relator' Writ of Prohibition. Since this Relator has made a very strong showing of proof: (1) that the court or officer against whom the writ is sought is about to exercise judicial or quasi-judicial power; (2) the exercise of that power is unauthorized by law; (3) denying a writ will result in injury for which no other adequate remedy exists in the ordinary course of law; (4) That this Pro Se Relator will suffer a "actual irreparable harm/injury"(ie, Federal Constitutional Rights To Liberty; Freedom of Movement, Travel, and Commerce by depriving him of Substantial Rights- Driver's License Privileges(currently suspended) based upon Respondents "abusing and usurping" their Judicial Functions. That a Substantial Prejudicial Error would result by blatantly violating this Relator of his clearly established Federal Constitutional Rights protected under Equal Protection Right to procedural Due Process of Law and Access to the Courts, protected under 1st, 4th, 5th, 6th, and 14th Amendments of the U.S. Constitution, as all circumstances should dictate and Justice would so demand.

Date: 5-4-15

Respectfully Submitted,

XC: Judge Michael Cicconetti
Painesville Prosecutor
Law Director Joseph Gurley


RELATOR IN PRO PER
JOHN MARK ANDREWS
120 COURT STREET
PAINESVILLE, OHIO 44024
(440) 391-3381

STATE OF OHIO)
)SS.
COUNTY OF LAKE)

CERTIFICATE OF SERVICE

On _____ 2015, The undersigned served a copy of this Pro Se Relator's Memorandum In Opposition To Respondents Motions To Dismiss; and Certificate of Service. Upon Respondent Painesville Municipal Court Judge MICHAEL A. CICCONE, Painesville Municipal Court, 7 Richmond Street, P.O. Box 601, Painesville, OH 44077; Respondent Painesville Prosecutor(Law Director) JOSEPH GURLEY at 240 E. Main St., Painesville, OH 44077; and the State of Ohio, via, Ohio Attorney General, Mike Dewine, at 30 E. Broad Street, 14th Floor, Columbus, Ohio 43215. By placing a copy of said documents in a sealed envelope, properly addressed with First Class US Postage being fully prepaid and depositing it in the US Mail.

I declare that the above statements are true to the best of my knowledge, information, and belief. 29 USC 1746 et seq.

Date: 5-4-15

XC: Judge Michael Cicconetti
Painesville Prosecutor
Law Director Joseph Gurley

Respectfully Submitted,

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