

IN THE SUPREME COURT OF OHIO

STATE EX REL.)	
DOUGLAS E. ODOLECKI)	CASE NO.
c/o John W. Gold, Esq.)	
412 Aqua Marine Blvd.)	
Avon Lake, OH 44012)	
)	
Relator)	ORIGINAL ACTION IN HABEAS,
)	MANDAMUS, AND PROHIBITION
vs.)	
)	
FRANK D. CELEBREZZE, JR.)	
Presiding Judge)	
Eighth District Court of Appeals)	
1 W. Lakeside Ave.)	
#202)	
Cleveland, OH 44113)	
)	
and)	
)	
EIGHTH DISTRICT COURT)	
OF APPEALS)	
1 W. Lakeside Ave.)	
#202)	
Cleveland, OH 44113)	
)	
and)	
)	
TIMOTHY J. DEGEETER)	
Mayor, City of Parma)	
6611 Ridge Road)	
Parma, OH 44129)	
)	

and)
)
LOU GALIZIO)
Administrator, City of Parma Jail)
5555 Powers Blvd.)
Parma, OH 44129)
)
Respondents)

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

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

1. Douglas E. Odolecki is a journalist and law enforcement accountability activist who was convicted of one count of Obstruction of Official Business, a second degree misdemeanor, in Parma Municipal Court Case No. 14CRB02839. Mr. Odolecki was also convicted of one count of Misconduct at an Emergency, a fourth degree misdemeanor, Obstruction of Official Business, a second degree misdemeanor and Disorderly Conduct, a fourth degree misdemeanor, in Parma Municipal Court Case No. 15CRB30555. The cases were consolidated and tried to a jury on February 9-11, 2016.

2. On February 11, 2016 the trial court sentenced Mr. Odolecki to the maximum length of incarceration on all counts and, contrary to law, ordered that the sentences run consecutively without making any findings in support thereof as required by R.C. § 2929.14. Mr. Odolecki's counsel made an oral motion to stay execution which was summarily denied by the court.

3. Mr. Odolecki then commenced his appeal with the the Eighth District Court of Appeals and filed a motion to set bond. Without articulating its reasoning, the court of appeals denied Mr. Odolecki's motion.

4. Mr. Odolecki has no adequate remedies at law. Unless this Court grants the relief requested in this action, Mr. Odolecki will have served a sentence far in excess of the maximum permitted length of incarceration, ninety days, even if his convictions are affirmed. Moreover, for reasons more fully set forth herein, Mr. Odolecki's convictions are likely to be reversed on appeal, yet he will have completed his sentence.

JURISDICTION

5. 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

6. Douglas E. Odolecki is the Relator in this action, currently incarcerated in the Parma Municipal Jail without bond.

7. Respondent Frank D. Celebrezze, Jr. is the Presiding Judge of the Eighth District Court of Appeals located in Cuyahoga County, Ohio. Without explanation, of the Court of Appeals, Judge Celebrezze signed the order denying Mr. Odolecki bond pending his appeal.

8. Respondent Eighth District Court of Appeals is located in Cleveland, Ohio and hears appeals of cases adjudicated in the trial courts of Cuyahoga County. The Eighth District Court of Appeals denied Mr. Odolecki's motion for a stay.

9. Respondent Timothy J. DeGeeter is the Mayor of the City of Parma in Cuyahoga County, Ohio and is ultimately responsible for the operation of the Parma City Jail where Mr. Odolecki has been ordered to serve his sentence.

10. Respondent Lou Galizio is the Administrator of the Parma City Jail. One of Mr. Galizio's responsibilities is the operation of the Parma City Jail where Mr. Odolecki has been ordered to serve his sentence.

FACTS

The Trial, verdict, sentencing and Post-Trial Motion for Stay

June 13, 2014 – Obstruction of Official Business

11. During one of the City of Parma's OVI Checkpoint operations, Douglas Odolecki was standing on the corner sidewalk at the intersection of State and Brookpark roads, three blocks north from the City's checkpoint, holding a sign that read "CHECKPOINT AHEAD – TURN NOW." The only basis for the conviction was a police officer's testimony that he observed two vehicles with their turn signals on proceed straight on Brookpark Road rather than turning south onto State Road.

July 29, 2015 - Obstruction of Official Business, Misconduct at an Emergency, Disorderly Conduct

12. While riding his bicycle across a bridge on Snow Road, Mr. Odolecki observed several Parma Police Officers surrounding a young man sitting on a guardrail. Mr. Odolecki immediately began filming the encounter from his cellphone. Odolecki crossed the street, stood

at the corner at least 25 feet from the encounter and continued filming. Mr. Odolecki was asked not to film because the boy was “having a bad day.” Odolecki continued filming, whereupon Parma police officer Sgt. Gillesie knowingly and falsely advised Odolecki that the boy was a minor and that Odolecki needed his mother’s permission to film him. Gillesie then assaulted Odolecki by coming into physical contact with Odolecki’s phone and person. Gillesie instructed Odolecki to “take a walk” whereupon Odolecki crossed the street and continued filming. Odolecki also began to voice his displeasure for the police officer’s actions by protesting that “this guy likes to violate peoples’ rights” and “say hello to YouTube mother----er.”

13. Odolecki was subsequently charged with Obstruction of Official Business, Misconduct at an Emergency and Disorderly Conduct. Contrary to law, the jury was placed in the position of having to determine whether Odolecki has a First Amendment privilege to videotape the police or to criticize their conduct verbally. The City obtained a conviction on all three counts on the basis that by merely videotaping a suicidal teenager with autism (facts wholly unknown to Odolecki at the time) that he was obstructing the Parma Police from responding to the crisis and that by filming and verbally expressing his displeasure for the police’s conduct, merely because children were in the immediate vicinity, he engaged in misconduct at the scene of an emergency and disorderly conduct.

14. During voir dire, Judge O’Donnell’s biased, pro-police sentiment was showcased for the entire jury pool when she summarily removed another police accountability activist, who was sitting directly behind the undersigned in the gallery, for no apparent cause. The individual was making no noise and was causing no disturbance of which the undersigned is aware. When asked by counsel why she removed the individual, Judge O’Donnell simply stated that “he was

distracting me.” Judge O’Donnell’s actions tainted the jury pool before the first piece of evidence was even presented.

15. During trial, the City of Parma presented no evidence that Mr. Odolecki lacked a constitutional privilege to exercise his speech or to observe and record the City of Parma Police, even though lack of privilege is an element of the offense of Obstruction of Official Business:

606.14 OBSTRUCTING OFFICIAL BUSINESS.

(a) No person, **without privilege to do so** and with purpose to prevent, obstruct, or delay the performance by a public official of any authorized act within the public official’s official capacity, shall do any act that hampers or impedes a public official in the performance of the public official’s lawful duties.

(emphasis added)

16. The City presented no evidence that Mr. Odolecki, by merely holding a sign on June 13, 2014 or merely filming the police on July 29, 2015, succeeded in actually hampering or impeding them. It is not enough that Mr. Odolecki merely inconvenienced them. See *Lakewood v. Abdelhaq* 2014 Ohio 4572 (8th Dist. App. 2014)

17. The City of Parma admitted during statements made in closing that videotaping police encounters is “what Mr. Odolecki does for a living” – thereby exempting him from liability as a journalist pursuant to the Misconduct at Emergency charge:

648.07 MISCONDUCT AT AN EMERGENCY.

(a) No person shall knowingly do any of the following:

(1) Hamper the lawful operations of any law enforcement officer, firefighter, rescuer, medical person, emergency medical services person, or other authorized person engaged in the person's duties at the scene of a fire, accident, disaster, riot, or emergency of any kind;

(2) Hamper the lawful activities of any emergency facility person who is engaged in the person's duties in an emergency facility;

(3) Fail to obey the lawful order of any law enforcement officer engaged in the law enforcement officer's duties at the scene of or in connection with a fire, accident, disaster, riot, or emergency of any kind.

(b) ***Nothing in this section shall be construed to limit access or deny information to any news media representative in the lawful exercise of the news media representative's duties.***

(emphasis added)

18. The City of Parma failed to produce any evidence that the words uttered by Mr. Odolecki criticizing the actions of the Parma Police amounted to “fighting words” which would take his speech outside of the protections afforded by the First Amendment. See *State v. Hoffman* (1979) 57 Ohio St.2d 129 (persons may not be punished under [disorderly conduct statute] for speaking boisterous, rude or insulting words, even with the intent to annoy another, unless the words by their very utterance are likely to provoke the average person to an immediate, retaliatory breach of the peace.)

19. The trial court excluded all evidence pertaining to the constitutionality of the City of Parma’s OVI Checkpoints even though such evidence was relevant to Mr. Odolecki’s defense that he was engaging in protected speech by challenging the City’s unconstitutional practices on June 13, 2015. Additionally, the trial court refused to permit Mr. Odolecki’s counsel to make an offer of proof for a reviewing court.

20. Following the close of evidence, Mr. Odolecki’s counsel convened with the prosecution in Judge Deanna O’Donnell’s jury room to ensure that the jury had all appropriate video exhibits available for viewing. The walls of the jury room were adorned with certificates and awards clearly evincing the pro-police sentiment of the trial court. No certificates, plaques or awards were displayed on the walls other than those issued to Judge O’Donnell by the City of Parma Police.

21. During sentencing, Judge O’Donnell was vitriolic. In her haste to impose sentence, she had to be reminded by the prosecution to permit Defendant and his counsel to make a statement. Judge O’Donnell’s voice was raised, frequently yelling. She called Mr. Odolecki a “bully” and even suggested that if she had been present at the scene on July 29, 2015

she would have physically assaulted Mr. Odolecki. On best memory her words were “you would have had to call the police for me.” Judge O’Donnell also, in response to her self-posed rhetorical question of when the perceived trend of public disrespect toward law enforcement will end, stated “I can stop it for a little bit.” These statements clearly demonstrate a pro-police bias and a departure from neutrality. Judge O’Donnell imposed consecutive sentences without making any statutorily mandated findings in support thereof, resulting in a 240 day sentence that is contrary to law. (Exhibits A & B)

22. Mr. Odolecki’s post-sentencing oral motion to stay execution was summarily denied.

23. Mr. Odolecki timely appealed and moved the Eighth District for an order setting bond ending appeal. On Thursday, March 10, the Court of Appeals made denied Mr. Odolecki’s motion, as set forth in its judgment entry:

Motion to set bond pending appeal is denied

(Exhibit C)

COUNT I – WRIT OF HABEAS CORPUS

24. Mr. Odolecki incorporates and re-alleges the above paragraphs.

25. 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).

26. The Eighth District Court of Appeals erred when it denied Mr. Odolecki bail without giving any explanation, in light of the fact that Mr. Odolecki (1) poses no risk of flight, (2) is not a danger to the community, (3) is likely to prevail on his appeal regarding, at a

minimum, the court's imposition of consecutive sentences; and (4) will have completed in excess of the statutorily permitted sentence by the time his likely meritorious appeal is resolved.

27. *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.*

28. 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." Accordingly, the Ohio Supreme Court remanded the case to the court of appeals for further consideration of *Liles's* request for bail pending appeal.

29. More recently, this court in *State ex rel. Hunter v. Cunningham*, 141 Ohio St.3d 1423 (2014) the Court ordered that Relator, a judge convicted of a *fourth degree felony* (Having an Unlawful Interest in a Public Contract), should have her sentence stayed, that no additional bond should be required and that she should remain free on her own recognizance during the pendency of her appeal.

30. Mr. Odolecki's argument for bail is even stronger than Judge Hunter's. His offenses are not fourth degree felonies, but merely "petty offenses" pursuant to Crim.R. 2. A "petty offense" is "a misdemeanor other than [a] serious offense." Crim.R. 2(D). Under Crim.R. 2(C), a "serious offense" is "any felony, and any misdemeanor for which the penalty prescribed by law includes confinement for more than six months." The maximum penalty for Odolecki's Obstruction of Official Business convictions, second-

degree misdemeanor, is confinement for ninety days. R.C. 2929.24(A)(2). The maximum sentence for Odolecki's Misconduct at an Emergency and Disorderly Conduct charges, fourth degree misdemeanors, is confinement for thirty days. R.C. 2929(A)(4).

31. Further, Mr. Odolecki can not be seriously considered a flight risk because the maximum sentence he may serve, if convicted, is ninety days. Pursuant to R.C. 2929.14(C)(4):

If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

- (a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.
- (b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.
- (c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

Thus, a trial court must make three findings before imposing consecutive sentences:

- (1) that consecutive sentences are necessary to protect the public from future crime or to punish the offender; (2) that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public; and (3) that one of the three particular findings set forth in R.C. 2929.14(C)(4)(a)-(c) applies.

State v. Linde, 9th Dist. Summit No. 26714, 2013-Ohio-3503, ¶ 25.

Recently, in *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, the Supreme Court of Ohio stated that:

In order to impose consecutive terms of imprisonment, a trial court is required to make the findings mandated by R.C. 2929.14(C)(4) at the sentencing hearing and incorporate its findings into its sentencing entry, but it has no obligation to state reasons to support its findings.

(Emphasis added.) Id.

Here, the trial court failed to make any of the findings mandated by R.C. § 2929.14. The court failed state either on the record or in its journal entry that “consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public.” Absent this finding, it is not even necessary to examine whether the secondary requirements of subsections (a), (b) or (c) have been met.

As of the time of this filing, Mr. Odolecki has already served 35 days of the maximum 90-day sentence allowable by law

32. Finally, there is no adequate remedy at law. By the time the court of appeals decides Mr. Odolecki’s appeal, he will have fully served in excess of the maximum sentence permitted by law, which would be unjustified even if he were to fail in his attempt to overturn his convictions. Sen

33. Accordingly, this Court should grant Mr. Odolecki’s petition for a writ of habeas corpus.

COUNT II – WRIT OF MANDAMUS

34. Mr. Odolecki incorporates and re-alleges the above paragraphs.

35. In addition to seeking a writ of habeas corpus, Mr. Odolecki alternatively seeks a writ of mandamus.

36. In light of this Court's decision in *Hunter*, Mr. Odolecki is entitled to be released on bail, particularly where he 1) poses no risk of flight, (2) is not a danger to the community, (3) is likely to prevail on his appeal regarding, at a minimum, the court's imposition of consecutive sentences; and (4) will have completed in excess of the statutorily permitted sentence by the time his likely meritorious appeal is resolved.

37. Accordingly, this Court should stay Mr. Odolecki's sentence, and remand the case back to the court of appeals with the instruction to re-evaluate his motion and set an appropriate bond.

COUNT III – WRIT OF PROHIBITION

38. Mr. Odolecki incorporates and re-alleges the above paragraphs.

39. In addition to seek writs of habeas corpus and mandamus, Mr. Odolecki also seeks a writ of prohibition to restrain Mayor DeGeeter and Jail Administrator Galizio from admitting him into the Parma City Jail pending the court of appeals establishment of an appropriate bond.

PRAYER FOR RELIEF

WHEREFORE, Relator Douglas E. Odolecki 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 set an appropriate bond.
2. Issue a peremptory writ of mandamus, or at a minimum, an alternative writ, requiring the Eighth District Court of Appeals to set an appropriate bond.
3. Issue a peremptory writ of prohibition, or at a minimum, an alternative writ,

prohibiting Mayor DeGeeter and Jail Administrator Galizio from taking Mr. Odolecki into custody until the Eighth District Court of Appeals has the opportunity to set an appropriate bond.

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,

JOHN W. GOLD, LLC

/s/ John W. Gold

JOHN W. GOLD (#0078414)

412 Aqua Marine Blvd.

Avon Lake, OH 44012

Phone: (419) 871-0249

Fax: (419) 593-4441

Email: jgold@jwg-law.com

Attorney for Defendant-Appellant

CERTIFICATE OF SERVICE

A copy of the foregoing was sent via Electronic Mail on the 22nd day of March, 2016, to

the following:

Prosecutor
Parma City Hall
6611 Ridge Road
Parma, OH 44129

/s/ John W. Gold

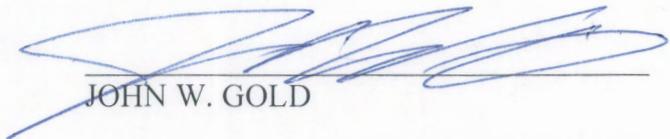
JOHN W. GOLD (#0078414)

STATE OF OHIO)
)
COUNTY OF LORAIN) SS: AFFIDAVIT OF JOHN W. GOLD

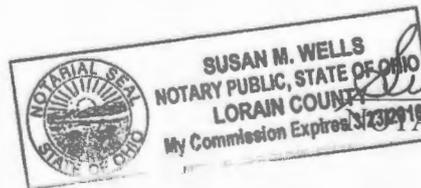
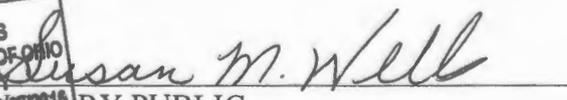
Now comes John W. Gold, who being first duly sworn, deposes and states that:

1. I am an adult who is competent to testify and has knowledge of the facts set forth in this Affidavit.
2. Douglas Odolecki was convicted of one count of Obstructing Official Business in Parma Municipal Court Case No. 14CRB02839. A copy of the court's judgment entry is attached hereto as Exhibit A.
3. Douglas Odolecki was convicted of Obstructing Official Business, Misconduct at an Emergency and Disorderly Conduct in Case No. 15CRB30555. A copy of the court's judgment entry is attached hereto as Exhibit B.
4. Douglas Odolecki made an oral motion in the trial court to stay execution of sentence and to continue bond pending appeal.
5. The trial court denied Mr. Odolecki's motion without explanation.
6. Mr. Odolecki appealed his conviction to the Eighth District Court of Appeals.
7. Mr. Odolecki moved the Eighth District Court of Appeals for an order to set bond pending his appeal.
8. The Eighth District Court of Appeals denied Mr. Odolecki's motion without explanation. A copy of the court's judgment entry is attached hereto as Exhibit C.

FURTHER AFFIANT SAYETH NAUGHT.


JOHN W. GOLD

Sworn to and subscribed, before me and in my presence, the foregoing Affidavit, this 22 day of March, 2016.

 
SUSAN M. WELLS
NOTARY PUBLIC
NOTARY PUBLIC

IN THE PARMA MUNICIPAL COURT

CUYAHOGA COUNTY, OHIO

STATE OF OHIO

CITY OF PARMA

CASE NUMBER: 14CRB02839

vs.

JUDGE: DEANNA O'DONNELL

DOUGLAS E ODOLECKI

JUDGMENT ENTRY

Case called on 02/09/2016. Defendant present with counsel JOHN W GOLD along with Prosecuting Attorney JOHN J SPELLACY. Defendant having previously entered a plea of not guilty to 606.14 OBSTRUC OFFIC.BUSINESS.

WHEREUPON the trial commenced and witnesses were sworn. DEFENDANT FOUND GUILTY.

Defendant fined \$200.00 and costs. Jail 90 days

JAIL TIME TO RUN CONSECUTIVE TO CASE #15CRB03055

Judge Deanna O'Donnell

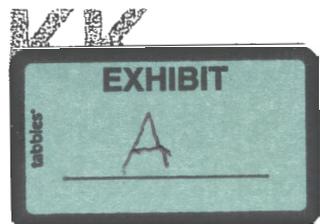
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PARMA MUNICIPAL COURT



IN THE PARMA MUNICIPAL COURT

CUYAHOGA COUNTY, OHIO

FILED
PARMA MUNICIPAL COURT
16 FEB 23 AM 11:29

STATE OF OHIO

CITY OF PARMA

CASE NUMBER: 15CRB03055

vs.

JUDGE: DEANNA O'DONNELL

DOUGLAS E ODOLECKI

JUDGMENT ENTRY

Case called on 02/09/2016. Defendant present with counsel JOHN W GOLD along with Prosecuting Attorney JOHN J SPELLACY. Defendant having previously entered a plea of not guilty to 648.07 MISCONDUCT AT EMER.

606.14 OBSTRUCT OFFIC.BUSIN

648.04 DISORDERLY CONDUCT.

WHEREUPON the trial commenced and witnesses were sworn. DEFENDANT FOUND GUILTY.

COUNT 1: Defendant fined \$200.00 and costs. Jail 30 days

COUNT 2: Defendant fined \$200.00 and costs. Jail 90 days

COUNT 3: Defendant fined \$100.00 and costs. Jail 30 days

JAIL TIME TO RUN CONSECUTIVE

Judge Deanna O'Donnell

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PARMA MUNICIPAL COURT

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EXHIBIT
B

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Nailah K. Byrd, Clerk of Courts

CITY OF PARMA

Appellee

COA NO.
104160

LOWER COURT NO.
2014 CRB 02839
2015 CRB 30555

PARMA MUNI.

-VS-

DOUGLAS E. ODOLECKI

Appellant

MOTION NO. 493934

Date 03/10/16

Journal Entry

Motion by Appellant to set bond pending appeal is denied.

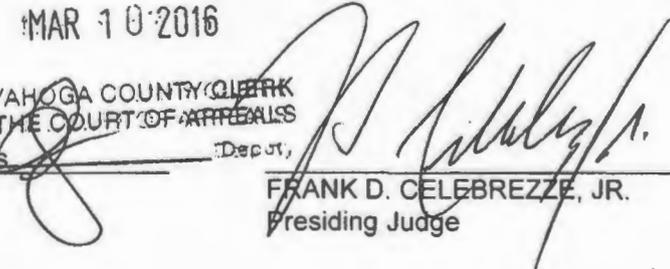
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MAR 10 2016

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS

Judge PATRICIA A. BLACKMON, Consuls

Deput,


FRANK D. CELEBREZZE, JR.
Presiding Judge

CA16104160



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EXHIBIT

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