

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

Martin Desmond  
3366 Ridgely Park  
Poland, OH 44514

Plaintiff,

vs.

Paul Gains (in his official and personal capacities)  
Mahoning County Prosecuting Attorney  
21 West Boardman St.  
6<sup>th</sup> Floor, Administration Building  
Youngstown, OH 44503

Linette Stratford (in her official and personal capacities)  
Mahoning County Prosecutor's Office  
21 West Boardman St.  
6<sup>th</sup> Floor, Administration Building  
Youngstown, OH 44503

Mahoning County  
120 Market Street  
Youngstown, OH 44503

Defendants.

Case No. 18CV771

Judge SWEENEY

COMPLAINT WITH JURY DEMAND

NATURE OF ACTION

1. This is an action under Ohio law for defamation, intimidation, retaliation, civil-rights violations, and other state-law claims.

2. Plaintiff Martin Desmond was a rising star in the Mahoning County Prosecutor's Office, so well respected for his honesty and integrity that he was thought to be on his way to becoming the next county prosecuting attorney.

3. After Desmond learned of prosecutorial misconduct, however, and then, in December 2016 and January 2017, submitted written reports of that misconduct, Defendants Mahoning County Prosecuting Attorney Paul Gains and Defendant Mahoning County retaliated against him—investigating *him* for his reports, suspending him based on false allegations, ultimately terminating him, and then savaging his hard-won reputation by broadcasting those false allegations to the public, including through an unprecedented press conference held the day of Desmond's termination.

4. Defendants' efforts reveal more than a garden-variety retaliation or defamation claim. What they reveal is an attempt to cover up the office's own complicity in the misconduct that Desmond reported.

5. Specifically, this case arises from an indictment, filed to intimidate a witness (Kalilo Robinson) into testifying in a murder prosecution, and the ensuing prosecutorial abuses Desmond attempted in vain to correct. Those abuses required the indictment to be dismissed, but triggered a federal civil-rights lawsuit that threatened to expose an expanding ring of complicity in the Office's abuse of prosecutorial power.

6. Despite Desmond's efforts, Defendants took no action to correct the prosecutorial abuses, and ratified them by taking no action on his internal reports. But even though he never disclosed them—or his knowledge—to the public, and Defendants did not disclose them in the federal lawsuit (but delicately pleaded around them in their Answer) they

affirmed troubling misconduct. So as a prophylactic, the vulnerable Defendants secretly prepared knowingly false disciplinary charges against Desmond, suspended him the day after the federal court announced that the civil lawsuit would be dismissed, terminated him, and launched a press campaign to destroy his credibility, savaging his hard-won reputation.

7. The ring of complicity began with Dawn Cantalamessa, the assistant prosecutor who had the sham indictment filed, falsely invoked Desmond's name to bless it, and ignored his efforts to restore constitutionality to the prosecution.

8. It expanded to Defendant Linette Stratford, a supervisor and Chief Assistant Prosecutor without criminal-law experience who resented Desmond's promotional prospects, suppressed his internal report of the misconduct that returned an alleged murderer to the streets, and authored a knowingly false memorandum recommending his termination.

9. Finally, it reached Defendant Gains, who invited Desmond to submit written reports about the misconduct, but disregarded them to rubber-stamp Stratford's recommendation, summoned him for disciplinary action the afternoon the federal court indicated the civil suit would be dismissed, issued knowingly false allegations against Desmond the very next day, and circulated them to the press (and held an unprecedented press conference) to undermine any further light Desmond might shine on the abuses that transpired under Gains's watch. Even though Defendants successfully—albeit disingenuously—evaded Robinson's claims in his civil lawsuit, Gains disciplined Desmond for “making [himself] a witness” in the civil lawsuit by internally raising his

concerns, and told others in the office that he terminated Desmond for being a witness to a lawsuit filed against the County and his Office.

10. Defendants' campaign to conceal their misconduct and destroy Desmond's credibility, however, violated a raft of state laws, and ranged beyond his warning about the civil lawsuit. Gains and Stratford also falsely stated that Desmond assisted another party in suing the County, statements they also knew were false based on their own records, defaming him and placing him in a false light. And after Desmond appealed his termination to the State Personnel Board of Review (SPBR), Gains opposed it with an affidavit riddled with inaccurate statements. Whatever may have transpired had Desmond actually been a witness in the witness's federal suit, Defendants' wanton and malicious falsehoods preclude immunity for their unlawful retaliation against him.

#### **PARTIES**

11. Plaintiff Martin Desmond is a former assistant prosecutor with the Mahoning County Prosecutor's Office. He resides in Poland, Ohio, located in Mahoning County.

12. Defendant Paul Gains is the Mahoning County Prosecuting Attorney and at all relevant times was acting under color of state law. He resides in Mahoning County. He is sued in both his official and personal capacities.

13. Defendant Linette Stratford is Chief Assistant Prosecutor at the Mahoning County Prosecutor's Office and at all relevant times was acting under color of state law. She resides in Mahoning County. She is sued in her official and personal capacities.

14. Defendant Mahoning County is a political subdivision as defined in R.C. 2744.01, of which the Mahoning County Prosecutor's Office is a subunit. The County, through the

Prosecutor's Office, formerly employed Desmond and currently employs Gains and Stratford, and is liable for acts and omissions taken under its customs, policies, or practices. The County is also responsible for training and supervising its employees in carrying out their duties in a lawful manner.

#### **JURISDICTION AND VENUE**

15. This Court has jurisdiction because the suit concerns state-law violations by the Defendants and the amount in controversy exceeds \$25,000.

16. The Court has personal jurisdiction over the Defendants.

17. Venue is proper here because all parties reside, work, and/or are located in Mahoning County, and the events at issue took place in Mahoning County.

#### **FACTUAL BACKGROUND**

##### **Desmond serves the public with distinction for 13 years.**

18. Desmond began working at the Mahoning County Prosecutor's Office on April 18, 2004. He was hired with nearly five years of prior experience with the FBI, as a certified public accountant, and as a probation officer.

19. During his time as an assistant prosecutor, he prosecuted nearly 1,000 cases, and was known, as one Youngstown news anchor put it, as a "strong voice for the victim."

20. Desmond was regularly commended for his strong performance and dedication to the community. A 2010 letter from an Ohio State Board of Pharmacy agent, for example, praised Desmond for his work prosecuting a pharmacist's illicit drug distribution, noting Desmond's ability to "coordinate and organize [a] complex prosecution into a successful

victory” and that Desmond “demonstrated a standard of professionalism and ability . . . that few prosecutors have achieved in their careers.”

21. FBI Director Robert Mueller III recognized Desmond for his “outstanding record” in prosecuting offenders in “complex cases” involving both state and federal laws.

22. Because of his outstanding performance, Desmond earned elite assignments as the lead prosecutor for the Mahoning Valley Law Enforcement Task Force and the FBI Violent Crimes Task Force. He was invited to speak at numerous events, and his work was the subject of national media attention, including an Investigation Discovery Channel documentary and an article in Sports Illustrated.

23. In addition to those above, he earned recognition from the Ohio Attorney General and the Mahoning Valley Chiefs of Police, and was selected to serve on the National District Attorneys Association Marijuana Policy Panel.

24. Desmond came to be a trusted advocate. One of his early assignments, for example, was to the courtroom of Judge James C. Evans, who knew of Desmond’s reputation and specifically requested him. And when Judge Lou A. D’Apolito first took the bench in 2009, Prosecuting Attorney Gains wanted an experienced prosecutor to assist him and selected Desmond for that assignment. Later that year, Gains reassigned Desmond to the Mahoning Valley Law Enforcement Task Force, where he successfully took on responsibilities that historically had needed to be divided between two prosecutors.

25. In 2013, Desmond took on even more responsibility, maintaining his responsibilities on the task force while also handling the docket for Judge R. Scott

Krichbaum and also taking on grand-jury responsibilities. Grand-jury responsibilities included reviewing police reports, speaking with witnesses, researching the law, writing up indictments, and presenting cases to the grand jury. Desmond assisted with grand-jury tasks throughout most of 2013 and at different times from 2014 to June 2016, while maintaining his full work load at the task force and handling multiple homicide cases. Throughout his 13 years with the County, he earned raises and was given increased responsibilities.

26. Office employees and others often joked that Gains treated Desmond like a step-son. Gains and Desmond discussed that Desmond might take over as county prosecuting attorney when Gains retired, and Gains talked about grooming Desmond for that position. Gains even introduced Desmond at a county trustees' holiday dinner in 2015.

27. Desmond's rise within the office came to a halt, however, when Desmond reported prosecutorial misconduct.

**Desmond becomes aware of misconduct within the prosecutor's office and brings it to his supervisors' attention.**

28. In 2016, Desmond learned of misconduct within the prosecutor's office, specifically regarding the prosecution of Marquan White for the November 2014 murder of Antwon Martinez. The heart of the misconduct was the treatment of a key witness to the murder, Kalilo Robinson.<sup>1</sup>

29. Desmond's colleague, assistant prosecuting attorney and chief trial counsel Dawn Cantalamessa, wrongly had Robinson indicted based on his invoking his Fifth

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<sup>1</sup> A further elaboration of many of the facts in this section can be found in Desmond's January 27, 2017 memorandum, attached as Ex. 1, which he submitted to Gains, and which is one of the things this complaint alleges triggered some of the retaliation.

Amendment privilege against self-incrimination, kept Robinson detained even after the case against him was dismissed, and misrepresented to the court that Robinson was a flight risk, thus keeping him detained even further.

*Desmond explains to Cantalamessa the correct process for compelling the testimony of a witness who has invoked his Fifth Amendment privilege, but she flouts the rules.*

30. In early 2016, Cantalamessa, who was assigned to prosecute White, approached Desmond about a problem. Key witness Kalilo Robinson, who had earlier identified White as the murderer, was no longer cooperating with the prosecution against White. Initially, Cantalamessa asked Desmond about the process for having the judge, rather than the prosecution, call a witness to testify, and Desmond provided Cantalamessa and her co-counsel, assistant prosecuting attorney Shawn Burns, a pleading to use as a model for requesting such a procedure. (This way, if Robinson claimed to lack knowledge, the state could cross-examine and impeach him with his prior statement identifying White.)

31. But a couple weeks later, Cantalamessa returned to Desmond, saying that Robinson had now invoked his Fifth Amendment right to remain silent rather than provide testimony in the case. (She did not tell Desmond *why* Robinson had invoked this privilege—namely, because she had threatened to charge Robinson himself with the murder if he did not cooperate, despite the lack of evidence implicating him.)

32. Robinson's invocation limited Cantalamessa's options. Now if she wanted to compel Robinson's testimony, she had to follow a particular statutory scheme for doing so, otherwise she would run afoul of the Fifth Amendment and the Ohio Rules of Professional Conduct. (That is, she could not simply threaten the witness by charging him for his failure to cooperate; that would mean she was charging him for exercising his

privilege to remain silent, which is verboten. *See, e.g., State v. Leach*, 102 Ohio St.3d 135, 2004-Ohio-2147, 807 N.E.2d 335, ¶ 38 (holding that the law does not permit the use of a defendant's pre-arrest invocation of his right to remain silent as substantive evidence of guilt).)

33. But, if certain statutory requirements were met, she *could* bring charges under the statute if Robinson failed to cooperate. Desmond explained the statutory procedure to Cantalamessa: under R.C. 2945.44, prosecuting a witness for refusing to testify despite the witness asserting Fifth Amendment privilege would require (1) a prosecutor's written request for a court order compelling the testimony; (2) the court's explanation of immunity to the witness; (3) the court's grant of immunity; and (4) the witness's refusal to testify despite a court order.

34. Desmond emphasized to Cantalamessa the importance of satisfying all the elements of the statute before bringing such charges. Failing to do so would amount to bringing criminal charges against a person for exercising the Fifth Amendment privilege.

35. And Cantalamessa was aware, or should have been, of these basic principles of criminal justice. She had been assigned to prosecute the case of *State v. Chaney*. And in *Chaney*, the Seventh District, citing *State v. Leach*, reversed a conviction obtained by the Mahoning County prosecutor's office because the prosecutor improperly cross-examined the defendant based on his constitutional right to remain silent and commented on it again in closing argument. 7th Dist. Mahoning No. 08-MA-171, 2010-Ohio-1312, ¶¶39, 41, 2010 WL 1208299, at \*7-8.

36. Yet despite the office's previous experience, Cantalamessa failed in Robinson's case to adhere to the legal requirements.

*Desmond becomes aware that Cantalamessa had Robinson indicted based on his invoking his Fifth Amendment privilege to remain silent.*

37. On April 5, 2016, the court held a hearing in the *White* case, in the course of which Robinson invoked the Fifth Amendment, and Cantalamessa moved to compel his testimony and offered him immunity under R.C. 2945.44. But the court never granted Robinson immunity and never ordered him to testify.<sup>2</sup>

38. Cantalamessa even made sure:

Cantalamessa: For the record, your Honor, did you order Mr. Robinson to testify and did he actually say he is refusing to testify?

Court: No.<sup>3</sup>

39. Despite the fact that Robinson had not been granted immunity or ordered to testify, Cantalamessa moved forward with an indictment of Robinson based on obstruction of justice and tampering of evidence. She first approached Desmond to present the case to the grand jury. Desmond refused to do so without the immunity-related elements being met, and told her so. Undeterred, she got assistant prosecutor Shawn Burns to do it.

40. Desmond was not present and had no involvement in presenting the case to the grand jury.

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<sup>2</sup> *State v. White*, 15-CR-538, Hearing Tr. at 16–17 (Apr. 5, 2016), attached as Ex. 2.

<sup>3</sup> *Id.* at 16:17–21.

41. As Desmond learned later, the grand jury indicted Robinson for obstruction of justice and tampering with evidence.

42. The only evidence presented to the grand jury supporting the indictment against Robinson was his invocation of his Fifth Amendment privilege to remain silent.

43. Burns represented to the grand jury that Robinson had been ordered to give testimony, which was not true.<sup>4</sup>

44. And Burns failed to disclose to the jury that the mere *offer* of immunity is insufficient to permit an individual's Fifth Amendment invocation to be used as evidence to indict.

45. Likewise, in the *Robinson* bill of particulars, Cantalamessa referred to Robinson's invocation of his right to remain silent as evidence of guilt, but did not mention that the court never granted immunity and never ordered testimony.<sup>5</sup>

46. Based on these wrongful acts, the grand jury indicted Robinson, and Robinson was arrested and held in the Mahoning County jail.

47. Desmond learned of these acts a few months later, when Robinson's attorney James Wise approached Desmond at the courthouse and showed him the bill of particulars and the grand-jury transcript (which Wise had successfully moved to unseal).

48. Desmond declined to provide affirmative advice, and told Wise that he should file whatever pleadings he felt were necessary and address the issue directly with Gains.

Desmond did not otherwise discuss the case with Wise.

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<sup>4</sup> See *State v. Robinson*, 16-CR-342, Grand-Jury Tr. at 3:9-11 (Apr. 7, 2016) ("In this case it would be the testimony that he was ordered to give."), attached as **Ex. 3**.

<sup>5</sup> See generally *State v. Robinson*, 16-CR-342, Bill of Particulars, attached as **Ex. 4**.

49. Despite Desmond's refusal to participate in her misconduct, in April or May 2016, Cantalamessa told Judge D'Apolito that *Desmond* had been the one to indict Robinson, which was false. And she persisted in misrepresenting key aspects of the prosecution in court. In August 2016, in response to Robinson's motion to dismiss the indictment on grounds of prosecutorial vindictiveness, she herself moved to dismiss, but tried to say that she was doing so in return for Robinson's cooperation. But Robinson never provided anything in return. Cantalamessa ultimately agreed with the judge that she was moving to dismiss the indictment with "no strings attached"<sup>6</sup> (effectively an admission of the indictment's impropriety).

50. And then she misled the court into believing that Robinson was a flight risk and would be unavailable to testify for White's trial, claiming that Robinson's statements on jail calls indicated that he planned to flee to another state and avoid testifying, when any fair interpretation of the statements showed otherwise. She represented at an August 16, 2016 hearing, for example, that Robinson said he would be "gone forever," when that is nowhere to be found in the jail calls for the dates she cited.<sup>7</sup>

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<sup>6</sup> *State v. Robinson*, 16-CR-342, Hearing Tr. on Mot. Dismiss, at 3:5-8. (Aug. 16, 2016), attached as **Ex. 5**.

<sup>7</sup> And in her August 25, 2016 affidavit for a material-witness warrant, Cantalamessa represented that "Kalilo Robinson plans to leave town as soon as he is out of jail and not return for the trial." But while on one call he had stated that he planned to go to Tennessee "in a couple months when I get outta here," as Desmond later learned when he listened to the calls himself, Robinson never said he planned to leave "as soon as he is out of jail" or that would not return for the trial. Viewed in context, Robinson's statements showed his interest was in getting bond so he did not have to stay in "this building" ("I'm not trying to be in here"), in particular because he wanted to be with his love interest ("If I don't leave this building, can I see you next week? Can I have another chance to be with you?"). Other calls in May and July 2016 show that he was hoping to go to a treatment facility (Oriana House) (or his grandmother's house for dinner), and that, again, he "[couldn't] sit here no more," meaning jail, and wanted to be out on bond. (At a September 6, 2016 status hearing, when Cantalamessa tried to bring the issue up again, the judge denied her

51. Desmond, waiting for a proceeding on one of his own cases, was present in the courtroom during that hearing. After the hearing and still in the courtroom, Desmond overheard Wise and Attorney Thomas Zena (counsel for White) say to each other that Robinson did not say what Cantalamessa claimed he said.

52. Robinson filed a habeas petition because, based on Cantalamessa's oral misrepresentations in court, the court had ordered him detained without even a material-witness warrant.

*While the habeas petition is pending, Desmond reports his concerns about the misconduct to the chief of the appellate division, assistant prosecutor Ralph Rivera. Rivera reports to Linette Stratford, chief assistant. Desmond assumes something is being done, but hears nothing about any investigation.*

53. Increasingly concerned with Cantalamessa's methods, on or around August 24, 2016, Desmond reported his concerns about the Robinson indictment to assistant prosecutor Ralph Rivera. Rivera was chief of the appellate division, and Desmond considered him higher up than Desmond in the chain of command. Rivera was handling the habeas petition for the prosecutor's office.

54. Desmond informed Rivera of his concerns that Cantalamessa had indicted Robinson for crimes Robinson did not commit (i.e., obstructing justice and tampering with evidence based on his invoking his Fifth Amendment privilege) and then held him in county jail for it. Desmond also reported that defense counsel seemed adamant that Robinson did not say what Cantalamessa claimed he said on the jail calls.

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motion, noting that Robinson had appeared for the hearing. (Robinson had previously been released from the jail, and still appeared.)

55. Rivera agreed with Desmond's concerns. Within days, Rivera advised Desmond that he had relayed Desmond's concerns to others within the prosecutor's office, including chief assistant Linette Stratford, the third-highest-ranking person in the office.

56. Despite Desmond's report, no one within the prosecutor's office, including supervisors such as chief assistant Stratford or deputy chief prosecutor Nicholas Modarelli, contacted Desmond regarding any investigation into Cantalamessa's handling of the indictment or the jail calls.

57. Upon information and belief, the prosecutor's office conducted minimal, if any, investigation into Cantalamessa's conduct in August or September 2016. (In a later memorandum, Stratford admits that she listened to the jail calls only in January 2017.)

58. This was despite the fact that on August 30, less than one week after the petition was filed, the Seventh District granted the petition and ordered Robinson released, finding that he had been denied "the most fundamental rudiments of constitutional due process." *Robinson v. Green*, 7th Dist. Mahoning No. 16 MA 0134, 2016 WL 4697962, ¶ 10.

59. In early September, after the Seventh District's opinion and after Robinson had been released, Cantalamessa again approached Desmond, this time asking him to check his "snitch network" for information on Robinson. Desmond asked her whether she meant Marquan White (against whom the case was still proceeding, while Robinson's had been dismissed). Cantalamessa confirmed that, no, she "want[ed]" Robinson.

60. Concerned about Cantalamessa's display of vindictiveness, Desmond decided to personally review the jailhouse recordings that Cantalamessa had used to secure the

warrant against Robinson. He did so along with an FBI special agent. Both concluded that Robinson did not state what Cantalamessa claimed.

61. Desmond also spoke with Burns, who had presented Robinson's case to the grand jury. Burns told Desmond that Cantalamessa had instructed him to indict the case.

62. But if Desmond had any illusion that his supervisors would take action against Cantalamessa, he was mistaken. Instead, in a meeting on unrelated matters on September 7, 2016, at which both Stratford and Gains were present, Gains ordered Desmond not to criticize or question his supervisors, including Cantalamessa.

63. Taking to heart the words of his superiors and becoming occupied with other trials, Desmond did not bring up the misconduct topic again until December 2016. In September and October 2016, Desmond was preparing for a multiple-defendant trial with multiple murder and attempted-murder charges. The trial lasted until November 28, 2016, and Desmond began preparing for another trial set for December 2016.

64. Then, in late November 2016, Attorney Wise, Robinson's counsel, saw Desmond at the courthouse and told him that Robinson intended to file a § 1983 lawsuit. Desmond was walking down the hall going into trial, preoccupied, and barely responded. In early December 2016, Wise again told Desmond that he intended to file a lawsuit. Desmond urged Wise to contact Gains in the hope of preventing the lawsuit.

65. On December 9, 2016, Wise did contact Gains. In the conversation, according to Gains's admission in a later affidavit, Wise told Gains that he was planning to file a civil-rights lawsuit against Cantalamessa and Mahoning County based on Cantalamessa's conduct in the *Robinson* case. Gains asked Wise to send a copy of the complaint to him,

and Wise complied, delivering a copy to the prosecutor's office early the following week. Despite knowing of Wise's intent to file a lawsuit, and the delivery of the complaint copy, Gains failed to contact Wise again.

66. Wise then filed the complaint on December 16, alleging claims of malicious prosecution, failure to train, and false imprisonment. The complaint included some of the same allegations as Robinson's motion to dismiss filed several months before: that Cantalamessa and Burns misled the grand jury regarding Robinson's refusal to testify, and improperly indicted Robinson for crimes when he had invoked his constitutional right to remain silent. The complaint also included allegations related to the material witness warrant Cantalamessa had obtained, namely that she had misrepresented the nature of certain jail calls to the court, improperly seeking Robinson's detention despite the fact that the indictment against him had been dismissed. Given the earlier habeas petition and Desmond's report to Rivera, the prosecutor's office had been on notice for months regarding the complaint's allegations.

67. Desmond learned of the complaint's filing through others at the office.

**In December 2016, Mr. Desmond reports the misconduct in writing, following up in January 2017 with a written memorandum laying out the factual basis for his concerns about misconduct.**

68. On or around December 22, 2016, Desmond learned of a new Ohio Supreme Court decision that, he believed, opened a new avenue for the County to secure Robinson's testimony against White. After discussing the case with Rivera, Desmond called assistant prosecutor Burns to discuss it. From Burns he learned, however, that Cantalamessa was proceeding to dismiss White's murder charge. Desmond sent a message to Cantalamessa

to alert her to the Supreme Court decision, but Cantalamessa told him that because Robinson had filed a grievance and a § 1983 complaint against her, Gains had already ordered her to dismiss *White*.

69. At this point, Desmond felt that Cantalamessa's conduct was compromising the office's reputation and integrity, as well as criminal justice. With an alleged murderer walking free, Desmond decided to directly report to Gains his concerns about Cantalamessa's mishandling of the *White* case. Referring to the *White* dismissal, on December 22, 2016, Desmond wrote: "This is extremely upsetting and disappointing. I'm afraid to say more because you'll think I'm being disrespectful or insubordinate, but [Cantalamessa] mishandled this case. ... Much of the claims against her are true and accurate."

70. By "claims," Desmond was referring to—and Gains understood Desmond was referring to—the allegations in Robinson's federal complaint.

71. In his text message response, written minutes after Desmond's, Gains asked Desmond for information "regarding these claims against Dawn Krueger [Cantalamessa's maiden name]" and mentioned the week-old, still-pending civil suit. And in the same thread, he referred to the "allegations contained in the civil sui[t]." (He also later admitted he was familiar with the nature of the claims, stating in an affidavit that he had been informed by Stratford "about the Prosecutorial Misconduct Motion," and that Stratford had "advised [him] . . . of the allegations contained in the Motion to Dismiss Robinson's indictment," i.e., the motion brought in August 2016 raising the same issues as the December 2016 § 1983 lawsuit.)

72. Desmond asked to speak about the matter with Gains the following morning. Gains arranged for a telephone conversation with Desmond for the next day, but then cancelled it and asked Desmond simply to prepare a memo.

73. Desmond was on vacation with his family until January 4, 2017. Upon return to work, Desmond immediately began to prepare for two complex trials that required weeks of preparation. In addition, he kept his normal courtroom duties and had family obligations.

74. In January 2017, while juggling his other duties, Desmond also prepared his report. Before providing the report to Gains, Desmond shared it with Attorney Gerald Ingram for review. Ingram spoke to Gains regarding the report's contents.

75. On January 27, 2017, as requested, Desmond provided the report to Gains. It contained nine pages of footnoted narrative, along with 29 pages of exhibits, detailing the above-mentioned events from Cantalamessa's approaching Desmond in early 2016 to the December 2016 report, including conduct that likely violated the Ohio Rules of Professional Conduct and several criminal statutes.

76. Cantalamessa's conduct likely violated criminal statutes such as interfering with civil rights, coercion, intimidation of a witness, and/or unlawful restraint.

77. The memo not only reported Cantalamessa's misconduct in the *Robinson* case,<sup>8</sup> but also mentioned other instances of misconduct within the prosecutor's office.<sup>9</sup>

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<sup>8</sup> *Memo.* at 4-7.

<sup>9</sup> *Id.* at 5 n.6 (citing *Lucky* and *Hill* cases). The misconduct in the *Lucky* and *Hill* cases is discussed at further length in Desmond' Petition to Unseal Grand-Jury Testimony and Produce Transcripts, 17-CV-OPEN (filed, Dec. 20, 2017), at 5-7 (discussing *Lucky* and *Hill* cases).

78. At the end of the memorandum, Desmond stated: “I believe there are some individuals in the office with additional knowledge on this matter, but are concerned about coming forward.”

79. At the time Desmond submitted his report on January 27, 2017, the civil suit against the County, prosecutor’s office, and individuals was still pending.

80. At no point did anyone follow up with Desmond as part of any investigation into the reported misconduct.

81. Before suspending Desmond on March 23, 2017, neither Gains nor any supervisor spoke to Desmond concerning the contents of his report, including the names of others who may have known about the misconduct.

**On March 22, 2017, chief assistant Linette Stratford provides a memo to Gains, in which she falsely states that Desmond had provided research assistance to an adverse party and tried to cover it up. Stratford’s memos relating to Cantalamessa’s and Burns’s conduct, by contrast, find no wrongdoing.**

82. While no one followed up with Desmond regarding the allegations of misconduct he set forth in his memo, unbeknownst to him, chief assistant Stratford *was* conducting an investigation of sorts based on Desmond’s reports—of *Desmond*.

83. The result of this so-called investigation, in which Stratford interviewed Burns and Cantalamessa, but not Desmond, was a 19-page memo, dated March 22, 2017, that Stratford published to Gains, and the office ultimately provided in redacted form to the media on or around March 30, 2017.

84. The memo appears to have made a number of allegations and six “summary findings and recommendations.” Only the sixth of these findings and recommendations is unredacted. (According to the March 30, 2017 letter accompanying the County’s public-

records response to the *Vindicator*, many of the redactions supposedly were to “remove any information relating to potential unresolved violation of the Ohio Rules of Professional Conduct.” Yet the County failed to redact such allegations in the sixth allegation, which, upon information and belief, was the most damaging of all and equally false.)

85. The sixth allegation—again, the one unredacted “factual” finding—falsely states that Desmond “*use[d] the county computer to aid another to bring a lawsuit against the county and members of the prosecutor’s office.*”

86. It further claims, “in his Westlaw search, Attorney Desmond cites a criminal defendant—Colvin—as the subject of the search apparently in order to hide the true nature of his search.”

87. The report specifically called the allegation “theft in office,” unauthorized use of property, and “[a]t a minimum,” an ethics violation. (Given that all other allegations had been redacted, disclosing this one highlighted the claim.)

88. These statements were false, and Stratford made them wantonly, recklessly, maliciously, and without good faith, motivated to conceal her own culpability in suppressing the *Robinson* misconduct and to discredit Desmond. (Although Desmond’s concerns had been relayed to her in August 2016, for example, she listened to the jail calls in January 2017, when investigating Desmond and while Robinson’s § 1983 suit was still pending.)

89. Stratford knew or should have known, had she done even a minimal inquiry, that the statements were false. Stratford never bothered even to ask Desmond what his

reasons were for conducting the Westlaw search at issue, and why he cited the name “Colvin.” Upon information and belief, Stratford spoke to no one to verify the assumptions in her memo.

90. As detailed further below, Gains admitted at the subsequent predisciplinary hearing on March 31, 2017 that the allegations of theft in office and unauthorized use of property were unfounded, and should not have been included in the letter, as there was no evidence to support them. Desmond also rebutted the claim at the predisciplinary hearing, by explaining the likely subjects of his Westlaw research.

91. In fact, two defendants in the Colvin case had filed grievances against and threatened to sue Desmond for prosecutorial misconduct, and those claims are what Desmond was researching in mid-December, in preparation for a December 19, 2016 pretrial conference before Judge Durkin in the defendants’ criminal case. The notion that Desmond would have been able to contribute research to a complaint the same day it was filed—especially given that it had already been circulated to the prosecutor’s office the week before—is ridiculous and strains credulity.

92. Statements falsely accusing someone of criminal acts are defamatory *per se*.

93. Upon information and belief, the other five allegations in Stratford’s memo—currently redacted—also contain false and defamatory statements. The sixth allegation, described above, is nearly a word-for-word copy of the sixth allegation in Desmond’s suspension letter. If the other five follow that pattern, then they are likely matches of the first five allegations in the suspension letter. And those suspension-letter allegations, as discussed below, contain many false statements.

94. The March 22 memo was a false writing intended to influence public officials—Gains and other future governmental decision-makers—in the discharge of their duties.
95. Stratford and Gains published and gave publicity to the statements in the memo, knowing them to be false. They ensured wide publicity and caused the media to be aware of those statements, and ultimately provided the memorandum to reporters.
96. Gains and Stratford intended to and did portray Desmond in a false light before the public.
97. Neither Gains nor Stratford showed Desmond Stratford’s memo or told him about it. He learned about it later from seeing a public-records response to the media.
98. Stratford also wrote memos related to Burns’s and Cantalamessa’s conduct. Each of these memos was barely over six and eight pages, respectively, compared to the 19 pages devoted to Desmond’s memo. Stratford ignored both Burns’s and Cantalamessa’s proven misconduct, dismissing their actions as reasonable or done in good faith.
99. Stratford glossed over Burns’s misconduct. She admitted Burns had presented inaccurate information to the grand jury, but excused it: “[T]he only possible misstatement of fact is at page 3 of the grand jury transcript, wherein Attorney Burns states, ‘In this case it would be the testimony he was ordered to give. But Attorney Burns provides a reasonable explanation...’”
100. The explanation was simply that he supposedly had no intention to mislead, and “everyone was of the same understanding that no such order had been made.” (Everyone except the grand jurors, perhaps.)

101. The misstatement, Stratford wrote, gave her “little concern,” because the balance of the transcript showed that Burns was basing the indictment, not on Robinson’s having defied an order to testify, but on Robinson’s refusal to testify after earlier giving a proffer. She thus found that Burns “acted in good faith.”

102. But Stratford never mentions Robinson’s invocation of his Fifth Amendment privilege and fails to mention that the grand-jury transcript itself showed that Burns, eliciting testimony from Youngstown Police Detective Patrick Kelly, used that invocation as evidence of guilt (and wrongly represented that Robinson had refused to testify during a trial, when in fact that there had been no trial yet):

Q: Let’s talk a little bit about more in detail what happened yesterday. We brought him into court and he was put on the witness stand and put under oath; is that correct?

A: Correct. **And he invoked his Fifth Amendment right, which was kind of crazy ’cause he’s a witness, so.**

Q: And then once he invoked his Fifth Amendment right, what happened next?

A: The prosecutor’s office gave him immunity—offered him immunity.

Q: Was that done in writing?

A: Yes. I believe you gave it to him, his attorney, the defense attorney for the actual shooter, and the judge, so. And he still refused to testify.

Q: Anything else you’d like to add as far as the facts surrounding the incident from yesterday?

A: No, that’s about it. **The only thing is that I was kind of taken back [sic] when he invoked his Fifth Amendment right because he is a witness. Usually when you invoke your Fifth Amendment right, you have something to hide.** And that kind of stopped it right there. The trial was done right there at that point.

...

Q: And just so we’re clear finally, **the evidence that we’re talking about that he’s concealing in this matter, is it the physical testimony that he was to provide in court?**

A: Yes. . . .<sup>10</sup>

103. Regarding Cantalamessa’s conduct, Stratford likewise found that Cantalamessa had pursued Robinson’s indictment in “good faith,” that she had not based the indictment on R.C. 2945.44, but on the underlying obstruction-of-justice and tampering-with-evidence statutes themselves and “applicable case law.”

104. As with Burns’s memo, Stratford failed to acknowledge that Robinson invoked his Fifth Amendment privilege.

105. And she ignored Cantalamessa’s bill of particulars, which mentioned both Robinson’s invocation of his Fifth Amendment privilege as evidence of guilt and the prosecution’s offer of immunity (but left out that the court had not *granted* the immunity and had not *ordered* the testimony), for example:

On or about April 5, 2016, . . . Kalilo Robinson did with purpose [to] hinder discovery . . . of another for a crime, . . . destroy or conceal physical evidence of the crime or act, . . . by now representing to the court in a sworn hearing, to establish cause for his testimony, after being subpoenaed, **that he now possessed information which would trigger the 5th Amendment for himself . . . After being offered immunity for his potential involvement in the Murder of Antwon Martinez, the Defendant still maintained that he would refuse to testify** as to his knowledge of the event . . . Said action constitutes Obstructing Justice . . .

(emphasis added).

106. As mentioned, the law is clear that indicting an individual for invoking his Fifth Amendment privilege against self-incrimination, when the court has not granted that individual immunity and not ordered testimony, is unlawful.

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<sup>10</sup> *State v. Robinson*, 16-CR-342, Grand Jury Tr., at 3:9–11; 5:11–6:10; 6:22–7:3 (emphasis added).

107. And Stratford, who is chief assistant, and the prosecutor's office were on notice about this basic requirement, having had a criminal conviction reversed because of just such violations in the not-too-distant past. *State v. Chaney*, 7th Dist. Mahoning No. 08-MA-171, 2010-Ohio-1312, ¶¶39, 41, 2010 WL 1208299, at \*7-8 (citing *Leach*, reversing a conviction obtained by the Mahoning County prosecutor's office because the prosecutor improperly cross-examined the defendant based on his constitutional right to remain silent and commented on it again in closing argument).

108. Regarding the jail calls, Stratford wrote that on January 30, 2017, she had listened to the calls and that they reflected what Cantalamessa said they said. She found, by contrast, that Desmond's allegations were "patently false."

109. Upon information and belief, Stratford excused Burns and Cantalamessa despite the evidence against them, so that she could build a case against Desmond and discredit his reports, and could then use that to influence and convince Gains to take unwarranted discipline against Desmond, including termination.

110. Stratford's actions reinforced her motivation to retaliate against Desmond for reporting prosecutorial misconduct, discredit him, and exercise the ill-will and resentment she harbored for him: she turned the investigation on *Desmond* rather than on the subjects of his January 27, 2017 memo; she disingenuously excused Burns and Cantalamessa; and, further, she used Desmond's memorandum to falsely accuse Desmond of theft in office.

111. Stratford's statement that Desmond's report (regarding Cantalamessa's misrepresentations of the jail calls) was "patently false" was itself false. Robinson did not

state on the calls that he would be “gone forever,” or that he intended to move to Tennessee *in order to avoid testifying at trial*, yet Cantalamessa represented as much to the court, and concealed that the move was not to avoid testifying, but to relocate his residence. Even the court later denied Cantalamessa’s motion for a deposition, acknowledging that Robinson had appeared for the status hearing. (Robinson had previously been released from the jail, and still appeared, thus negating any claim of his unavailability.) As Cantalamessa had done before the court, Stratford omitted in her memo to Gains material facts regarding Robinson’s intentions and availability for testimony.

112. Stratford’s memos on Burns and Cantalamessa, like her memo on Desmond, were materially false writings used to influence Gains, a public official, in the discharge of his duties, and other officials to be involved in decisions about Desmond’s employment status and termination.

113. As described next, the seeds Stratford planted bore poisonous fruit ultimately having a devastating effect on Desmond.

**On March 23, 2017, less than two months after Desmond submitted his report and one day after receiving Stratford’s memorandum with defamatory statements, Gains suspends Desmond. On April 5, he terminates Desmond.**

114. Stratford’s memo is dated March 22, 2017. On the same day, the court in Robinson’s § 1983 suit held a case-management conference at which it announced it would dismiss Robinson’s suit. (In the written decision that followed, the court made

clear it was dismissing the case on grounds of prosecutorial immunity.<sup>11</sup> It also acknowledged that Robinson’s *Monell* claim for municipal liability failed, in pertinent part because Robinson had not shown that an official decision-maker had authorized the wrongful acts. Robinson did not know, and therefore did not plead, that Desmond had internally reported the misconduct and a supervisor with authority to bind the office—Stratford—had failed to take action.)

115. Following the March 22 federal-court proceeding, Gains contacted Desmond and requested that Desmond come to his office the following day.

116. Desmond did as he was told, and on March 23, 2017, met Gains in his office. He could not have prepared himself for the shock he was to receive. Gains handed him a letter laying out six allegations—upon information and belief, identical to those from Stratford’s March 22 memo—to defend against in a pre-disciplinary hearing, and placing Desmond on paid administrative leave.

117. The March 23, 2017 suspension letter contained no supporting facts or evidence.

118. The allegations were that Desmond

- a. “engaged in communications” with adverse parties;
- b. “knowingly made himself a witness to a lawsuit”;
- c. “uttered false claims of ethical violations against” a member of the prosecutor’s office, which caused a grievance to be filed, in which he was named as a witness;

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<sup>11</sup> See *Robinson v. Mahoning County*, No. 4:16-cv-3011, U.S. Dist. LEXIS 59683, \*17 (N.D. Ohio, Apr. 19, 2017).

- d. “made false and misleading allegations against a fellow member of the prosecutor’s office” to adverse parties;
- e. “failed to communicate [his] belief that a fellow member . . . engaged in misconduct to an appropriate supervisor”; and
- f. “apparently used equipment and assets of [his] employer, Mahoning County, to conduct research to assist parties adverse to [his] client, Mahoning County. . . .”

As mentioned, the sixth is almost word-for-word the sixth (and only unredacted) allegation in Stratford’s memo.

119. Upon information and belief, Stratford drafted the suspension letter and published it to Gains, who did no independent review of the allegations before rubberstamping them and signing the letter.

120. Stratford’s draft was a materially false writing used in an attempt to influence a public official, Gains.

121. The letter’s allegations were blatantly false, vague, nonsensical, and/or facially pretextual. Gains either knew they were false and rubberstamped them anyway, or recklessly disregarded their falsity, because Gains’s experience with Desmond would have required him to investigate these incongruous allegations, and any reasonable inquiry of records within his possession or control would have revealed their falsity.

122. For example, the allegation that Desmond “engaged in communications” with adverse parties, to the extent this is referring to regular communications with opposing counsel, hardly constitutes misconduct. (And to the extent this intends to suggest more

involved discussions or disclosures of office matters, such allegations were false. As Desmond's January 27, 2017 memo shows, such discussions and disclosures did not occur.)

123. The allegation that Desmond "knowingly made himself a witness" or that he was named as a witness in a grievance admits to unlawful intimidation and retaliation: it is unlawful to try to influence or intimidate a witness to a criminal act, and to retaliate against any witness for discharging his or her duties.

124. The allegation that Desmond "uttered false claims of ethical violations" against Cantalamessa, or that he "made false and misleading allegations" about her to adverse parties is false—he never even "uttered" claims of ethical violations or allegations to adverse parties, much less "false" ones.

125. The allegation that Desmond failed to communicate the misconduct to a supervisor is also false, because Desmond reported the misconduct to Rivera, who told Desmond that he passed on Desmond's concerns to Stratford and others. (Desmond also, obviously, did communicate the misconduct to Gains in both his December text messages and his January 27, 2017 memo, so this allegation is flat-out wrong.) The allegation is also an insufficient basis for discipline, because other assistant prosecutors in the office, including Cantalamessa, knew of Wise's intention to file a lawsuit on Robinson's behalf, yet none of them were disciplined. None of these assistant prosecutors came forward and none were terminated.

126. WKBN.com reported, for example, that Wise had told Cantalamessa about his intention to sue in August 2016: "I did not like how she handled this matter and advised

her that I would be filing a lawsuit against her.”<sup>12</sup> Yet Cantalamessa was not disciplined for failing to inform Gains of Wise’s threat. The prosecutor’s office continues to employ Cantalamessa.

127. The allegation that Desmond used county equipment and resources to aid adverse parties is likewise false, as discussed elsewhere above and below.

128. The March 23, 2017 suspension letter was a false writing intended to intimidate and hinder Desmond in the discharge of his duties as a public servant, as well as in the discharge of his duties as a witness.

129. On or about March 31, 2017, a pre-disciplinary “hearing” was held, with Gains, Stratford, attorney Todd Raskin, Desmond, attorney Ira Mirkin, attorney Danielle Murphy, and attorney Gerald Ingram present.

130. At the start of the “hearing,” Desmond still did not know the factual allegations underlying the suspension letter. Again, he had not been provided or even told about Stratford’s memo.

131. At the “hearing,” Gains admitted that the allegation that Desmond had used county resources to assist adverse parties (i.e., Westlaw research) should not have been included in the letter, as there was no evidence to support such an allegation. Nor was there any other evidence of any theft in office or unauthorized use of property.

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<sup>12</sup> Gerry Ricciutti, *Mahoning County Prosecutor reveals more details in Desmond firing*, WKBN.com (April 06, 2017, 4:17 PM), <http://wkbn.com/2017/04/06/mahoning-county-prosecutor-reveals-more-details-in-desmond-firing/> [perma.cc/5XUQ-3SW5] at 0:01:35.

132. Gains nevertheless proceeded to question Desmond regarding his Westlaw research.

133. Despite the demeaning and ludicrous nature of the whole questioning—Desmond had been a trusted public servant for 13 years at that point, and in any case, if he had wanted to help the adversary, there would have been plenty of ways he could have done so without using the office Westlaw account—Desmond respectfully answered Gains's questions.

134. Desmond explained that while he could not remember every specific case name or topic he researched, if shown the research trail, he could identify the defendant, issues, or matter to which the research applied.

135. Desmond then provided a detailed explanation of how he conducts his research, so that if Gains wanted to verify Desmond's explanation, he could do so. Desmond explained that when conducting Westlaw research, he puts the defendant's name into the client field, and that when there are multiple defendants, he puts the top-named defendant in the indictment in the field. He further explained his process for saving the cases with pertinent information and told Gains exactly where Gains could find the information on the office G: drive and his email folders.

136. Gains questioned Desmond about specific topics from the alleged research, and, thinking back to his December 2016 schedule, Desmond provided the names of Vincent Moorer and Melvin Johnson; they were both co-defendants of the top-named defendant in a case, Dewaylyn Colvin. As mentioned above, at the time, these individuals were threatening to sue Desmond and had filed grievances against him (which were dismissed

without any need to respond), and he was researching issues pertinent to that threat, in preparation for a December 19, 2016 pretrial before Judge Durkin.

137. Gains never showed Desmond the Westlaw research trails about which he was questioning Desmond.

138. Gains produced no evidence against Desmond at the pre-disciplinary “hearing”—on the Westlaw-research or any other allegation discussed. Desmond rebutted each allegation, to the extent he understood what the allegation even was referring to.

139. Later, at or immediately after a press conference on April 5, 2017, Gains published part or all of Desmond’s Westlaw research trails to members of the media. He knew that the research trails were materially misleading, based on his knowledge of Desmond’s research-entry protocols.

140. Later, Desmond saw what Gains had shown members of the media, and Colvin was indeed the name on the Westlaw trails with the specific research topics discussed at the “hearing.”

141. Gains issued no findings or conclusions from the predisciplinary “hearing.”

142. On April 3, 2017, Desmond followed up with a letter to Gains further rebutting the various allegations in the suspension letter and urging Gains to speak to Rivera, to whom, in August 2016, Desmond had reported his suspicions of Cantalamessa’s conduct.

143. On April 3, 2017, Gains and Stratford met with Rivera, who confirmed that Desmond had reported concerns of misconduct, and that Rivera had reported those concerns up the chain to Stratford in August 2016.

144. At the April 3, 2017, meeting, Stratford admitted that Rivera had come to her in August 2016 regarding concerns of Cantalamessa's misconduct.

145. At the April 3, 2017 meeting, Rivera also confirmed with Gains and Stratford that he had told Desmond in August 2016 that he had relayed Desmond's concerns to Stratford and others.

146. Two days later, on April 5, 2017, Gains terminated Desmond (effective April 6, 2017) in a one-sentence letter. The letter provided no explanation for the termination.

147. Both during the suspension and on the day of the termination, Gains told others in the prosecutor's office that Desmond was being disciplined for being a witness.

**Gains holds a press conference about Desmond's termination, at which he insinuates that Desmond was colluding with adverse parties against the County.**

148. While he provided no explanation to Desmond for ending Desmond's 13 years of service to the County, Gains immediately summoned reporters from the local media to trumpet the termination in a press conference. Before April 2017, Gains had never before held a press conference to announce an assistant prosecutor's termination. This one was live-streaming on the Internet via one or more news organization's websites, and thus reached the public at large in real time.

149. At the press conference, to a roomful of reporters, Gains made false statements of fact about Desmond. He knew that these statements were false, or recklessly disregarded their falsity despite a high degree of certainty that they were likely false, and failed to investigate them. He was motivated to retaliate against and discredit Desmond to undermine any revelation Desmond might make about Gains's inaction and ratification of

the prosecutorial abuses Desmond reported, as further demonstrated by the shifting explanations Gains provided for terminating Desmond.

150. In making these statements, Gains was not acting as an advocate of the state. He was discussing an employment situation, and was exercising an administrative function. And the statements were not made in connection with initiating any prosecution.

151. Gains falsely insinuated that Desmond had colluded with adverse parties against the County. The false statements included the following:

152. *First*, Gains claimed that Desmond had concealed Robinson's plans to sue the county. As reported by TV station WKBN: "Gains also says Desmond didn't want the County to know it was about to get sued. . . ." <sup>13</sup> Relatedly, Gains accused Desmond of failing to alert his supervisors of his suspicions of misconduct and of discussing "internal matters" with Robinson's counsel, insinuating that Desmond was deliberately acting against the County's best interests.

153. But it was untrue that Desmond concealed information from the County, and Gains knew or should have known through minimal investigation that it was untrue: as Desmond recounted in his January 27, 2017 memo, Desmond told Wise to contact Gains before filing suit, thus belying any intention to keep the information from the county. If Desmond were truly scheming against the County on Robinson's behalf, moreover, he would not, on December 22, 2016, have alerted his colleagues to the Ohio Supreme Court case that he thought might help them secure Kalilo Robinson's testimony (all documented in text messages). Moreover, as Gains himself later admitted in an affidavit,

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<sup>13</sup> See, e.g., WKBN News at 6 (WKBN television broadcast April 5, 2017), at 1:02–1:08.

Wise did contact Gains to advise him of Robinson's intent to sue. Gains, in response, did nothing to prevent the lawsuit. Gains was in the best position to prevent the lawsuit, not Desmond.

154. It was also untrue that Desmond was discussing "internal matters" with defense counsel as if he were colluding with adverse parties. Nothing in Desmond's memo or anything else suggested such discussions. And Gains admitted at the press conference that he did not know what Desmond discussed.

155. It was similarly untrue that Desmond had not alerted his supervisors. Desmond told assistant prosecutor and chief of the appellate division Ralph Rivera, who passed Desmond's concerns on to chief assistant Stratford, one of Desmond's supervisors. Gains knew this, not only because Desmond mentioned it in his January 27, 2017 memo, but also because Desmond reiterated it in the March 31, 2017 predisciplinary hearing and in his April 3, 2017 letter to Gains, in which he urged Gains to talk to Rivera. On April 3, 2017, Gains did speak to Rivera, and Rivera confirmed Desmond's claim, with Stratford, too, admitting that Rivera had brought those concerns to her in August 2016. In any case, Gains had no good-faith basis to criticize Desmond on this basis, given that Gains himself had warned Desmond in September 2016 not to criticize or question his supervisors, including Cantalamessa.

156. *Second*, Gains claimed that Desmond lied about conducting certain legal research: "Gains says he had a hearing to ask [Desmond] about a list of computer searches he made on his County Westlaw Account on the morning of December 16th, 2016, the same

morning that defense Attorney Wise's federal lawsuit was filed. *Desmond denied making any of those searches[,] according to Gains.*"<sup>14</sup>

157. But as detailed above, this was untrue, and Gains knew it was untrue: at the hearing, Desmond provided an explanation for the Westlaw research he had conducted on the subject areas Gains asked about. Desmond even provided the defendants' names for which the research was conducted.

158. *Third*, Gains insinuated that Desmond had provided legal research to an adverse party: "Prosecutor Gains says, 'And there is no reason why he as a prosecutor assigned to the criminal division should be conducting any of this research whatsoever. These are civil matters, not criminal.'" Gains held up the documents showing Desmond's Westlaw trails and showed the research trails to reporters.

159. Again, Gains knew the allegations were untrue; indeed, at the hearing, he had admitted there was no evidence to support allegations of theft in office and unauthorized use of property. Desmond explained that the research he had conducted the morning Robinson's suit was filed was for his own cases, a fact that was corroborated by documents, including the Westlaw research trails that Gains showed the media.

160. Upon information and belief, Gains also made other false statements indicating that there had been instances on which Desmond had refused to do assignments and

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<sup>14</sup> Michelle Nicks, Assistant Mahoning County Prosecutor fired, WFMJ.com (April 05, 2017, 1:46 PM), <http://www.wfmj.com/story/35078139/assistant-mahoning-county-prosecutor-fired>; <https://web.archive.org/web/20170621154800/http://www.wfmj.com/story/35078139/assistant-mahoning-county-prosecutor-fired> (accessed March 21, 2018) (emphasis added); see also Amanda Smith and Tyler Trill, Mahoning County's assistant prosecutor fired, WKBN.com (April 5, 2017, 2:10 PM), at 1:08–12, <http://wkbn.com/2017/04/05/mahoning-countys-assistant-prosecutor-fired/> (accessed March 21, 2018).

other instances in which he refused to work with others. These statements, too, were untrue, as several assistant prosecutors in the office and police officers could attest. Upon information and belief, Gains admitted as much by telling reporters who were present not to report certain statements.

161. Gains's false statements about Desmond, such as that he shared resources with and disclosed internal matters to an adverse party, lied about conducting certain work, wanted his employer to be sued, failed to tell his supervisors about suspected misconduct, and refused to do his job, bear on Mr. Desmond's qualifications and fitness for his profession and thus constitute defamation *per se*.

162. Gains made the false statements to the media, knowing the statements were false. He did so outside of his function as an advocate of the state, and outside of initiating any criminal prosecution.

163. The Youngstown *Vindicator* and television stations WFMJ and WKBN covered the story.

164. In releasing the false charges to the media—and, because the press conference was live-streamed, directly to the public—Gains intended to and did portray Desmond in a false light before the public.

165. Upon information and belief, news of Gains's accusations has reached other county prosecutor offices and the federal government.

166. Despite applying to all open prosecutor positions within a three-hour radius of Youngstown, and despite his exemplary, decorated record preceding his termination,

Desmond has received no call back from a prosecutor's office in nearly a year since his termination.

167. Gains's statements at the press conference also show that he could not keep his story straight regarding why he had terminated Desmond, reflecting Gains's retaliatory motive:

- a. While on one hand, Gains insinuated that Mr. Desmond had provided research assistance to an adverse party, on the other hand, he claimed in the press conference that he had "never accused Desmond of helping Wise with his lawsuit."<sup>15</sup>
- b. And while his March 23, 2017 suspension letter emphasized Desmond's duty to protect "the interests of Mahoning County in civil matters," in the press conference, he faulted Desmond for researching the County's potential exposure to liability for prosecutorial misconduct, telling reporters, "There is no reason why he as a prosecutor assigned to the criminal division should be conducting any of this research whatsoever. *These are civil matters.*"<sup>16</sup>

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<sup>15</sup> Ricciuti, *above*, WKBN.com (April 06, 2017, 4:17 PM), <http://wkbn.com/2017/04/06/mahoning-county-prosecutor-reveals-more-details-in-desmond-firing/> [perma.cc/5XUQ-3SW5].

<sup>16</sup> Nicks, *above*, <http://www.wfmj.com/story/35078139/assistant-mahoning-county-prosecutor-fired> (emphasis added).

**Desmond files an appeal with the SPBR, which Gains moves to dismiss; Gains's affidavit, on which the motion to dismiss is based, is riddled with inaccurate statements. And the motion to dismiss further changes stories as to the reasons for Desmond's termination.**

168. In May 2017, Desmond filed a whistleblower appeal before the State Personnel Board of Review (SPBR). Gains and the County moved to dismiss the appeal, arguing the Board lacked jurisdiction because Desmond had allegedly not met the requirements of being designated a "whistleblower."

169. In his motion to dismiss, Gains changed his story again. In this account, Desmond's firing no longer had anything to do with his status as a potential witness. Nor was there any mention of the Westlaw research that Gains had emphasized in the pre-disciplinary hearing and his press conference. In the motion to dismiss, instead, Gains only alleged that Desmond "failed to report his suspicions" about Cantalamessa's misconduct in a timely manner. As detailed above, this was demonstrably untrue.

170. The affidavit upon which Gains and the County relied to move to dismiss Desmond's SPBR contained false statements and statements outside of Gains's personal knowledge.

171. Gains's affidavit twice inaccurately states that Kalilo Robinson was given something in return for his cooperation in the case against Marquan White. First, the affidavit avers that, in return for his cooperation, Robinson received a reduction in an aggravated-riot charge. But as court documents such as the complaint, plea agreement, and sentencing entry, show, in fact, the aggravated-riot charge was pleaded down in May and June 2013—*17 months before* the Martinez homicide (which took place in November

2014).<sup>17</sup> Robinson could not have received the reduced charge in exchange for cooperation regarding a murder that had not yet taken place. And it was undisputed that there was no impeachment evidence against Robinson.

172. Second, Gains's affidavit states that "On August 16, 2016 *State v. Robinson* was dismissed in an effort to attempt to again secure his testimony in *State v. White*." But as shown above, the transcript of the August 16, 2016 dismissal hearing shows that Cantalamessa moved to dismiss the case "with no strings attached."<sup>18</sup> Robinson provided nothing in return for the dismissal.

173. The affidavit, moreover, wrongly stated that Desmond did not report the misconduct to his supervisors. As shown above, this was untrue.

174. Gains's affidavit was a materially false writing used to try to influence the SPBR and was further retaliation against Desmond for reporting misconduct within the prosecutor's office.

175. The SPBR dismissed Desmond's appeal on jurisdictional grounds, without providing Desmond a hearing either on the merits or on the factual issues at play on the jurisdictional question. Desmond's appeal from the SBPR is currently before the Mahoning County Court of Common Pleas.

176. Upon information and belief, Gains has instructed individuals within the prosecutor's office, the court (including sitting judges), and law enforcement not to associate with Desmond, thus further retaliating against him.

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<sup>17</sup> See *In the matter of Kalilo Rae Kwon Robinson*, 2013 JA 653 (complaint; plea agreement dated May 21, 2013; plea entry; and sentencing entry dated June 28, 2013), attached as Ex. 6 (redacted to remove personal identifying information).

<sup>18</sup> *State v. Robinson*, 16-CR-342, Hearing Tr. on Mot. Dismiss, at 3:5-8. (Aug. 16, 2016) (Ex. 4).

**The termination, defamation, and ongoing retaliation have had a devastating effect on Desmond.**

177. For Desmond, the termination has been financially and emotionally devastating. As a result of losing his job, he lost not only his salary and substantial retirement benefits, but also his whole family's health insurance (wife and three children), forcing them to join a more expensive health-insurance plan.

178. Compounding that is the humiliation and reputational damage he experienced through Defendants' plan to defame him and destroy his career. Despite applying to every open prosecutor position within a three-hour radius of his residence, Desmond has to date received no call-backs or offers, notwithstanding his substantial experience and qualifications.

179. And Mahoning County is a place where many people know each other. On countless occasions when Desmond has been out in public and approached about this matter, he is with his wife and children, who have to relive the experience.

180. The unjust termination and defamatory actions have affected Desmond's personal life as well. Desmond's three children are old enough to hear the news, but too young to truly understand what occurred. On one occasion, Desmond was telling his sons the importance of always telling the truth and doing the right thing regardless of the criticism one might receive, to which one of his sons, then age 13, replied, "Look at what that got you." This loss of his children's innocence was like a knife to Desmond's heart.

181. Being a prosecutor is a calling for Desmond. Being terminated was not just about losing a job, but also losing a central part of his identity. Desmond went from being a

rising star to now unable to get an interview at a prosecutor's office. Moreover, Gains has attempted to isolate Desmond and destroy his relationships with his former colleagues.

182. Gains's betrayal has also had a lasting effect on him: he and Gains previously not only had a working relationship, but were friends who went out for drinks, wings, and cigars, and discussed personal matters in addition to the law. Desmond now questions all of Gains's prior statements and motives.

## **CLAIMS**

### **CLAIM I**

#### **DEFAMATION UNDER OHIO COMMON LAW**

#### **AGAINST STRATFORD IN HER OFFICIAL AND PERSONAL CAPACITIES, MAHONING COUNTY**

183. Plaintiff incorporates all previous allegations.

184. Defamation requires a statement of fact, published to one or more third parties, conveying a defamatory meaning, that was false, unprivileged, and published with the requisite degree of fault.

185. Stratford published the March 22 memoranda to Gains, knowing that the defamatory allegations of fact against Desmond contained within them were false (including that Desmond used county resources to benefit an adverse party and that Desmond's statements about Cantalamessa's conduct were "patently false"), or with reckless disregard as to whether the statements in the letter were true. This actual malice overcomes any qualified privilege, including the common-interest privilege.

186. Stratford's statements regarding employment were within her administrative function, not within her function as an advocate of the state and not in connection with

initiating any prosecution. She was not entitled to absolute prosecutorial immunity for these statements.

187. Nor is she entitled to immunity under R.C. 2744.03(A)(6), because her acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

188. The County, through Gains, improperly allowed the statements to be republished to others, including during Desmond's predisciplinary "hearing," and then to the media.

189. Under R.C. 2744.09(B), the County is not immune from suit because Desmond's claim arises out of the employment relationship between himself and the political subdivision.

190. As a direct and proximate result of Stratford's defamatory statements, which the County endorsed and adopted as its own official statements, Desmond has suffered and will continue to suffer damages for which the Stratford and the County are liable, including, but not limited to, harm to reputation, emotional distress, humiliation, embarrassment, and economic opportunities.

191. Stratford intentionally, wantonly, recklessly, and maliciously defamed Desmond, and thus is liable for punitive or exemplary damages.

**CLAIM 2**  
**DEFAMATION UNDER OHIO COMMON LAW**  
**AGAINST GAINS IN HIS OFFICIAL AND PERSONAL CAPACITIES, MAHONING COUNTY**

192. Plaintiff incorporates all previous allegations.

193. Gains published defamatory statements of fact about Desmond to others, including the media and the public, during the April 5, 2017 live-cast press conference

(including that Desmond lied about not doing Westlaw research). Gains made these statements knowing they were false or with reckless disregard as to their falsity. The actual malice overcomes any qualified privilege.

194. Gains's statements regarding Desmond's employment were within his administrative function, not within his function as an advocate of the state and not in connection with initiating any prosecution. He was not entitled to absolute prosecutorial immunity for these statements.

195. Nor is he entitled to immunity under R.C. 2744.03(A)(6), because his acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

196. The County, through Gains, improperly allowed the statements to be published to others, including during Desmond's predisciplinary "hearing," and then to the media.

197. Under R.C. 2744.09(B), the County is not immune from suit because Desmond's claim arises out of the employment relationship between himself and the political subdivision.

198. As a direct and proximate result of Gains's defamatory statements, which the County endorsed and adopted as its own official statements, Desmond has suffered and will continue to suffer damages for which the County and Gains are liable, including, but not limited to, harm to reputation, emotional distress, humiliation, embarrassment, and economic opportunities.

199. Gains intentionally, wantonly, recklessly, and maliciously defamed Desmond, and thus is liable for punitive or exemplary damages.

**CLAIM 3**  
**INTIMIDATION (USING A FALSE OR FRAUDULENT WRITING) UNDER R.C. 2921.03**  
**AGAINST STRATFORD IN HER OFFICIAL AND PERSONAL CAPACITIES**

200. Plaintiff incorporates all previous allegations.

201. Under R.C. 2921.03, no person, knowingly and by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant in the discharge of the person's duty. This provision creates civil liability under R.C. 2921.03(C).

202. Desmond was a public servant and a witness.

203. Stratford's March 22, 2017 memorandum on Desmond was a materially false or fraudulent writing.

204. Stratford's March 22, 2017 memorandum on Cantalamessa and her February 7, 2017 memo on Burns were materially false or fraudulent writings.

205. Stratford's draft of the March 23, 2017 suspension letter was a materially false or fraudulent writing.

206. Stratford drafted and/or used these materially false and fraudulent writings with malicious purpose in bad faith, or in a wanton and reckless manner, to attempt to hinder Desmond, a public servant, in discharging his duties, by subjecting him to unwarranted discipline as a public employee, and to influence, intimidate, or hinder Desmond in discharging his duty as a witness.

207. Stratford also used the false writings of her February 7, 2017 and March 22, 2017 memos, and the March 23, 2017 suspension letter—which, upon information and belief,

she drafted—to attempt to influence Gains in disciplining Desmond, and other future public-servant decision-makers in sustaining that discipline.

208. Stratford’s writings regarding Desmond’s employment were within her administrative function, not within her function as an advocate of the state and not in connection with initiating any prosecution. She is not entitled to absolute prosecutorial immunity for her statements.

209. Nor is she entitled to immunity under R.C. 2744.03(A)(6), because her acts and omissions were with malicious purpose, in bad faith, and/or in wanton or reckless manner.

210. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Stratford is liable, including, but not limited to, pain and suffering; the loss of salary, wages, and benefits; other terms, privileges, and conditions of employment; and attorneys’ fees.

211. Stratford’s acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter her and others from engaging in this type of unlawful conduct.

**CLAIM 4**  
**INTIMIDATION (USING A FALSE OR FRAUDULENT WRITING) UNDER R.C. 2307.60**  
**AGAINST STRATFORD IN HER OFFICIAL AND PERSONAL CAPACITIES**

212. Plaintiff incorporates all previous allegations.

213. Under R.C. 2921.03, no person, knowingly and by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a

wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant or a witness in the discharge of the person's duty.

214. In addition to the civil liability created under R.C. 2921.03(C), R.C. 2307.60 provides that anyone injured in person or property by a criminal act may recover full damages in a civil action.

215. Desmond was a public servant and a witness.

216. Stratford's March 22, 2017 memorandum on Desmond was a materially false or fraudulent writing.

217. Stratford's March 22, 2017 memorandum on Cantalamessa and her February 7, 2017 memo on Burns were materially false or fraudulent writings.

218. Stratford's draft of the March 23, 2017 suspension letter was a materially false or fraudulent writing.

219. Stratford drafted and/or used these materially false and fraudulent writings with malicious purpose in bad faith, or in a wanton and reckless manner, to attempt to hinder Desmond, a public servant, in discharging his duties, by subjecting him to unwarranted discipline as a public employee, and to influence, intimidate, or hinder Desmond in discharging his duty as a witness.

220. Stratford also used the false writings of her February 7, 2017 and March 22, 2017 memos, and her draft of the suspension letter, in an attempt to influence Gains in disciplining Desmond, and other future public-servant decision-makers in sustaining that discipline.

221. Stratford's writings regarding Desmond's employment were within her administrative function, not within her function as an advocate of the state and not in connection with initiating any prosecution. She is not entitled to absolute prosecutorial immunity for her statements.

222. Nor is she entitled to immunity under R.C. 2744.03(A)(6), because her acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

223. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Stratford is liable, including, but not limited to, pain and suffering; the loss of salary, wages, and benefits; other terms, privileges, and conditions of employment; and attorneys' fees.

224. Stratford's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter her and others from engaging in this type of unlawful conduct.

**CLAIM 5**  
**INTIMIDATION (USING A FALSE OR FRAUDULENT WRITING) UNDER R.C. 2921.03**  
**AGAINST GAINS IN HIS OFFICIAL AND PERSONAL CAPACITIES**

225. Plaintiff incorporates all previous allegations.

226. Under R.C. 2921.03, no person, knowingly and by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant in the discharge of the person's duty. This provision creates civil liability under R.C. 2921.03(C).

227. Desmond was a public servant and a witness.
228. Stratford's March 22, 2017 memoranda on Desmond and Cantalamessa, and her February 7, 2017 memo on Burns, were materially false or fraudulent writings.
229. The March 23, 2017 suspension letter, which Gains signed, was a materially false or fraudulent writing.
230. Gains's June 1, 2017 affidavit, attached to the motion to dismiss Desmond's SPBR whistleblower appeal, was a materially false or fraudulent writing.
231. Gains drafted and/or used these materially false and fraudulent writings with malicious purpose in bad faith, or in a wanton and reckless manner, to attempt to hinder Desmond, a public servant, in discharging his duties, by subjecting him to unwarranted discipline as a public employee, and to influence, intimidate, or hinder Desmond in discharging his duty as a witness.
232. Gains also used these false writings to attempt to influence future public-servant decision-makers in sustaining the discipline to which he subjected Desmond.
233. Gains's writings regarding Desmond's employment were within his administrative function, not within his function as an advocate of the state and not in connection with initiating a prosecution. He is not entitled to absolute prosecutorial immunity for his statements.
234. Nor is he entitled to immunity under R.C. 2744.03(A)(6), because his acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

235. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Gains is liable, including, but not limited to, pain and suffering; the loss of salary, wages, and benefits; other terms, privileges, and conditions of employment; and attorneys' fees.

236. Gains's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter him and others from engaging in this type of unlawful conduct.

**CLAIM 6**  
**INTIMIDATION (USING A FALSE OR FRAUDULENT WRITING) UNDER R.C. 2307.60**  
**AGAINST GAINS IN HIS OFFICIAL AND PERSONAL CAPACITIES**

237. Plaintiff incorporates all previous allegations.

238. Under R.C. 2921.03, no person, knowingly and by filing, recording, or otherwise using a materially false or fraudulent writing with malicious purpose, in bad faith, or in a wanton or reckless manner, shall attempt to influence, intimidate, or hinder a public servant in the discharge of the person's duty.

239. In addition to the civil liability created under R.C. 2921.03(C), R.C. 2307.60 provides that anyone injured in person or property by a criminal act may recover full damages in a civil action.

240. Desmond was a public servant and a witness.

241. Stratford's March 22, 2017 memoranda on Desmond and Cantalamessa, and her February 7, 2017 memo on Burns, were materially false or fraudulent writings.

242. The March 23, 2017 suspension letter, which Gains signed, was a materially false or fraudulent writing.

243. Gains's June 1, 2017 affidavit, attached to the motion to dismiss Desmond's SPBR whistleblower appeal, was a materially false or fraudulent writing.

244. Gains drafted and/or used these materially false and fraudulent writings with malicious purpose in bad faith, or in a wanton and reckless manner, to attempt to hinder Desmond, a public servant, in discharging his duties, by subjecting him to unwarranted discipline as a public employee, and to influence, intimidate, or hinder Desmond in discharging his duty as a witness.

245. Gains also used these false writings to attempt to influence future public-servant decision-makers in sustaining the discipline to which he subjected Desmond.

246. Gains's writings regarding Desmond's employment were within his administrative function, not within his function as an advocate of the state and not in connection with initiating any prosecution. He is not entitled to absolute prosecutorial immunity for his statements.

247. Nor is he entitled to immunity under R.C. 2744.03(A)(6), because his acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

248. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Gains is liable, including, but not limited to, pain and suffering; the loss of salary, wages, and benefits; other terms, privileges, and conditions of employment; and attorneys' fees.

249. Gains's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter him and others from engaging in this type of unlawful conduct.

**CLAIM 7**  
**FALSE LIGHT – INVASION OF PRIVACY**  
**AGAINST STRATFORD IN HER OFFICIAL AND PERSONAL CAPACITIES, MAHONING COUNTY**

250. Plaintiff incorporates all previous allegations.

251. One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of privacy if (a) the false light in which the other was placed would be highly offensive to a reasonable person and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

252. Stratford gave publicity to statements she knew were false or as to which she was reckless regarding their falsity and the false light they would place Desmond. She publicized them to Gains with the intent that they reach the public, and ensured that they were sure to reach the public and/or be substantially certain to become public knowledge. These statements were also circulated to the media. They placed Desmond in a false light, and have forced Desmond to remain in a false light for over eleven months.

253. These statements are detailed in the factual narrative above and include statements such as that Desmond used county resources to aid an adversary and tried to hide that effort, engaging in theft in offense, unauthorized use of property, and ethics violations. The false light in which this placed Desmond would be highly offensive to a reasonable person.

254. Stratford's statements regarding Desmond's employment were within her administrative function, not within her function as an advocate of the state and not in

connection with initiating any prosecution. She was not entitled to absolute prosecutorial immunity for these statements.

255. Nor is she entitled to immunity under R.C. 2744.03(A)(6), because her acts and omissions were with malicious purpose, in bad faith, and/or in wanton or reckless manner.

256. The County, through Gains, improperly allowed the statements to be publicized, including during Desmond's predisciplinary "hearing," and then to the media.

257. Under R.C. 2744.09(B), the County is not immune from suit because Desmond's claim arises out of the employment relationship between himself and the political subdivision.

258. As a direct and proximate result of Stratford's unlawful conduct, adopted by the County, Desmond has suffered and will continue to suffer economic and non-economic damages for which Stratford and the County are liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

259. Stratford's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

**CLAIM 8**  
**FALSE LIGHT – INVASION OF PRIVACY**  
**AGAINST GAINS IN HIS OFFICIAL AND PERSONAL CAPACITIES, MAHONING COUNTY**

260. Plaintiff incorporates all previous allegations.

261. One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of privacy if (a) the false light in which the other was placed would be highly offensive to a reasonable person and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

262. Gains publicized false statements he knew were false or as to which he was reckless disregarding their falsity and the false light they would place Desmond. Through his actions and statements, he ensured that they were sure to reach the public and/or be substantially certain to become public knowledge, including through his April 5, 2017 press conference and media communications and releases. These false statements placed Desmond in a false light before the public, and have forced Desmond to remain in a false light for over eleven months.

263. These statements are detailed in the narrative above and include such statements and insinuations as that Desmond did not want the county to know it was going to be sued, that he discussed “internal matters” with adverse parties, that he lied about whether he had conducted certain research or not, that he had provided research assistance to an adverse party (which Gains alleged while holding up the Westlaw research, making the act even more egregious). The false light in which this placed Desmond would be highly offensive to a reasonable person.

264. Gains also knew or acted with reckless disregard as to the falsity of the material that he was publicizing and the false light in which this would place Desmond.

265. For example, stating that Desmond did not want the county to know it was going to be sued was false and tarnished Desmond's reputation as a prosecutor of integrity who cared about his community. Gains either knew or would have known, had he properly investigated the claims, about the falsity and the false light in which they would place Desmond. Yet Gains publicized the allegations in his press conference and Stratford's memo without caveat.

266. Gains's statements regarding Desmond's employment were within his administrative function, not within his function as an advocate of the state and not in connection with initiating any prosecution. He was not entitled to absolute prosecutorial immunity for these statements.

267. Nor is he entitled to immunity under R.C. 2744.03(A)(6), because his acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

268. The County, through Gains, improperly allowed the statements to be publicized to others, including during Desmond's predisciplinary "hearing," and then to the media.

269. Under R.C. 2744.09(B), the County is not immune from suit because Desmond's claim arises out of the employment relationship between himself and the political subdivision.

270. As a direct and proximate result of Gains's unlawful conduct, adopted by the County, Desmond has suffered and will continue to suffer economic and non-economic

damages for which Gains and the County are liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

271. Gains's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

#### **CLAIM 9**

#### **CIVIL LIABILITY FOR CRIMINAL ACTS (INTIMIDATION OF ATTORNEY, VICTIM, OR WITNESS IN A CRIMINAL CASE) UNDER R.C. 2307.60 AND R.C. 2921.04 AGAINST GAINS AND STRATFORD IN THEIR OFFICIAL AND INDIVIDUAL CAPACITIES, MAHONING COUNTY**

272. Plaintiff incorporates all previous allegations.

273. Under R.C. 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

274. Under R.C. 2921.04, no person, purposely and by unlawful threat of harm to any person or property, shall attempt to influence, intimidate, or hinder a witness to a criminal or delinquent act by reason of the person being a witness to that act. The provision carries a criminal penalty.

275. Under R.C. 2921.04(E), "witness" means any person who has or claims to have knowledge concerning a fact or facts concerning a criminal or delinquent act.

276. Desmond had knowledge of facts regarding criminal acts, such as interference and violation of another's civil rights, coercion, intimidation of a witness, and unlawful restraint.

277. Gains and Stratford attempted to intimidate and hinder Desmond in being a witness to those acts by undertaking the following against Desmond for "knowingly

ma[king] [him]self a witness to a lawsuit filed against” Mahoning County, Gains, and fellow prosecutors:

- a. investigating Desmond after he submitted his January 27, 2017 report;
- b. lodging false written allegations against Desmond;
- c. subjecting him to a “hearing” with ludicrous allegations;
- d. suspending Desmond;
- e. ultimately terminating Desmond;
- f. holding a press conference held for the specific purpose of maligning Desmond with false and defamatory statements;
- g. making false statements in an affidavit supporting a motion to dismiss Desmond’s SPBR appeal.
- h. instructing Desmond’s former colleagues and others not to associate with him, thereby isolating Desmond.

278. In undertaking the acts mentioned in the preceding paragraph, Gains and Stratford also attempted to intimidate and hinder Desmond for being named as a witness in a grievance filed against Dawn Cantalamessa.

279. This intimidation involved both threatening and eventually imposing economic harm on Desmond.

280. Gains’s and Stratford’s actions regarding Desmond’s employment were within their administrative function, not within their function as advocates of the state and not in connection with initiating any prosecution. They are not entitled to absolute prosecutorial immunity for these actions.

281. Nor are they entitled to immunity under R.C. 2744.03(A)(6), because their acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

282. The County, through Gains, improperly allowed the above-mentioned acts to take place.

283. Under R.C. 2744.09(B), the County is not immune from suit because Desmond's claim arises out of the employment relationship between himself and the political subdivision.

284. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which the County, Stratford, and Gains are liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

#### **CLAIM 10**

#### **CIVIL LIABILITY FOR CRIMINAL ACTS (RETALIATION AGAINST WITNESS FOR DISCHARGING DUTIES) UNDER R.C. 2307.60 AND R.C. 2921.05(A) AGAINST GAINS, STRATFORD, MAHONING COUNTY**

285. Plaintiff incorporates all previous allegations.

286. Under R.C. 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

287. Under R.C. 2921.05, no person, purposely and by unlawful threat of harm to any person or property, shall retaliate against a witness because the witness discharged his duties. The provision carries a criminal penalty.

288. A witness includes someone who sees/hears an event. A witness's duties include not only the act of testifying but all of the preliminary aspects of becoming formally involved in the process.<sup>19</sup>

289. Desmond discharged his duties as a witness by reporting what he saw and writing a statement, i.e., his December 22, 2016 text message and January 27, 2017 memo.

290. Gains and Stratford retaliated against Desmond for discharging his duties as a witness—regarding both the civil lawsuit against the County, Gains, and fellow prosecutors and the grievance filed against Cantalamessa—when they undertook all the acts mentioned in Claim 9 above. These acts included subjecting Desmond to investigation after he wrote his January 27, 2017 memo, lodging false accusations against him and subjecting him to a hearing addressing some of those allegations, suspending Desmond, terminating Desmond, holding a press conference for the specific purpose of defaming him in a press conference, writing false statements in an affidavit to support dismissing Desmond's SPBR appeal, and instructing Desmond's former colleagues and others not to associate with him.

291. This retaliation involved both threatening and eventually imposing economic harm on Desmond.

292. Gains's and Stratford's actions regarding Desmond's employment were within their administrative function, not within their function as an advocate of the state and not in connection with initiating a prosecution. He is not entitled to absolute prosecutorial immunity for these actions.

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<sup>19</sup>*State v. Fuqua*, 3rd Dist. Hardin No. 6-02-01, 2002-Ohio-4697, ¶¶ 7-10.

293. Nor are they entitled to immunity under R.C. 2744.03(A)(6), because their acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

294. The County, through Gains, allowed the retaliation to occur, including through all the above-mentioned acts.

295. Under R.C. 2744.09(B), the County is not immune from suit because Desmond's claim arises out of the employment relationship between himself and the political subdivision.

296. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which the County, Stratford, and Gains are liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

**CLAIM II  
(ALTERNATIVE CLAIM)**

**WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY AGAINST RETALIATION FOR BEING A WITNESS— AGAINST GAINS, MAHONING COUNTY**

297. Plaintiff incorporates all previous allegations. This claim applies only if the Court finds that Desmond does not meet the criteria to establish a claim under R.C. 2923.05.

298. Gains and Mahoning County intentionally and maliciously subjected Desmond to retaliation for being a witness, undertaking acts as noted in Claims 9 and 10 above.

299. Ohio law including R.C. 2921.05(A) sets up a clear policy against retaliation, especially witness retaliation.

300. Gains's and the County's discharge of Desmond contravened Ohio's clear public policy against retaliation, including witness retaliation.

301. Dismissing employees under circumstances like those involved in Desmond's dismissal would jeopardize Ohio's public policy against witness retaliation, as manifested in 2921.05(A).

302. Desmond's dismissal was motivated by conduct related to Ohio's public policy against witness retaliation, as manifested in R.C. 2921.05(A).

303. Desmond had received many accolades in his 13 years of service. Gains lacked an overriding legitimate business justification for Desmond's dismissal, especially given that Gains's reasoning was false.

304. Gains's actions regarding Desmond's employment were within his administrative function, not within his function as an advocate of the state and not in connection with initiating a prosecution. He is not entitled to absolute prosecutorial immunity for these actions.

305. Nor is he entitled to immunity under R.C. 2744.03(A)(6), because his acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

306. The County, through Gains, improperly allowed the retaliatory discharge to occur.

307. Under R.C. 2744.09(B), the County is not immune from suit because Desmond's claim arises out of the employment relationship between himself and the political subdivision.

308. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Gains and the

County are liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

309. Gains's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

310. A remedy under this Claim for violation of a public policy will not duplicate remedies under R.C. 2307.60 and R.C. 2921.05.

**(ALTERNATIVE CLAIM)**

**CLAIM 12**

**CIVIL LIABILITY FOR CRIMINAL ACTS (RETALIATION AGAINST PUBLIC SERVANT FOR DISCHARGING DUTIES) UNDER R.C. 2307.60 AND R.C. 2921.05(A) AGAINST GAINS, STRATFORD, MAHONING COUNTY**

311. Plaintiff incorporates all previous allegations. This claim applies only if the Court or a final, binding court decision finds that Desmond's reports to Gains, Rivera, and the prosecutor's office were part of his duties as a prosecutor.

312. Under Ohio Rev. Code § 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

313. Under Ohio Rev. Code § 2921.05, no person, purposely and by unlawful threat of harm to any person or property, shall retaliate against a public servant because the public servant discharged her duties. The provision carries a criminal penalty.

314. Gains and Mahoning County retaliated against Desmond for discharging his duties as a public servant by undertaking the acts set forth above in Claims 9 and 10, including subjecting Desmond to investigation after he wrote his January 27, 2017 memo, lodging false accusations against him and subjecting him to a hearing addressing some of those allegations, suspending Desmond, terminating Desmond, holding a press conference for

the specific purpose of defaming him in a press conference, writing false statements in an affidavit to support dismissing Desmond's SPBR appeal, and instructing his former colleagues and others, including court personnel, not to associate with him.

315. This retaliation involved both threatening and eventually imposing economic harm on Desmond for reporting misconduct and other issues he discovered in the course and scope of his duties.

316. Gains's and Stratford's actions regarding employment were within their administrative function, not within their function as an advocate of the state and not in connection with initiating a prosecution. They are not entitled to absolute prosecutorial immunity for these actions.

317. Nor are they entitled to immunity under R.C. 2744.03(A)(6), because their acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

318. The County, through Gains, improperly allowed the retaliation, including all the above-mentioned acts.

319. Under R.C. 2744.09(B), the County is not immune from suit because Desmond's claim arises out of the employment relationship between himself and the political subdivision.

320. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which the County, Stratford, and Gains are liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

**CLAIM B**

**CIVIL LIABILITY FOR CRIMINAL ACTS (INTERFERING WITH CIVIL RIGHTS) UNDER R.C. 2307.60  
AND R.C. 2921.45 AGAINST GAINS, STRATFORD, MAHONING COUNTY**

321. Plaintiff incorporates all previous allegations.

322. Under R.C. 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

323. Under R.C. 2921.45, no public servant, under color of his office, employment, or authority, shall knowingly deprive, or conspire or attempt to deprive any person of a constitutional or statutory right. This provision carries a criminal penalty.

324. Gains and Stratford are public servants. Under color of their office, employment, or authority, both knowingly deprived Desmond of his statutory rights as detailed above, including his right to be free from retaliation for being a witness and for exposing prosecutorial misconduct.

325. Gains's and Stratford's actions regarding Desmond's employment were within their administrative function, not within their function as advocates of the state and not in connection with initiating any prosecution. They were not entitled to absolute prosecutorial immunity for these actions.

326. Nor are they entitled to immunity under R.C. 2744.03(A)(6), because their acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

327. The County, through Gains, improperly allowed the deprivation of Desmond's rights to occur, including through retaliation, intimidation, and all the above-mentioned acts.

328. Under R.C. 2744.09(B), the County is not immune from suit because Desmond's claim arises out of the employment relationship between himself and the political subdivision.

329. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Gains, Stratford, and the County are liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

330. Gains's and Stratford's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter them and others from engaging in this type of unlawful conduct.

**CLAIM 14**  
**CIVIL LIABILITY FOR CRIMINAL ACTS (PERJURY) UNDER R.C. 2307.60 AND R.C. 2921.11**  
**AGAINST GAINS IN HIS OFFICIAL AND PERSONAL CAPACITIES**

331. Plaintiff incorporates all previous allegations.

332. Under R.C. 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

333. Under criminal statute R.C. 2921.11(A), "[n]o person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material."

334. Defendant Gains knowingly made false statements under oath or affirmation, in his affidavit attached to his motion to dismiss in the SPBR whistleblower proceeding, an official proceeding.

335. The false statements were material to the proceedings.

336. Gains's writings regarding Desmond's employment were within his administrative function, not within his function as an advocate of the state and not in connection with initiating a prosecution. He is not entitled to absolute prosecutorial immunity for his statements.

337. Nor is he entitled to qualified immunity under R.C. 2744.03(A)(6), because his acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

338. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Gains is liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

339. Gains's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter him and others from engaging in this type of unlawful conduct.

**CLAIM 15**  
**FALSIFICATION UNDER R.C. 2921.13(G)**  
**AGAINST STRATFORD IN HER OFFICIAL AND PERSONAL CAPACITIES**

340. Plaintiff incorporates all previous allegations.

341. Under R.C. 2921.13, no person shall knowingly make a false statement when the statement is made in an official proceeding or is made with the purpose to mislead a public official in performing the public official's official function.

342. R.C. 2921.13(G) provides for a civil cause of action.

343. Stratford knowingly made false statements in her March 22, 2017 memorandum to Gains regarding Desmond. Stratford also made false statements in her March 22, 2017 memorandum on Cantalamessa and her February 7, 2017 memo on Burns.

344. Stratford made false statements in her draft of the March 23, 2017 suspension letter.

345. Stratford made these false statements with the purpose to mislead Gains, a public official, in disciplining Desmond, which falls within Gains's official functions, as well as other future public-servant decision-makers in sustaining that discipline.

346. Stratford's statements regarding Desmond's employment were within her administrative function, not within her function as an advocate of the state and not in connection with initiating a prosecution. She is not entitled to absolute prosecutorial immunity for her statements.

347. Nor is she entitled to qualified immunity under R.C. 2744.03(A)(6), because her acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

348. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Stratford is liable, including, but not limited to, pain and suffering; the loss of salary, wages, and benefits; other terms, privileges, and conditions of employment; and attorneys' fees.

349. Stratford's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter her and others from engaging in this type of unlawful conduct.

**CLAIM 16**  
**CIVIL LIABILITY FOR CRIMINAL ACTS (FALSIFICATION) UNDER R.C. 2307.60 AND R.C. 2921.13**  
**AGAINST STRATFORD IN HER OFFICIAL AND PERSONAL CAPACITIES**

350. Plaintiff incorporates all previous allegations.

351. Under R.C. 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

352. Under R.C. 2921.13, no person shall knowingly make a false statement when the statement is made in an official proceeding or is made with the purpose to mislead a public official in performing the public official's official function.

353. Stratford knowingly made false statements in her March 22, 2017 memorandum to Gains regarding Desmond. Stratford also made false statements in her March 22, 2017 memorandum on Cantalamessa and her February 7, 2017 memo on Burns.

354. Stratford made false statements in her draft of the March 23, 2017 suspension letter.

355. Stratford made these false statements with the purpose to mislead Gains, a public official, in disciplining Desmond, which falls within Gains's official functions, as well as other future public-servant decision-makers in sustaining that discipline.

356. Stratford's statements regarding Desmond's employment were within her administrative function, not within her function as an advocate of the state and not in connection with initiating a prosecution. She is not entitled to absolute prosecutorial immunity for her statements.

357. Nor is she entitled to qualified immunity under R.C. 2744.03(A)(6), because her acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

358. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Stratford is liable, including, but not limited to, pain and suffering; the loss of salary, wages, and benefits; other terms, privileges, and conditions of employment; and attorneys' fees.

359. Stratford's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter her and others from engaging in this type of unlawful conduct.

**CLAIM 17**  
**FALSIFICATION UNDER R.C. 2921.13(G)**  
**AGAINST GAINS IN HIS OFFICIAL AND PERSONAL CAPACITIES**

360. Plaintiff incorporates all previous allegations.

361. Under R.C. 2921.13, no person shall knowingly make a false statement when the statement is made in an official proceeding or is made with the purpose to mislead a public official in performing the public official's official function.

362. R.C. 2921.13(G) provides a civil cause of action.

363. Defendant Gains knowingly made false statements in his affidavit attached to his motion to dismiss in the SPBR whistleblower proceeding, an official proceeding.

364. Defendant Gains knowingly made false statements in his affidavit attached to his motion to dismiss in the SPBR whistleblower proceeding, with the purpose to mislead future public-official decision-makers in performing their official functions.

365. Gains also made false statements in the March 23, 2017 letter suspending Desmond, with the purpose to mislead future public-official decision-makers in performing their official functions.

366. Gains's statements regarding Desmond's employment were within his administrative function, not within his function as an advocate of the state and not in connection with initiating a prosecution. He is not entitled to absolute prosecutorial immunity for his statements.

367. Nor is he entitled to qualified immunity under R.C. 2744.03(A)(6), because his acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

368. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Gains is liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

369. Gains's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter him and others from engaging in this type of unlawful conduct.

#### **CLAIM 18**

#### **CIVIL LIABILITY FOR CRIMINAL ACTS (FALSIFICATION) UNDER R.C. 2307.60 AND R.C. 2921.13 AGAINST GAINS IN HIS OFFICIAL AND PERSONAL CAPACITIES**

370. Plaintiff incorporates all previous allegations.

371. Under R.C. 2307.60, anyone injured in person or property by a criminal act may recover full damages in a civil action.

372. Under R.C. 2921.13, no person shall knowingly make a false statement when the statement is made in an official proceeding or is made with the purpose to mislead a public official in performing the public official's official function.

373. Defendant Gains knowingly made false statements in his affidavit attached to his motion to dismiss in the SPBR whistleblower proceeding, an official proceeding.

374. Defendant Gains knowingly made false statements in his affidavit attached to his motion to dismiss in the SPBR whistleblower proceeding, with the purpose to mislead a future public-official decision-makers in performing their official functions.

375. Gains's writings regarding Desmond's employment were within his administrative function, not within his function as an advocate of the state and not in connection with initiating a prosecution. He is not entitled to absolute prosecutorial immunity for his statements.

376. Nor is he entitled to qualified immunity under R.C. 2744.03(A)(6), because his acts and omissions were with malicious purpose, in bad faith, and/or in a wanton or reckless manner.

377. As a direct and proximate result of this unlawful conduct, Desmond has suffered and will continue to suffer economic and non-economic damages for which Gains is liable, including, but not limited to, pain and suffering, the loss of salary, wages, and benefits, and other terms, privileges, and conditions of employment.

378. Gains's acts were willful, egregious, malicious, and worthy of substantial sanction to punish and deter him and others from engaging in this type of unlawful conduct.

### PRAYER FOR RELIEF

For the reasons stated above, Martin Desmond respectfully requests the following relief from the Court:

- A. Declare that Defendants' acts and conduct constitute violations of state law;
- B. Enjoin Defendants from further retaliating against Desmond and from further implementing any previous acts of retaliation;
- C. Enter judgment in Desmond's favor on all claims for relief;
- D. Award Desmond reinstatement, full compensatory damages, economic and non-economic, including, but not limited to, damages for back pay, front pay, pain and suffering, mental anguish, emotional distress, humiliation, and inconvenience that he has suffered and is reasonably certain to suffer in the future;
- E. Award Desmond punitive damages as appropriate for all intentional and malicious violations of state law;
- F. Award pre-judgment and post-judgment interest at the highest lawful rate;
- G. Award Desmond his reasonable attorneys' fees (including expert fees) and all other costs of this suit;
- H. Award all other relief in law or equity to which Desmond is entitled and that the Court deems equitable just, or proper.

**JURY DEMAND**

Desmond demands a trial by jury on all issues within this Complaint.

Respectfully submitted,

/s/ 

Subodh Chandra (0069233)

Donald P. Screen (0044070)

Sandhya Gupta (0086052)

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*Attorneys for Plaintiff Martin Desmond*

REQUEST FOR SERVICE

TO THE CLERK:

Please issue the Summons and Complaint and serve the Complaint by certified mail to Defendant listed in the Complaint's caption, making return according to law.

  
/s/ \_\_\_\_\_

*One of the Attorneys for Plaintiff Martin Desmond*

# EXHIBIT 1

## Memorandum

To: Paul Gains  
 From: Martin Desmond   
 Re: State v. Marquan White; State v. Kalilo Robinson  
 Date: January 27, 2017

The following memorandum contains the relevant information to the best of knowledge.

I initially became aware of the investigation into the homicide of Antwon Martinez (hereinafter "Martinez")

During Thanksgiving the following week, a memorial for Martinez was still up.

When charges were filed against Marquan White (hereinafter "White"), the Violent Crimes Task Force (hereinafter "VCTF") conducted the search for him. The VCTF is located in the basement of Task Force/FBI offices and I work with these officers. On December 29, 2014, during a search of White's mother's house, Task Force officers located several types of drugs. As a result, I indicted and prosecuted Carlton Council and Monique White (Marquan's mother) in Case No. 15-CR-759.

White was later arrested and the case proceeded through the Juvenile Court. I had no involvement in the case during this period. However, when the case was bound over to the Common Pleas Court in June 2015, I reviewed it for Grand Jury, because I was assisting with Grand Jury at the time. I reviewed the case for Grand Jury, but before I could finish writing it up for indictment, Assistant Prosecuting Attorney Dawn Krueger Cantalamessa (hereinafter "Cantalamessa") retrieved the file and indicated that she would be handling it.

White was indicted on June 18, 2015, and was arraigned on June 30, 2015, with an immediate pretrial. The case was assigned to Judge Lou D'Apolito's Court. That same morning, June 30, 2015, I had a pretrial in Judge D'Apolito's court at 10:00am in State v. Paul Wilson (Case No. 15-CR-63). See Exhibit 1. While at the Wilson pretrial, I assisted with White's pretrial and obtaining a waiver of speedy trial.

Following the hearing, I was assigned to prosecute White. A notice of appearance was filed and discovery was prepared. I again reviewed the case after being assigned to it. I attended the first pretrial on July 16, 2015. See Exhibit 2. In August 2015, Cantalamessa filed a notice of appearance in the White case and indicated that she was going to be cocounsel.

Another pretrial was held in October 2015, at which time the trial was reset for January 19, 2016, without consulting me. Had I been consulted about this new trial date, I would not have set it then because it conflicted with my trial in State v. Michael Austin & Hakeem

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Henderson (Case No. 13-CR-380A &380B), which was already set for trial on January 19, 2016.<sup>1</sup> I learned from Cantalamessa that she was going to be handling the case thereafter.

I do not recall have any further dealings with the case until mid-January, possible early February, 2016. At that time, Cantalamessa informed me that the main witness, Kalilo Robinson (hereinafter "Robinson"), did not want to cooperate. Cantalamessa indicated her belief that White had somehow threatened Robinson not to cooperate and that Robinson was scared. According to Cantalamessa, White and Robinson had been either transported together or held together at some point.

Cantalamessa asked me for the process to have the Court call a witness, as opposed to the State calling a witness to testify.<sup>2</sup> The thought being that, if the Court called Robinson to testify and he claimed that he had no knowledge, then the State (via Cantalamessa) could impeach Robinson with his prior statement identifying White as the killer.

In response to Cantalamessa's request for assistance, I advised her on the process and sent her and Shawn Burns an email with the appropriate pleading. The pleading that I provided is one that I used in a prior case when I had a similar issue arise. The email was sent on February 19, 2016. See Exhibits 7 and 8.

Sometime later, possibly a couple weeks, Cantalamessa advised me that Robinson was now invoking his right to remain silent. We both found this odd because Robinson appeared to not be an active participant (or complicit) in the homicide, although he was present. We discussed the possibility of offering him immunity. I advised Cantalamessa that, in order to provide immunity, the procedures set forth in R.C. 2945.44 needed to be followed.<sup>3</sup> I reviewed

<sup>1</sup> The Austin & Henderson trial was set for January 19, 2016, back in July 2015, which was before the White trial was schedule. The Austin & Henderson trial was continued on January 11, 2016, but not before I was no longer handling the White case. See Exhibits 3, 4, 5, and 6.

<sup>2</sup> Evid.R. 614(A) permits the Court to call a witness to testify. This procedure then allows the State to cross-examine and impeachment the witness. Conversely, if the State calls a witness to testify, the State normally can only direct examine the witness and cannot impeach its own witness, absent surprise and prejudice. Evid.R. 613 then permits the State to admit a prior inconsistent statement.

<sup>3</sup> 2945.44 Witnesses turning state's evidence.

(A) In any criminal proceeding in this state or in any criminal or civil proceeding brought pursuant to Chapter 2981. of the Revised Code, if a witness refuses to answer or produce information on the basis of the witness's privilege against self-incrimination, the court of common pleas of the county in which the proceeding is being held, unless it finds that to do so would not further the administration of justice, shall compel the witness to answer or produce the information, if both of the following apply:

(1) The prosecuting attorney of the county in which the proceedings are being held makes a written request to the court of common pleas to order the witness to answer or produce the information, notwithstanding the witness's claim of privilege;

(2) The court of common pleas informs the witness that by answering, or producing the information the witness will receive immunity under division (B) of this section.

(B) If, but for this section, the witness would have been privileged to withhold an answer or any information given in any criminal proceeding, and the witness complies with an order under division (A) of this section compelling the witness to give an answer or produce any information, the witness shall not be prosecuted or subjected to any criminal penalty in the courts of this state for or on account of any transaction or matter concerning which, in compliance with the order, the witness gave an answer or produced any information.

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the statute with her and specifically advised her that (1) she had to file a written motion for the Court to order the witness to testify (i.e. offer and grant immunity); (2) the Court had to advise the witness of what immunity entails; (3) the Court had to grant the immunity; and (4) the Court had to order the witness to testify. I told Cantalamessa to make sure these things were done on the record (or by judgment entry) or that the appropriate record was made.

A short time later, a hearing was held on the immunity issue. Although I was not present at the hearing, I spoke with Cantalamessa afterwards. She told me that she made the written request to offer/grant immunity (prong 1) and that Judge D'Apolito advised Robinson of what that meant (prong 2), but that Robinson still did not answer any questions.

Cantalamessa then stated that she wanted to indict Robinson for Obstructing Justice and Tampering with Evidence. She asked me to indict him, because I was assisting with Grand Jury at the time. I told her that I needed the Court's order granting immunity (prong 3) and a transcript of the hearing in which the Court ordered Robinson to testify and his refusal to testify (prong 4). Cantalamessa acknowledged that the Court did not grant the immunity and did not order Robinson to testify.

I specifically informed Cantalamessa, without the aforementioned requirements being met (namely the granting of immunity and the order to testify), that we could not indict Robinson because we did not meet the statutory requirements as stated in R.C. 2945.44. In essence, without the statutory immunity requirements being met, we would be indicting Robinson for invoking his right to remain silent, which is not permissible or proper. I specifically informed Cantalamessa that I would not indict Robinson at that time and, unfortunately, we would have to wait and see what the Court would do in the future.

Shortly thereafter, possibly the next day, Assistant Prosecuting Attorney Shawn Burns (hereinafter "Burns") approached me with the case file and indicated that he believed Cantalamessa wanted him to indict Robinson. (Burns was cocounsel on the White case with Cantalamessa). I reiterated the same issues to Burns as I did to Cantalamessa. Burns indicated that he would discuss it with Cantalamessa, who I believe was either out-of-town or out of the office at the time.

On April 7, 2016, I was handling Grand Jury presentments when the White/Robinson case file appeared in the stack of cases to be presented. I advised Deputy Chief Prosecutor Nick Modarelli that we could not indict the case at that time. Maureen Scavelli indicated that Robinson had to be indicted that day because White had a trial set in a few weeks.

Cantalamessa was not at Grand Jury that day. From what I recall, she was either out-of-town or out of the office. Burns came to Grand Jury, as well as Detective Pat Kelly, and the matter was discussed. Detective Kelly indicated that he was present at that hearing when Cantalamessa offered immunity. At some point, Cantalamessa was called on the telephone.

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(C) A witness granted immunity under this section may be subjected to a criminal penalty for any violation of section 2921.11, 2921.12, or 2921.13 of the Revised Code, or for contempt committed in answering, failing to answer, or failing to produce information in compliance with the order.

Although I was present when the telephone call was made, I did not hear what was discussed on the telephone.

After the telephone call, I was assured that the elements were met and the case could be presented. I offered to present it to the Grand Jury, but Burns indicated that he would present it. I was not present in the Grand Jury when the case was presented. I later learned that Kalilo Robinson was indicted for Obstructing Justice and Tampering with Evidence.

I did not have any dealings with the case at this point because I was consumed with the trial of Michael Austin and Hakeem Henderson (Case No. 13-CR-380), which started on April 24, 2016.

In late May or early June, 2016, I was at an unrelated pretrial/hearing in Judge Lou D'Apolito's Court.<sup>4</sup> I was present in the outer offices of Judge D'Apolito's chambers, as were Attorneys Thomas Zena (hereinafter "Zena") and James Wise (hereinafter "Wise"). Zena and Wise were not there for my hearings.

While at this unrelated hearing, Judge D'Apolito showed me a motion for Grand Jury transcripts filed on behalf of Robinson by Wise and asked if I had seen the motion. I told him that I had no reason to see it, and he asked if I was still on the White case and I told him no. Judge D'Apolito then asked if I indicted Robinson and I told him that I did not indict Robinson.

Judge D'Apolito told me that Cantalamessa informed him that I indicted the case. I advised Judge D'Apolito that I did not indict the case and that I specifically told Cantalamessa not to indict Robinson because I did not believe the statutory requirements were met. I then told Judge D'Apolito that it was my understanding that he did not grant that State's offer of immunity and did not order Robinson to testify. Judge D'Apolito confirmed that he did not grant immunity and did not order Robinson to testify. Zena chimed in that Judge D'Apolito said he was taking it under advisement and did not grant immunity and did not order Robinson to testify.

Judge D'Apolito stated that he was going to conduct an in-camera inspection of the Grand Jury transcripts and see what happened before he would issue a ruling.

Afterward, I asked Zena if Cantalamessa really blamed me for indicting Robinson. Zena said she initially blamed me, but then blamed Burns.

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<sup>4</sup> I am not sure of the exact date or hearing, because at the time, I did not think this matter would get to the point it is at now, so I did not take note. However, I have reviewed my calendar and found the following possible events:

- Tuesday, May 31, 2016, at 9:30am, State v. Michael Atyim (Case No. 16-CR-309).
- Friday, June 3, 2016, at 9:00am, State v. Boisseau Harris (Case No. 15-CR-505).
- Friday, June 3, 2016, at 9:00am, State v. Clifton Panezich (Case No. 16-CR-505) [no hearing set, but waivers executed with Judge D'Apolito].
- Monday, June 6, 2016, at 10:00am, State v. Bennie Adams (Case No. 07-CR-1261).
- Wednesday, June 8, 2016, at 10:00am, State v. Leonard Savage, et al (Case No. 15-CR-1174).



In late June, 2016, while at another unrelated pretrial/hearing, Judge D'Apolito informed me that he reviewed the Grand Jury transcripts, which confirmed that I did not indict Robinson.<sup>5</sup> I told him that I knew I did not indict him. Judge D'Apolito stated that he planned on unsealing the Grand Jury transcripts and said, words to the effect of, the prosecutor's office may have a problem, but did not elaborate. Judge D'Apolito then said he was recusing, or had recused, himself from the Robinson case.

In mid to late July, 2016, I saw Wise at the courthouse and he mentioned the Grand Jury transcripts and the bill of particulars filed by Cantalamessa. He even showed me copies. He claimed that both items showed that the elements were not met to indict Robinson. Although I already felt that the statutory requirements were not met, I still reviewed the documents, and it appeared that Wise was correct. So, I told Wise that he should contact Prosecutor Paul Gains directly and do what he thought was proper. I told Wise that it was not my place to contact Mr. Gains, but that I would definitely tell the truth if and when I was asked.

Soon after, I heard that Cantalamessa offered White (the accused killer) a deal in exchange for his cooperation against Robinson (the witness). I do not recall who I heard this from, whether Zena, Wise, a fellow prosecutor(s), or Judge D'Apolito. I did not put much stock in what I heard and chalked it up to courthouse rumor, especially in light of my knowledge of the case that Robinson was a witness, not necessarily a participant/complicitor.

Around the same time, I also started hearing allegations that Cantalamessa was being vindictive against Robinson and was engaging in prosecutorial misconduct. Despite being well aware of Cantalamessa's known history of questionable indictment practices and other issues, I did not immediately believe what I heard.<sup>6</sup>

In mid-August, 2016, I heard in the courthouse that Wise had filed a motion to dismiss the Indictment against Robinson. Again, I do not recall who I heard this from, whether Zena, Wise, a fellow prosecutor(s), or Judge D'Apolito.

On August 16, 2016, I had two (2) hearings in front of Visiting Judge Thomas Pokorny at 10:00am.<sup>7</sup> Prior to my hearings, Judge Pokorny was addressing Wise's motion to dismiss and

<sup>5</sup> I am not sure of the exact date or hearing, because at the time, I did not think this matter would get to the point it is at now, so I did not take note. However, I have reviewed my calendar and found the following possible events:

- Thursday, June 16, 2016, at 1:30pm, State v. Savage, et al (Case No. 15-CR-1174) [no hearing set, but parties present to obtain DNA samples from defendants].
- Monday, June 20, 2016, at 10:30am, Search Warrant on Dewaylyn Colvin's property [no hearing set, but parties met to discuss process to review Colvin's property].
- Tuesday, June 28, 2016, at 9:00am, State v. Michael Atyim (Case No. 16-CR-309).
- Tuesday, June 28, 2016, at 2:00pm, State v. Leonard Savage, et al (Case No. 15-CR-1174).

<sup>6</sup> However, hearing these rumors/ramblings, I remembered the cases of State v. Dominique Lucky (Case No. 08-CR-329) and State v. Christopher Hill (Case No. 08-CR-372). From my recollection, both of these defendants were charged with murder after they refused to cooperate against Tyrell Ravnell (08-CR-373), who was also accused of the same murder. The cases were handled by former Assistant Prosecuting Attorney Kasey Shidel and we spoke about them. In the motions to dismiss the indictments against Lucky and Hill, part of the basis for the dismissals was the belief that they were charged to compel their cooperation. See Exhibits 9 and 10.

<sup>7</sup> The two (2) hearings were on the following cases:

- State v. Jeffrey McCain (Case No. 16-CR-33P), Tuesday, August 16, 2016, at 10:00am.

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Cantalamessa's motion for leave to dismiss the Indictment against Robinson. I was busy handling my cases and learned, while there, that the Robinson case was dismissed.

While Wise was leaving, he commented that Cantalamessa filed a motion to dismiss on the grounds that Robinson was cooperating, but that he never agreed to do so in exchange for the dismissal.

Later that same day, August 16, 2016, I was in Judge Lou D'Apolito's Court for a hearing in State v. Song Westphal, et al (Case No. 16-CR-838), set at 2:30pm. While waiting for my hearing, I was in the courtroom during the hearing on whether to release Robinson from jail in light of the Indictment being dismissed.

During the hearing, Cantalamessa argued for keeping Robinson in jail because he was a flight risk. Cantalamessa stated on the record that she had jail calls in which Robinson stated that he wanted to move out of state to avoid having to testify at trial. (Obviously, I am paraphrasing what I heard, but the transcript of the hearing will provide the exact language.)

I recall Wise asking for the exact dates and/or times of these telephone calls and arguing that Robinson never said what Cantalamessa was claiming he said. Ultimately, Judge D'Apolito ordered Robinson to be held in the county jail without bond until a hearing could be held on the matter.

After the hearing, Wise and Zena were both stating that Robinson never said what Cantalamessa claims he said and that she made several misrepresentations.

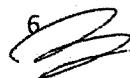
The following week I heard in the courthouse that Wise filed a petition for a writ of habeas corpus to have Robinson released from the jail. I also heard that Cantalamessa filed a motion for a material witness warrant to have Robinson held, based on the jail calls.

I spoke with Assistant Prosecuting Attorney Ralph Rivera (hereinafter "Rivera") about the petition and discussed legal issues pertaining to addressing it. I pointed out that the main issue was Cantalamessa indicting Robinson for a crime that he did not commit, and then holding him in the county jail on it. I also indicated that someone should listen to these purported jail calls and determine whether or not Robinson said what Cantalamessa claims he said. I pointed out that Wise and Zena seemed adamant that Robinson did not say that he was leaving town in order to avoid having to testify. Rivera indicated that he spoke to several individuals in the office (including supervisors) and that the consensus was that, once the Indictment was dismissed, Robinson was being held unlawfully in the county jail.

I finally decided to listen to the jail calls myself. I specifically listened to the calls referenced by Cantalamessa in the hearing, in her motion for a material witness warrant, and her affidavit. In my opinion, it is clear that Robinson did not say what Cantalamessa claimed he said.

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- State v. Clayton Peyatt (Case No. 16-CR-33S), Tuesday, August 16, 2016, at 10:00am.

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The following week I heard that the Seventh District Court of Appeals granted Robinson's petition for a writ of habeas corpus and ordered his release.

On Friday, September 2, 2016, I was present in Judge D'Apolito's Court for the hearing on Cantalamessa's motion to depose Robinson, which was denied. I recall an indication that Robinson would adhere to a subpoena for the White trial.

After the hearing, I saw Cantalamessa in the Victim-Witness Department. She asked me to check my "snitch network" to find any information on "Kalilo." I thought she misspoke and meant to say to Marquan White. So I asked her, words to the effect of, "don't you mean Marquan?" She said no, that she wanted information against "Kalilo," but if I found something on Marquan that would be ok too. I told her that I would see what I could find out.

In the months that followed, I saw Wise periodically throughout the courthouse and sometimes while I was at lunch. Several times he stated that he was filing a §1983 action. I consistently told him to contact Prosecutor Gains directly, because it was my honest belief that Mr. Gains should know what occurred and would not stand for it. I again reiterated that I would tell the truth, even though I knew there would be consequences and repercussions for it.

During this time period, I also spoke with Burns. He told me that he spoke to Cantalamessa on the telephone the morning that Robinson was indicted. He told me that she told him to indict the case. I advised Burns to speak directly to Chief Linette Stratford and Prosecutor Gains.

In mid-December, I heard from other prosecutors that Wise dropped off a copy of the unfiled §1983 complaint and that it was floating around the office. I heard shortly thereafter that Wise did actually file the complaint.

On December 22, 2016, I received an office-wide email from Rivera with the Ohio Supreme Court decision in State v. Aalim (2016), 2016-Ohio-8278. The Aalim case held that the mandatory bind-over of juveniles was unconstitutional, but that discretionary bind-over was still constitutional.

I called Burns that day and told him my thoughts. He said that he thought the case was being dismissed, but that he would contact Cantalamessa. A few hours later, I called Burns and he indicated that he had not heard back from Cantalamessa.

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So, on December 22, 2016, at 4:27pm, I sent Burns and Cantalamessa the following text, "Do not dismiss Marquan White! This new Ohio Supreme Court helps us."

At 4:28pm, Cantalamessa responded in a text, "Tell Paul. He told me to file it and I did."

At 4:28pm, I responded in a text, "What?! Why?"

At 4:29pm, Cantalamessa responded in a text, "Because the witness is uncooperative. Kalilo filed a 1983 action and a grievance." See Exhibit 11.

So, on December 22, 2016, at 4:29pm, I sent Prosecutor Gains and Chief Stratford the following text, "Do not let them dismiss Marquan White. This new Ohio Supreme Court case helps us. We can still proceed."

At 4:47pm, I sent Prosecutor Gains and Chief Stratford the following text, "State v. Aalim, 2016-Ohio-8278. Just decided."

At 5:33pm, Chief Stratford responded in a text, "Are you calling dawn on this".

At 5:43pm, I responded in a text, "I texted Shawn and Dawn. Dawn told me to call Paul. Apparently it's already been dismissed. This is extremely upsetting and disappointing. I'm afraid to say more because you'll think I'm being disrespectful or insubordinate, but she mishandled this case. There is a lot of what she did that you are unaware of. Much of the claims against her are true and accurate."

At 5:50pm, Prosecutor Gains responded in a text, "Marty I need an email from you on what information you have regarding these claims against Dawn Krueger. I'm not quite sure what you were referring to with regard to dismissal of the criminal case".

At 5:51pm, Prosecutor Gains responded in a text, "A civil suit has been filed so please get me that information in your email as soon as possible".

Prosecutor Gains called my cellphone, but I did not hear/see the call, until I saw these texts.

At 5:56pm, I responded in a text, "Can I call you in the morning? I have family in from out of town at my house at the moment. I will gladly sit down with you and Lynette."

At 5:59pm, Prosecutor Gains responded in a text, "You can call me. But I'm still going to need a memo since I'm conducting an internal investigation into the allegations contained in the civil sui". At 5:59pm, Prosecutor Gains added, "Suit".

At 6:00pm, I responded in a text, "Ok. Can I call tomorrow?"

At 6:00pm, I added, "And I will work on memo over the weekend."

At 6:05pm, Chief Stratford responded in a text, "We can talk tomorrow"

The next morning, December 23, 2016, at 8:15am, Prosecutor Gains responded in a text, "Marty something is come up with that and I will not be available for a phone conference. Just prepare the memo and email it to both of us then we can discuss this after we receive the memo". See Exhibit 12.

On January 3, 2017, at 12:04pm, Chief Stratford sent me an email asking for the memo. At 12:08pm, I responded that I was on vacation from 12/22 to 1/4 and spending time with family, but that I had not forgotten about the memo. At 1:36pm, Chief Stratford responded that it was ok and to complete it when I returned to work. On January 24, 2017, Prosecutor Gains ordered me to provide the memo by January 27, 2017.

As a final note, I believe there are some individuals in the office with additional knowledge on this matter, but are concerned about coming forward. I have told these individuals that we have an obligation to Prosecutor Gains to tell him what we know.

Martin Desmond

STATE OF OHIO  
MAHONING COUNTY, | SS.

IN THE COURT OF COMMON PLEAS

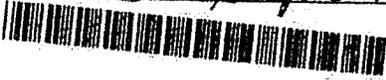
State of Ohio  
PLAINTIFF  
VS.  
Paul Edward Wilson  
DEFENDANT

CLERK OF COURTS  
MAHONING COUNTY, OHIO  
JUL 01 2015  
FILED  
ANTHONY VIVO, CLERK

CASE NO. 15 CR 43  
DATE 6/30 2015

JUDGMENT ENTRY

Case called. Parties present.  
After much discussion, above captioned  
case is to be reset for plea  
on September 30, 2015 at 9:00 A.M.



2015 CR  
00083  
00029853741  
CRJUD

CLERK : COPY TO ALL COUNSEL  
OR UNREPRESENTED PARTY.

APPROVED:

(77372)  
ATTORNEY FOR PLAINTIFF  
Michael H. Cassi  
ATTORNEY FOR DEFENDANT

J. D'Amico  
JUDGE D'Amico

23061 000346

EXHIBIT  
1

MAHONING COUNTY, OHIO  
JUL 21 2015  
FILED  
ANTHONY VIVO, CLERK

*MA*

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

STATE OF OHIO	)	CASE NO. 15 CR 538
	)	
PLAINTIFF	)	JUDGE LOU A. D'APOLITO
	)	
VS.	)	JUDGMENT ENTRY
	)	
MARQUAN T. WHITE	)	
	)	
DEFENDANT	)	

Case called for Pretrial July 16, 2015. Assistant Prosecuting Attorney Marty Desmond, Attorney Tom Zena, and Attorney Andrew Zellers were present. By agreement of the parties:

Discovery cutoff deadline for the State of Ohio is September 11, 2015.

Discovery cutoff deadline for the Defendant is September 18, 2015.

All motions shall be submitted by September 25, 2015. Responses shall be filed by October 2, 2015.

A Motions Hearing is set for October 5, 2015 at 1:30 p.m..

Final Pretrial is set for October 7, 2015 at 1:30 p.m..

Trial is set for October 13, 2015 at 8:30 a.m..

IT IS SO ORDERED.

*7/16/15*  
DATE

*[Signature]*  
\_\_\_\_\_  
JUDGE LOU A. D'APOLITO

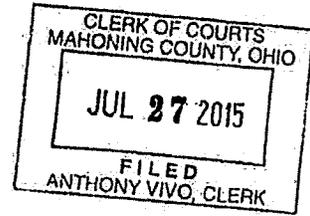
CLERK : COPY TO ALL COUNSEL  
OR UNREPRESENTED PARTY.



2015 CR  
00538  
00000358124  
CRJUD

*J 3072*  
*P 000438*

EXHIBIT  
2



IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

STATE OF OHIO	)	<b>CASE NO. <u>13-CR-380(A)</u></b>
	)	
PLAINTIFF	)	JUDGE JOHN M. DURKIN
	)	
VS.	)	
	)	<b><u>JUDGMENT ENTRY</u></b>
MICHEAL AUSTIN	)	
	)	
DEFENDANT	)	

This matter was scheduled before this Court for a pre-trial on July 27, 2015.

Upon agreement of the parties, a pre-trial shall be scheduled for August 27, 2015 at 9:30 a.m.

The Jury Trial of this matter shall be scheduled for January 19, 2016 at 8:30 a.m.

**IT IS SO ORDERED.**

DATE: \_\_\_\_\_

\_\_\_\_\_  
JUDGE JOHN M. DURKIN

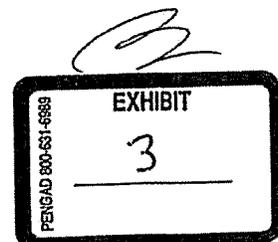
**TO THE CLERK:**  
Please provide a time stamped copy of the foregoing Judgment Entry to the following:

Attorney Edward Hartwig  
Mahoning County Prosecutor's Office



2013 CR  
00380 A  
00082190136  
CRJUD

J-3074  
0000090



STATE OF OHIO  
MAHONING COUNTY, ) SS.

IN THE COURT OF COMMON PLEAS

CASE NO. 13-cr-380 B

CLERK OF COURTS  
MAHONING COUNTY, OHIO  
DATE  
JUL 27 2015  
FILED  
ANTHONY VIVO, CLERK

7/27 20 15

JUDGMENT ENTRY

State of Ohio

PLAINTIFF

VS.

Hakeem Henderson

DEFENDANT

Attorney Rhys Cartwright-Jones appointed as counsel for Defendant.

By agreement of the parties, Trial is set for January 19, 2016,

at 8:30 AM. Due to the amount of discovery and potential pleadings

to be filed still, speedy trial is tolled until Trial.

So ordered.

CLERK: COPY TO ALL COUNSEL  
OR UNREPRESENTED PARTY



2013 CR  
00380 B  
00004536834  
CRJUD

APPROVED:

*[Signature]*  
ATTORNEY FOR PLAINTIFF  
*[Signature]*  
ATTORNEY FOR DEFENDANT

J-3074  
000091  
*[Signature]*  
JUDGE

EXHIBIT  
4

CLERK OF COURTS  
MAHONING COUNTY, OHIO  
JAN - 7 2016  
FILED  
ANTHONY VIVO, CLERK

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

STATE OF OHIO	)	CASE NO. 13 CR 380A
	)	
	)	JUDGE JOHN M. DURKIN
PLAINTIFF	)	
VS.	)	<u>JUDGMENT ENTRY</u>
	)	
MICHAEL AUSTIN	)	
	)	
DEFENDANT	)	

A Suppression Hearing was held in the above matter on January 6, 2016. The Defendant was present with Counsel, Attorneys Edward Hartwig and Joseph Messuri. Assistant Prosecutors, Martin Desmond and Michael Yacovone, were present on behalf of the State of Ohio.

The Court took the matter under advisement.

The Defendant's Motion to Continue the Trial set January 19, 2016, is sustained.

The Jury Trial set January 19, 2016, is continued.

This Court finds that this motion acts as a tolling event for purposes of speedy trial.

Upon agreement of the parties, the Court sets the Jury Trial for February 16, 2016, at 9:00 A.M.

The Defendant's Motion to Dismiss was taken under advisement.

See Record.

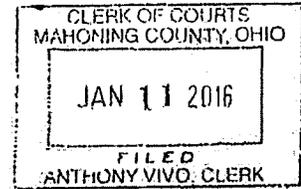
1/7/16  
DATE:

  
\_\_\_\_\_  
JUDGE JOHN M. DURKIN

2013 CR  
00380 A  
00059626160  
CRJUD



  
EXHIBIT  
5  
PENGAD 800-631-6888



IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

STATE OF OHIO	)	CASE NO. 13 CR 380B
	)	JUDGE JOHN M. DURKIN
PLAINTIFF	)	
VS.	)	
	)	<b><u>JUDGMENT ENTRY</u></b>
HAKEEM HENDERSON	)	
	)	
DEFENDANT	)	

A Pre-trial was held in the above matter on January 11, 2016. The Defendant was present with counsel, Attorney Rhys Cartwright-Jones. Assistant Prosecutor, Martin Desmond, was present on behalf of the State of Ohio.

The Defendant's Notice of Concurrence in Motion to Continue is sustained. The Jury Trial set January 19, 2016, is continued.

This matter shall be reset for Pre-trial on January 28, 2016, at 1:00 P.M.

Upon agreement of the parties, the Jury Trial is reset to February 16, 2016, at 9:00 A.M.

1/11/16  
DATE:

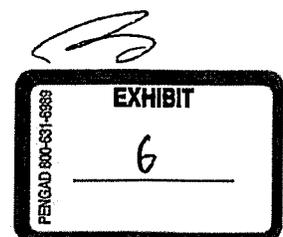
  
\_\_\_\_\_  
JUDGE JOHN M. DURKIN

To the Clerk:  
Please issue copies to the following:

Asst. Pros. Martin Desmond  
Attorney Rhys Cartwright-Jones



2013 CR  
00380 B  
00039724927  
CRJUD

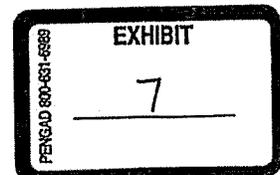


**Desmond, Marty**

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**From:** Desmond, Marty  
**Sent:** Friday, February 19, 2016 4:07 PM  
**To:** Krueger, Dawn; Burns, Shawn  
**Subject:** Motion  
**Attachments:** MtPriorInconsistentStatement.doc

Hope this helps. Let me know how the Judge rules.



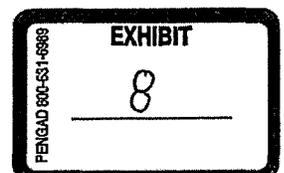
IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

STATE OF OHIO	)	CASE NO. 13-CR-828
	)	
Plaintiff	)	
	)	JUDGE MAUREEN A. SWEENEY
-vs-	)	
	)	
FRANKIE HUDSON JR.	)	STATE'S MOTION TO HAVE THE
	)	COURT CALL A WITNESS TO
Defendant	)	TESTIFY PURSUANT TO EVID.R.
	)	614(A) AND NOTICE OF INTENT TO
	)	ADMIT EVIDENCE PURSUANT TO
	)	EVID.R. 613

NOW COMES PLAINTIFF, State of Ohio, by and through the undersigned counsel, and moves this Court to call witness Marquis Thomas as a Court's witness pursuant to Evid.R. 614(A); and to permit the State to admit evidence pursuant to Evid.R. 613, if necessary. Attached is a memorandum in support setting forth the legal and factual reasons in support of the motion and notice.

Respectfully submitted,

MARTIN P. DESMOND (0077377)  
Assistant Prosecuting Attorney  
21 West Boardman Street, Sixth Floor  
Youngstown, Ohio 44503  
Telephone: (330) 740-2330  
Facsimile: (330) 740-2008  
Counsel for Plaintiff, State of Ohio



**MEMORANDUM IN SUPPORT****I. Facts.**

The State incorporates the facts as previously stated in its earlier filed pleadings. The following facts are included specifically as they pertain to this pleading.

On October 17, 2011, Juvenile Probation Officer Bob Gentile contacted YPD Detective Ron Rodway concerning a conversation that P.O. Gentile had with juvenile inmate Marquis Thomas. As stated in Detective Rodway's notes:

Gentile stated that Thomas stated that he was in a house on Lucuis and heard Frankie Hudson and Jerome Miller aka Noodles talking about killing Davis. He mentioned that a 9mm and a 40cal. Were used and that Davis was shot in the groin and head.

On October 18, 2011, Detective Rodway interviewed Thomas as the juvenile justice center. As stated in Detective Rodway's notes:

Thomas stated that he was at a friends house on Lucius the night Josh Davis was killed. He stated he knows Josh and had played football with him. He did not know the address on Lucius and stated his friend has since moved. He stated he believes it was somewhere around 2300hrs. when Frankie Hudson and another male black known only as noodles came over and they were on foot. He stated that Frankie called him aside and told him that they had gone down to Josh Davis house to rob him and it went bad and josh started yelling and Frankie said he shot twice and Josh went down and they shot two more times. He stated that Frankie said they took some weed and they used a 40cal. And a 9mm. He stated Frankie and Noodles stayed at the house on Lucius for a couple of hours and played and smoked. Showed Thomas photos of Frankie Hudson and Jerome Miller and he identified them as the individuals who came to the house on Lucius. Thomas stated he is concerned if he has to testify. Thomas has been in JJC since 9/30/11 on a burglary charge.

On April 7, 2014, Assistant Prosecuting Attorney Martin Desmond met with Thomas in order to prepare him for testimony in the upcoming trial of Defendant Hudson and Reese, which was set for April 14. At that time, Thomas refused to cooperate and indicated that he would not testify.



Approximately one (1) hour later, APA Desmond was notified that Thomas was arrested for burglary about being apprehended exiting a residence. Thomas was later indicted for Burglary (F-2) in Case No. 14-CR-349, pled guilty, and was sentenced to four (4) years prison.

In December 2014, APA Desmond again spoke with Thomas concerning whether he was willing to testify. Thomas initially refused to testify, but then indicated a willingness to do so. Thomas thereafter acknowledged that the information contained in Detective Rodway's notes was accurate and correct, and that he would testify to it. In exchange for his testimony, the State was going to not oppose/recommend Thomas' judicial release. The December trial ended in mistrial when a jury could not be empaneled. The case was set for trial in March 2015, but was continued, and reset for June 22.

On June 18, 2015, APAs Desmond and Kevin Trapp attempted to speak with Thomas, who still incarcerated, in order to prepare him trial. Thomas was unwilling to speak with APAs Desmond and Trapp, because he wanted his attorney, Doug Taylor, to be present. On June 19, 2015, APAs Desmond and Trapp, along with Attorney Taylor, spoke with Thomas, who stated he was not willing to testify and stated that he did not make the aforementioned statements to P.O. Gentile and Detective Rodway.

## **II. Law and argument.**

### **A. Evid.R. 614(A).**

Evid.R. 614(A) [Calling by court] provides, "The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called." Generally speaking, Evid.R. 607(A) provides that a party may

3. 

cross-examine or impeach its own witness “by means of a prior inconsistent statement only upon a showing of surprise and affirmative damage.” However, “When a witness is called under Evid.R. 614, Evid.R. 607 is inapplicable; no showing of surprise is required.” State v. Beasley (2007), 2007-Ohio-5432 (Ohio App. 8 Dist.) at ¶ 48, citing State v. Schultz (2005), 2005-Ohio-345 (Ohio App. 11 Dist.).

In the present case, the State moves this Court to call Thomas as a witness, in order to allow the State to cross-examine Thomas, as he has become uncooperative.

**B. Evid.R. 613.**

Evid.R. 613(B) provides:

Extrinsic evidence of a prior inconsistent statement by a witness is admissible if both of the following apply:

- (1) If the statement is offered solely for the purpose of impeaching the witness, the witness is afforded a prior opportunity to explain or deny the statement and the opposite party is afforded an opportunity to interrogate the witness on the statement or the interests of justice otherwise require;
- (2) The subject matter of the statement is one of the following:
  - (a) A fact that is of consequence to the determination of the action other than the credibility of a witness;
  - (b) A fact that may be shown by extrinsic evidence under Evid.R. 608(A), 609, 616(A), or 616(B);
  - (c) A fact that may be shown by extrinsic evidence under the common law of impeachment if not in conflict with the Rules of Evidence.

Therefore, once the aforementioned requirements are met, the State is permitted to introduce extrinsic evidence of a witness’ prior inconsistent statement, which includes, police reports, written summaries, or recordings. See, State v. Abernathy (2015), 2015-Ohio-1363 (Ohio App. 5 Dist.); see, also, State v. Allen (2013), 2013-Ohio-3715 (Ohio App. 5 Dist.); Beasley, supra; and Schultz, supra.

As the Fifth District Court of Appeals stated:

As our brethren in the Tenth District have observed,

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Evid.R. 613(B), thus, allows introduction of extrinsic evidence of a prior statement only after a proper foundation has been laid through direct or cross-examination in which: “ ‘ “(1) the witness [here Teague] is presented with the former statement; (2) the witness is asked whether he made the statement; (3) the witness is given an opportunity to admit, deny or explain the statement; and (4) the opposing party is given an opportunity to interrogate the witness on the inconsistent statement.” ‘ “ State v. Kulasa, 10th Dist. No. 11AP-826, 2012-Ohio-6021, ¶ 12, quoting State v. Mack, 73 Ohio St.3d 502, 514-15 (1995), quoting State v. Theuring, 46 Ohio App.3d 152, 155 (1st Dist.1988). If a witness denies making a prior inconsistent statement, a proper foundation has been laid, and if, in addition, the prior inconsistent statement does not relate to a collateral matter, extrinsic evidence is admissible. Kulasa at ¶ 19. If a witness admits having made the contradictory statements, however, then extrinsic evidence of the prior inconsistent statement is not admissible. In re M.E.G., 10th Dist. No. 06AP-1256, 2007-Ohio-4308; State v. Hill, 2d Dist. No. 20028, 2004-Ohio-2048, ¶ 40. A trial court's ruling on an Evid.R. 613(B) issue, like other evidentiary rulings, is reviewed for an abuse of discretion. Kulasa at ¶ 13, citing, inter alia, State v. Reiner, 89 Ohio St.3d 342, 357-58 (2000). State v. Ferguson, 10th Dist., Franklin No. 12AP-1003, 2013-Ohio-4798, ¶ 15.

Abernathy, supra, at ¶ 26.

In the case at trial, the requirement set forth in Evid.R. 613(B) will be met once the Court calls Thomas as a witness. Under section (B)(1), Thomas will be given an opportunity to explain or deny the statement and Defendant will be afforded an opportunity to cross-examine him; additionally, the ends of justice require his testimony.

Under section (B)(2), the facts go directly to Defendant's commission of these offenses, and is not meant solely to impeach the credibility of Thomas. Thomas statements are a confession by Defendant and directly relate to his guilt.

Therefore, once Thomas denies making the statements (or otherwise refused to testify), the State intends (and gives notice) to call Officer Gentile and Detective Rodway as witnesses to offer extrinsic evidence of Thomas' prior inconsistent statements.

**II. Conclusion.**

WHEREFORE, the State of Ohio prays for an Order of this Court granting the State's motion to call witness Marquis Thomas as a Court's witness pursuant to Evid.R. 614(A); and to permit the State to admit evidence pursuant to Evid.R. 613, if necessary.

Respectfully submitted,

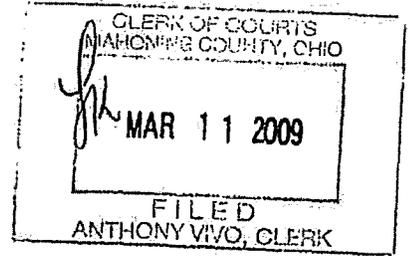
MARTIN P. DESMOND (0077377)  
 Assistant Prosecuting Attorney  
 21 West Boardman Street, Sixth Floor  
 Youngstown, Ohio 44503  
 Telephone: (330) 740-2330  
 Facsimile: (330) 740-2008  
 Counsel for Plaintiff, State of Ohio

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of June 2015, a copy of the foregoing *State's Motion to Have the Court Call a Witness to Testify Pursuant to Evid.R. 614(A) and Notice of Intent to Admit Evidence Pursuant to Evid.R. 613* was sent to Attorney David Betras, 6630 Seville Drive, Canfield, Ohio, 44406, via regular U.S. mail, email, and/or facsimile.

MARTIN P. DESMOND (0077377)  
 Assistant Prosecuting Attorney  
 21 West Boardman Street, Sixth Floor  
 Youngstown, Ohio 44503  
 Telephone: (330) 740-2330  
 Facsimile: (330) 740-2008  
 Counsel for Plaintiff, State of Ohio

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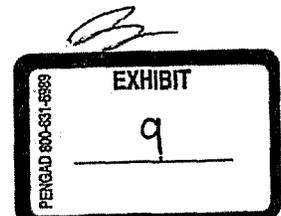
IN THE COURT OF COMMON PLEAS  
CRIMINAL DIVISION  
MAHONING COUNTY, OHIO

STATE OF OHIO,	)	
	)	CASE NO: 08 CR 329
Plaintiff,	)	
	)	JUDGE LOU D'APOLITO
-vs-	)	
	)	MOTION TO DISMISS
DOMINIQUE LUCKY,	)	INDICTMENT
	)	
Defendant	)	

NOW COMES the State of Ohio, by and through the undersigned counsel, and moves this Court for leave to dismiss the Indictment against the defendant in the above referenced case.

The State of Ohio submits that the defendant, Dominique Lucky, was indicted on October 9, 2008 in a one count indictment for murder, a violation of R.C. 2903.02(A)(D). The indictment alleged that the defendant purposely caused the death of Diana Noble on or about February 22, 2008. Ms. Noble died as a result of a gunshot wound. It is believed and identified in the police report that the fatal shot was sustained while the victim was in the act of purchasing an illegal narcotic at a public housing site in Campbell, Ohio.

The State is alleging that the defendant, Mr. Lucky, was present at the time of the shooting and participated in the sale of the illegal narcotics to the victim. It was believed at one point, that the defendant may have been involved with provoking or inciting the shooting or even possibly involved in the actual shooting. The State also believes that a witness identified Mr. Lucky being present at the time of the shooting, something Mr. Lucky disputed after he was arrested and agreed to be interviewed by the police. Further evidence that Mr. Lucky may be attempting to cover his tracks.

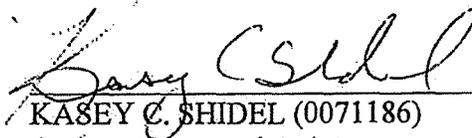


That being said, the State is moving this Court to dismiss the indictment for several reasons: witness testimony will not indicate that Mr. Lucky actually possessed a firearm at the time Ms. Noble was shot; the firearm in question was never found as a result of the investigation; upon conclusion of the investigation, there is only evidence of the defendant's presence at the time of the shooting and not enough evidence to establish beyond a reasonable doubt that the defendant knew or had reason to know that Ms. Noble was going to be shot at the time the drug transaction was taking place; and, the defendant did inevitably provide a statement to police indicating he was at another location, other than the scene of the crime, at the time of the shooting.

The witness that identified Mr. Lucky being present at the time of the shooting, has been reported by law enforcement investigating this case, as transient and difficult to locate at times. It also appears that this particular charge may have been brought by investigating authorities, although in good faith, as an attempt to apply pressure on the defendant to cooperate with law enforcement investigating this matter.

The State is convinced that there is not enough corroborating evidence against the defendant to continue prosecution at this time. WHEREFORE, the State moves the Court to dismiss the indictment, in the above referenced case, and find the case to be dismissed, based upon the above information.

Respectfully submitted,

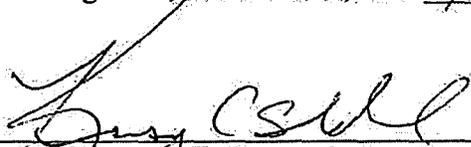


KASEY C. SHIDEL (0071186)

Assistant Prosecuting Attorney  
2801 Market Street, 2<sup>nd</sup> Floor  
Youngstown, Ohio 44507  
330-781-645

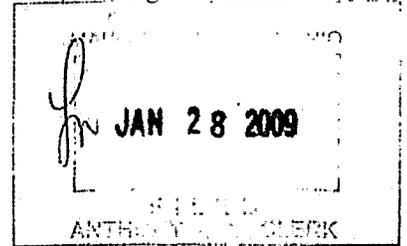
CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Dismiss was provided to the Attorney for the Defendant, Gerald Ingram, 7330 Market St. Youngstown, Ohio 44512, this 11<sup>th</sup> day of March, 2008 via regular mail.



KASEY C. SHIDEL (0071186)  
Assistant Prosecuting Attorney  
2801 Market Street, 2<sup>nd</sup> Floor  
Youngstown, Ohio 44507  
330-781-6453





IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO

STATE OF OHIO

Plaintiff,

Vs.

CHRISTOPHER J. HILL

Defendant

)  
)  
)  
)  
)  
)  
)

CASE NO. 08 CR 372

JUDGE LOU A. D'APOLITO

MOTION TO DISMISS  
INDICTMENT

Comes now the State of Ohio, by and through Assistant Mahoning County  
Prosecutor Robert Bush, submitting this motion to dismiss as further supported in the  
attached memorandum.

MEMORANDUM

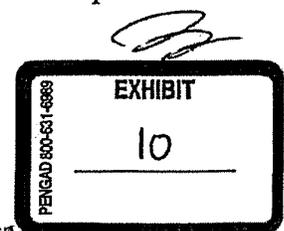
The defendant in this matter, Christopher Hill was indicted on October 9, 2008 in  
a one count indictment for murder, a violation of R.C.2903.02 (A) (D).

The indictment alleged the defendant purposely caused the death of Dianna Noble.

The victim in this indictment died of a gunshot wound.

Facts demonstrate the injury was sustained while the victim was in the act of buying  
crack cocaine at a public housing site in the City of Campbell, Ohio.

The state is alleging that Hill provided an individual with a firearm that may have  
been used in the shooting death of the victim. Again, the defendant has been indicted  
with the murder. The state is requesting the dismissal for several reasons; witness  
testimony will not place the defendant at the scene of the shooting. The state has not  
been able to develop any evidence that would identify the firearm if it were given to the  
shooter as the firearm used in the shooting of the victim. Approximately 3 hours elapsed



between the time Hill allegedly y provided a firearm to the eventual shooter and the actual shooting of the victim. There is no evidence as to what type of firearm may have been provided to the shooter and there is limited evidence as to what type of firearm was used by the shooter.

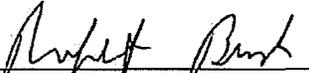
The witness that allegedly observed Hill provide the shooter with a firearm has been described as homeless and has been difficult to locate. At best his testimony would be considered weak.

It also seems, these particular charges, may have been brought by investigating authorities in an effort to bring pressure on the defendant for testimony against the other charged defendant. However, Hill has refused to offer any statement or testimony that would assist the state in the prosecution of the shooter. It is noted these individuals were not charged in a single indictment or as acting in concert.

The State of Ohio is convinced there is not enough credible evidence against Hill to continue the prosecution at this time. This being the case, the State of Ohio is bound to motion this court for an order dismissing the above captioned case without prejudice.

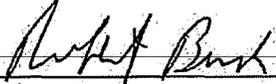
WHEREFORE, the State of Ohio moves this Court for an Order dismissing the above case 08 Cr 372 against Christopher Hill, without prejudice.

Respectfully submitted,

  
Robert Bush (#0058475)  
Assistant Mahoning County Prosecutor  
21 W. Boardman Street, 6<sup>th</sup> Floor  
Youngstown, Ohio 44503  
(330) 740-2330

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing motion has been sent via U.S. mail this 28<sup>th</sup> day of January, 2009 to Attorney Michael O. Kivlighan at The Commerce Building, 201 E. Commerce St., Suite 346, Youngstown, Ohio 44503.

  
\_\_\_\_\_  
Robert Bush



Shawn Burns

Krueger

iMessage

Thu, Dec 22, 4:27 PM



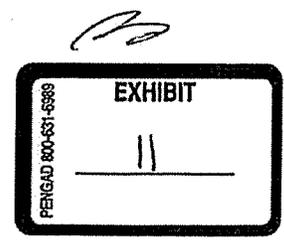
Krueger

**Tell Paul. He told me to file it  
and I did.**



Krueger

**Because the witness  
is uncooperative. Kalilo filed a  
1983 action and a grievance.**





Shawn Burns

Krueger

iMessage

Thu, Dec 22, 4:27 PM

[Redacted]

4:27 PM

From:

**Tell Paul. He told me to file it and I did.**

4:28 PM

[Redacted]

Krueger

**Because the witness is uncooperative. Kalilo filed a 1983 action and a grievance.**

4:29 PM





Paul



Lynette



iMessage

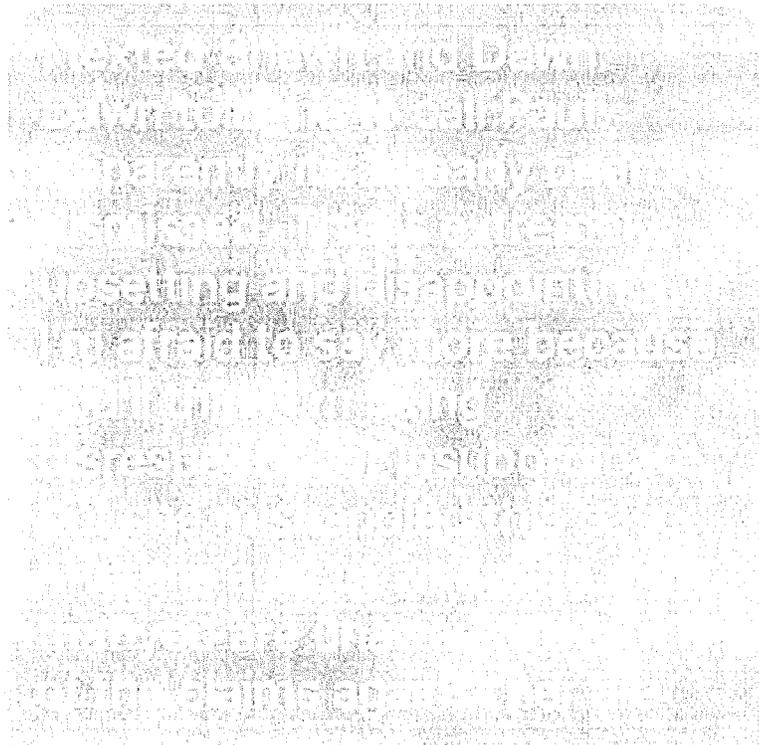
Thu, Dec 22, 4:28 PM



Lynette: [Redacted]



Are you calling dawn on this



*[Handwritten signature]*

PENGAD 800-631-6889  
EXHIBIT  
12





Paul



Lynette



iMessage  
Thu, Dec 22, 4:29 PM

[Faded iMessage text]

[Faded iMessage text]

4:47 PM

My name is Bernard

**Are you calling dawn on this**

5:03 PM

[Faded iMessage text]

5:03 PM





Paul



Lynette



Paul Gann

Marty I need an email from you on what information you have regarding these claims against Dawn Krueger. I'm not quite sure what you were referring to with regard to dismissal of the criminal case

A civil suit has been filed so please get me that information in your email as soon as possible





Paul



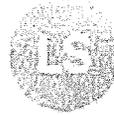
Lynette

Marty I need an email from you on what information you have regarding these claims against Dawn Krueger. I'm not quite sure what you were referring to with regard to dismissal of the criminal case

A civil suit has been filed so please get me that information in your email as soon as possible



Paul

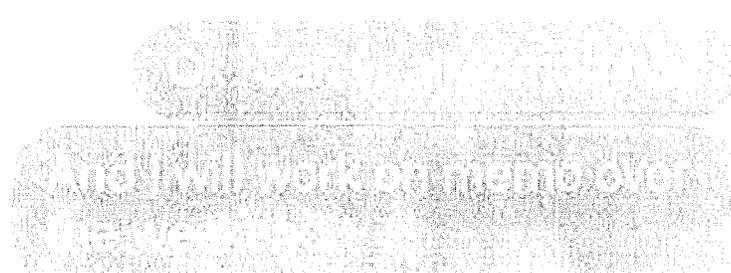


Lynette



You can call me. But I'm still going to need a memo since I'm conducting an internal investigation into the allegations contained in the civil sui

Suit



We can talk tomorrow

Marty something is come up with that and I will not be available for a phone conference. Just prepare the



Paul



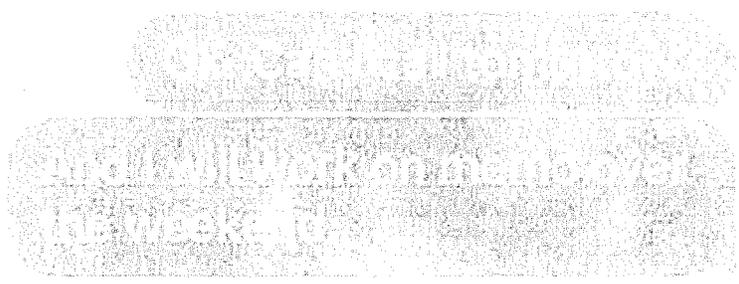
Lynette



Paul

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Suit



We can talk tomorrow

Marty something is come up with that and I will not be available for a phone conference. Just prepare the





Paul



Lynette



going to need a memo since I'm conducting an internal investigation into the allegations contained in the civil sui



Suit

And I will work on memo over the weekend

Lynette Strafford



We can talk tomorrow

Fri, Dec 23, 8:15 AM

Paul Gains

Marty something is come up with that and I will not be available for a phone conference. Just prepare the memo and email it to both of us then we can discuss this after we receive the memo





Paul



Lynette

going to need a memo since I'm conducting an internal investigation into the allegations contained in the civil sui

Suit



By the way

We can talk tomorrow

Fri, Dec 31, 10:41 AM

Paul

Marty something is come up with that and I will not be available for a phone conference. Just prepare the memo and email it to both of us then we can discuss this after we receive the memo

## EXHIBIT 2

STATE OF OHIO ) IN THE COURT OF COMMON PLEAS  
 ) ss.  
COUNTY OF MAHONING ) CASE NO. 2015 CR 538

STATE OF OHIO )  
 )  
Plaintiff ) DEFENDANT'S  
 )  
-vs- ) TRANSCRIPT OF PROCEEDINGS  
 )  
MARQUAN TREVAIL WHITE ) MOTION HEARING  
 )  
Defendant )

APPEARANCES: **Atty. Dawn Cantalamessa**  
**Atty. Shawn F. Burns**  
On behalf of the State  
  
**Atty. Thomas E. Zena**  
**Atty. Andrew R. Zellers**  
On behalf of the Defendant  
  
**Atty. James R. Wise**  
On behalf of Kalilo Robinson

**BE IT REMEMBERED** that at the hearing of the above-entitled cause, in the Court of Common Pleas, Mahoning County, Ohio, beginning on the **5th** day of **April, 2016**, and continuing thereafter, as hereinafter noted, before **the Honorable Lou A. D'Apolito**, the above appearances having been made, the following proceedings were had:

1                   **MS. CANTALAMESSA:** We are here in Case  
2                   Number 15 CR 538, State of Ohio versus  
3                   Marquan White. Your Honor, we are here this  
4                   afternoon on, I guess, State's motion to take  
5                   the deposition of one of the State's  
6                   witnesses. We do have that witness here.  
7                   It's our understanding that the witness' wish  
8                   was to claim the Fifth Amendment and so we  
9                   are having this hearing in order to  
10                  straighten that out.

11                  **THE COURT:** Okay. Is that correct?

12                  **MR. ZELLERS:** Yes, it is, Your Honor.

13                  **MS. CANTALAMESSA:** Your Honor, at this  
14                  time the state would call Kalilo Robinson to  
15                  the stand.

16                  **THE COURT:** Okay. Let's get  
17                  Mr. Robinson on the stand.

18                  **MR. ZENA:** We are not conceding that  
19                  this gentleman is, quote, unavailable and  
20                  therefore a deposition is in order, but it  
21                  seems to be the vehicle to get us to the end.

22                  **THE COURT:** Okay. How are you doing?  
23                  Come on up here.

1                   WHEREUPON, the State called

2  
3                   KALILO ROBINSON,

4  
5                   who, being first duly sworn testified  
6                   as follows:

7  
8                   **THE COURT:** All right. Come on up here  
9                   and sit down.

10                   Here present in court Mr. Zena and  
11                   Mr. Zellers and their client.

12                   Madam Prosecutor?

13                   **MS. CANTALAMESSA:** Thank you, Your  
14                   Honor. Good afternoon.

15                   **THE COURT:** Good afternoon.

16                   **EXAMINATION**

17                   **BY MS. CANTALAMESSA:**

18                   **Q**            Would you please state your name for the  
19                   record?

20                   **A**            Kalilo Robinson.

21                   **Q**            I'm sorry?

22                   **A**            Kalilo Robinson.

23                   **THE COURT:** You have to speak up

1 Mr. Robinson, okay?

2 **THE WITNESS:** Kalilo Robinson.

3 **Q** Kalilo Robinson; is that correct?

4 **A** Yes.

5 **Q** And how old are you, Kalilo?

6 **A** I'm 19.

7 **Q** Nineteen?

8 **THE COURT:** Mr. Robinson, you have to  
9 speak up. I can't hear you. Again, your  
10 name was, Mr. Robinson?

11 **THE WITNESS:** Kalilo Robinson.

12 **THE COURT:** There we go.

13 **Q** And how old are you?

14 **A** Nineteen.

15 **Q** Mr. Robinson, could you tell us what happened  
16 on November 16 of the year 2014?

17 **A** I plead the Fifth.

18 **Q** You plead the Fifth Amendment?

19 **A** Yeah.

20 **Q** And are you refusing to testify concerning  
21 that event?

22 **A** Respectfully, I am.

23 **MS. CANTALAMESSA:** Your Honor, at this

1 time I would give to the Court a motion to  
2 compel this witness to testify and an offer  
3 of immunity.

4 **THE COURT:** I have just been handed  
5 what's been titled with this caption of the  
6 State versus Marquan White, Motion to Compel  
7 Witness to Testify. It says, "Now comes the  
8 State of Ohio, by and through the Assistant  
9 County Prosecuting Attorney of Mahoning  
10 County, and hereby moves this Court to order  
11 the witness, Kalilo Robinson, to testify  
12 concerning facts which are material to the  
13 instant case. Pursuant to the request, the  
14 State will grant immunity to this witness  
15 pursuant to Revised Code Section 2945.44."

16 And this motion was provided to -- a  
17 copy as a preview to the counsel, Mr. Wise  
18 for Mr. Robinson; and Mr. Robinson and  
19 Mr. Wise had the opportunity to meet and  
20 discuss whatever it is the attorney felt was  
21 necessary for his client to understand.

22 Mr. Wise, you had that conversation with  
23 your client; is that correct?

1           **MR. WISE:** That is correct, Your Honor.

2           **THE COURT:** And based on this Motion to  
3 Compel, what is your posture as regards your  
4 client?

5           Mr. Zena, do you want to say something?

6           **MR. ZENA:** The only thing I wanted to  
7 say, and I think I have standing to say this  
8 given the fact that I have a defendant that  
9 will suffer consequences.

10          **THE COURT:** Sure.

11          **MR. ZENA:** Unless I am mistaken, I have  
12 done this in the federal system, this is an  
13 offer to move for immunity.

14          **THE COURT:** Yes.

15          **MR. ZENA:** You are the only one who can  
16 grant immunity.

17          **THE COURT:** Yes.

18          **MR. ZENA:** And mostly what happens -- I  
19 have seen in criminal culpability cases where  
20 immunity is granted by a Judge, a Judge makes  
21 inquiry into what acts are you asking me to  
22 bar this man for prosecution for. The John  
23 Gotti case is a perfect example of that.

1           When the other defendant who was charged with  
2           many murders, their offer of immunity was  
3           extended, and they had to get into an entire  
4           evidentiary hearing on what acts he was going  
5           to be immune from prosecution on. So it's my  
6           argument that immunity would require your  
7           approval.

8           **THE COURT:** I think we all understand  
9           that, but I do think that it is necessary for  
10          the state to indicate what it is immunity is  
11          granted. In this particular statute, as I  
12          see it, and I may be wrong -- and you, of  
13          course, can correct me -- this is a  
14          transaction of immunity which is the type we  
15          are dealing with rather than any others.

16          So with that being said, Madam  
17          Prosecutor, would you wish to place on the  
18          record what it is you are granting this young  
19          man immunity from?

20          **MS. CANTALAMESSA:** Your Honor, we are  
21          granting immunity to Mr. Robinson for the  
22          murder of Antwon Martinez on November 16,  
23          2014.

1                   **THE COURT:** Mr. Wise?

2                   **MR. WISE:** I have nothing.

3                   **THE COURT:** Mr. Zena?

4                   **MR. ZENA:** Well, the only thing I can  
5 say is, again, we feel we have standing given  
6 the fact that I know of nothing -- nothing  
7 that says this man in any of the evidence is  
8 implicated and could be found guilty of that  
9 case anyway. I mean, they have to give us  
10 that evidence so that we could impeach this  
11 man, and we have received nothing saying that  
12 he is guilty of anything in that case. So I  
13 guess he is being offered immunity I don't  
14 know what for because he has no criminal acts  
15 alleged against him for that, none  
16 whatsoever. I mean, the only thing he said  
17 in his statements was that he was there, but  
18 in his statements he doesn't say anything  
19 about being involved in it at all, and I have  
20 no evidence that he has been involved in this  
21 at all.

22                   **MS. CANTALAMESSA:** Your Honor, from the  
23 beginning he has always said that he knew

1           that Antwon was going to be killed from  
2           Mascarella but he didn't know when. He said  
3           that on at least two occasions, so he has  
4           always said that. Now we are now hearing  
5           that he is claiming the Fifth, so he  
6           obviously feels that he has some  
7           incriminating evidence against himself that  
8           he doesn't want to reveal. So that's the  
9           purpose in claiming the Fifth. So we are  
10          offering him immunity for that murder to find  
11          out what that information is.

12                 **THE COURT:** Mr. Wise, your response and  
13                 your client? If you need time to talk to  
14                 your client?

15                 **(WHEREUPON, a discussion was had between**  
16                 **Mr. Wise and Mr. Robinson off the record and**  
17                 **out of the hearing of the rest of the**  
18                 **participants, after which the proceedings**  
19                 **continued as follows:)**

20                 **MR. WISE:** My client will advise you  
21                 that even with the immunity that he chooses  
22                 not to testify.

23                 **THE COURT:** So as of this point we have

1 a witness who is available and refuses to  
2 testify and a witness has asserted the Fifth  
3 Amendment. And the state is moving for the  
4 Court to grant this defendant immunity from  
5 any of the acts that he may have participated  
6 in regarding --

7 **MR. ZENA:** Excuse me, Your Honor. Just  
8 for the record purposes, he is not  
9 technically a defendant here. He is only a  
10 witness here.

11 **THE COURT:** You are correct.

12 **MR. ZENA:** Thank you, Your Honor.

13 **THE COURT:** In this particular case you  
14 are correct, he is called as a witness.  
15 Yeah.

16 So the state has indicated that he made  
17 some statements that he knew that a murder  
18 was to occur, and that he was present at the  
19 time and place of a murder, and that the  
20 state believes that -- I'm assuming, and you  
21 are going to have to help me a little more,  
22 Madam Prosecutor -- that there are some acts  
23 he may have committed. And are you telling

1 the Court that one of those acts may be a  
2 complicity to murder, or conspiracy to  
3 murder, or do you have any evidence of that?

4 **MS. CANTALAMESSA:** Well, what we are  
5 hearing is that if these things that he would  
6 have to say to us today would, in fact, be  
7 complicity, we are offering him that immunity  
8 because with him claiming the Fifth, we don't  
9 know what is incriminating. He hasn't given  
10 any sort of incriminating statement against  
11 himself except for being present and knowing  
12 about it. That's about it. But if he is  
13 saying he has further evidence that would  
14 incriminate himself, we are offering him  
15 immunity for that, and we want to be sure  
16 that he knows that, and we want you to compel  
17 his testimony. We want you to order him to  
18 testify.

19 **MR. ZENA:** The sum of that seems to be  
20 if he did any acts, which we can't prove he  
21 did, he would be offered immunity for those  
22 acts, but we can't prove that he did any of  
23 them. That's basically what she said.

1                   **MS. CANTALAMESSA:** Well, the defense is  
2 talking in circles as well --

3                   **THE COURT:** Yeah.

4                   **MS. CANTALAMESSA:** -- because but for  
5 this witness giving a statement to the  
6 police, his client wouldn't even be charged.

7                   **MR. ZENA:** But this isn't about -- I'm  
8 sorry, Your Honor -- this isn't about my  
9 client now. This is about what position he  
10 holds on that stand.

11                   **THE COURT:** Mr. Robinson?

12                   **MR. ZENA:** That's correct. This isn't  
13 about him at all. This is about offering  
14 immunity to somebody in case there are  
15 acts -- which they don't know exist, can't  
16 prove -- but if there were, he is immune from  
17 them. That's not immunity, Judge.

18                   **MS. CANTALAMESSA:** It is immunity if we  
19 can corroborate those acts, and we won't know  
20 about it until he tells us.

21                   **MR. ZENA:** We are going in circles.

22                   **THE COURT:** Yeah, we are going in  
23 circles.

1 Mr. Wise, anything you want to add?

2 **MR. WISE:** Your Honor, with all due  
3 respect, and what I have heard on the record  
4 this morning, first of all, I understand that  
5 this matter is a pretrial hearing.

6 **THE COURT:** Yeah.

7 **MR. WISE:** In fact, this matter -- we  
8 are not in trial -- that he is obviously  
9 available if this was a trial.

10 **THE COURT:** Uh-huh.

11 **MR. WISE:** It's my understanding that  
12 the Court is attempting to possibly  
13 circumvent -- not circumvent his rights, but  
14 to try and figure out what's going to happen  
15 in the event of a trial if he refuses to  
16 testify or that the prosecutor, in fact, is  
17 trying to figure out what she can do if, in  
18 fact, he refuses to testify, as he has  
19 indicated that he will, as he has indicated  
20 to all of us he will. However, I don't  
21 believe that even with the granting of  
22 immunity by this Court, even if he continues  
23 to refuse to testify, he is not in contempt

1           since this matter -- we're not in trial.  If,  
2           in fact, we had a jury impaneled and my  
3           client was, in fact, subpoenaed to be here  
4           and then refused, I think at that point he  
5           could be held in contempt.  But at this time  
6           I don't believe that a contempt action is  
7           warranted.

8                       **THE COURT:**  So the long and short of  
9           your response is that we are premature in  
10          making the determination today as to whether  
11          or not, one, he has refused to testify, and  
12          we don't have a trial.  Whether he is  
13          refusing to testify or is asked or granted  
14          immunity because you have asked, your client  
15          has taken the Fifth Amendment, so that  
16          triggers the response by the government to  
17          offer the immunity.  So are you saying that  
18          at this time your client is refusing to  
19          testify today and is withholding that choice  
20          of what action to take until the time of  
21          trial?  Is that what you are telling me?

22                      **MR. WISE:**  Your Honor, I believe that my  
23          client, not to use the word "right" because

1 that doesn't -- that might not be applicable.  
2 He has a choice of who to speak to and who  
3 not to speak to with regard to this matter.

4 **THE COURT:** At this point. At this  
5 point, juncture, yeah.

6 **MR. WISE:** At this point he has a right  
7 not to talk to Attorney Zena, if Attorney  
8 Zena wants to question him. I believe he has  
9 a right not to talk to the prosecutors if he  
10 doesn't want to because we are not in trial.

11 **THE COURT:** I understand that. I guess  
12 my question to you was are we not premature  
13 then in the entertaining the motion of  
14 immunity when, in fact, it is not -- it is  
15 not ripe for that decision until such time as  
16 he is called as a witness for trial, and then  
17 at that time we determine whether or not he  
18 refuses to testify or he refuses to testify  
19 on the grounds of it may cause to incriminate  
20 him to some type of criminal liability?

21 **MR. WISE:** Yes, Your Honor.

22 **MS. CANTALAMESSA:** Would defense  
23 counsel, Mr. Wise, agree then if he refuses

1 to testify, he is unavailable then?

2 **THE COURT:** At the hearing?

3 **MS. CANTALAMESSA:** Yes.

4 **MR. WISE:** I believe the rule speaks to  
5 unavailability at trial. There has been no  
6 showing that he is unavailable at trial until  
7 the jury is impaneled and he at that point  
8 says, by the way, I'm moving to Cuba so --

9 **THE COURT:** Yeah, I agree with you. I  
10 just think that what we are doing is going  
11 back and forth between a hypothetical, your  
12 client saying he is unavailable. Can we  
13 agree that if he doesn't testify, he is  
14 unavailable? I think that's the issue that  
15 we have to determine at trial, not here  
16 today.

17 **MS. CANTALAMESSA:** For the record, Your  
18 Honor, did you order Mr. Robinson to testify  
19 and did he actually say he is refusing to  
20 testify?

21 **THE COURT:** No.

22 **MS. CANTALAMESSA:** Or did Mr. Wise say  
23 that?

1                   **THE COURT:** I did that deliberately.

2                   **MS. CANTALAMESSA:** Okay.

3                   **THE COURT:** Yeah. Because I think that  
4 we have to move to the trial itself before we  
5 do this, unless the State is able to offer  
6 some evidence of some criminality other than  
7 the innuendo of what he may or may not have  
8 done, or that he is charged. And at that  
9 point I do think that Mr. Zena is right, that  
10 his client, because of the effect it may have  
11 on him, has the right to know what  
12 culpability, if any, that Mr. Robinson has in  
13 this event.

14                   So the Court is going to hold in  
15 abeyance any decision on this matter until we  
16 move to a trial date, and we will then resume  
17 this conversation at that time. Okay?

18                   **MS. CANTALAMESSA:** Thank you, Your  
19 Honor.

20                   **THE COURT:** All right. Thank you very  
21 much.

22                   **MR. WISE:** Thank you, Your Honor.

23                   **MR. ZENA:** Your Honor?

1                   **THE COURT:** Yeah.

2                   **MR. ZENA:** There is one other thing. I  
3 did not bring this up. It appears it will be  
4 our intention, and we have a written  
5 document, it will be our intention to  
6 withdraw this defendant's previous motion or  
7 waiver of right to speedy trial and ask the  
8 Court to invoke speedy trial. We understand  
9 that if you do make that order, the 90 days  
10 starts then. He gets no credit for anything  
11 prior. Whether or not --

12                   **MS. CANTALAMESSA:** There is no 90 days  
13 after revocation. It's a reasonable  
14 timeframe. There is no 90 days, and they are  
15 severed counts.

16                   **MR. ZENA:** Excuse me.

17                   **THE COURT:** Go ahead.

18                   **MR. ZENA:** After we make the argument,  
19 that it is actually a mathematical formula  
20 based on the murder case, we are going to ask  
21 that the -- that the waiver of speedy trial  
22 be withdrawn. If you determine that will not  
23 be the case and it's a reasonable time,

1 that's over. If you determine it does start  
2 a new 90 days ticking at that point, then  
3 that will start that. But it wouldn't start  
4 no matter when until after you made a ruling  
5 on the motion.

6 **THE COURT:** I understand.

7 **MR. ZENA:** I want everyone to know that  
8 is our intention.

9 **THE COURT:** I think the prosecutor is  
10 right when we talk about a reasonable time  
11 based upon the case law; but this Court is  
12 pretty sensitive to actual numbers, so I  
13 would be setting this matter within that time  
14 frame.

15 **MR. ZENA:** Yes, Your Honor. Thank you,  
16 Your Honor.

17 **THE COURT:** All right. We are in  
18 recess. Thank you.

19  
20 **(WHEREUPON, Court was adjourned.)**  
21  
22  
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REPORTER'S CERTIFICATE

I HEREBY CERTIFY the above and foregoing is a true and correct transcript of all evidence introduced and proceedings had in the hearing of the within-named case as shown by my stenographic notes taken by me during the hearing and at the time the evidence was being introduced.

\_\_\_\_\_  
CATHERINE A. BUCK, RPR  
OFFICIAL COURT REPORTER

DATE: \_\_\_\_\_

# EXHIBIT 3



STATE OF OHIO        )  
                          )    SS:  
MAHONING COUNTY     )

**IN THE GRAND JURY**  
**CASE NO. 16 CR 342**

**DATE:**            April 7, 2016

**PLACE:**           Grand Jury Room  
                      Mahoning County Courthouse  
                      Youngstown, Ohio

**PRESENT:**        Shawn F. Burns  
                      On Behalf of the State of Ohio  
  
                      Detective Sergeant Patrick Kelly, Witness  
  
                      The Mahoning County Grand Jury  
  
                      Diane M. Kerchofer, RPR  
                      Official Court Reporter

\* \* \* \* \*

1                   **WHEREUPON,**

2  
3                   **DETECTIVE SERGEANT PATRICK KELLY,**

4  
5                   **who, being first duly sworn testified**  
6                   **as follows:**

7                   **EXAMINATION**

8                   **BY MR. BURNS:**

9                   **Q**            Good morning, Detective. Could you state  
10                   your full name and spell your last name for the record,  
11                   please?

12                   **A**            Detective Sergeant Pat Kelly, K-E-L-L-Y.

13                   **Q**            Detective, we're here today in the matter of  
14                   the State of Ohio versus Kalilo Robinson. Shawn Burns  
15                   on behalf of the Mahoning County Prosecutor's Office.  
16                   We're seeking an indictment on the following counts:  
17                   Count One, obstructing justice, whereby the state is  
18                   alleging that Kalilo Robinson did with purpose to  
19                   hinder the discovery, apprehension, prosecution,  
20                   conviction, punishment of another for a crime, or to  
21                   assist another to benefit from the commission of a  
22                   crime by communicating false information to any person.  
23                   And Count Two, similarly, with the difference that

1 we're asking that — we're seeking an indictment that  
2 he assisted another to benefit from the commission of a  
3 crime by the destruction or concealing the physical  
4 evidence. In this case it would be his testimony which  
5 had previously been given. And Count Three, tampering  
6 with evidence, that he did knowingly in an official  
7 proceeding or investigation likely to be instituted,  
8 concealed or remove a certain thing for the purpose to  
9 impair its value or availability as evidence. In this  
10 case it would be the testimony that he was ordered to  
11 give.

12           Detective, how did you become acquainted with  
13 the defendant in this matter, Kalilo Robinson?

14 **A**           I investigated a homicide. It happened in  
15 Thanksgiving a couple years ago. We had found a male  
16 black subject shot about three times in the back of the  
17 head on the north side. Through my investigation I  
18 found that it was Kalilo Robinson and Marquan White  
19 were the two people who were last with the victim.  
20 Kalilo agreed to be a witness for us, and he told us  
21 that they were walking on Galaida and Marquan took a  
22 gun out and shot the guy in the back of the head and  
23 then stood over top of him and shot him two more times

1 to the head.

2 Through the course of the investigation I  
3 found out that they were at this house, all three of  
4 them together, left the house walking, and that's what  
5 happened when he shot him. Yesterday we had a pretrial  
6 and Kalilo Robinson invoked his Fifth Amendment right  
7 and refused to testify as a witness.

8 Q Was that done on the record?

9 A That was on the record.

10 Q And the statements that you took from him  
11 previously, were those all recorded?

12 A One was recorded, and one was with the court  
13 stenographer on a proffer. So we have two statements  
14 of Kalilo Robinson.

15 Q And could you just briefly tell the grand  
16 jurors what you mean by a proffer?

17 A It's official. It's with a court reporter.  
18 There's an attorney there. There's a prosecutor there,  
19 and I'm there, and we were able to question him. And  
20 so he was able to give both sides of the story.

21 Q And, in fact, we were taking his statement in  
22 exchange for his cooperation and agreement not to  
23 charge him in regard to that matter?

1     **A**           Correct. The reason that being is the actual  
2 shooter and Kalilo are completely different looking.  
3 The shooter is light skinned and Kalilo is very dark  
4 skinned, and we have a witness who saw right after the  
5 shooting the light-skin male running with the gun and  
6 the dark-skin male running behind him like seconds  
7 after the shooting. So that's why I felt comfortable  
8 going to Kalilo and getting him to be a witness. And  
9 when he did that yesterday, it just put a halt to the  
10 case.

11    **Q**           Let's talk a little bit about more in detail  
12 what happened yesterday. We brought him into court and  
13 he was put on the witness stand and put under oath; is  
14 that correct?

15    **A**           Correct. And he invoked his Fifth Amendment  
16 right, which was kind of crazy 'cause he's a witness,  
17 so.

18    **Q**           And then once he invoked his Fifth Amendment  
19 right, what happened next?

20    **A**           The prosecutor's office gave him immunity --  
21 offered him immunity.

22    **Q**           Was that done in writing?

23    **A**           Yes. I believe you gave it to him, his

1 attorney, the defense attorney for the actual shooter,  
2 and the judge, so. And he still refused to testify.

3 Q Anything else you'd like to add as far as the  
4 facts surrounding the incident from yesterday?

5 A No, that's about it. The only thing is that  
6 I was kind of taken back when he invoked his Fifth  
7 Amendment right because he is a witness. Usually when  
8 you invoke your Fifth Amendment right, you have  
9 something to hide. And that kind of stopped it right  
10 there. The trial was done right there at that point.

11 Q And throughout -- and throughout the  
12 conversations you had with him as well as the recorded  
13 statement and the one that was not recorded, it was  
14 always made clear that his testimony was essential in  
15 this case?

16 A Correct.

17 Q And that everything that was being done with  
18 regard to giving him -- with agreeing not to charge him  
19 and then presenting him with immunity was in  
20 consideration of that fact?

21 A Correct.

22 Q And just so we're clear finally, the evidence  
23 that we're talking about that he's concealing in this

1 matter, is it the physical testimony that he was to  
2 provide in court?

3 **A** Yes, because he was actually, for lack of a  
4 better word, an eyewitness. He was right there. It  
5 was the victim, shooter, Kalilo Robinson.

6 **MR. BURNS:** Okay. That's all I have at  
7 this time. Any questions? Okay. Thank you.

8 \* \* \* \* \*

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REPORTER'S CERTIFICATE

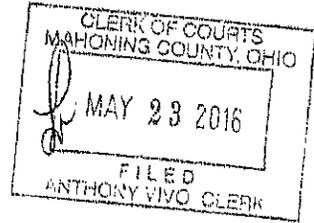
I HEREBY CERTIFY that the above and foregoing is a true and correct transcript of the proceedings had in the grand jury of the within-named case as shown by my stenographic notes taken by me during the grand jury and at the time the evidence was being introduced.

DIANE M. KERCHOFER, RPR  
OFFICIAL COURT REPORTER

DATE: \_\_\_\_\_

# EXHIBIT 4

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO



STATE OF OHIO	)	
	)	CASE NO. 16 CR 342
PLAINTIFF	)	
	)	JUDGE LOU A. D'APOLITO
-vs-	)	
	)	BILL OF PARTICULARS
KALILO ROBINSON,	)	
	)	
DEFENDANT	)	

NOW COMES the State of Ohio, by and through the undersigned counsel, and, in response to Defendant's request for a bill of particulars under Crim.R. 7(E), renders the following:

In Mahoning County, Loc.R. 9 permits open-file discovery in criminal cases. Additionally, it is the position of the State that the combination of the Indictment against this defendant and the previously disclosed incident reports provide more than sufficient detail to apprise him of the charges against him. Nevertheless, the State offers the following.

On or about April 5, 2016, at the Mahoning County Courthouse, in Downtown Youngstown, Mahoning County, Ohio, KALILO ROBINSON did with purpose too hinder the discovery, apprehension, prosecution, conviction or punishment of another for a crime, or to assist another to benefit from the commission of a crime, communicate false information to any person, by now representing to the court in a sworn hearing to establish cause for his testimony that he now possessed information which would trigger the 5<sup>th</sup> Amendment for himself, after having maintained in three prior statements that he didn't know that Marquan White was going to kill Antwon Martinez, even though he

previously admitted that Marquan White did talk about killing Antwon prior to the date of his death, for the statement he gave to the police about "Jo Jo", a.k.a. Joseph Mascarella. After being offered immunity for his potential involvement in the Murder of Antwon Martinez, the Defendant still maintained that he would refuse to testify as to his knowledge of the event, thereby assisting another (Marquan White) to benefit from the commission of the crime of the murder of Antwon Martinez.

Said action constitutes Obstructing Justice in violation of R.C. 2921.32 (A)(5)(C) as alleged in Count 1, of the Indictment and against the peace and dignity of the State of Ohio.

On or about April 5, 2016, at the Mahoning County Courthouse, in Downtown Youngstown, Mahoning County, Ohio, KALILO ROBINSON did with purpose too hinder the discovery, apprehension, prosecution, conviction or punishment of another for a crime, or to assist another to benefit from the commission of a crime, destroy or conceal physical evidence of the crime or act, or induce another to withhold testimony or information or to elude legal process summoning him to testify or supply evidence, by now representing to the court in a sworn hearing, to establish cause for his testimony, after being subpoenaed, that he now possessed information which would trigger the 5<sup>th</sup> Amendment for himself, after having maintained in three prior statements that he didn't know that Marquan White was going to kill Antwon Martinez, even though he previously admitted that Marquan White did talk about killing Antwon prior to the date of his death, for the statement Antwon gave to the police about "Jo Jo", a.k.a. Joseph Mascarella. After being offered immunity for his potential involvement in the Murder of Antwon Martinez, the Defendant still maintained that he would refuse to testify as to his

knowledge of the event, thereby destroying or concealing his evidence(testimony) relating to the crime.

Said action constitutes Obstructing Justice in violation of R.C. 2921.32 (A)(4)(C) as alleged in Count 2, of the Indictment and against the peace and dignity of the State of Ohio.

On or about April 5, 2016, at the Mahoning County Courthouse, in Downtown Youngstown, Mahoning County, Ohio, KALLO ROBINSON did knowing that an official proceeding or investigation was about to be or was likely to be instituted, conceal or remove a certain thing, with purpose to impair its value or availability as evidence in such a proceeding or investigation, by now representing to the court in a sworn hearing to establish cause for his testimony that he now possessed information which would trigger the 5<sup>th</sup> Amendment for himself, after having maintained in three prior statements that he didn't know that Marquan White was going to kill Antwon Martinez, even though he previously admitted that Marquan White did talk about killing Antwon prior to the date of his death, for the statement he gave to the police about "Jo Jo", a.k.a. Joseph Mascarella. After being offered immunity for his potential involvement in the Murder of Antwon Martinez, the Defendant still maintained that he would refuse to testify as to his knowledge of the event, thereby destroying or concealing his evidence(testimony) relating to the crime.

Said action constitutes Tampering with Evidence in violation of R.C. 2921.12 (A)(1)(B) as alleged in Count 3, of the Indictment and against the peace and dignity of the State of Ohio.

WHEREFORE, the State of Ohio prays for an Order of this Court finding that a bill of particulars has been rendered herein pursuant to law.

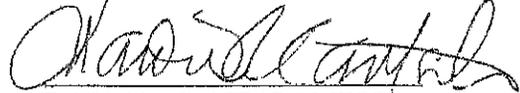
Respectfully submitted,



DAWN P. CANTALAMESSA  
Asst. County Prosecutor  
Atty. Reg. No. 0074983  
21 West Boardman Street, 6<sup>th</sup> Floor  
Youngstown, Ohio 44503  
Tel. (330) 740-2330  
Fax (330) 740-2008

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>th</sup> day of May 2016, a copy of the foregoing bill of particulars was sent to Atty. James Wise, via facsimile.



DAWN P. CANTALAMESSA  
Asst. County Prosecutor

# EXHIBIT 5

STATE OF OHIO ) IN THE COURT OF COMMON PLEAS  
 ) ss.  
COUNTY OF MAHONING ) **CASE NO. 16 CR 342**

**STATE OF OHIO** )  
 )  
 **Plaintiff** )  
 )  
 -vs- ) **TRANSCRIPT OF PROCEEDINGS**  
 )  
 **KALILO ROBINSON** ) **MOTION**  
 )  
 **Defendant** )

APPEARANCES: **Atty. Dawn Cantalamessa**  
 **Atty. Shawn Burns**  
 On behalf of the State  
  
 **Atty. James R. Wise**  
 On behalf of the Defendant

**BE IT REMEMBERED** that at the hearing of the above-entitled cause, in the Court of Common Pleas, Mahoning County, Ohio, beginning on the **16th** day of **August, 2016**, and continuing thereafter, as hereinafter noted, before **the Honorable Thomas Pokorny**, the above appearances having been made, the following proceedings were had:

1           **THE COURT:** We're going to do State of  
2 Ohio vs. Kalilo Robinson, Case No. 16 CR 342.  
3 Is Mr. Robinson here?

4           **MS. CANTALAMESSA:** Yes, Your Honor.

5           **THE COURT:** You're Mr. Robinson?

6           **THE DEFENDANT:** Yes, sir.

7           **THE COURT:** Okay. Come on right up.  
8 Mr. Robinson is present. James Wise is here  
9 on his behalf. Dawn Cantalamessa is here on  
10 behalf of the state of Ohio.

11           Ms. Cantalamessa, if you would, please?

12           **MS. CANTALAMESSA:** Yes, Your Honor.  
13 Again, this is Case No. 16 CR 342. The state  
14 has filed a motion for leave to file a  
15 dismissal entry and a dismissal entry, Your  
16 Honor. We would ask that you grant that  
17 dismissal of this case.

18           **THE COURT:** Mr. Wise, on behalf of the  
19 defendant, I would assume that you're in  
20 agreement with this?

21           **MR. WISE:** I'm not in agreement with the  
22 motion as stated, Your Honor. In their  
23 motion they're indicating --

1           **THE COURT:** You're not moving on the  
2 paper motion; you're moving on an oral  
3 motion?

4           **MS. CANTALAMESSA:** Yes, Your Honor.

5           **THE COURT:** With no strings attached; is  
6 that correct?

7           **MS. CANTALAMESSA:** That's right, Your  
8 Honor.

9           **THE COURT:** Okay. Any objection to it?

10          **MR. WISE:** No, Your Honor.

11          **THE COURT:** All right. Then upon  
12 recommendation of the prosecuting attorney  
13 and for good cause shown the Case 16 CR 342  
14 is ordered dismissed without prejudice. And  
15 then the defendant is ordered retained into  
16 custody and asked to be transported to the  
17 fourth floor to Judge D'Apolito's room at  
18 this point. Okay?

19          **MR. WISE:** As to this case, though, Your  
20 Honor, he is released from custody?

21          **THE COURT:** Yeah, we're going to report  
22 back and let me know what happens up there,  
23 and then we'll go from there. Okay?

1                   **MS. CANTALAMESSA:** Okay. Thank you,  
2 Your Honor.

3                   **THE COURT:** Thanks.

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REPORTER'S CERTIFICATE

I HEREBY CERTIFY that the above and foregoing is a true and correct transcript of the proceedings had in the hearing of the within-named case as shown by my stenographic notes taken by me during the hearing and at the time the hearing was being held.

\_\_\_\_\_  
GINA A. DURKIN, RPR, CRR  
OFFICIAL COURT REPORTER

DATE: \_\_\_\_\_

# EXHIBIT 6

COMPLAINT

(Child or Children)

Revised Code, Secs. 2151.27 and 2152.021

In the Matter of:

Case No. 2013 JA

653 FILED MAHONING COUNTY JUVENILE COURT

KALILO RAE KWON ROBINSON

Single Charge  Multiple Charges

2013 APR 26 PM 1 40

The undersigned, after being duly sworn, according to law, says that he/she has knowledge of a certain child, to-wit:

KALILO RAE KWON ROBINSON

Redacted

16 years old

Male  Female

African American  Caucasian  Hispanic  Other

COMPUTER

appears to be a Delinquent child, in that:

COUNT ONE: On or about April 23, 2013 in the City of Youngstown, County of Mahoning and State of Ohio, he did participate with four (4) or more in a course of disorder conduct in violation of Section 2917.11 of the Revised Code with purpose to commit or facilitate the commission of an offense of violence; in violation of Section 2917.02(A)(2) of the Revised Code being AGGRAVATED RIOT a FELONY of THE FOURTH DEGREE and thereby being a Delinquent Child as defined in Ohio Revised Code Section 2152.02(F)..

Complainant further says:

That said child now resides at: Redacted, YOUNGSTOWN, OH, Redacted

That the names and addresses of the parents of said child are:

TAMIKA ROBINSON - PARENT residing at Redacted, YOUNGSTOWN, OH, Redacted

That said child is currently in the care of custody of: PARENT

*[Signature]*  
Off. James Rowley, Complainant

C/O Youngstown Police Dept.  
Complainant Address

Sworn to before me and subscribed in my presence this 26 day of April 2013.

By: *[Signature]*  
Notary Public



DEBORAH A. McADAMS  
Notary Public

In and for the State of Ohio

My Commission Expires

6-10-13

IN THE COURT OF COMMON PLEAS  
MAHONING COUNTY, OHIO  
JUVENILE DIVISION

MAHONING COUNTY  
JUVENILE COURT

IN THE MATTER OF:

Case Number 2013 JA 00653 JUV

KALILO RAE KWON ROBINSON

2013 JUN 14 A 11:19

Judge Theresa Dellick

Alleged Delinquent Child

CLERK OF COURTS

Magistrate Richard White

I, **KALILO RAE KWON ROBINSON**, being before this honorable Court, with my parent/guardian, and represented by counsel, Attorney **MICHAEL L GOLLINGS** do hereby represent that:

A. I understand that I was originally charged with the following:

**AGGRAVATED RIOT in violation of O.R.C. §2917.02 F4**

B. I understand that I have formerly plead a denial to the charges listed in Section A of this agreement and I now wish to enter plea(s) of admission to the following charges:

**ATTEMPTED AGGRAVATED RIOT in violation of O.R.C. §2917.02/2923.02 F5**

C. I understand that in exchange for the pleas of admission outlined in Section B of this agreement, the State of Ohio is moving to dismiss the following charges and I hereby enter a stipulation as to probable cause for the initial filing of the following charges:

No dismissals

State moves the Court to Dismiss:

D. My counsel has advised me and I fully understand the nature of the charges against me and the elements contained therein. I am satisfied that counsel has done what I have requested in my defense, and I am completely satisfied with the legal representation I have received from my counsel.

E. I understand that by my offer to enter an admission to the charges listed in Section B of this agreement that I surrender the right to challenge everything that happened before my admission.

F. I fully understand and realize that when I respond to the Court under oath that I am confessing that I am truly guilty of committing the crime(s) to which I entered an admission and by doing so this is as much a conviction as if the Court would find me guilty and delinquent by reason thereof.

G. I fully understand that if my admission is accepted by this Court, whatever sentence the Court gives me will be based on nothing else but an independent investigation of the nature and circumstance of the crimes, the harm or damage done, my past background, the prospects of rehabilitation, and all other statutory considerations. Any recommendation made to the Court as part of any agreement entered into by the State is just that, a recommendation. The Court is under no obligation or Duty to accept and/or agree with any recommendations made herein.

H. Notwithstanding the information contained in Section G of this agreement, the State of Ohio is making the following recommendations:

Pursuant to Juvenile Court policy and procedure, an OYAS (Ohio Youth Assessment System) Dispositional Report must be completed prior to disposition. The State of Ohio agrees to accept and support the findings and recommendations contained therein.

No Contact Orders

VIP Program

Counseling

Sports Program

Other:

Restitution to victim

Chemical Dependency Assessment and Treatment

Community Service

- I. I understand that by entering an admission to the charges listed in Section B of this agreement that I waive certain important and substantial Constitutional and statutory rights including:
1. My right to confront any and all witnesses against me.
  2. My right to have compulsory process for obtaining witnesses in my favor.
  3. My right to require the State of Ohio, at trial to prove my guilt beyond a reasonable doubt on each and every element of the offense(s) charged.
  4. That at no time, at trial or otherwise, can I be compelled to testify against myself and if I choose not to testify no one can comment on my failure to testify.
  5. My right to an appeal of any judgment of this Court should its rulings or verdict be against me and a lawyer to prosecute my appeal if my circumstances so warrant.

J. I further understand that the Court, upon acceptance of my plea, may proceed with judgment and sentence immediately if I waive a separate dispositional hearing and I *could* be sentenced to the following:

**6 Month *Minimum*\*\* Commitment to the Ohio Department Of Youth Services (ODYS)**

\*\*I further understand that any order of commitment to the Ohio Department of Youth Services is a *minimum* commitment. Therefore, there is a possibility of detention up to my 21<sup>st</sup> birthday.

K. I understand that commitment imposed by the Court can and may be ordered to run consecutively. I further understand that if I am eighteen (18) years of age at the time of the execution of this agreement or if I attain the age of eighteen (18) years old during my commitment, I may be incarcerated for all of or some of the ordered commitment at the Mahoning County Justice Center as opposed to the Mahoning County Juvenile Justice Center.

L. I understand that court costs, restitution, and other financial sanctions can be imposed.

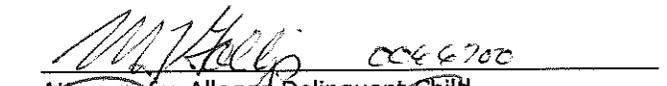
I NOW CERTIFY THAT THIS PLEA IS FREELY AND VOLUNTARILY ENTERED INTO AND WAS NOT IN ANY WAY COERCED OR INDUCED BY THREATS OR PROMISES OF ANY KIND OTHER THAN THOSE STATED IN PRE-TRIAL NEGOTIATIONS (analogous to Criminal Rule 11 negotiations) OF WHICH MY ATTORNEY HAS FULLY ADVISED ME AND STATED IN OPEN COURT. I FURTHER ACKNOWLEDGE THAT MY DECISION TO ENTER ADMISSIONS PLACES ME COMPLETELY AND WITHOUT RESERVATION OF ANY KIND, UPON THE MERCY OF THE COURT WITH RESPECT TO THE DISPOSITION OF MY CASE.

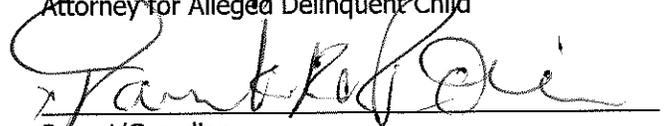
ALL OF THE ABOVE HAS BEEN FULLY EXPLAINED TO ME BY THE COURT AND COUNSEL.

I AM ABLE TO READ OR I HAVE HAD THIS READ TO ME AND FULLY UNDERSTAND THE FOREGOING, AND AT THIS TIME I WISH TO WAIVE MY RIGHTS VOLUNTARILY AND ENTER AN ADMISSION TO THIS/THESE CRIME/CRIMES.

  
Attorney for Plaintiff, State of Ohio

  
Alleged Delinquent Child

 0046700  
Attorney for Alleged Delinquent Child

  
Parent/Guardian

Date

5/21/13

FILE MAHONING COUNTY COURT OF COMMON PLEAS  
MAHONING COUNTY  
JUVENILE COURT

MAHONING COUNTY COURT OF COMMON PLEAS  
JUVENILE DIVISION  
JUDGE THERESA DELLICK  
300 East Scott Street  
Youngstown, Ohio 44505  
(330) 740-2244

2013 JUN 14 A 11:19

IN THE MATTER OF: CLERK OF COURTS

CASE NO: 2013 JA 00653 JUV

KALILO RAE KWON ROBINSON  
DOB: Redacted

MAGISTRATE'S DECISION  
**IN COMPUTER**

ALLEGED DELINQUENT CHILD

This matter came on for a Pre-Trial in Courtroom #5 on May 21, 2013 before Magistrate Richard N. White.

Present in Court were Subject Child with counsel, Attorney Michael L. Gollings; Tamika Robinson, mother; Mark Jones, Probation Officer and Anissa Modarelli, Assistant County Prosecutor.

The State of Ohio moves to amend the Complaint from the charge of Aggravated Riot (F4), in violation of ORC § 2917.02 to a charge of Attempted Aggravated Riot (F5), in violation of ORC § 2917.02/2923.02.

The Court reviews plea form with Subject Child. Subject Child acknowledges that he understands the nature of the charges against him, having reviewed the same with counsel. Subject Child further acknowledges that he understands that by his Admission to this charge he hereby waives his right to a) trial b) confront witnesses c) require the State of Ohio to prove its case beyond a reasonable doubt d) testify against himself e) appeal these proceedings, other than the commitment itself.

This Court having reviewed the charges with the Subject Child and his rights associated therewith finds that the Subject Child understood the nature of the charges against him, understood his rights in relation to those charges, and knowingly, intelligently and voluntarily waived the same and withdraws his former plea of Denial and entered a plea of Admission to the amended charge of Attempted Aggravated Riot (F5), in violation of ORC § 2917.02/2923.02. The Court finds Subject Child to be delinquent.

A Supplemental Ohio Youth Assessment System Report shall be completed.

**ORDERED**

1. The Motion to amend the Complaint from the charge of Aggravated Riot (F4), in violation of ORC § 2917.02, to a charge of Attempted Aggravated Riot (F5), in violation of ORC § 2917.02/2923.02 shall be sustained.
2. Matter shall be set for Disposition Hearing on **June 24, 2013 at 1:30 p.m.** before Magistrate Richard N. White.
3. A Supplemental Ohio Youth Assessment System Report shall be completed and the recommendation shall be submitted at least three (3) days prior to the above scheduled Disposition date.
4. The Magistrate finds that it is contrary to the welfare of the Subject Child to remain in the home and that removal from the home is in the Subject Child's best interest.
5. The Magistrate finds that reasonable efforts have been made to prevent the placement of the Subject Child.
6. Subject Child shall remain in the Court's Detention Facility for his safety and the safety of the community.

6/13/13

DATE

  
MAGISTRATE RICHARD N. WHITE  
(mb 6/12/13)

Pursuant to Juvenile Rule 40 and Civil Rule 53, as applicable, the parties shall have fourteen (14) days from the filing date of this Decision to file written objections with the Clerk of this Court. The filing of objections to the Magistrate's Decision shall operate as an automatic stay of execution of the Judgment until the Court disposes of those objections. Any such objections must be served upon all parties to this action, and a copy provided to the Court. A party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law in this Decision unless the party timely and specifically objects to that finding or conclusion as required by Juvenile Rule 40 and Civil Rule 53, as applicable. Any party may request the Magistrate to provide written findings of fact and conclusions of law. In accordance with Juvenile Rule 40, Civil Rule 52 and Civil Rule 53, as applicable, this request must be made within seven (7) days for the date of filing this Decision. This is a final, appealable Decision. A copy of the foregoing was mailed this 11 day of June, 2013 to: Subject Child and parent; Attorney Michael L. Gollings; Anissa Modarelli, Assistant County Prosecutor; Victim Witness Coordinator; Detention; Tim Novak; Austin Kennedy; Mark Jones, Probation Officer; Kim Wainwright and Wes Skeels, Chief Probation Officer.

For further information, please call: Case Manager Maria at 330.740.2244 x. 6413.

MAHONING COUNTY COURT OF COMMON PLEAS  
JUVENILE DIVISION  
THERESA DELLICK, JUDGE

300 East Scott Street  
Youngstown, Ohio 44505  
(330) 740-2278

FILED  
MAHONING COUNTY  
JUVENILE COURT  
2013 JUN 28 A 8:19

IN COURT

IN THE MATTER OF CLERK OF COURTS

CASE NO: 2013 JA 00653 JUV

KALILO RAE KWON ROBINSON  
DOB: Redacted

JOURNAL ENTRY ADOPTING  
MAGISTRATE'S DECISION

ALLEGED DELINQUENT CHILD

THE COURT HAVING INDEPENDENTLY REVIEWED THE MAGISTRATE'S DECISION OF 6-26-13, FINDING NO ERROR OF LAW OR OTHER DEFECT APPEARS ON THE FACE OF THE DECISION IN ACCORDANCE WITH JUVENILE RULE 40, AND CIVIL RULE 53, AS APPLICABLE, ADOPTS SAID DECISION AND ORDERS THE FOLLOWING AS SET FORTH BELOW. THE FILING OF TIMELY OBJECTIONS SHALL OPERATE AS AN AUTOMATIC STAY OF EXECUTION OF THIS JUDGMENT UNTIL SAID OBJECTIONS ARE DISPOSED OF BY THE COURT PURSUANT TO JUVENILE RULE 40 (D)(3).

This matter came on for Disposition Hearing in Courtroom #5 on June 24, 2013 before Magistrate Richard N. White.

Present in Court were Subject Child with counsel, Attorney Michael L. Gollings; Tamika Robinson, mother; Nicole Cline, Probation Officer for Mark Jones, Probation Officer and Anissa Modarelli, Assistant County Prosecutor.

Subject Child had previously entered a plea of Admission to the amended charge of Attempted Aggravated Riot (F5), in violation of ORC § 2917.02/2923.02 on May 21, 2013 and affirmed said plea in Court this date. The Court finds Subject Child to be delinquent.

The Court reviewed the Supplemental Ohio Youth Assessment System Report with counsel. The State of Ohio agrees to adopt the recommendation of the Supplemental Ohio Youth Assessment System Report.

Subject Child spoke on record, as did his counsel. The Court acknowledged said statements and proceeded with Disposition.

Subject Child stated that he deserved another chance.

The Magistrate told him that he does not deserve another chance. He has been uncooperative since he was released from the Community Corrections Facility. He has missed court appearances and lied in Court.

However, the Probation Officer requested that Subject Child be given one last chance in the Re-Entry Court Program.

**ORDERED**

1. Subject Child's previously entered plea of Admission to the amended charge of Attempted Aggravated Riot (F5), in violation of ORC § 2917.02/2923.02, is accepted and the Court finds Subject Child to be delinquent as defined in ORC § 2152.02(F).
2. To the amended charge of Attempted Aggravated Riot (F5), in violation of ORC § 2917.02/2923.02, Subject Child shall be committed to the legal custody of the Ohio Department of Youth Services for institutionalization in a secure facility for an indefinite term consisting of a minimum period of six (6) months and a maximum period not to exceed Subject Child's attainment of the age of twenty-one (21) years, which shall be suspended and held in abeyance. Subject Child shall be credited with forty-seven (47) days that the child has been held prior to this Entry.
3. If said commitment is imposed it shall be consecutive with the commitment in Case No. 2012 JA 01344 JUV.

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4. Pursuant to ORC § 2152.74, Subject Child shall submit to a D.N.A. specimen collection procedure.
5. Subject Child is returned on Probation to this Court. All prior terms and conditions of Probation remain in effect including, but not limited to, participation in Re-Entry Court and the Choices program.
6. Subject Child was advised that a violation of his Probation may result in the imposition of the original commitments held in abeyance.
7. Subject Child and parent/legal guardian are hereby notified of the right to seal and expunge the record of this proceeding pursuant to ORC § 2151.355 through ORC § 2151.358. A written notice detailing the sealing and expungement procedure is attached hereto as Exhibit A.
8. Subject Child released from Detention to the custody of his mother.
9. Subject Child placed on House Arrest until further Order of this Court.
10. The Magistrate finds that removal from the home is not in the Subject Child's best interest and remaining in the home is best for the Subject Child's welfare.
11. The Magistrate finds that return to the home is in the Subject Child's best interest.
12. Subject Child shall appear at Re-Entry Court on **June 27, 2013 at 3:30 p.m.** before Magistrate Richard N. White.
13. Subject Child shall be fined \$10.00 plus Court costs to be paid in thirty (30) days to the Clerk of this Court.

6-27-13  
DATE

  
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THERESA DELLICK, JUDGE

A copy of the foregoing was mailed this 28<sup>th</sup> day of June, 2013 to: Subject Child and parent; Attorney Michael L. Gollings; Anissa Modarelli, Assistant County Prosecutor; Victim Witness Coordinator; Bonnie Lohr; Detention Booth; Tim Novak; Nicole Cline, Probation Officer; Mark Jones, Probation Officer; Kim Wainwright and Wes Skeels, Chief Probation Officer. Jayne Leonard