

IN THE HURON MUNICIPAL COURT  
ERIE COUNTY, OHIO

<p>STATE OF OHIO <i>Plaintiff,</i> v. STACY HINNERS <i>Defendant.</i></p>	<p>Case No.: CRB1900126ABC Visiting Judge S. Dwight Osterud</p>
<p><b>DEFENDANT STACY HINNERS'S REPLY IN SUPPORT OF HER BENCH MEMORANDUM ON THE NEED TO ADVISE CERTAIN WITNESSES OF THEIR RIGHTS</b></p>	

The City's *ad hominem* response attacking Mrs. Hinnners for pointing out the need to offer Fifth and Sixth Amendment warnings to certain witnesses being investigated by the Ohio attorney general

- (1) fails to address the controlling Sixth District case law requiring such warnings. (Bench Mem. at 6.) In that respect, in its single-minded zeal to prosecute Mrs. Hinnners, the prosecution disregards the witnesses' constitutional rights, the Hinnnerses' rights as criminal complainants, and the Ohio attorney general's right not to have a municipal prosecutor interfere with its investigation.
- (2) fails to refute the existence of a related, Ohio attorney general criminal investigation ordered by the Common Pleas Court upon Erie County Prosecuting Attorney Kevin Baxter's application, after review of the written criminal complaints of Jason and Stacy Hinnners. (Exs. 1, 2, and 3 to Bench Mem.)
- (3) asks this Court to disregard a court-ordered Ohio attorney general investigation just because it was Jason and Stacy Hinnners who filed criminal complaints, while ignoring the fact that both the Erie County Prosecuting Attorney and the Erie County Court of

Common Pleas took those complaints seriously enough that, after many weeks of deliberation, they assigned the Ohio attorney general to investigate.

The prosecution's entire argument comes down simply to this: because of the complainants' identity, and because this prosecutor—handpicked by and financially beholden to a target of that very investigation—unilaterally insists the investigation thus must be illegitimate, this Court should just wish away the investigation the Common Pleas Court ordered, disregard witnesses' constitutional rights, and predetermine—before the Ohio attorney general investigates—that Stacy and Jason Hinnners are not crime victims. And yet this same prosecutor urging these judicial determinations admitted that *he* has no jurisdiction to consider the Hinnnerses' complaints. He is in no position to interfere with the attorney general's duly ordered investigation. Nor may he urge this Court to violate what the law requires for witnesses under investigation. And that is to advise the witnesses, before they testify, of their rights and ensure that any waivers are knowing, voluntary, and intelligent.

Mrs. Hinnners's counsel is informed by the Ohio attorney general's office that the Bureau of Criminal Investigation has now been assigned to investigate. Despite promising this Court in a call on Friday, October 3, 2019 that he would inquire and verify the investigation, the prosecutor has failed to disclose this. Perhaps the attorney general is denying him this information because that office knows about his conflicted zeal as an agent of Huron Law Director Aimee Lane, who is a subject or target of their investigation. Because Lane selected him to go after Stacy Hinnners, the prosecutor here will likely become, at a minimum, a witness in that investigation.

If the prosecutor is afraid that his witnesses, when advised of their rights, will invoke Fifth Amendment privilege and the right to counsel, then his problem is with the United States Constitution, not with Mrs. Hinnners or her counsel. And if the prosecutor fears a court filing documenting the need for this, then his problem is with a constitutionally mandated open-court

system, and with Prof.Cond.R. 3.6(b) (authorizing pretrial publicity of information filed in court “notwithstanding” any prejudice), not with Mrs. Hinners or her counsel. (The news of the Ohio attorney general’s appointment to investigate Huron officials was already publicly reported some time ago, so the prosecutor’s accusations on this subject are especially baffling. He has likely enhanced the prospect of news coverage by making such a big deal about the Court following the Constitution.)

This Court should especially note the prosecutor’s insistence that he control not only what pleadings Mrs. Hinners may file (Ex. 5 to Bench Mem.), but that he even attempted to interfere with the clerk of courts docketing a duly filed pleading by Mrs. Hinners’s counsel. (Email from Prosecutor M. O’Shea to Clerk of Courts Julie Ortega (Oct. 3, 2019), attached here.)

The prosecution’s desperation in his response extends to the foul blow of accusing the defense camp of the crime of “witness intimidation” merely for suggesting—based on controlling case law and the Common Pleas Court’s order—that witnesses receive proper advice of rights. And the prosecution’s mockery of the thought that a police officer might warn witnesses of their rights ignores *Miranda* and its case progeny requiring such warnings where testimony is being elicited in a custodial setting—which testimony in court is. The Hinnerses’ core interest—beyond their general reverence for the Constitution and the rule of law—is simple: if the Court violates these witnesses’ rights, then the Court will interfere with the Hinnerses’ opportunity as crime victims to see a successful investigation and prosecution. The attorney general’s office cannot use tainted testimony and might, as it has previously, decline to prosecute because of the difficulty in proving that the prosecution was not tainted by the failure to advise witnesses of their rights.

The prosecutor touts his offer to dismiss the charges against Mrs. Hinners, contingent on her agreement to state that probable cause existed to charge her. Under the legal standards for disruption of a lawful meeting and obstruction of *lawful* official business discussed thoroughly in the

motion to dismiss, such probable cause did not exist. There was no “*substantial*” disruption, which the caselaw requires to give disruption prohibitions constitutional force. And no lawful official business took place when officers acted as the former mayor’s personal bouncers when no crime was taking place and Mrs. Hinnners had every right to continue sitting quietly in a public meeting.

There is no legitimate *criminal prosecutorial* purpose in this prosecutor imposing such a precondition to exculpate city officials from potential civil liability. *See* Ohio Bd. of Prof. Cond. Op. 94-10 (barring prosecutor’s demand for agreement to dismiss criminal charges that lack merit in exchange for defendant’s release of civil claims). By insisting Mrs. Hinnners agree—falsely—that probable cause existed, the prosecutor is simply laying bare his improper role as a civil-liability mercenary for the law director who hired him. If the City has nothing to worry about because its officials did nothing wrong, then it would just dismiss the criminal charges without preconditions, and let any civil courts sort things out. But no, the prosecutor actually admits—in writing—that Mrs. Hinnners’s damages under these circumstances are—his word—“huge.”

Contrary to the prosecutor’s odd claim, Mrs. Hinnners is not asking the Court to “be involved... in making Miranda decisions for any witnesses in this case.” Rather, the Court should follow the required procedure and warn the identified witnesses of their Fifth Amendment privilege and right to counsel. Let them make the decision.

The Court should also hold the caselaw-required disqualification hearing for a prosecutor who is the appointed agent of a key witness. *See* Def.’s Mot. Disqual. This prosecutor’s cavalier and intemperate response to a simple bench memorandum reporting the irrefutable existence of an investigation and binding applicable Sixth District caselaw requiring advice of rights when such an investigation exists underscores the need to have a fairer—and actually independent—prosecutor. The appearances here alone warrant it. The visiting judge in this case recently appointed an independent prosecutor in a Cleveland prosecution—not leaving that to the law director of that city.

The Court should do the same here, because Huron's law director is a key witness and she should not be picking the prosecutor.

Respectfully submitted,

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#### **CERTIFICATE OF SERVICE**

I certify that on October 7, 2019, this document was served on opposing counsel as provided by Civ. R. 5(B)(2)(f).

/s/ Subodh Chandra

*One of the attorneys for Stacy Hinnars*



Subodh Chandra <subodh.chandra@chandraLaw.com>

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## State v. Hinners filing

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Michael J. O'Shea, ESQ. <michael@moshea.com>

Thu, Oct 3, 2019 at 8:13 AM

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Julie. I would ask that you not file the attached until after the judge has had a conference call with us today at 8:30 in the morning. Thank you.

Sent from Samsung Galaxy smartphone

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----- Original message -----

From: Subodh Chandra <[subodh.chandra@chandraLaw.com](mailto:subodh.chandra@chandraLaw.com)>

Date: 10/3/19 8:04 AM (GMT-05:00)

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Subject: State v. Hinners filing

Good morning.

Please file and return a file-stamped copy of the attached filing. Thank you.

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