ORIGINAL

NO. 2016-0812

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX, REL. RANDOLPH DAILEY, ET AL.,

Relators-Appellee

vs.

JUDGE WILLIAM L. DAWSON

Respondent-Appellant

MERIT BRIEF OF INTERVENOR-RESPONDENTS/APPELLANTS CUYAHOGA COUNTY PROSECUTOR'S OFFICE AND CITY OF EAST CLEVELAND

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INTRODUCTION AND SUMMARY OF ARGUMENT

Appellee-Relators Randolph Dailey, Michael Donegan, Patricia Coleman, Jason Edens, and Paul Wilson, brought an original action for a writ of prohibition in the Eighth District Court of Appeals in an attempt to prevent Respondent, the Honorable Judge William L. Dawson, from exercising his jurisdiction over misdemeanor criminal complaints in the East Cleveland Municipal Court.

The misdemeanor criminal actions at issue involve second-degree misdemeanor complaints filed by the Cuyahoga County Prosecutor and the City of East Cleveland against the Appellee-Relators for their failure to control themselves, and the Cleveland police officers under their supervision during the reckless and outrageous high-speed, multi-jurisdictional vehicular pursuit of unarmed Timothy Russell and Malissa Williams on the night of November 29, 2012. This police chase lead to the tragic deaths of Russell and Williams in the driveway of East Cleveland's Heritage Middle School parking lot when thirteen Cleveland Police officers, including Michael Brelo, fired 137 bullets into the victims and their trapped vehicle—killing them.

The facts alleged in both Appellee-Relators' original and amended complaints, attachments, and the facts incorporated in the pleadings before the Eighth District Court of appeals, demonstrated that Relators were not legally entitled to a writ of prohibition against Judge Dawson. As set forth below, the Eighth District Court of Appeals erred in granting Appellee-Relators' a writ of prohibition against Judge Dawson when the underlying claims within in their verified complaint should have been raised during the ordinary course of in a motion to dismiss before Judge Dawson and then, if necessary, on a subsequent appeal. It was irrelevant for the appellate court to review and consider the decision of the Cuyahoga Court of Common Pleas to dismiss the common pleas indictments other than to recognize the fact that dismissals occurred.

Judge Dawson did not patently and unambiguously lack jurisdiction over the underlying misdemeanor complaints to hear and decide arguments on the "jurisdictional priority rule", because the East Cleveland Municipal Court has the inherent jurisdiction to determine its own jurisdiction and render judgement on any alleged defects within misdemeanor complaints. The Eighth District abused its discretion in determining whether or not prohibition lied in this matter when it inappropriately reviewed the decision of the Cuyahoga County Court of Common Pleas to dismiss the criminal indictments against the Appellees-Relators. As such, Appellant Intervenor-Respondents request that this Court reverse the judgment of the Eighth District Court of Appeals and dismiss the action for the Writ of Prohibition against Judge Dawson in its entirety—ending the needless delay of justice for Timothy Russell, Malissa Williams, and the citizens of East Cleveland, and further hold as law Appellant's Proposition of Law:

> **PROPOSITION OF LAW:** A municipal court has the ability to determine its own jurisdiction, to include a determination regarding whether the jurisdictional priority rule would apply in a criminal case. As such, no writ of prohibition would lie as a criminal defendant must first challenge the municipal court's jurisdiction and the criminal defendant has an adequate remedy at law by means of appeal to challenge the court's jurisdiction.

RELEVANT STATEMENT OF THE FACTS AND OF THE CASE

As correctly stated by the Eighth District Court of Appeals, there is no dispute the misdemeanor complaints filed in East Cleveland Municipal Court and the misdemeanor charges[1]

[1] The East Cleveland cases at issue are: *E. Cleveland v. Dailey*, E. Cleveland M.C. No. 15CRB00623; *E. Cleveland v. Donegan*, E. Cleveland M.C. No. 15CRB00626; *E. Cleveland v. Coleman*, E. Cleveland M.C. No. 15CRB000625; *E. Cleveland v. Edens*, E. Cleveland M.C. No. 15CRB000624; and *E. Cleveland v. Wilson*, E. Cleveland M.C. No. 15CRB000627 ("The East Cleveland Complaints").

in Cuyahoga County Court of Common Pleas indictments[2] stem from the same police pursuit through the cities of Cleveland and East Cleveland that culminated in the deaths of Malissa Williams and Timothy Russel on November 29, 2012. *Sate ex rel. Dailey v. Dawson*, 8th Dist. Cuyahoga No. 103237, 2016-Ohio-2837, at ¶ 8.

On May 30, 2014, a Cuyahoga County Court of Common Pleas Grand Jury returned indictments against Appellee-Relators Randolph Dailey, Michael Donegan, Patricia Coleman, Jason Edens, and Paul Wilson for two counts of Dereliction of Duty in violation of R.C. 2921.44(E), misdemeanors of the second degree. These charges were joined in the common pleas indictments with felony charges against Michael Brelo. *Id.* at ¶ 9. Upon the Appellee-Relators motion, their trial was severed from that of Michael Brelo on September 29, 2015. *Id.* at ¶ 10. At the conclusion of a bench trial on May 23, 2015, Brelo was found not guilty in the Cuyahoga County Court of Common Pleas. *Id.* at ¶ 3, 10.

On June 29, 2015, the Cuyahoga County Prosecutor indicated to Appellees-Relators and the Court of Common Pleas that the misdemeanor charges against the Appellees-Relators would be charged in the East Cleveland Municipal Court. The court of common pleas indictments remained pending and scheduled for trial on July27, 2015 at that time. *Id.* at ¶ 11.

On July 2, 2015, misdemeanor Dereliction of Duty complaints were filed in the East Cleveland Municipal Court. The filing of charges in the municipal court was pursuant to an agreement entered into on that same date between the Cuyahoga County Prosecutor's Office and the City of East Cleveland in which the Cuyahoga County prosecutor would serve as lead counsel

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[2] The common pleas court cases related to this action are: *State v. Dailey*, Cuyahoga C.P. No. CR-13-580457-B; *State v. Donegan*, Cuyahoga C.P. No. CR-13-580457-C; *State v. Coleman*, Cuyahoga C.P. No. CR-13-580457-D; *State v. Edens*, Cuyahoga C.P. No. CR-13-580457-E; and *State v. Wilson*, Cuyahoga C.P. No. CR-13-580457-F. ("The common pleas court indictments").

in the prosecution of the complaints. The charges filed in the municipal court were identical to those in the common pleas indictments against Appellees-Relators. On July 3, 2015, Each Appellee-Relator was served with a copy of the complaint and summons and that required each of them to appear for arraignment on July 10, 2015. *Id.* at ¶ 1, 3, 12.

On July 8, 2015, in response to the complaints being filed, Appellee-Relators petitioned for a Writ of Prohibition against Judge Dawson and an application for the expedited issuance of an alternative writ to stay the misdemeanor prosecution in the East Cleveland Municipal Court while the writ petition pended in the court of appeals. *Id.* at ¶ 3, 15. In Appellee-Relators initial verified complaint Appellee-Relators primarily argued "that respondent Judge Dawson patently and unambiguously lacked jurisdiction to proceed based on the jurisdictional priority rule," because "the common pleas court's jurisdiction was invoked first, it possessed the exclusive jurisdiction to proceed over the misdemeanor charges." *Id.* at ¶ 15. The Eighth District granted the alternative writ and set an expedited briefing schedule regarding the writ of prohibition the next day. Id. ¶ 3, 16.

On July 10, 2015, the Cuyahoga County Prosecutor filed a motion to dismiss the common pleas court indictments against Appellee-Relators. After a hearing, the Cuyahoga County Court of Common Pleas granted the motion to dismiss the indictments without prejudice on July 27, 2015. *Id.* at ¶ 16. In so doing, the court found that: "the pendency of the same charges in the East Cleveland Municipal Court provided good cause and that dismissal could only be denied if the state had acted in bad faith by seeking the dismissals. Because the court concluded that the state had not acted in bad faith, the indictments were dismissed without prejudice." *Id.* The parties agreed below that such a dismissal was a not a final, appealable order and the Appellee-Relators could not have perfected an appeal because the Eighth District would lack jurisdiction to consider

a direct appeal from the dismissal. *Id.*

In response to the dismissal of the common pleas indictments, Appellee-Relators sought and were granted leave to file an amended complaint for writ of prohibition. *Id.* at ¶ 17. Within the amended complaint, they argued "the subsequent dismissal of the indictments could not retroactively cure an alleged lack of subject matter jurisdiction that existed at the time the East Cleveland complaints were filed." *Id.* Appellee-Relators also raised several alternative arguments in their amended complaint, including that "the dismissals in the common pleas court were invalid and void pursuant to R.C. 2941.33 and Crim.R. 48 such that the jurisdictional priority rule sill vests the common pleas trial court with exclusive jurisdiction;" that "the state's action in dismissing the indictment in order to pursue the same criminal charges in East Cleveland infringed their constitutional rights to be tried by a fair cross-section of the community and constituted a violation of *Batson v. Kentucky*, 476 U.S. 79 106 S.Ct. 1712, 90 L.Ed 69 (1986);" and "the dismissal of the common pleas court indictments should be construed as a transfer in violation of Crim.R. 21." *Id.*

Respondent Judge Dawson answered both the complaint and amended complaint. In his answers he indicated that "he takes no position on his authority or jurisdiction to proceed in the East Cleveland cases," and "should [Appellee-]Relators file any motions in East Cleveland he will rule on them accordingly." *Id.* at ¶ 4.

Over Appellee-Relators' objection, the Eighth District granted the Cuyahoga County Prosecutor and East Cleveland law director permission to intervene as respondents in the action to move for dismissal of the complaint and amended complaint. *Id.* at ¶ 5. Appellant Intervenor-Respondents contended below that the application for a Writ of Prohibition should be dismissed because:

> (1) the jurisdictional priority rule is limited to civil actions; (2) the jurisdictional priority rule does not apply when only one action is pending; (3) East Cleveland Municipal Court has jurisdiction to preside over criminal misdemeanor actions where part of the offense conduct occurred in its jurisdiction; and (4) relators have adequate remedies at law to raise their legal, constitutional, and jurisdictional challenges because the East Cleveland Municipal Court does not patently and unambiguously lack jurisdiction.

Id. at ¶ 18. In turn, Appellee-Relators moved for summary judgement and opposed the dismissal of the complaint and amended complaint in the appellate court. *Id.* at ¶ 5. By this means, they argued two main points: 1) that based on the jurisdictional priority rule Judge Dawson patently and unambiguously lacks jurisdiction to proceed, and 2) that Appellant-Relators have no other adequate remedy at law to remedy the common pleas court's alleged unlawful dismissal of indictments because said dismissal is not a final, appealable order. *Id.* at ¶ 24.

On April 29, 2016, the Eighth District court of appeals denied Appellant Intervenor-Respondents motion to dismiss and granted Appellee-Relator's motion for summary judgment. In its majority opinion, the appellate court concluded Appellee-Relators had no other adequate remedy at law to challenge the validity of the common pleas court's dismissal of the common pleas court indictments because the dismissal was not a final, appealable order. *Id.* at ¶16, 54. Additionally, the Eighth District found that Respondent Judge Dawson patently and unambiguously lacked jurisdiction to proceed due to the jurisdictional priority rule as a void dismissal of the common pleas indictments resulted in two cases, with the same parties, and same issue pending in different courts of concurrent jurisdiction. *Id.* at ¶ 31, 54. However, it did not address the remaining alternative arguments set forth in Appellee-Relators complaints "except to note that other adequate remedies in the ordinary course of law would preclude issuing a writ on those ground." *Id.* at ¶ 53.

But, the dissent wrote an ardent and sound opinion stating that as a matter of law the

Appellees-Relators did not establish all the elements necessary for the issuance of a writ of prohibition. Specifically, that Judge Dawson had subject matter jurisdiction over the East Cleveland charges as the trial court acted within its discretion when it dismissed the indictments rendering the jurisdictional priority rule inapplicable. *Id.* at ¶ 76 (Blackmon, J. dissenting opinion). The dissent when on, in pertinent part, to state:

> "A trial court's dismissal of an indictment is reviewed for an abuse of discretion. Substantial deference is given to the trial court unless it is determined that the court's ruling was * * * 'without a reasonable basis or one which is clearly wrong.'" (Citation omitted.) *State v. Walton*, 8th Dist. Cuyahoga No. 87347, 2006-Ohio-4771, ¶ 4.
>
> The common pleas court conducted a hearing in open court on the state's motion to dismiss, which the relators opposed. After hearing both sides, the court issued a reasoned decision, which concluded that the pendency of the same charges in East Cleveland provided good cause for the dismissal. Further, the trial court found that the state's decision to pursue prosecution in East Cleveland was not done in bad faith, but was the equivalent of litigation strategy. The trial court ultimately concluded:
>
>> [T]here is no evidence that the prosecution was not instituted, and is not being pursued, with anything other than a good faith belief that the defendants did commit the crimes with which they are charged and that justice will be served by convictions. Given that, the prosecutor, as an advocate for a particular result, may use any means within the bounds of the law to assure a correct verdict. One of those means is choosing the venue where the case will be heard when more than one court has statutory jurisdiction. If the executive reconsiders the wisdom of his initial choice of that venue it is not the prerogative of the judiciary — absent a dishonest purpose, moral obliquity, conscious wrongdoing, breach of a known duty through some ulterior motive or ill will partaking of the nature of fraud — to prevent that reconsideration, and I find no bad faith here.
>
> The trial court went on to conclude that the dismissal should not be denied in order to serve the interests of justice. The court reasoned that the relators would be subjected to trial and that although the additional expense, inconvenience, uncertainty, and anxiety were burdens, they did "not rise to the level of deprivation of constitutional and procedural safeguards."

> The trial court provided a reasonable basis to support its decision and one that is not clearly wrong. Therefore, I cannot find that the trial court abused its discretion by granting the motion to dismiss.
>
> Because the dismissals were not invalid and the jurisdictional priority rule is inapplicable, respondent Judge William L. Dawson does not patently and unambiguously lack jurisdiction in the East Cleveland cases, and he has jurisdiction to determine his authority to preside over the misdemeanor cases.
>
> Relators are not precluded from challenging the jurisdiction of the East Cleveland court to proceed by filing motions to dismiss in that court based on their arguments that the procedural posture of the case amounts to a violation of their constitutional rights and a violation of the various procedural safeguards. Additional alternate remedies exist to challenge the venue and the jury array and can be litigated in East Cleveland. *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 19 (noting "without a patent and unambiguous lack of jurisdiction, a court possessed of general subject-matter jurisdiction can determine its own jurisdiction, and a party contesting that jurisdiction has an adequate remedy by appeal).
>
> Relators assert that if the motions are denied an eventual appeal will not provide an adequate remedy because it does not provide speedy, complete, or beneficial relief to them. This argument presumes that relators will not prevail at the trial level on any of the various motions, which is only speculation at this time. Nonetheless, the Ohio Supreme Court has found that an eventual appeal does provide an adequate remedy to challenge any errors in the court's determination of its jurisdiction. *McGinty v. Eighth Dist. Court of Appeals*, 142 Ohio St.3d 100, 2015-Ohio-937, 28 N.E.2d 88. In *McGinty*, the relator prosecutor maintained that an eventual appeal from an appellate court's alleged improper exercise of jurisdiction would be inadequate because it is neither beneficial nor speedy. The Ohio Supreme Court held, "[t]he delay and expense caused by an appeal do not render that appeal an inadequate remedy." *Id.* at ¶ 16.

Id. at ¶ 77-82.

The State of Ohio filed its notice of appeal on May 26, 2016. On June 16, 2016, the certified record of the Eight District Court of Appeals was filed with this Court. The State of Ohio's merit brief now follows.

LAW AND ARGUMENT

PROPOSITION OF LAW: A municipal court has the ability to determine its own jurisdiction, to include a determination regarding whether the jurisdictional priority rule would apply in a criminal case. As such, no writ of prohibition would lie as a criminal defendant must first challenge the municipal court's jurisdiction and the criminal defendant has an adequate remedy at law by means of appeal to challenge the court's jurisdiction.

Appellee-Relators were not entitled to the extraordinary relief they sought from the Eighth District Court of Appeals because Judge Dawson has subject matter jurisdiction over misdemeanor complaints filed in the East Cleveland Municipal Court, and therefore does not patently and unambiguously lack jurisdiction over the underlying misdemeanor criminal complaint. Further, Judge Dawson could properly determine a motion to dismiss premised upon the doctrine of jurisdictional priority and such ruling is subject to an appeal if Appellee-Relators are convicted of the misdemeanor offenses they are charged with. It was an abuse of discretion and irrelevant for the Eighth District Court of Appeals to review the rationale of the Cuyahoga County Court of Common Pleas Judge's opinion dismissing an indictment. The fact that the indictment was, or was not, dismissed is relevant. The rationale underlying the prior dismissal could be utilized by Appellee-Relators in the ordinary course of law to challenge Judge Dawson's jurisdiction.

For these reasons, prohibition does not lie in this matter. Judge Dawson has the inherent power to determine his own court's jurisdiction and Appellee-Relators have adequate remedies at law in the form of a motions to dismiss, and subsequent appeal. Accordingly, this Court should reverse the eighth District Court of Appeals decision to issue the extraordinary writ and dismiss Appellee-Relators' verified complaint and amended complaint with prejudice.

I. The Standard for Issuing a Writ of Prohibition

A writ of prohibition is an "extraordinary remedy which is customarily granted with caution and restraint, and is issued only in cases of necessity arising from the inadequacy of other remedies." *State ex rel. Henry v. Britt,* 67 Ohio St. 2d 71, 73, 424 N.E.2d 297 (1981). This Court has indicated it will not grant the extraordinary remedy "routinely or easily." *State ex rel. Barclays Bank PLC v. Court of Common Pleas of Hamilton Cty.,* 74 Ohio St. 3d 536, 540, 660 N.E.2d 458 (1996).

The *only* issue tested by the writ of prohibition is the subject matter jurisdiction of the lower court: "[w]here the tribunal has such jurisdiction, prohibition is not available to prevent or correct an erroneous decision." *State ex rel Eaton Corp. v. Lancaster,* 40 Ohio St. 3d 404, 409, 534 N.E.2d 46 (1988) (citing *State ex rel. Winnefeld v. Common Pleas Court,* 159 Ohio St. 225, 112 N.E.2d 27 (1953)). Subject matter jurisdiction "connotes the power of a court to hear and decide a case upon its merits. ..." *Morrison v. Steiner,* 32 Ohio St. 2d 86, 290 N.E.2d 841 (1972), paragraph one of the syllabus.

To be entitled to the requested writ of prohibition, Appellees-Relators must establish that (1) the Judge Dawson is about to or has exercised judicial power, (2) the exercise of that power is unauthorized by law, and (3) either denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law, *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 18; *State ex rel. Miller v. Warren Cty. Bd. of Elections*, 130 Ohio St.3d 24, 2011-Ohio-4623, 955 N.E.2d 379, ¶ 12, or the lack of jurisdiction is patent and unambiguous, *Chesapeake Exploration, L.L.C. v. Oil & Gas Comm.*, 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 480, ¶ 11.

But even if the remedy of appeal is available, prohibition will only issue if there is a

complete lack of jurisdiction on the part of the court or tribunal, where a particular dispute is clearly outside its jurisdiction, or where it proposes to exercise some power it does not have. *State ex rel. Sullivan v. Ramsey*, 124 Ohio St.3d 355, 922 N.E.2d 214 (2010); *State ex rel. Lee v. Trumbull County Probate Ct.*, 83 Ohio St.3d 369, 700 N.E.2d 4 (1998); *McAuley v. Smith*, 82 Ohio St.3d 393, 696 N.E.2d 572 (1998); State ex rel. *Kaylor v. Bruening*, 80 Ohio St.3d 142, 684 N.E.2d 1228 (1997); *State ex rel. Johnson v. Cty. Ct. of Perry Cty.*, 25 Ohio St.3d 53, 495 N.E.2d 16 (1986); *State ex rel. Gilla v. Fellerhoff*, 44 Ohio St.2d 86, 338 N.E.2d 522 (1975); State ex rel. *Adams v. Gusweiler*, 30 Ohio St.2d 326, 285 N.E.2d 22 (1972).

"Absent a patent and unambiguous lack of jurisdiction, a court having general subject-matter jurisdiction can determine its own jurisdiction, and a party challenging the court's jurisdiction has an adequate remedy by way of appeal." *State ex rel. Steffen v. Myers*, 143 Ohio St.3d 430, 2015-Ohio-2005, 39 N.E.3d 483, ¶ 17. This court has discretion in issuing a writ of prohibition. *State ex rel. Gilligan v. Hoddinott*, 36 Ohio St.2d 127, 304 N.E.2d 382 (1973). If the Court determines that jurisdiction is not patently and unambiguously lacking, it need not further consider the merits of Appellee-Relators' jurisdictional arguments, as they can challenge the lower court's ruling on appeal. *See generally State ex rel. Hamilton Cty. Bd of Commrs. v. Hamilton Cty. Court of Common Pleas,* 126 Ohio St. 3d 111, 2010-Ohio-2467, 931 N.E. 2d 98, ¶ 37.

A court has inherent power to determine its own jurisdiction in the first instance and, until it does so, prohibition will not lie. *State ex rel. Hunter v. Summit County Human Resources Comm.*, 81 Ohio St.3d 450, 692 N.E.2d 185 (1998); *State ex rel. B.F. Goodrich Chem. Div v. Griffin*, 59 Ohio St.2d 59, 391 N.E.2d 1018 (1979); *State ex rel. Erie County Democratic Executive Committee v. Brown*, 6 Ohio St.2d 136, 216 N.E.2d 369 (1966). A Writ of Prohibition cannot be used to prevent an anticipated erroneous decision by the court as to jurisdiction. *State ex rel.*

Heimann v. George, 45 Ohio St.2d 231, 344 N.E.2d 130 (1976); *State ex rel. Gilla v. Fellerhoff*, 44 Ohio St.2d 86, 338 N.E.2d 522 (1975). The proper function of a prohibition is to prevent a court from exceeding its jurisdiction, not to prevent errors. Thus, it will not lie to prevent an erroneous decision in a case in which the court has jurisdiction. *State ex rel. Ohio AFL-CIO v. Indus Comm.*, 58 Ohio St.2d 458, 391 N.E.2d 315 (1979); *Kelley v. State,* 94 Ohio St. 331, 114 N.E. 255 (1916).

With that being said, when the petitioner has an adequate remedy at law, prohibition is not available even though the relator contends that the court lacks jurisdiction and is abusing its discretion by proceeding despite its lack of jurisdiction. *State ex rel. Rose Hill Burial Park of Hamilton, Ohio v. Moser*, 1 Ohio St.3d 13, 437 N.E.2d 300 (1982). In essence, if the inferior court has jurisdiction, prohibition is precluded.

II. Judge Dawson Does Not Patently and Unambiguously Lack Jurisdiction over a Misdemeanor Criminal Complaint.

The five Appellee-Relators were charged in the East Cleveland Municipal Court with Dereliction of Duty under R.C. 2921.44(E) and E. Cleveland M.C. 525.12, a misdemeanor of the second degree. Specifically, the second-degree misdemeanor criminal complaints filed against each Relator in the East Cleveland Municipal Court under R.C. 2921.44(E) and M.C. 525.12 state:

> [B]eing a public servant did recklessly fail to perform a duty expressly imposed by law with respect to the public servant's office and/or did recklessly do an act expressly forbidden by law with respect to the public servant's office: to wit, the duties or acts expressed in R.C. 737.11 and/or R.C. 4511.24 and/or R.C. 4511.041 and/or R.C. 4511.03, without due regard for the safety of all persons using the street or highway.

In Ohio, municipal courts are not inferior to the courts of common pleas. The two courts share concurrent jurisdiction over misdemeanor offenses. *State ex rel. Coss v. Hoddinott*, 16 Ohio St.2d 163, 164, 243 N.E.2d 59 (1968). Under R.C. 2931.03 the court of common pleas has original

jurisdiction of all crimes and offenses, except in the cases of *minor* misdemeanor offenses. Additionally, R.C. 2931.03 does not limit the jurisdiction of a municipal court to try misdemeanor offenses from the Ohio Revised Code arising in the municipality's jurisdiction. R.C. 2931.04; *see, also*, R.C. 1901.20(A)(1); *State ex re. Wellington v. Kobly*, 112 Ohio St.3d 195, 858 N.E.2d 798, 2006-Ohio-6571; *State ex rel. Wilson v. Nash*, 41 Ohio App.2d 201, 324 N.E.2d 774 (8th Dist. 1974); *State v. Zdovc*, 106 App. 481, 151 N.E.2d 672 (8th Dist. 1958).

It is obvious that the East Cleveland Municipal Court has subject matter jurisdiction over second-degree misdemeanor complaints brought in this case against Appellee-Relators for Dereliction of Duty as it related to their actions on the night of November 29, 2012 in the City of East Cleveland. The Ohio Revised Code expressly authorizes a municipal court to hear misdemeanor criminal complaints, and these undisputed facts defeat any argument that Judge Dawson patently and unambiguously lacking jurisdiction.

Accordingly, as Judge Dawson's jurisdiction is not patently lacking, he is free to determine jurisdiction over a particular case. *See State ex rel. Bell,* 131 Ohio St. 3d 114, 2012-Ohio-54, 961 N.E.2d 181, ¶ 19. Misdemeanor criminal complaints are squarely within the jurisdiction of a municipal courts. Furthermore, in Judge Dawson's answers to both Appellee-Relators' verified complaint and amended complaint, he articulates that he will rule upon any motion filed by the Relators to dismiss regarding the propriety of the East Cleveland Municipal Court's jurisdiction impartially and without bias. If upon the denial of a motion to dismiss in the East Cleveland Municipal Court Relators believe Judge Dawson's jurisdictional rulings are in error, they have an adequate remedy at law in the form of an appeal. *Hamilton Cty. Bd. of Commrs,* 126 Ohio St. 3d 111, 2010-Ohio-2467, 931 N.E2d 98, ¶ 37. Thus, this Court should reverse the decision of the

Eighth District Court of Appeals granting the Writ of Prohibition against Judge Dawson and dismiss Appellee-Realtors complaints in their entirety.

III. The Jurisdictional Priority Rule Does Not Compel A Court to Sit in Judgment over Another

The jurisdictional-priority rule provides that as between state courts of concurrent jurisdiction, the tribunal whose power is first invoked acquires exclusive jurisdiction to adjudicate the whole issue and settle the rights of the parties. *State ex rel. Dunlap v. Sarko*, 135 Ohio St.3d 171, 2013-Ohio-67, 985 N.E.2d 450, ¶ 9. But, the jurisdictional-priority rule does not apply if the first action terminates before the second action commences. *State ex rel. Flower v. Rocker*, 52 Ohio St.2d 160, 162, 370 N.E.2d 479 (1977). In other words, "the jurisdictional priority rule requires that there be two cases *pending*." (Emphasis sic.) *Family Med Found, Inc. v. Bright*, 10th Dist. Franklin No. 00AP-1476, 2001 Ohio App. LEXIS 2864, 2001 WL 722103, *4 (June 28, 2001), *rev'd on other grounds*, 96 Ohio St.3d 183, 2002-Ohio-4034, 772 N.E.2d 1177; *see also Fronk v. Chung*, 11th Dist. Lake No. 98-L-079, 1999 Ohio App. LEXIS 2009, 1999 WL 266571 (April 30, 1999).

The jurisdictional priority rule, also known as the concurrent jurisdiction rule, does not force the original court into exercising exclusive jurisdiction to the exclusion of other courts over the particular dispute. *State ex rel. Rogers v. Philip Morris, Inc.*, 10th Dist. Franklin No. 06AP-1012, 2008-Ohio-3690, at ¶ 76 (Whiteside, J., concurring in part and dissenting in part) ("The concurrent jurisdiction rule may be invoked and the court first obtaining jurisdiction may acquire exclusive jurisdiction to the exclusion of other courts, which might have jurisdiction over the particular dispute"); *see, also, Cross,* supra.

This common law doctrine has been recognized by courts across the country not as a "question of traditional subject matter jurisdiction, but [as] rather a question of judicial

administration." *Charleen J. v. Blake O.*, 289 Neb. 454, 463, 855 N.W.2d 587 (2014), citing *Barth v. Barth*, 22 Neb. App. 241, 851 N.W.2d 104 (2014). In *Barth*, the Nebraska Court of Appeals held that a district court where the action was filed secondly properly exercised jurisdiction when the district court where the action was first filed did not demand jurisdictional priority. After the second filing—and informally conferring with the district court where the second filing was made—the first court dismissed the action that had been filed with it.

The Nebraska Court of Appeals explained that the principles of judicial administration were met in the second court's exercise of jurisdiction because there was no unnecessary litigation or danger of conflicting decisions. *Id.* Likewise it is logical that if an Ohio court of common pleas dismisses a case in which it has original and exclusive jurisdiction, the matter may proceed in a second court in which the identical action was brought against the same parties to achieve judicial administration between the two courts of concurrent jurisdiction.

As the jurisdictional priority rule is not a question of subject matter jurisdiction its application by the Eighth District Court of Appeals decision to divest Judge Dawson of subject matter jurisdiction to hear misdemeanor complaints was made in error. Further, a judge is not sitting in judgment over another court or reviewing a decision if it hears facts and determines whether or not to apply the jurisdictional priority rule as relied upon in the Eighth District's analysis. If Judge Dawson was to determine a motion to dismiss based upon the jurisdictional priority rule, his decision would not vacate, modify, or reverse the judge's ruling on the State's motion to dismiss the misdemeanor charges pending in the Court of Common Pleas.

Given the nature of the doctrine of jurisdictional priority, the appropriate and ordinary course of legal action was for Appellee-Relators to file a motion to dismiss in the East Cleveland Municipal Court so that Judge Dawson could determine whether or not an identical case between

the parties was pending in the Cuyahoga County Court of Common Pleas and if the jurisdictional priority rule impeded his ability to hear the misdemeanor complaints against Appellee-Relator's in this case. As such, prohibition cannot lie for Appellee-Relators and this Court should reverse the grant of a writ of prohibition by the Eighth District Court of Appeals.

IV. Prohibition does not Lie for an Alleged Violation of the Jurisdictional Priority Rule in a Criminal Case. Such a challenge should be made in the ordinary course of law in the court a movant alleges to lack jurisdiction.

The Eighth District majority opinion relies on *State ex rel. Coss v. Hoddinott*, 16 Ohio St.2d 163, 164, 243 N.E.2d 59 (1968), for the proposition that municipal courts and courts of common pleas are court of concurrent jurisdiction for misdemeanor criminal charges, and as such are bound by the jurisdictional priority rule. The State of Ohio concedes that *Cross* does indeed stand for such a proposition. However, when read and analyzed in its entirety, *Cross* stands for far more than just that proposition alone. Indeed, it is wholly analogous and controlling on the matter before this Court and supports the State's argument that a writ of prohibition does not lie in these circumstances and provides that a court must first have the ability to and can determine its own jurisdiction – a fact ignored by the Eighth District Court of Appeals in this matter.

In *Cross*, each relator was arrested and charged in the County Court of Monroe County with a misdemeanor. In each of their cases, the relator alleged that he appeared in the County Court, pursuant to court order, for arraignment; and the prosecutor orally advised the clerk of the County Court to dismiss each case; but that no journal entry was made dismissing the case. On the same day on which the prosecutor ordered the cases dismissed in the County Court, each matter was presented to the grand jury, which returned indictments against each of the relators for the same offense of which they were charged in the County Court. Each relator demurred to the indictment in his case, but the demurrers were overruled by Court of Common Pleas. To escape

presence at trial, the relators sought writs of prohibition to prevent the Judge of the Court of Common Pleas from hearing and determining each case. *Id.* at 164.

This Court realized that the relators' cases in *Cross* rested upon the contention that "where two courts have concurrent jurisdiction, prohibition lies to protect the jurisdiction of the court whose powers were first invoked." *Id.* at 165. There, the relators asserted that "the charges were filed in the county court *first* and that it retained jurisdiction above all other courts. As, although the prosecutor ordered each case dismissed in the county court, and charging papers were marked "dismissed," since no formal journal entries of dismissal were made and filed with the clerk of the county court the cases in the county court were not truly dismissed and prohibition lied to prevent the Court of Common Pleas from proceeding to try each case. *Id.*

This Court then went on to review several Ohio cases in which the jurisdictional priority rule was found applicable. Id. at 165-166. But, this Court concluded that the relators in *Cross*:

> [W]ho are each being prosecuted on a criminal charge, have not brought the action in either the County Court or the Court of Common Pleas. Obviously they do not want to be prosecuted in any court. *The relators do not allege that they are being prosecuted or threatened with prosecution in the County Court. In fact, the relators assert that the prosecutor ordered the charge against each of them dismissed in the County Court*. Therefore, the only basis for issuance of the writs which relators seek is the technical ground that no formal journal entries of dismissal have been made. Technically charges are still pending against them in the County Court.
>
> *Under the circumstances of these causes*, where the Court of Common Pleas has jurisdiction of the subject matter and of the persons of the relators and there are no allegations in their petitions that prosecution for the same offense is threatened in the County Court, the extraordinary writ of prohibition will not issue. Since the Court of Common Pleas will be permitted to decide the question of its jurisdiction, the relators have an adequate remedy by way of appeal.

Id. at 166 (citations omitted) (*emphasis original).* This Court then went on to deny the writs in *Cross*. *Id.*

Here, the facts are nearly identical to those in *Cross*. The State of Ohio initially chose to pursue charges in the Cuyahoga County Court of Common Pleas. A Cuyahoga County Grand Jury jointly indicted relators, along with Brelo, in May 2014. However, in September 2014, the court of common pleas granted relators' motions to try them separately from Brelo. Brelo's charges proceeded to trial first, and he was found not guilty after a bench trial in May 2015. Then, in June 2015, the county prosecutor's office announced its intention to abandon prosecution of the misdemeanor charges against relators in the common pleas court in order to pursue them in the East Cleveland Municipal Court. And the common pleas indictments were subsequently dismissed in July 2015 upon the State of Ohio's request because it no longer intended to prosecute Appellee-Relators in the court of common pleas and the East Cleveland Municipal Court had subject matter jurisdiction and venue over identical misdemeanor complaints.

When Appellee-Relators filed their initial verified complaint for a Writ of Prohibition, relators technically faced duplicate charges in multiple courts of concurrent jurisdiction. However, by the time Appellee-Relators amended complaint was filed the Eighth District the indictments in the court of common pleas had been dismissed. This dismissal in the common pleas court cases removed any impediment to Judge Dawson's authority to proceed because there were no longer two "pending" cases between the same parties in two separate courts of concurrent jurisdiction, technically or otherwise as was the case in *Cross*, supra. Appellee-Relators were no longer subjected to prosecution simultaneously in two courts of concurrent jurisdiction, and thus any protections afforded to them under the jurisdictional priority rule as outlined in *Cross, supra*, at 164-165, were eliminated.

Under *Cross*, Judge Dawson does not patently and unambiguously lack jurisdiction to determine his own jurisdiction by resolving any motions to dismiss that may be filed in East

Cleveland Municipal Court, including any that raise the argument that the municipal court lacks jurisdictional priority under the rule. In fact, *Cross* clearly holds that a writ of prohibition is inappropriate when asserting matters of jurisdictional priority. The correct way to levy such a challenge is to raise jurisdictional priority in a motion to dismiss in the court of which the movant believes lacks jurisdiction under the doctrine and appeal a negative ruling on the issue if necessary. This is the proper remedy through the ordinary course of law. Thus, prohibition does not and cannot lie in this case regardless of if the dismissal of the common pleas indictments was valid.

Under *Cross*, the determination of whether the jurisdictional priority rule applies to a given case is within in the jurisdiction of the court of which the motion to dismiss filed. *Cross* does not stand for the proposition that an appellate court can review the circumstances of jurisdictional priority truly exist in a petition for a Writ of Prohibition, in fact it explicitly stands for the opposite. A determination of jurisdictional priority can only be made by the court of concurrent jurisdiction whose priority is being challenged and then if necessary in a subsequent and permissible direct appeal. The Eighth District abused its discretion in issuing the Writ by holding the contrary. As such, it should be reversed by this Court.

V. Relators Have An Adequate Remedy of Law, Defeating Their Request for a Writ of Prohibition.

The Supreme Court of Ohio has noted on multiple occasions that a writ of prohibition is not a tool to appeal a ruling with which a party is unhappy or prevent a possible unfavorable judicial decision. A writ of prohibition "is not an appropriate remedy for the correction of errors, and does not lie to prevent an erroneous decision in a case which the court is authorized to adjudicate. . . ." *Barton v. Butler Cty. Bd. of Elections,* 39 Ohio St. 3d 291, 292, 530 N.E.2d 871 (1988); *see also State ex rel. Winnefeld,* 159 Ohio St. at 234, 112 N.E.2d 27 (where court has

jurisdiction, writ will not issue to prevent anticipated erroneous ruling pursuant to that jurisdiction).

Because the rationale for the dismissal of the common pleas indictment are irrelevant to the jurisdictional priority rule impact on the subject matter jurisdiction of the East Cleveland Municipal Court, respondent Judge William L. Dawson does not patently and unambiguously lack jurisdiction in the East Cleveland cases, and he has jurisdiction to determine his authority to preside over the misdemeanor cases. Appellee-Relators are not precluded from challenging the jurisdiction of the East Cleveland court to proceed by filing motions to dismiss in that court based on their arguments that the procedural posture of the case amounts to a violation of their constitutional rights and a violation of the various procedural safeguards.

Arguments by the Appellee-Relators that if their motions are denied an eventual appeal will not provide an adequate remedy because it does not provide speedy, complete, or beneficial relief to them are baseless. This argument presumes that relators will not prevail at the trial level on any of the various motions, which is only speculation at this time. Nonetheless, this Court has found that an eventual appeal provides an adequate remedy to challenge error in the court's determination of its jurisdiction. *McGinty v. Eighth Dist. Court of Appeals*, 142 Ohio St.3d 100, 2015-Ohio-937, 28 N.E.2d 88. In *McGinty*, the relator prosecutor maintained that an eventual appeal from an appellate court's alleged improper exercise of jurisdiction would be inadequate because it is neither beneficial nor speedy. This Court held, "[t]he delay and expense caused by an appeal do not render that appeal an inadequate remedy." *Id.* at ¶ 16.

CONCLUSION

Where, as here, Appellee-Relators cannot show that the East Cleveland Municipal Court *patently and unambiguously* lacks jurisdiction over misdemeanor complaints, the relators must

demonstrate that it lacks an adequate remedy at law. Here, Appellee-Relators have an adequate remedy at law: they can file motions to dismiss to challenge Judge Dawson's jurisdictional priority, and subsequent direct appeal. As such, this Court should reverse the Eighth District Court of Appeals issuance of the Writ of Prohibition against Judge Dawson in *State ex rel. Dailey v. Dawson*, 8th Dist. Cuyahoga No. 103237, 2016-Ohio-2837, and dismiss Appellee-Relators petition in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on July 26, 2016, I caused the foregoing Merit Brief of Appellant Intervenor-Respondents to be filed electronically, with notice of this filing to be sent to the parties by operation of the Court's Electronic Filing system.

Additionally, a true copy of the foregoing brief was served this 26 day of July, 2016 by e-mail and U.S. Mail upon:

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