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## STATEMENT OF FACTS

Woodrow Fox, Relator in this action, owns and maintains the bail bond business, “Woody Fox Bail Bonds, LLC”. While the Relator’s business is located in Franklin County, he operates a satellite office in Newark and routinely posts surety bonds for the courts in Licking County, including the Licking County Court of Common Pleas.

Respondents Judge David Branstool and Judge Thomas Marcelain are judges with the Licking County Court of Common Pleas. Part of their responsibilities as Licking County Common Pleas Court judges is to preside over the appearance of criminal defendants and set or modify bail in accordance to Crim.R. 46 and Rev. Code 2937.22. When bail is scheduled for a particular defendant, the judge, or the magistrate, generates an entry which is forwarded to the Licking County Clerk’s Office so that Respondent Gary Walters as Clerk, or one of his deputies, knows what the bail is and how it is to be satisfied to secure the defendant’s release.

Relator has alleged in his Complaint and his Merit Brief that the Respondent routinely sets appearance bonds that require a 10% cash deposit be posted to secure a defendant’s release as permitted under Crim.R. 46(A)(2), (hereinafter these bonds will be referred to as “appearance bonds”), and will not allow the Relator to tender a bail instrument in satisfaction. The Relator has further alleged that if Respondent has scheduled an appearance bond pursuant to Crim.R. 46(A)(2), the Clerk’s Office will not accept a bail instrument in lieu of the cash deposit. The Relator has not alleged that defendants have been unable to post their bonds when they are set under Crim.R. 46(A)(2), just that the Relator as bail bondsman cannot satisfy defendants’ bonds via a bail instrument.

At the time that Relator filed his Complaint, he relied on six cases, filed in 2011 and 2012, where Respondent Branstool had set an appearance bond under Crim.R. 46(A)(2) but refused to accept a bail instrument in lieu of the 10% cash deposit: *State of Ohio v. Jenny Markle*, 2012 CR 404; *State of Ohio v. Melissa Canterbury*, 2011 CR 73; *State of Ohio v. Sara Caw*, 2012 CR 106; *State of Ohio v. Abigail Hunt*, 2012 CR 396; *State of Ohio v. Brittani Hill*, 2012 CR 439; and *State of Ohio v. Ralph Lawyer*, 2012 CR 358. Respondent, in the Motion to Dismiss filed on behalf of Respondent Branstool and Walters on March 28, 2013, provided a procedural history for all six of the above named cases. Respondent relies on the histories previously provided and has attached a recitation of those histories to the Appendix.

In Relator's Merit Brief, he has added five additional cases, again filed in 2011 and 2012, where "appearance bonds" were set requiring a 10% cash deposit pursuant to Crim.R. 46(A)(2) and surety bonds were refused as satisfaction for the 10% cash deposit: *State of Ohio v. Carl Flanagan*, 2011 CR 166; *State of Ohio v. Andrew Miller*, 2012 CR 316; *State of Ohio v. Xavier Esposito*, 2011 CR 185; *State of Ohio v. Errol Anglada*, 2011 CR 100; *State of Ohio v. Chedale Lancaster*, 2011 CR 106. The procedural histories for these cases are recited below.

**A. Procedural Histories of the newly added cases**

Carl Flanagan was indicted for Aggravated Drug Possession, a felony of the 3rd degree, on April 11, 2011. He appeared on May 27, 2011 and his bond was set as a \$15,000 bond, cash or surety. Woody Fox Bail Bonds posted the bond on June 8, 2011. Upon the second continuance of Mr. Flanagan's jury trial, Judge Branstool modified Mr. Flanagan's bond on September 14, 2011 to add an appearance bond of \$10,000, which could be satisfied with a 10% cash deposit of \$1,000. While Mr. Flanagan's attorney had filed a motion to modify bond on

September 27, 2011, Meredith Hatfield posted the \$1,000 deposit to satisfy the appearance bond on Mr. Flanagan's behalf on September 30, 2011. Mr. Flanagan failed to appear for his change of plea hearing on October 19, 2011. Upon his failure to appear, Mr. Flanagan's bond was revoked and a warrant was issued for his arrest.

On October 24, 2011, Judge Branstool scheduled a bond forfeiture hearing for December 12, 2011, pursuant to Rev. Code 2937.36. The Licking County Sheriff's Office arrested Mr. Flanagan on December 7, 2011 and his bond hearing was set for December 9, 2011. At that time, Mr. Flanagan's bond was increased to \$50,000 to be satisfied as follows: his previous bond of \$25,000.00 (\$15,000 cash or surety and \$10,000 "appearance bond") was continued as posted, but the court added an additional bond of \$25,000 cash or surety that would need to be posted. On the same date, Woody Fox Bail Bonds moved to be released from the \$15,000 bond it had previously posted. The Court released Woody Fox Bail Bonds from its bond obligation on December 20, 2011 and increased Mr. Flanagan's bond to \$100,000 cash or surety. No individual or surety posted the \$100,000 bond after December 20, 2011 and Mr. Flanagan's subsequent request to modify bond was denied. Mr. Flanagan changed plea to his charge and was sentenced to serve 24 months in prison on March 16, 2012.

Andrew Miller was indicted on Theft, a felony of the 5<sup>th</sup> degree on June 15, 2012. Mr. Miller was arraigned on September 5, 2012 and his bond was set as an "OR" (Own Recognizance) bond. As he pled not guilty, his case was set for jury trial for November 28, 2012. Mr. Miller failed to appear for his trial and a warrant was issued for his arrest. He was arrested on December 10, 2012 and his bond was modified to an appearance bond of \$10,000, which could be satisfied with a 10% cash deposit. The record does not show a bond

modification or habeas action was ever filed. Mr. Miller changed plea to his charge and was sentenced to three years of community control on March 7, 2013.

Xavier Esposito was indicted on Theft, a felony of the 5<sup>th</sup> degree on April 15, 2011. He was arraigned on May 18, 2011 and his bond was set as \$10,000 cash or surety. On May 27, 2011, Mr. Esposito, through his attorney, moved for a bond reduction. Judge Branstool modified his bond to an appearance bond of \$2,000 on June 21, 2011, which was posted on the same day by Melissa Esposito. Mr. Esposito filed a Motion for Intervention In Lieu of Conviction on July 20, 2011, which was granted on September 6, 2011. Provided that Mr. Esposito complies with the terms of his intervention plan, his case will be dismissed upon completion of his three year probation.

Errol Anglada was indicted on Possession of Heroin, a felony of the 4<sup>th</sup> degree on March 11, 2011. His initial appearance was in Licking County Municipal Court, which set his bond as \$10,000 cash or surety. Mr. Anglada's bond was continued upon his appearance in Licking County Common Pleas Court. On April 13, 2011, the defendant petitioned the court for a reduction in his bond, which was granted. Mr. Anglada's new bond was an appearance bond \$5,000. Gabriel Anglada posted the bond on behalf of Mr. Anglada on May 2, 2011. Mr. Anglada changed plea to his charge on July 27, 2011 and was sentenced to community control.

Chedale Lancaster was indicted for Possession of Crack Cocaine, a felony of the 4<sup>th</sup> degree on March 11, 2011. Mr. Lancaster had his initial appearance in Licking County Municipal Court where his bond was set at \$50,000 cash or surety. AA Craven Bonds posted Mr. Lancaster's bond, per the Licking County Municipal Clerk's Office. This initial bond was continued when he was arraigned on March 24, 2011 in Licking County Common Pleas Court.



After a change in attorneys, Mr. Lancaster's jury trial was scheduled for August 31, 2011. He failed to appear for his jury trial which resulted in his bond being revoked and a warrant being issued for his arrest. Mr. Lancaster was arrested on September 19, 2011 and AA Craven Bonds was discharged from its obligations for the bond on September 20, 2011. A new bond hearing was scheduled and Mr. Lancaster's modified bond was \$100,000 cash or surety.

As Mr. Lancaster was unable to post his bond, he moved for a bond reduction through his attorney on October 31, 2011. The court granted Mr. Lancaster's request on November 10, 2011 and his bond was reduced to an appearance bond \$5,000.00, with the 10% cash deposit which was posted by L'Aysa Harris on November 18, 2011. Mr. Lancaster changed his plea to guilty on January 27, 2012 and was sentenced to three years of community control.

Pursuant to the Stipulation of Evidence filed by Relator on June 11, 2013, the additional five cases were all assigned to Respondent Branstool and either he or the magistrate set the above-referenced bonds. Respondent Walters' office followed Respondent Branstool's bond orders as written and did not accept a surety bond in lieu of the 10% cash deposit for bail issued under Crim.R. 46(A)(2). Respondent Marcelain did not set any of the bonds complained of and the Respondent renews its request that Judge Marcelain be dismissed from this action.

## ARGUMENT

### PROPOSITION OF LAW

- I. **RESPONDENTS HAVE NOT VIOLATED SECTION 9, ARTICLE I OF THE OHIO CONSTITUTION BY SCHEDULING APPEARANCE BONDS UNDER CRIM.R. 46 (A)(2) AND NOT ACCEPTING BAIL INSTRUMENTS IN SATISFACTION THEREOF..**

#### A. Bonds scheduled pursuant to Crim.R. 46(A)(2) only are not "cash only" bonds

The Relator and the Amici, the American Bail Coalition, have argued in their respective briefs that setting a bond pursuant to Crim. R. 46(A)(2) and not permitting it to be satisfied via a bail instrument is the equivalent of setting a “cash only” bond. “Cash only” bonds have previously been held to be unconstitutional as they violate Section 9, Article I of the Ohio Constitution for depriving defendants of their rights to “sufficient sureties”. *Smith v. Leis* (2005), 106 Ohio St.3d 309.

The Respondent disputes the Relator’s and Amici’s argument by relying on (1) Crim.46(A) as it permits judicial discretion in scheduling bond, (2) Crim.R. 46(A)(2) does not provide for an appearance bond to be satisfied with a bail instrument, and (3) *State ex rel. Williams v. Fankhauser*, 2006 WL 621697 (Ohio App. 11 Dist.) that held that “appearance bonds” are not “cash only” bonds:. The Respondent prays that this Court will adopt the rationale put forth in *Williams* to resolve this issue.

The Relator is overlooking that trial courts in Ohio have always had the discretion to schedule appearance bonds under Crim.R. 46, and not set them with any other bond types including surety bonds, since the rule’s adoption in 1973. The Supreme Court, as promulgators of the Rules of Procedure, have written and adopted the rules pursuant to their powers under Section 5(B), Article IV of the Ohio Constitution to **not** conflict with the law of Ohio.<sup>1</sup> As

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<sup>1</sup>Section 5(B), Article IV provides: “(B) The supreme court shall prescribe rules governing practice and procedure in all courts of the state, *which rules shall not abridge, enlarge, or modify any substantive right*. Proposed rules shall be filed by the court, not later than the fifteenth day of January, with the clerk of each house of the general assembly during a regular session thereof, and amendments to any such proposed rules may be so filed not later than the first day of May in that session. Such rules shall take effect on the following first day of July, unless prior to such day the general assembly adopts a concurrent resolution of disapproval. All laws in conflict with

Crim.R. 46(A)(2) does not provide for the posting of an appearance bond via a bail instrument, it is the Respondent's position that they are merely following the rule that was adopted by the Ohio Supreme Court and have not violated the Relator's "legal rights" in doing so.

**1. *State ex rel. Jones v. Hendon and State ex rel. Baker v. Troutman***

The Relator and Amici rely on *State ex rel. Jones, et al. v. Hendon* (1993), 66 Ohio St.3d 115, and *State ex rel. Baker v. Troutman* (1990), 50 Ohio St.3d 270 in support of their argument that a 10% cash deposit for an appearance bond is the equivalent of a "cash only" bond.

Respondents argue that the underlying facts in both cases do not support the Relator's and Amici's assertion and that both cases are easily distinguishable from the facts at bar.

In order to discuss both *Jones* and *Baker*, it is necessary to refer to Crim.R. 46 as it existed prior to the 1998 constitutional amendment of Section 9, Article I of the Ohio Constitution:

**(C)Preconviction Release in Serious Offense Cases.** Any person who is entitled to release under division (A) of this rule shall be released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judge or magistrate, unless the judge or magistrate determines that release will not ensure the appearance of the person as required. Where a judge or magistrate so determines, he or she, either in lieu or in addition to the preferred methods of release stated above, shall impose any of the following conditions of release that will reasonably ensure the appearance of the person for trial or, if no single condition ensures appearance, any combination of the following conditions:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise the person;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;

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such rules shall be of no further force or effect after such rules have taken effect." (emphasis added)

(3) *Require the execution of an appearance bond in a specified amount, and the deposit with the clerk of the court before which the proceeding is pending of either \$25.00 or a sum of money equal to ten percent of the amount of the bond, whichever is greater. Ninety percent of the deposit shall be returned upon the performance of the conditions of the appearance bond;*(emphasis added—section is precursor to current Crim.R. 46(A)(2))

(4) **Require the execution of a bail bond with sufficient solvent sureties, the execution of a bond secured by real estate in the county, or the deposit of cash or the securities allowed by law in lieu of bond.** (emphasis added—section challenged in both *Jones* and *Baker*)

(5) Impose any other constitutional condition considered reasonably necessary to ensure appearance.

While both cases referred to “cash” bonds that were set pursuant to Crim.R.46(C)(4), their outcomes turned on different issues. In *Jones*, the trial court had scheduled a \$50,000 “cash only” bond under Crim.R. 46(C)(4) pursuant to its policy of setting “cash only” bonds for felonies and the clerk’s office followed the court’s policy by refusing surety bonds to satisfy a cash bond. *Id.* at 116. Jones sued to force the Hamilton County Municipal Court to allow surety bonds to be posted for felonies and to force the Hamilton County Municipal Clerk to accept surety bonds on all “monetary bond” cases. *Id.*

In making its ruling, the Court relied on the plain meaning of Crim.R. 46(C)(4) as Section 9, Article I was silent as to the types of bonds that could be imposed. *Id.* at 118. The Court held that when a trial court sets a bond *under* Crim.R. 46(C)(4), which provided multiple options for a defendant to satisfy his/her bond, the court’s discretion was limited to “setting the amount of bond” and not the manner in which the bond was posted. *Id.* If a bond was set under

Crim.R.46(C)(4), the clerk's office was bound to accept any of the specified methods for posting bail under that section to satisfy bond.<sup>2</sup> *Id.*

The reliance on the language in Crim.R.46(C)(4) is the critical distinction between *Jones* and the case at bar. At the time *Jones* was decided, Section 9, Article I only stated that a bail had to be supported by sufficient sureties and that it could not be excessive. Since Crim.R. 46(C)(4) provided three different methods in satisfying a bond, there was no reason to limit a defendant to one method.

However, such a "choice" does not exist in Crim.R. 46(A)(2) as it is written specifically as an "appearance bond" where 90% of the monetary bond amount is satisfied based upon the defendant's signed promise to appear and compliance with any and all bail conditions, including an acknowledgment of his or her liability if he or she doesn't appear, and the remaining 10% of the bond is satisfied by a cash deposit. The rule, which was written and adopted by the Ohio Supreme Court in full consideration of it not conflicting with the Ohio Constitution, does not provide for the satisfaction of an appearance bond by bail instrument or any other means besides the signed acknowledgment by the defendant and 10% cash deposit. As *Jones* itself distinguished between a judge's authority in setting a bond under Crim.R. 46(C)(3) and what is provided under Crim.R. 46(C)(4), it is clear that the *Jones* court did not intend to include a bond set under Crim.R. 46(C)(3), the predecessor to Crim.R. 46(A)(2), as a "cash only" bond.

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<sup>2</sup> *Jones* specifically held: "We agree that Section 9, Article I is silent as to the forms which bail may take and that *Crim.R. 46(C)* vests discretion in the judge to impose any of the five conditions listed in *Crim.R. 46(C)(1) to (5)* when not satisfied that the preferred conditions of release will reasonably ensure the accused's appearance. However, Crim.R. 46(C)(4) constitutes but a single condition which the judge may impose—the condition of bond." (emphasis added) As "appearance bonds" existed under Crim.R. 46(C)(3), even the *Jones* court recognized that the trial court had the discretion to set an appearance bond without coupling it with a surety bond.

The facts in *Baker* turned on a different issue. In *Baker*, the trial court had issued a \$5,000 cash only bond for Baker. He obtained the services of a bail bondsman to post the cash bond. The bail bondsman was willing to post the cash bond until he was presented with a notice that he would have to sign, prior to his cash bond being accepted, signifying that he “consented” to having the cash bond applied to Baker’s fines and costs.<sup>3</sup> The bondsman didn’t sign the notice, so the clerk refused to accept his bond. *Id.* at 271.

Not only was this practice in contravention of Ohio Revised Code §2937.40, the notice itself had nothing to do with securing a defendant’s appearance. *Id.* at 272. The court stated: “Bail ensures appearance. Therefore, the conditions placed on it must relate appearance and the reason for forfeiture to nonappearance.” *Id.* Forcing a defendant, or a third party to sign a notice that requires a condition not related to securing a defendant’s appearance is an “excessive bail” thereby depriving a defendant to his right of “sufficient sureties.” *Id.*

The Relator asserts in his brief that bonds set under Crim.R. 46(A)(2) are “wholly unrelated to the appearance of the accused at the next court proceeding” and alleges that Respondent is only motivated by “revenue” by setting a bond under Crim.R.46(A)(2).<sup>4</sup> Relator’s

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<sup>3</sup> The form read: “NOTICE TO DEFENDANT/THIRD PARTY DEPOSITOR/SURETY: By signing this form and depositing cash or securities, you are expressly agreeing that the fines and cost of the above case, if not otherwise satisfied by the defendant, will be paid from the case or securities deposited. Do not sign this form or deposit cash/securities if you are not agreeing to this procedure.” *Id.* at 270.

<sup>4</sup> Respondent takes issue with the Relator’s characterization of why Respondent would set a bond under Crim.R. 46(A)(2) and not a cash, surety, or property bond under Crim.R. 46(A)(3). Relator listed several “advantages” that it had over the Respondent in bail bonding, but misstated the law in the process. Specifically, the Relator implied that Respondent was wrongfully rejecting credit cards under Crim.R. 46(G) (Each municipal or county court shall, by rule, establish a method whereby a person may make bail by use of a credit card.) Respondent wishes to clarify two things: (1) Respondent Clerk of Courts accepted payments by credit card until

brief at 12. However, the language on the forms titled, “Judgment Entry—Initial Appearance”, contradict that premise as it mirrors the language in Crim.R 46(A)(2).

Applying the analysis in *Baker*, the language on the Judgment Entry is directly related to securing an accused’s appearance. The accused is put on notice that if he/she fails to appear that not only could the cash deposit be forfeited but the defendant would also be liable for the balance of the bond (the remaining amount after the cash deposit is deducted.)<sup>5</sup> The language also advises the accused or depositor that upon the accused’s compliance with bond terms that he/she will receive 90% of the 10% bond deposit back. The refund of the deposit is wholly *related* to an accused complying with his/her bond conditions. As the conditions are related to appearance, then that bail is not “excessive” and is supported by “sufficient sureties” under Section 9, Article I and *Baker*.

**2. 1998 Amendment to Section 9, Article I of the Ohio Constitution, revised Crim.R. 46, and *Smith v. Leis*, 106 Ohio St.3d 309, and “sufficient sureties.”**

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March 2013 (which covers all of the cases cited by Relator in support of their Complaint) and (2) The Licking County Common Pleas Court is not subject to Crim.R. 46(G) as it is not a “county court.” “County courts” are defined as having “exclusive, original jurisdiction in civil actions for the recovery of sums not exceeding \$500, and original jurisdiction where the amount in controversy does not exceed \$15,000” and covers all territory not subject to a municipal court. 23 Ohio Jur. 3d Courts and Judges §321 “Common Pleas Courts” jurisdiction is not triggered unless the amount in controversy exceeds \$15,000. 23 Ohio Jur.3d Courts and Judges §251.

<sup>5</sup>This language is mirrored in the forms that a bond depositor must sign when posting the 10% cash deposit for an appearance bond. However, regardless of who posts the cash deposit bond, the defendant is always liable for the balance pursuant to the plain language on the entry, so no individual is required to act as an unlicensed surety in violation of Crim.R.46(J). Samples of the bond deposit forms are attached in the Appendix.

After *Jones* and *Baker* had been decided, the electorate approved an amendment to Section 9, Article I of the Ohio Constitution in 1998 to give courts more discretion in what factors to consider when setting bond. This version exists today and provides:

“All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and *except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or the community.* **Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail.** Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments indicted.

*The general assembly shall fix by law standards to determine whether a person who is charged with a felony where proof is evident or the presumption great poses a substantial risk or serious physical harm to any person or the community. Procedures for establishing the amount and conditions of bail shall be established pursuant to Article IV, Section 5(B) of the Constitution of the state of Ohio.”* *Smith v. Leis* (2005), 106 Ohio St.3d 309, 835 N.E. 2d 5, quoting the 1998 amendment of Section 9, Article I. (emphasis in *italics* added by *Smith* to represent the language added by the 1998 amendment; sentence in **bold** added by Respondent)

After Section 9, Article I was amended, the Ohio Supreme Court, in accordance with Section 5(B), Article IV amended Ohio Crim. R. 46 to incorporate the revised Section 9, Article I into the bail procedure to be followed by Ohio courts. Specifically, the re-configured Crim.R. 46(A) provides the following:

(A) **Types and amounts of bail.** Any person who is entitled to release shall be released upon *one or more* of the following types of bail in the amount set by the court:

- (1) The personal recognizance of the accused or an unsecured bail bond;
- (2) *A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;*
- (3) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.



(emphasis added)

Pursuant to Crim.R. 46(A), trial courts have the discretion to either set bond under (A)(1), (A)(2), or (A)(3) or a combination of those sections thereof. *Smith v. Leis*, 165 Ohio App.3d 581 (2006). The factors that a trial court can consider when ordering the “types, amounts, or conditions” of bail are contained under Crim.R. 46(C)(1) through (5). Trial courts also have the right to amend bail at any time by ordering different or additional amounts or types of bonds. Crim.R.46(E).

Upon the passage of the 1998 Amendment to Section 9, Article I, the issue of “cash only” bonds came to the forefront again in *Smith v. Leis* (2005), 106 Ohio St.3d 309. In *Smith*, the trial court had set a “\$1,000,000.00 straight cash only” bond under Crim.R.(46)(A)(3). Smith filed a habeas corpus petition to force the state to lower his bond to a “reasonable” amount. The respondent argued that with the 1998 constitutional amendment and rule change of Crim.R. 46 “cash only” bonds were now permitted. *Id.* 317, 321.

The court nixed this argument, but narrowly. In a 4-3 decision, the court held that the Ohio Constitution did not permit “cash only” bonds due to the “sufficient sureties” language contained within Section 9, Article I. *Id.* at 323. The court ruled that to require a defendant to post a *full* bond amount in cash would effectively bar that defendant access from a surety in contravention of Section 9, Article I. *Id.* at 321.

As “sufficient sureties” are not defined in the Section 9, Article I, the majority looked to how other jurisdictions defined the term and ultimately relied on the definition of a “surety” found in Black’s Law Dictionary, which provides that a surety is “(a) person who is primarily

liable for the payment of another's debt or the performance of another's obligation." *Id.* at 319 citing *Black's Law Dictionary* (8 Ed. 2004).

However, Justice Lundberg Stratton, in her dissent, lamented the majority's interpretation of "surety":

"In my view, the majority's use of Black's Law Dictionary to define the term "surety" too narrowly circumscribes the "sufficient sureties" clause, which, rather than specifically associating the bailing process with commercial bonding or some other secured transaction, merely provides the judge discretion in ensuring the that the accused will appear for trial. *Id.* at 325.

She also correctly surmised that this narrow reading of the "sufficient sureties" clause would empower bail bondsmen to believe that they are the only permissible "surety" under the Ohio Constitution: "To conclude the sufficient sureties clause extends an unfettered right to a commercial bail bondsmen (sic) contradicts the language of our constitution as well as historical reality." *Id.* at 326 citing *State v. Briggs* (Iowa 2003), 666 N.W.2d 573.

Unfortunately, that is what has occurred here. Relator has asserted that since Revised Code Chapter 3905 covers what a "surety" is and does, that should satisfy the "sufficient sureties" clause under Section 9, Article I. Not only is that is too narrow of an interpretation of what was intended by the "sufficient sureties" clause, the Relator is completely disregarding the goal of Section 9, Article I. The purpose of Section 9, Article I is to ensure that **defendants** are protected from excessive bail and have the means to post that bail.<sup>6</sup> It was **not** intended to protect the commercial surety business.

Respondent Tim Neal was correct in his Merit Brief to argue that the term "surety" cannot be so narrowly construed to negate its alternative meaning of the pledging of a "bond,

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<sup>6</sup> With the caveat that the defendant is not charged with a capital offense or presents a threat to public safety based on the charges and a judicial determination. Section 9, Article I

obligation, or security given for the fulfillment of an undertaking”. Merit Brief of Respondent Tim Neal at 5 filed March 28, 2013 in *State ex rel. Sylvester v. Tim Neal*, Case No. 12-1742, consolidated with the case at bar. That is the more historically correct interpretation of the word as to what was meant by “sufficient sureties” at the time the Ohio Constitution was enacted, and not Rev. Code Chapter 3905.<sup>7</sup>

**3. Crim.R. 46(A)(2) is an approved type of bond under *Smith v. Leis* and *State ex rel. Williams v. Fankhauser***

The *Smith* court acknowledged that, as the Supreme Court, part of its powers and duties were to be the promulgators of the Criminal Rules. The majority held that if it had intended to authorize a “cash only” bond when the Court amended Crim.R. 46, then it would have provided for a “cash only” bond type in Crim.R. 46. *Id.* at 321. The court then went onto say it never would have authorized a “cash only” bond in Crim.R. 46 since that would have violated the “sufficient sureties” clause. *Id.*

It is clear that the Court when formulating procedural rules for courts to follow considers constitutional implications when drafting and adopting those rules. If the Court considered an appearance bond under Crim.R. 46(A)(2) as a “cash only bond”, then it never would have adopted it pursuant to its reasoning in *Smith*. Instead, the *Smith* court ruled the only permissible types of bonds that a Court can consider and schedule are those that are listed under Crim.R.46(A): “Thus, even under amended Crim.R. 46(E), trial courts are not authorized to

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<sup>7</sup>*State v. Briggs (Iowa 2003)*, 666 N.W.2d 573 provided an historical overview of what “sureties” were upon passage of the Iowa Constitution, which also contains the “sufficient sureties” clause. Essentially, “surety” transformed from a person who was simply responsible for an accused during the pendency of his/her case to the requirement of monetary obligations for his/her release. *Id.* at 581-582.

impose a cash-only condition on a bail or bond; they are authorized to change the type of bond (i.e. those listed in *Crim.R. 46(A)*) at any time.” *Id.* (emphasis added.)

The analysis in *Smith* regarding bond types was relied upon in *State ex rel. Williams v. Fankhauser*, 2006 WL 621697 (Ohio App. 11 Dist.). Williams was charged with three counts of receiving stolen property, all 4<sup>th</sup> degree felonies. *Id.* at 1. The trial court set Williams’ bond as “\$25,000.00 Ten Percent.” *Id.* David Mayfield, a bail bondsman, attempted to post a surety bond for the full \$25,000 to gain Williams’ release. The Portage County Clerk’s office rejected the surety bond and advised Mr. Mayfield that they could only accept the cash deposit of \$2,500. *Id.* Williams filed a writ of mandamus to force the clerk’s office to accept the surety bond so he could be released. *Id.*

Williams argued that the clerk’s office, by refusing a surety bond for a 10% cash deposit, was imposing a “cash only” bond to secure his release which was in contravention of the Ohio Constitution. *Id.* The relator cited to both *Jones* and *Smith* in support of his position. *Id.* at 3 & 4. The *Williams* court rejected the relator’s argument by relying on *Crim.R. 46(A)* and the holding in *Smith*. Specifically, the *Williams* court ruled that since *Smith* reviewed the entirety of *Crim.R. 46(A)* and found that it does not provide for the imposition of “cash only” bonds, then *Smith* ruled by implication that *Crim.R.46(A)(2)* is not a “cash only bond”. *Id.* at 5. Therefore, the court held that, based on *Smith*, if bail issued under *Crim.R. (A)(2)* is not considered a “cash only bond” then it does not violate the “sufficient sureties” clause under Section 9, Article I of the Ohio Constitution. *Id.*

The *Williams* court further distinguished the facts in its case from *Jones* and *Smith* as the bail issued in the two latter cases were set pursuant to the former and current version of

Crim.R. 46(A)(3), which provided a defendant multiple options on posting a bond. *Id.* at 4. The court cited to the benefit of Crim.R. 46(A)(2), for only making a defendant, or someone on his/her behalf, responsible for posting a 10% cash deposit and not having to post the remaining 90% of the bond. *Id.*

Respondent Branstool is clearly within his legal right to set appearance bonds to secure the appearance of defendants under Crim.R.46(A)(2), Section 9, Article I of the Ohio Constitution, and *Smith v. Leis* and Respondent Walters is duty bound to follow the trial court's orders under Rev. Code §2303.26. As Crim.R. 46(A)(2) doesn't provide for the posting of bail instruments as satisfaction for the cash deposit, the Relator and Amici should be petitioning the Supreme Court to revise the rule instead of suing Respondents for following it.

**B. Respondents have not violated Section 9, Article I as the appearance bonds scheduled by the Respondent were not "excessive"**

The Relator has argued throughout his merit brief that the Respondent's scheduling of bail under Crim.R.46(A)(2) only is an "excessive" bond since it cannot be satisfied with the posting of a "bail instrument". ("But when the Common Pleas Court and the Clerk refuse to accept a surety bail bond and condition a person's release from jail upon the payment of cash only, they trample upon the rights afforded to Ohio citizens in Section 9, Article I of the Ohio Constitution..." See Relator's Brief at 11)

However, the appearance bonds issued in Licking County Common Pleas Court that were cited by the Relator in his Complaint and Brief do not support his argument that those bails were "excessive". Of the eleven cases cited, nine of the defendants bonded out when the appearance

bond was scheduled.<sup>8</sup> Of the remaining two cases where the defendants did not bond out, neither moved for a bond modification or filed a habeas corpus action to secure their release.<sup>9</sup> (“Habeas Corpus is the proper remedy to raise an excessive bail claim.” *Chari v. Vore* (2001), 91 Ohio St.3d 323 at 325)

Contrary to the Relator’s claims that the appearance bonds were “excessive”, four of the eleven defendants requested a bond modification of their bonds when they were being held by cash/surety bonds only as they were unable to post them. Upon modification, those defendants received appearance bonds instead and all were able to post their bonds.<sup>10</sup> While the Relator may claim that this practice is unfair to his business, Section 9, Article I of the Ohio Constitution provides a judge with discretion to set the “type, amount, and conditions of bail”. To schedule an appearance bond under Crim.R. 46(A)(2) is well within the Respondent’s purview as it is an approved bail type. *Smith* at 321. It is fair to say that appearance bonds can be a good alternative to cash/surety bonds and allow the defendant access to “sufficient sureties” as the defendants have the means to satisfy their bonds and secure their release.

In contrast, the defendants in *Jones*, *Baker*, *Smith*, and *Williams* could not post their bond based on either the amount or conditions required by the respective trial courts to secure their release. The sureties in the above referenced cases were suing for the right to post bond on behalf of the defendants because they couldn’t secure their release otherwise. In the

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<sup>8</sup>Melissa Canterbury, Abigail Hunt, Brittani Hill, Ralph Lawyer, Carl Flanagan, Xavier Esposito, Errol Anglada, and Chedale Lancaster posted their bond when an appearance bond was scheduled.

<sup>9</sup> Sara Caw and Andrew Miller are the two defendants who did not post their bond but did not seek any additional relief to do so either.

<sup>10</sup> Hunt, Esposito, Anglada, and Lancaster.

consolidated cases at bar, there is no claim that the defendants could not post their bond, just that the sureties were upset that they were losing “revenue” by not being able to post for them. Essentially, the Relator, and their related ilk, are creating a constitutional “issue” where one doesn’t exist as there is no conflict between Crim.R. 46(A)(2) and Section 9, Article I of the Ohio Constitution.

## **PROPOSITION OF LAW**

### **II. RELATOR IS NOT ENTITLED TO DAMAGES UNDER REV. CODE §2731.11**

#### **A. Relator’s claim for damages is barred by laches**

The Relator has requested that this Court award him “damages” under Rev. Code §2731.11 as he is claiming that he has been injured by Respondent’s adherence to Crim.R. 46(A)(2) (R.C. §2731.11 provides “If a judgment in a proceeding for a writ of mandamus is rendered for the plaintiff, the relator may recover the damages, which he has sustained, to be ascertained by the court or a jury, or a referee or a master, as in a civil action, and costs.”). Attorneys’ fees are not recoverable under Rev. Code §2731.11. *State ex rel. Crumbley v. Cleveland*, 185 Ohio App.3d 82 (Ohio App. 8<sup>th</sup> Dist)(2009) citing *State ex rel. Chapnick v. E. Cleveland City School Dist. Bd. of Edn.* (2001), 93 Ohio St.3d 449.

While Respondents dispute that they have acted “unlawfully”, the Relator’s claim for damages should be barred by laches as he has not asserted his claim for damages in a timely manner. (“Laches is an affirmative defense based upon a failure to assert a right for an unreasonable length of time.” *Id* at 92 citing *Connin v. Bailey* (1984), 15 Ohio St.3d 34). In order for the Respondent to successfully assert the affirmative defense of laches, the following elements are to be established: “ (1) delay in asserting a right, (2) absence of an excuse for the

delay, (3) actual or constructive knowledge of an injury or wrong, and (4) prejudice to the other party.” *Id.* citing *Kennedy v. Cleveland* (1984), 16 Ohio App.3d 399, 403, citing *Smith v. Smith* (1959), 168 Ohio St. 447.

Applying the doctrine of laches to the Relator’s case at bar, he is barred from receiving damages. Relator admits that he was aware that Respondent was scheduling bonds pursuant to Crim.R. 46(A)(2) and not accepting surety bonds for satisfaction since 2010. Relator also acknowledged that he was aware that his surety bonds were rejected during this time, thereby causing his “injury”. Relator’s Brief at 1, 15-16. Despite being aware of the Respondent’s procedure and its outcome for the last three years, Relator has failed to put forth any explanation or defense as to why he is just now raising this claim instead of addressing it when it first occurred. As Relator has failed to pursue his claim in a timely fashion, his request for damages should be barred due to laches.

**B. Relator is not prohibited from posting a 10% cash deposit with the Licking County Clerk of Courts office pursuant to Ohio Revised Code §3905.932(G)**

Even if the Court does not find Relator’s request for damages to be barred by laches, the Relator has not been injured as he is not precluded as a bail bondsman from posting the 10% cash deposit. The Relator dedicated a section of his brief to explaining how the commercial bail bond industry works and how it is regulated under Revised Code Chapter 3905. See Relator’s Brief at 2-3. Specifically, he posited that he is prohibited from posting cash to a clerk of courts to secure a defendant’s release pursuant to Revised Code §3905.932. *Id.* at 3. A bail “instrument” is defined as “a fiduciary form showing a dollar amount for a surety bail bond.”

However, there are three exceptions permitted under Rev. Code §3905.932(G) that allow a bail bondsman to use cash to secure a release of a defendant. Rev. Code §3905.932(G) states:

“A surety bail bond agent or insurer shall not do any of the following:



(G) Post anything without using a bail instrument representing an insurer, to have a **defendant released on bail** on all types of set court bail, **except** for the following:

(1) Cash court fees or cash reparation fees;

(2) **Ten per cent assignments;**

(3) **Other nonsurety court bonds, if the agent provides full written disclosure and receipts and retains copies of all documents and receipts for not less than three years.**

**(Emphasis added.)**

Based on the written context of “defendants released on bail”, subsection (G) must be referring to securing bail in criminal cases. Rev. Code §1.42 (“Words and phrases shall be read in context and construed according to the rules of grammar and common usage.” ) Pursuant to the exception, a bail bondsman can either post cash for a 10% deposit or a nonsurety bond, so long as he or she complies with the disclosure and record keeping requirements. Despite Relator’s assertions to the contrary, there is no conflict between his duties as a licensed bail bond agent and his ability to post a 10% cash deposit to secure a defendant’s release since it is permitted under the Rev. Code §3905.932(G)(2) and/or (3). Even the bail bondsman in *State ex rel. Sylvester v. Neal*, Case No. 2012-1742, when faced with a rejection of his bail instrument in that case, posted the 10% cash deposit of \$500 with the Wayne County Clerk to secure the defendant’s release. Respondent Tim Neal Merit Brief at 1. As the Relator always had the option of posting the 10% cash deposit required by an appearance bond set under Crim.R.46(A)(2), he has not been damaged by the Respondents’ refusal to accept a surety bond.

**C. Relators are not entitled to damages as Respondents have political immunity under Rev. Code §2744.03**

The Respondents are not liable for damages as they have political subdivision immunity under Rev. Code §2744.01 et al which provide that an individual working for a political subdivision has immunity for acts committed while performing the “governmental or proprietary function” of said office. Elected officials are considered “employees” of a political subdivision. Rev. Code §2744.01(B). The exceptions to this immunity would be (1) that the employee acted outside the scope of his/her official responsibilities; (2) the employee’s acts with a malicious purpose, in bad faith, or in a wanton or reckless manner; or (3) civil liability is expressly imposed upon the employee by a section of the Revised Code. (“Civil liability shall **not** be construed to exist under another section of the Revised Code merely because the section imposes a responsibility or mandatory duty upon an employee, because that section provides for a criminal penalty, because of a general authorization in that section that an employee may sue or be sued, or because the section uses the term “shall” in a provision pertaining to an employee.”) Rev. Code §2744.03(A)(6)(a)-(c).

If an employee to a political subdivision is asserting his/her immunity under the statute, courts only need to apply a two pronged analysis to see if that employee is entitled to immunity. After determining whether an employee was acting in a governmental or propriety function, then he/she can assert his/her immunity unless the other party can prove that one of the exceptions listed under §2744.03(A)(6) apply. *State ex rel. Conroy v. Williams*, 185 Ohio App.3d 69 at 75 (2009). Finally, judges are exempt from civil liability for actions taken in their official capacity. *Planey v. Mahoning County Court of Common Pleas*, 154 Ohio Misc. 2d 1 (2009).

Applying the above analysis to the facts in this case, the Respondents are not liable for damages. As Respondent Marcelain has not participated in the complained about activity, and Relator has failed to prove otherwise, he should be left out of the damages inquiry entirely.

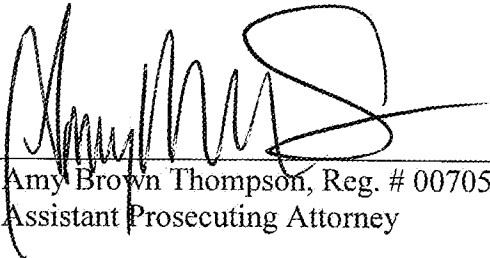
Respondent Branstool was engaged in the performance of his judicial duties when he set bonds under Crim.R. 46(A)(2) and has not acted outside the scope of his authority. He has not acted in a willful or wanton manner as he has followed Crim.R. 46(A)(2) in scheduling appearance bonds. Therefore, he is not subject to civil liability pursuant to the definition under Rev. Code §2744.03(A)(6) and has immunity as a judge pursuant to case law. Respondent Walters was acting within the scope of his office by following the bond orders set by Respondent Branstool or the magistrate under Rev. Code §2303.26 and none of the exceptions to his immunity apply under Rev. Code §2744.03(A)(6).

### CONCLUSION

Based on all of the foregoing, an appearance bond set under Crim.R. 46(A)(2) is not a cash only bond. As an “appearance bond” is not a “cash only” bond, it is not unconstitutional under Section 9, Article I of the Ohio Constitution. Pursuant to Crim.R. 46(A)(2), Respondent Branstool has the authority and right to set an appearance bond without accepting a surety bond. Further, if Respondent Branstool sets bail pursuant to Crim.R. 46(A)(2) only, then Respondent Walters, as a Licking County Clerk of Court is duty bound, under Ohio Rev. Code §2303.26, to follow the court’s order of not accepting a surety bond. Respondent Marcelain should be dismissed from this action as Relator has failed to introduce any evidence showing that he has refused a surety bond. Further, the Relator’s request for damages should be dismissed on the grounds that they are barred by laches. Even if the Court rejects the Respondents’ defense of laches, the Relator’s claim should still be dismissed as he has not been damaged since he could have posted a 10% cash deposit under Rev. Code §3905.932(G) and Respondents are immune under Ohio Rev. Code §2744.01, *et seq.*

Respectfully submitted,

KENNETH W. OSWALT  
LICKING COUNTY PROSECUTOR

By   
Amy Brown Thompson, Reg. # 0070511  
Assistant Prosecuting Attorney

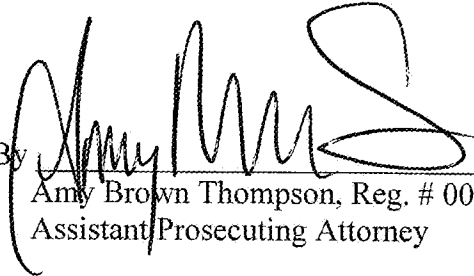
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing Merit Brief on has been served on the following parties by email and ordinary mail on this 30<sup>th</sup> day of July, 2013:

Kendra Carpenter  
*Sprinkle Carpenter, LLC*  
Counsel for Relator  
P.O. Box 14293  
Columbus, OH 43214

Gregory Barwell,  
Counsel of Record for Amici, American Bail Coalition  
Wesp/Barwell, LLC  
6400 Riverside Drive, Suite D  
Dublin, Ohio 43017

KENNETH W. OSWALT  
LICKING COUNTY PROSECUTOR

By   
Amy Brown Thompson, Reg. # 0070511  
Assistant Prosecuting Attorney

# **APPENDIX**

**Procedural Histories for:**

- 1) *State of Ohio v. Jenny Markle*, 2012 CR 404;
- 2) *State of Ohio v. Melissa Canterbury*, 2011 CR 73;
- 3) *State of Ohio v. Sara Caw*, 2012 CR 106;
- 4) *State of Ohio v. Abigail Hunt*, 2012 CR 396;
- 5) *State of Ohio v. Brittani Hill*, 2012 CR 439; and
- 6) *State of Ohio v. Ralph Lawyer*, 2012 CR 358.

Jenny Markle was charged Aggravated Drug Trafficking, a felony of the 4th degree, on August 3, 2012. She appeared on August 21, 2012 and her bond was set as a personal recognizance bond. On October 22, 2012, Ms. Markle was found to have violated a condition of her bond. As a result of the bond violation, the magistrate amended Ms. Markle's bond to an appearance bond of \$10,000 with a 10% cash deposit, and continued the conditions previously set. On October 24, 2012, Steve Burge Jr. posted the \$1,000 on Ms. Markle's behalf. Ms. Markle pled guilty to her charge on February 27, 2013.

Melissa Canterbury was indicted for Theft, a felony of the 3<sup>rd</sup> degree, on February 18, 2011. On March 8, 2011, Ms. Canterbury appeared on her charge and her bond was set as a "\$5,000 own recognizance reporting" bond with other conditions. This is a recognizance bond and no money has to be posted in order for the defendant to be released. Ms. Canterbury pled guilty to her charge on October 7, 2011. On July 31, 2012, Ms. Canterbury was charged with a probation violation and a bond hearing was scheduled for August 10, 2012. On that date, Ms. Canterbury's bond was set as an appearance bond of \$50,000 with conditions. On August 15, 2012, Derek Gavin-Smith posted bond on Ms. Canterbury's behalf. Ultimately, Ms. Canterbury's community control was revoked and she was conveyed to prison on November 6, 2012.

Sara Caw was indicted for Aggravated Possession of Drugs, a felony of the 5<sup>th</sup> degree, on March 2, 2012. She appeared on March 21, 2012 and her bond was set as a "\$5,000 own recognizance reporting", so she was released on her recognizances. Ms. Caw was accused of violating her bond and a hearing was held on October 24, 2012. At that time, her bond was amended to an appearance bond of \$10,000. On November 5, 2012, Ms. Caw pled guilty to her charges and was sentenced to the Licking County Jail.

Abigail Hunt was indicted for an Assault on a Peace Officer, a felony of the 4th degree, on July 27, 2012. She appeared on July 31, 2012 and her bond was set as an appearance bond of \$15,000 plus \$10,000 cash or surety. On August 10, 2012, Ms. Hunt, through her attorney, moved for a bond reduction which was granted by Respondent Judge Branstool. Her bond was reduced to an overall appearance bond of \$2,500. Ben Ameling posted that bond for her on August 22, 2012. Subsequent to that, she was accused of violating her bond and it was modified on October 2, 2012 to \$25,000 cash, surety, or 10% bond. Ms. Hunt pled on her charges on October 11, 2012 but was granted bond while her pre-sentence investigation was pending. On the same date, she moved for another bond modification as she apparently could not post the bond that was set on October 2, 2012. Her bond modification was granted and her bond was amended to an appearance bond of \$15,000 plus \$5,000 cash or surety on October 11, 2012. On October 18, 2012, her bond was posted by Jennifer Tanner-Smith and the Newark Bonding Company, respectively. Ms. Hunt eventually pled guilty and was sentenced to community control on November 15, 2012.

Brittani Hill was indicted for Aggravated Drug Trafficking, a felony of the 3rd degree and Tampering With Evidence, felony of the 3rd degree, on August 24, 2012. She appeared on her charges on August 28, 2012 and her bond was set as an appearance bond of \$10,000. Her



bond was posted the same day by Lucinda Mitchell. She pled guilty to her charges on November 20, 2012 and was sentenced to 4 ½ years of prison.

Ralph Lawyer was indicted for Domestic Violence, a felony of the 4th degree, on July 13, 2012. He appeared on July 17, 2012 and his bond was set as an appearance bond of \$10,000. On July 24, 2012, he appeared with his counsel and entered pleas of not guilty but did not move to amend his bond. On July 27, 2012, Doug Wellman posted Mr. Lawyer's bond. Mr. Lawyer pled guilty to his charges on November 1, 2012 and was sentenced to 60 days in jail and community control.

**ATTACHMENT I**

CERTIFIED ENTRIES REFERENCED BY RESPONDENTS REGARDING *STATE OF OHIO v. CARL FLANAGAN*  
CASE NO. 2011 CR 166

In the Court of Common Pleas, Licking County, Ohio

LICKING CO. OHIO

State of Ohio,

2011 MAY 27 PM 2:36

Plaintiff, GARY R. WALTERS  
CLERK

Case No. 11-CR-166

vs.

Carl Flanagan

Defendant.

**MAGISTRATE'S ORDER  
INITIAL APPEARANCE**

\*\*\*\*\*

On the 27<sup>th</sup> day of MAY, 2011, came the State of Ohio through the Licking County Prosecutor's Office, and also came the Defendant, personally, and with/without legal counsel, and this matter came on for an initial appearance.

- At the hearing, the Defendant requested the proceedings constitute as his/her arraignment. The Defendant waived a reading of, or in the alternative was read the indictment, and entered a plea(s) of Not Guilty to the charge(s) contained in the indictment. The Court accepted the plea(s).
- The Defendant is to appear for Arraignment on 6/7/11 at 8:30 a.m. at the Licking County Justice Center, 155 E. Main Street, Newark, Ohio 43055.
- Defendant is appearing pursuant to the summons issued in the above referenced matter.

For appearance of Defendant and pursuant to Crim. R. 46, the Court:

- Sets bond at \$5,000 own recognizance reporting.
- Sets bond at \_\_\_\_\_ appearance or 10%.
- Sets bond at \$15,000 cash or surety.
- Continues bond as set / posted through Municipal Court.
- Other \_\_\_\_\_.

With the added conditions:


- The Defendant shall report in person to the Adult Court Services Department, immediately following Arraignment and/or upon the posting of bond, and as they shall suggest.
- The Defendant shall not consume, or have in his possession, any alcohol or drugs, and shall submit to random urinalysis and breathalyzer testing.
- The Defendant shall submit to a LAPP evaluation.
- The Defendant shall have no contact, either directly or indirectly, with the alleged victim(s) in this matter and/or with any co-defendant(s).
- The Defendant shall not possess or have in his possession any firearm(s) and/or weapon(s).
- Other \_\_\_\_\_.


Judge  
Thomas M.  
Marcelain  
740-670-5781

Judge  
W. Dabid  
Wranstool  
740-670-5770

Courthouse  
Newark, Ohio  
43055

- cc:
- Licking County Prosecutor's Office
  - Adult Court Services Department
  - Defense Counsel: \_\_\_\_\_
  - Defendant Served Court

  
Magistrate Mattie Klein  
THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

JUN 5 2013  
Deputy   
Gary R. Walters  
Clerk of Courts

COURT COPY ACIC-FSCD-1



American Contractors Indemnity Company  
A member of HCC Surety Group  
601 S. Figueroa St., Suite 1600, Los Angeles, CA 90017-5721

Jan 06 2012

POWER OF ATTORNEY

ATT-2173079  
POWER NO.

KNOW ALL MEN BY THESE PRESENTS that the American Contractors Indemnity Company, a corporation duly organized and existing under the laws of the State of California and by the authority of the Resolution adopted by the Board of Directors by unanimous written consent on December 6, 1990 which said Resolution has not been amended or rescinded, does constitute and appoint and by these presents does make, constitute and appoint the named agent

COMMON COUNTY  
2011 JUN - 8 A 11 19  
execute, seal and deliver for and on its behalf and as its act and deed, as surety, a bail bond only. Authority of such Attorney-in-Fact is limited to appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearance.

This Power-of-Attorney is for use with Bail Bonds only. Not valid if used in connection with Immigration Bonds. This power void if altered or erased, void if used with other powers of this company or in combination with powers from any other surety company, void if used to furnish bail in excess of the stated amount of this Power, and can only be used once. The obligation of the company shall not exceed the sum of  
SHALL NOT EXCEED THE SUM OF FIFTEEN THOUSAND DOLLARS (\$15,000.00)

GARY P. WALTERS  
and provided this Power-of-Attorney is filed with the bond and retained as a part of the court records. The said Attorney-in-Fact is hereby authorized to insert in this Power-of-Attorney the name of the person on whose behalf this bond was given.

IN WITNESS WHEREOF, AMERICAN CONTRACTORS INDEMNITY COMPANY has caused these presents to be signed by its duly authorized officers, proper for the purpose and its corporate seal to be hereunto affixed this 8<sup>th</sup> of June 2011.

Bond Amount \$ 15,000<sup>00</sup>  
Defendant Carl E. Lanagan  
Charges Agg. Poss. Drugs  
Court / Date \_\_\_\_\_  
Case No. 11 CR 166  
City Newark State Ohio  
If rewrite, original No. \_\_\_\_\_  
Attorney-in-Fact Alan Ker  
(Name)



By: Adam S. Pessin  
Adam S. Pessin, President

By: Scott D. Anschultz  
Scott D. Anschultz, Vice-President

In the Court of Common Pleas, Licking County, Ohio  
CLERK COMMON PLEAS COURT LICKING CO. OHIO

2011 JUN 15 AM 9:05

State of Ohio,

Plaintiff, GARY R. WALTERS  
CLERK

vs.

Case No. 11-CR-1166

Carl Flanagan,

Defendant.

**JUDGMENT ENTRY  
ARRAIGNMENT**


On the 14<sup>th</sup> day of June, 2011, came the State of Ohio through The Licking County Prosecutor's Office, and also came the Defendant, personally, and with without legal counsel, and this matter came on for Arraignment of the Defendant. The Defendant waived a reading of, or in the alternative, was read the indictment, and entered a plea(s) of Not Guilty to the charge(s) contained in the indictment. The Court accepted the plea(s) of Not Guilty.

For appearance of Defendant, the Court:

- continues bond as previously set, including all previously established conditions.
- modifies bond to \$5,000 own recognizance reporting.
- modifies bond to \_\_\_\_\_ cash or surety.
- Other \_\_\_\_\_.

With the added conditions:

- All previously ordered conditions remain in full force and effect.
- The Defendant shall report in person to the Adult Court Services Department, immediately following Arraignment and/or upon the posting of bond, and as they shall suggest.
- The Defendant shall not consume, or have in his possession, any alcohol or drugs, and shall submit to random urinalysis and breathalyzer testing.
- The Defendant shall submit to a LAPP evaluation.
- The Defendant shall have no contact, either directly or indirectly, with the alleged victim(s) in this matter.
- Other \_\_\_\_\_.

  
Magistrate Mattie Klein  
Licking County Common Pleas Court

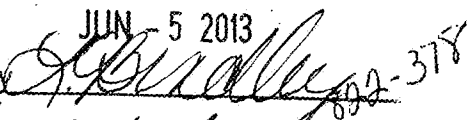
THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
Judge Marcelain / Judge Braselton  
Licking County Common Pleas Court  
LICKING COUNTY, OHIO

Judge  
Thomas M. Marcelain  
740-670-5777

Judge  
W. David Branstool  
740-670-5770

Courthouse  
Newark, OH 43055

cc: Licking County Prosecutor  
Court Services Department  
 Defense Counsel: S. Gussler  
 Defendant Served In Court

JUN 5 2013  
Deputy   
Gary R. Walters  
Clerk of Courts

IN THE LICKING COUNTY COMMON PLEAS COURT

703 E. COMMON PLEAS COURT  
LICKING CO., OHIO

2011 SEP 14 PM 2:35

State of Ohio,

Plaintiff,

-vs-

Carl G. Flanagan,

Defendant.

GARY R. WALTERS  
CLERK

: Case No. 11 CR 00166

: Judge W. David Branstool

JUDGMENT ENTRY

On September 14, 2011, this case came before the Court for a hearing on the State's Motion to Modify Bond. The Defendant appeared with his attorney, Stephanie Gussler. The State of Ohio was represented by Assistant Prosecuting Attorney Brian Waltz.

The Court considered the information available to it concerning the nature and circumstances of the offense charged; the weight of the evidence against the defendant from the investigative reports; the defendant's family ties to the Licking County community; the defendant's employment, financial resources, character and mental condition, the defendant's length of residence in the community; the defendant's record of convictions, record of appearances at court proceedings or of flight to avoid prosecution; and all other information the Court found relevant.

Therefore, pursuant to Crim. R. 46, the Court set bond as follows. The Defendant shall be released, subject to following conditions.

i. Type and Amount of Bail

- Bond is set in the amount of \$25,000.00, to be posted as follows:
  - The personal recognizance of the Defendant.
  - The execution of an unsecured bail bond in the amount of \$ \_\_\_\_\_
  - The execution of an appearance bond in the amount of \$10,000.00. The accused or bond depositor may deposit 10% of the full amount of bond directly with the Licking County Clerk of Courts. Upon breach, the accused/depositor will forfeit the amount deposited and will owe the balance on the full amount of bond. Upon compliance, 90% of the amount deposited shall be returned to the defendant or the bond depositor.
  - The Surety bond in the amount of \$15,000.00, continued as posted.

THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

JUN - 5 2013  
Deputy *[Signature]* / 765  
Gary R. Walters  
Clerk of Courts

II. Conditions of Bail

- The Defendant shall have no contact, directly or indirectly, with the following individuals: \_\_\_\_\_.
- The Defendant shall abstain from the consumption of any alcoholic beverage or illegal drugs and immediately submit to an alcohol or drug test at the request of any law enforcement officer or probation officer during the period he/she is subject to these conditions.
- The Defendant shall be placed on a condition of continuous alcohol use monitoring the terms of which shall be established supervised by the Probation Department. The Defendant shall bear all costs and fees associated with this condition.
- The Defendant is restricted to his or her residence, at all times, except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits, court appearances, court-ordered obligations; or other activities pre-approved by the supervising officer.
- Further, the Defendant's compliance with this provision shall be supervised by the Probation Department using an electronic monitoring device.
- The Defendant shall report twice per week to the Adult Court Services Department.
- All previously imposed conditions of bond are continued.

The Clerk shall serve a copy of this Judgment Entry upon all parties or counsel.

It is so ordered.

  
\_\_\_\_\_  
Judge W. David Branstool

Copies to:

Brian Waltz, Esq., Assistant Prosecuting Attorney  
20 South Second Street, 4th Floor, Newark, OH 43055

Will Champlin, Probation Officer  
Adult Court Services Department, Court House, Newark, OH 43055

Stephanie Gussler, Esq., Attorney for Defendant  
755 South High Street, Columbus, OH 43206

766



IN THE COURT OF COMMON PLEAS

LICKING COUNTY, OHIO

STATE OF OHIO

2011 SE. 10/11

CASE NO. 2011 CR 00166

OFFENSE: AGGRAVATED POSSESSION OF DRUGS (F3)

vs.

CARL G FLANAGAN

THE STATE OF OHIO, LICKING COUNTY, SS

ON September 30, 2011 THE DEFENDANT CARL G FLANAGAN AND MEREDITH HATFIELD PERSONALLY APPEARED BEFORE ME AND INDIVIDUALLY/JOINTLY AND ACKNOWLEDGED THAT CARL G FLANAGAN WOULD BE RESPONSIBLE TO OWE TO THE STATE OF OHIO THE SUM OF \$10,000 APPEARANCE BOND TO BE LEVIED ON PERSONAL PROPERTY AND REAL PROPERTY, IF HE/SHE SHOULD DEFAULT ON THE CONDITIONS OF THE BAIL AS SET FORTH BELOW:

- 1. THAT THE DEFENDANT SHALL PERSONALLY APPEAR BEFORE THE COMMON PLEAS COURT WHEN REQUIRED TO DO SO ON THE CHARGES FILED HEREIN.
- 2. REPORT TO ADULT COURT SERVICES *immediately upon release*
- 3. NO DRUGS OR ALCOHOL
- 4. URINALYSIS AND BREATH TESTING

- OTHER CONDITIONS
- LAPP EVALUATION
- NO CONTACT WITH ALLEDGED VICTIM
- NO OPERATING A MOTOR VEHICLE
- NO WEAPONS
- OTHER

*Def must report to ACS twice per week  
Jury Trial on 10/18/11 @ 9:00am*

*Meredith D Hatfield*  
 INDIVIDUAL POSTING BOND  
*2 Pleasant St*  
 ADDRESS  
*Newark OH 43055*  
 CITY STATE ZIP CODE  
*(740) 294-5317*  
 PHONE NUMBER

*Carl Flanagan*  
 DEFENDANT'S SIGNATURE  
*2 Pleasant*  
 ADDRESS  
*Newark Ohio 43055*  
 CITY STATE ZIP CODE  
*(740) 294-5317*  
 PHONE NUMBER

FILED  
GARY H. WALTERS  
CLERK

TAKEN AND ACKNOWLEDGED BEFORE ME UPON THE DATE ABOVE STATED AND CERTIFIED TRUE

GARY H. WALTERS  
BY *Gary H. Walters*  
DEPUTY CLERK

COMMON PLEAS COURT  
LICKING COUNTY, OHIO  
BY *Gary H. Walters*  
DEPUTY

COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

JUN - 5 2013  
Deputy *Gary H. Walters*  
Clerk of Courts



IN THE LICKING COUNTY COMMON PLEAS COURT

RECEIVED  
LICKING COUNTY  
OHIO

2011 OCT 19 11:37

State of Ohio, :  
Plaintiff, :  
-vs- : Case No. 11 CR 00166  
Carl G. Flanagan, : Judge W. David Branstool  
Defendant. :

GARY R. WALTERS  
CLERK


JUDGMENT ENTRY

This case came before the Court on October 19, 2011, for a Change of Plea hearing. Assistant Prosecuting Attorney, Tracy Van Winkle, appeared on behalf of the State of Ohio. Stephanie Gussler appeared on behalf of the defendant. The defendant failed to appear.

The Court hereby revokes the defendant's bond and orders a capias issued for the defendant's arrest.

Speedy trial time is tolled due to the act of the Defendant.

The Clerk of Courts is hereby ORDERED to serve a copy of the Judgment Entry upon all parties or counsel.

  
Judge W. David Branstool  
Common Pleas Court


Copies to:

Tracy Van Winkle, Esq., Assistant Prosecuting Attorney  
20 South Second Street, 4th Floor, Newark, OH 43055

Will Champlin, Probation Officer  
Adult Court Services Department, Court House, Newark, OH 43055

Stephanie Gussler, Esq., Attorney for Defendant  
755 South High Street, Columbus, OH 43206

THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

JUN - 5 2013  
Deputy   
Gary R. Walters  
Clerk of Courts

**In the Court of Common Pleas, Licking County, Ohio**

LICKING COUNTY  
COMMON PLEAS COURT

State of Ohio

Plaintiff, 2011 DEC -9 P 2:30 Case No: 11 CR 166

vs.

FILED  
GARY R. WALTERS  
CLERK

Carl G. Flanagan,

**MAGISTRATE'S ORDER**

Defendant.

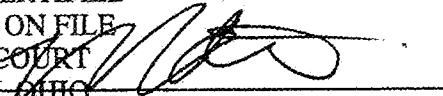
\*\*\*\*\*

On the 9<sup>th</sup> day of December, 2011, this matter came on for a bond hearing due to defendant's arrest on the capias. Defendant was present without counsel and Assistant Licking County Prosecutor Tracy Van Winkle was present on behalf of the State of Ohio. Pursuant to Crim. R. 46, bond is set in the amount of \$50,000, to be posted as follows:

1. A cash or surety bond in the amount of \$25,000;
2. The appearance bond in the amount of \$10,000, posted on September 30, 2011, is continued as posted;
3. The surety bond in the amount of \$15,000, posted on June 8, 2011, is continued as posted;
4. All other previously imposed conditions of bond are continued and remain in full force and effect.

The defendant shall report immediately to Adult Court Services upon posting of said bond and release from incarceration. The Clerk of Courts is hereby ORDERED to serve a copy of this Magistrate's Order upon all parties or counsel.

THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

  
Mattie Klein, Magistrate

JUN - 5 2013

Deputy 

Gary R. Walters  
Clerk of Courts

838/495

Judge  
Thomas M.  
Marcelain  
740-670-5781

Judge  
W. Habib  
Branstool  
740-670-5770

Courthouse  
Newark, Ohio  
43055

xc: Licking County Prosecutor's Office  
Walter Barnes, Adult Court Services Department  
Carl Flanagan, Defendant  
Licking County Justice Center

496

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

LICKING COUNTY  
COMMON PLEAS COURT



State of Ohio

Plaintiff,

2011 DEC -9 \* P 3:03

Case No.

2011-CR-166

vs.

FILED  
GARY R. WALTERS  
CLERK

JUDGE BRANSTOOL

Carl G. Flanagan

Defendant.

MOTION TO RELEASE SURETY

Now comes the surety, Woody Fox Bail Bonds, and respectfully moves the court for an order granting release from the bond for Carl G. Flanagan. On December 7, 2011, the defendant was apprehended by the surety and returned to the Licking County Jail. The defendant is now in the custody of the Licking County Sheriff.

Therefore, the surety respectfully request to be released from the bond.

Respectfully submitted,

Karen Held Phipps (0076282)  
Law Office of Karen Held Phipps, LLC  
Attorney for Defendant  
P.O. Box 20402  
Columbus, OH 43220-0402  
614-583-9165 Phone  
614-583-9171 Fax

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon the Office of the Licking County Prosecutor, via hand delivery to their mailbox in the office of the Clerk of Courts, on this 9th day of December, 2011.

THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
Karen Held Phipps (0076282)  
Attorney for Defendant  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

KAREN HELD PHIPPS  
283 SOUTH THIRD STREET  
COLUMBUS, OHIO  
43215

PHONE: (614) 583-9165  
FAX: (614) 583-9171

JUN - 5 2013  
Deputy   
Gary R. Walters  
Clerk of Courts

IN THE LICKING COUNTY COMMON PLEAS COURT

COMMON PLEAS COURT LICKING CO. OHIO

State of Ohio, :
Plaintiff, : Case No. 11 CR 00166
-vs- :
Carl G. Flanagan, : Judge W. David Branstool
Defendant. :

2011 DEC 20 PM 3:20
GARY R. WALTERS
CLERK

JUDGMENT ENTRY

The Court finds the Defendant is currently incarcerated on the pending charges. Accordingly, Woody Fox Bail Bonds is hereby discharged from all obligations and liability on the recognizance of the Defendant.

Bond is set in the amount of \$100,000.00, cash or surety. The Magistrate's Order filed December 9, 2011, is vacated.

IT IS SO ORDERED.

The Clerk of Courts shall deliver a copy of this Judgment Entry upon all parties and counsel of record.

[Handwritten signature of W. David Branstool]
W. David Branstool, Judge

Copies to:

Brian Waltz, Esq., Assistant Prosecuting Attorney
20 South Second Street, 4th Floor, Newark, OH 43055

Will Champlin, Probation Officer
Adult Court Services Department, Court House, Newark, OH 43055

Andrew T. Sanderson, Esq., Attorney for Defendant
21 West Church Street, Suite 201, Newark, OH 43055

Karen Held Phipps, Esq., Attorney for Woody Fox Bail Bonds
P.O. Box 20402, Columbus, OH 43220

Woody Fox Bail Bonds
27 South Park Place, Newark, OH 43055

THIS IS A TRUE and CERTIFIED COPY OF ORIGINAL ON FILE COMMON PLEAS COURT LICKING COUNTY, OHIO

JUN 5 2013
Deputy [Handwritten signature]
Gary R. Walters
Clerk of Courts

ATTACHMENT II

CERTIFIED ENTRIES REFERENCED BY RESPONDENTS REGARDING *STATE OF OHIO v. ANDREW MILLER*  
*CASE NO. 2012 CR 316*

IN THE COURT OF COMMON PLEAS, LICKING COUNTY, OHIO

CLERK OF COURT  
LICKING COUNTY, OHIO

JUN 5 2013

State of Ohio,

2012 SEP -5 PM 1:33

Deputy

*Chris Sharp*

Plaintiff, GARY R. WALTERS  
CLERK

*Amy R. Walters*  
Clerk of Courts

Case No. 12CR0316

vs.

Andrew Miller

Defendant.

**MAGISTRATE'S ORDER  
INITIAL APPEARANCE**

\*\*\*\*\*

On the 4<sup>th</sup> day of September, 2012, came the State of Ohio through the Licking County Prosecutor's Office, and also came the Defendant, personally, and with / without legal counsel, and this matter came on for initial appearance hearing.

- At the hearing, the Defendant requested the proceedings constitute as his/her arraignment. The Defendant waived a reading of, or in the alternative was read the indictment, and entered a plea(s) of Not Guilty to the charge(s) contained in the indictment. The Court accepted the plea(s).
- The Defendant is to appear for Arraignment on 9 / 11 / 12 at 8:30 a.m. at the Licking County Courthouse, 1 Courthouse Square, Newark, Ohio 43055. If you are incarcerated at the time of the hearing, appearance will be by video.
- Defendant is appearing pursuant to the summons issued in the above referenced matter.

For appearance of Defendant, the Court:

- Sets bond at \$5,000 own recognizance reporting.
- Sets bond at \_\_\_\_\_ appearance or 10%.
- Sets bond at \_\_\_\_\_ cash or surety.
- Continues bond as set / posted through Municipal Court.
- Other \_\_\_\_\_.

With the added conditions:

- The Defendant shall report in person to the Adult Court Services Department, immediately following Arraignment and/or upon the posting of bond, and as they shall suggest.
- The Defendant shall not consume, or have in his possession, any alcohol or drugs, and shall submit to random urinalysis and breathalyzer testing.
- The Defendant shall submit to a LAPP evaluation.
- The Defendant shall have no contact, either directly or indirectly, with the alleged victim(s) in this matter and/or with any co-defendant(s).
- The Defendant shall not possess or have in his possession any firearm(s) and/or weapon(s).
- Other \_\_\_\_\_.

Judge  
Thomas M. Marcelain  
740-670-5777

*[Signature]*  
Magistrate Mattie Klein

Judge  
W. David Branstool  
740-670-5770

cc: Licking County Prosecutor's Office  
Adult Court Services Department  
 Defense Counsel: \_\_\_\_\_  
 Defendant Served Court

Courthouse  
Newark, OH 43055

*AJZ  
327*

IN THE COURT OF COMMON PLEAS, LICKING COUNTY, OHIO

LICKING COUNTY  
COMMON PLEAS COURT

State of Ohio

2012 DEC 11 A 11: 07 Case No: 2012 CR 0316  
Plaintiff,

vs.

FILED  
GARY B. WALTERS  
CLERK

Andrew C. Miller,

MAGISTRATE'S ORDER

Defendant.

\*\*\*\*\*

On the 11<sup>th</sup> day of December, 2012, this matter came on for a pretrial bond violation hearing. Defendant was present with counsel and Assistant Licking County Prosecutor Chris Reamer was present on behalf of the State of Ohio. The Adult Court Services Department provided this Court with credible information that the defendant has violated his terms and conditions of bond. Based upon the information provided at the hearing, the Court hereby sets the defendant's bond at \$10,000 appearance or 10%, with conditions continued as previously set. The defendant shall report to Adult Court Services upon posting of said bond and release from incarceration. In addition, the defendant shall submit to a drug and alcohol assessment.

The Clerk of Courts is hereby ORDERED to serve a copy of this Magistrate's Order upon all parties or counsel.



Mattie Klein, Magistrate

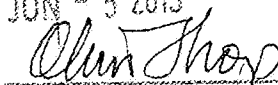
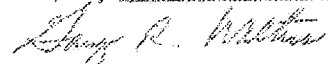
Judge  
Thomas M. Marcelain  
740-670-5777

Judge  
W. David Branstool  
740-670-5770

Courthouse  
Newark, OH 43055

xc: Licking County Prosecutor's Office  
Walter Barnes, Adult Court Services Department  
Beth Arrick, Esq., Attorney for Defendant

THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

JUN - 5 2013  
Deputy   
  
Clerk of Courts



**ATTACHMENT III**

CERTIFIED ENTRIES REFERENCED BY RESPONDENTS REGARDING *STATE OF OHIO v. XAVIER ESPOSITO*  
*CASE NO. 2011 CR 185*

# In the Court of Common Pleas, Licking County, Ohio

MAY 18 PM 3:37

JUN - 5 2013

State of Ohio,

Plaintiff, **JOHN R. WALTERS**  
CLERK

Deputy *John Sharp*

*John R. Walters*  
Clerk of Courts

vs.

Case No. 11cc0185

Xavier Esposito

Defendant.

### MAGISTRATE'S ORDER INITIAL APPEARANCE

\*\*\*\*\*

On the 18th day of MAY, 2011, came the State of Ohio through the Licking County Prosecutor's Office, and also came the Defendant, personally, and with ~~(without)~~ legal counsel, and this matter came on for an initial appearance.

At the hearing, the Defendant requested the proceedings constitute as his/her arraignment. The Defendant waived a reading of, or in the alternative was read the indictment, and entered a plea(s) of Not Guilty to the charge(s) contained in the indictment. The Court accepted the plea(s).

The Defendant is to appear for Arraignment on 05 / 24 / 11 at 8:30 a.m. at the Licking County Justice Center, 155 E. Main Street, Newark, Ohio 43055.

Defendant is appearing pursuant to the summons issued in the above referenced matter.

For appearance of Defendant and pursuant to Crim. R. 46, the Court:

- Sets bond at \$5,000 own recognizance reporting.
- Sets bond at \_\_\_\_\_ appearance or 10%.
- Sets bond at \$10,000 cash or surety.
- Continues bond as set / posted through Municipal Court.
- Other \_\_\_\_\_.

With the added conditions:

- The Defendant shall report in person to the Adult Court Services Department, immediately following Arraignment and/or upon the posting of bond, and as they shall suggest.
- The Defendant shall not consume, or have in his possession, any alcohol or drugs, and shall submit to random urinalysis and breathalyzer testing.
- The Defendant shall submit to a LAPP evaluation.
- The Defendant shall have no contact, either directly or indirectly, with the alleged victim(s) in this matter and/or with any co-defendant(s).
- The Defendant shall not possess or have in his possession any firearm(s) and/or weapon(s).
- Other \_\_\_\_\_.

*Mattie Klein*  
Magistrate Mattie Klein

cc: Licking County Prosecutor's Office  
Adult Court Services Department  
 Defense Counsel: \_\_\_\_\_  
 Defendant Served Court

Judge  
Thomas M.  
Marcelain  
740-670-5781

Judge  
W. Wabib  
Wanstool  
740-670-5770

Courthouse  
Newark, Ohio  
43055

820-21

COURT OF COMMON PLEAS  
LICKING COUNTY, OHIO  
IN THE LICKING COUNTY, COURT OF COMMON PLEAS  
2011 MAY 27 PM 9:21  
NEWARK, OHIO

STATE OF OHIO, GARY R. WALTERS  
CLERK

CASE NO. 11 CR 185

Plaintiff,

JUDGE BRANSTOOL

vs.,

XAVIER ESPOSITO

Defendant.

THIS IS A TRUE AND CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

JUN - 5 2013

Deputy

**DEFENDANT'S MOTION TO RECONSIDER BOND**  
**AND REQUEST FOR IMMEDIATE HEARING**

Now comes the Defendant, Xavier Esposito, by and through counsel, to respectfully move this honorable court to reconsider the current bond set in this case. A memorandum in support follows and is attached hereto.

Respectfully submitted,


**DARRIN C LEIST (0070533)**  
Attorney for Defendant  
130 E. Chestnut Street, Suite 402  
Columbus, Ohio 43215  
(614) 222-1000  
(614) 228-3593 facsimile

**MEMORANDUM IN SUPPORT**

The Defendant in this case has pled not guilty to one count of theft a felony of the fifth degree. On May 18, 2011 defendant's bond was set at \$10,000.00 cash or surety at his initial appearance. The defendant was arraigned on May 24, 2011 without any modification of the bond by Magistrate Klein.


The defendant now renews his request for a reduction in bond where the continuation of the current bond amount is excessive in the absence of any previous felony record; the crimes for which the defendant has been charged is a non-violent offense low grade felony; a reduction of bond would not otherwise diminish the seriousness of the offense; and, the defendant maintains an address within this court's jurisdiction, to wit: 429 Chateaugay Dr., Pataskala, Ohio 43062.

Wherefore, for the foregoing reasons and in the interest of justice, the defendant respectfully moves this court to reconsider his current bond and modify the same to a recognizance bond at the first opportunity for hearing.

  
DARRIN C. LEIST (0070533)  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true copy of the foregoing document was duly served upon the Asst. Licking County Prosecutor, Tracy F. Van Winkle, 20 S 2nd St., 4<sup>th</sup> Floor, Newark, OH 43055-5663, by regular U.S. Mail, postage pre-paid and facsimile on this 27<sup>th</sup> day of May, 2010.

  
DARRIN C. LEIST (0070533)  
Attorney for Defendant

IN THE LICKING COUNTY COMMON PLEAS COURT

THIS IS A TRUE & CERTIFIED COPY OF ORIGINAL ON FILE LICKING COUNTY, OHIO

State of Ohio,

2011 JUN 21 A 10:02

JUN - 5 2013

Plaintiff,

Deputy *Alan Shroy*  
*Shroy R. Walther*  
Clerk of Courts

-vs-

FILED  
GARY R. WALTER  
CLERK

Case No. 11 CR 00185

Xavier A. Esposito,

: Judge W. David Branstool

Defendant.

JUDGMENT ENTRY

On June 21, 2011, this case came before the Court for a hearing on the Defendant's Motion to Modify Bond. The Defendant appeared with attorney, Darrin Leist. The State of Ohio was represented by Assistant Prosecuting Attorney Brian Waltz.

The Court considered the information available to it concerning the nature and circumstances of the offense charged; the weight of the evidence against the defendant from the investigative reports; the defendant's family ties to the Licking County community; the defendant's employment, financial resources, character and mental condition, the defendant's length of residence in the community; the defendant's record of convictions, record of appearances at court proceedings or of flight to avoid prosecution; and all other information the Court found relevant.

Therefore, pursuant to Crim. R. 46, the Court set bond as follows. The Defendant shall be released, subject to following conditions.

I. Type and Amount of Bail

- The personal recognizance of the Defendant.
- The execution of an unsecured bail bond in the amount of \$\_\_\_\_\_.
- The execution of an appearance bond in the amount of \$2,000.00. The accused or bond depositor may deposit 10% of the full amount of bond directly with the Licking County Clerk of Courts. Upon breach, the accused/depositor will forfeit the amount deposited and will owe the balance on the full amount of bond. Upon compliance, 90% of the amount deposited shall be returned to the defendant or the bond depositor.
- The execution of a Cash or Surety bond in the amount of \$\_\_\_\_\_.

822/905

II. Conditions of Bail

- The Defendant shall have no contact, directly or indirectly, with the following individuals: \_\_\_\_\_.
- The Defendant shall abstain from the consumption of any alcoholic beverage or illegal drugs and immediately submit to an alcohol or drug test at the request of any law enforcement officer or probation officer during the period he/she is subject to these conditions.
- The Defendant shall be placed on a condition of continuous alcohol use monitoring the terms of which shall be established supervised by the Probation Department. The Defendant shall bear all costs and fees associated with this condition.
- The Defendant is restricted to his or her residence, at all times, except for employment; education; religious services; medical, substance abuse or mental health treatment; attorney visits, court appearances, court-ordered obligations; or other activities pre-approved by the supervising officer.
- The Defendant shall report once per week to the Adult Court Services Department.
- \_\_\_\_\_

The Clerk shall serve a copy of this Judgment Entry upon all parties or counsel.

It is so ordered.

  
\_\_\_\_\_  
Judge W. David Branstool

Copies to:

Brian Waltz, Esq., Assistant Prosecuting Attorney  
20 South Second Street, 4th Floor, Newark, OH 43055

Lisa Bates, Probation Officer  
Adult Court Services Department, Court House, Newark, OH 43055

Darrin C. Leist, Esq., Attorney for Defendant  
130 East Chestnut Street, Suite 402, Columbus, OH 43215

906

IN THE COURT OF COMMON PLEAS

LICKING COUNTY, OHIO

THIS IS A TRUE & VERIFIED COPY OF ORIGINAL ON FILE COMMON PLEAS COURT LICKING COUNTY, OHIO

STATE OF OHIO

LICKING COUNTY COMMON PLEAS COURT CASE NO. 2011 CR 00185

vs.

OFFENSE: THEFT (FS)

JUN 21 10 03

XAVIER A ESPOSITO

JUN 5 2011

THE STATE OF OHIO, LICKING COUNTY

FILED GARY R. WALTERS CLERK

Deputy

Chin Shep

ON June 21, 2011 THE DEFENDANT XAVIER A ESPOSITO AND MELISSA ESPOSITO PERSONALLY APPEARED BEFORE ME AND INDIVIDUALLY/JOINTLY AND ACKNOWLEDGED THAT XAVIER A ESPOSITO WOULD BE RESPONSIBLE TO OWE TO THE STATE OF OHIO THE SUM OF \$2,000 APPEARANCE BOND TO BE LEVIED ON PERSONAL PROPERTY AND REAL PROPERTY, IF HE/SHE SHOULD DEFAULT ON THE CONDITIONS OF THE BAIL AS SET FORTH BELOW:

- 1. THAT THE DEFENDANT SHALL PERSONALLY APPEAR BEFORE THE COMMON PLEAS COURT WHEN REQUIRED TO DO SO ON THE CHARGES FILED HEREIN.
- 2. REPORT TO ADULT COURT SERVICES *immediately upon release*
- 3. NO DRUGS OR ALCOHOL
- 4. URINALYSIS AND BREATH TESTING *copy to inmate 6-21-11 /Am*

- OTHER CONDITIONS
- LAPP EVALUATION
- NO CONTACT WITH ALLEDGED VICTIM
- NO OPERATING A MOTOR VEHICLE
- NO WEAPONS
- OTHER

*July Trial on 7/21/11 @ 9:00am*  
*x Off is restricted to residence with some conditions (see entry)*

Melissa Esposito  
INDIVIDUAL POSTING BOND

[Signature]  
DEFENDANT'S SIGNATURE

429 Croteauway  
ADDRESS

429 Croteauway apt  
ADDRESS

Patastala Oh 43062  
CITY STATE ZIP CODE

Patastala apt 43062  
CITY STATE ZIP CODE

623-910-1264  
PHONE NUMBER

6239101264  
PHONE NUMBER

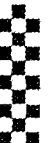
TAKEN AND ACKNOWLEDGED BEFORE ME UPON THE DATE ABOVE-STATED.

GARY R. WALTERS  
BY [Signature]  
DEPUTY CLERK

GARY R. WALTERS  
DEPUTY CLERK  
[Signature]

2011 JUN 21 PM 8:36

CLERK COMMON PLEAS COURT LICKING CO. OHIO



ATTACHMENT IV

CERTIFIED ENTRIES REFERENCED BY RESPONDENTS REGARDING *STATE OF OHIO v. ERROL ANGLADA*  
*CASE NO. 2011 CR 100*



IN THE LICKING COUNTY COMMON PLEAS COURT

State of Ohio

CLERK OF COMMON PLEAS CT. LICKING COUNTY, OHIO GARY W. BALTERS, CLERK

JUN - 5 2013

Deputy Cheryl Shorp  
John R. Walters  
Clerk of Court

Plaintiff,

2011 MAR 27 A 11:19  
Case No. 11 - CR 100

-vs-

Enroll Anglada FILED

Defendant.

JUDGMENT ENTRY - ARRAIGNMENT

The Defendant appeared for arraignment on 3-23-11, 2011.  
The State of Ohio was represented by K. O. Arnold from the Licking County  
Prosecutor's Office. The Defendant appeared with counsel, Stephen Wolfe.

The Defendant acknowledged receiving a copy of the indictment. In accordance with  
Crim. R. 10, the indictment was read to the Defendant, or in the alternative, the Defendant  
waived a reading of the indictment. The Defendant entered pleas of not guilty to all counts  
contained in the indictment.

Pursuant to Crim. R. 46, the Defendant shall be released on the following bond(s) and  
conditions:

I. Amount and Type of Bail

- Personal recognizance of the Defendant.
- The execution of an unsecured bail bond in the amount of \$ \_\_\_\_\_.
- The execution of an appearance bond in the amount of \$ \_\_\_\_\_. The accused or bond depositor may deposit 10% of the full amount of bond directly with the Licking County Common Pleas Clerk of Courts. Upon breach, the accused/depositor will forfeit the amount deposited and will owe the balance on the full amount of bond. Upon compliance, 90% of the amount deposited shall be returned to the defendant or the bond depositor.
- The execution of a Cash or Surety bond in the amount of \$ \_\_\_\_\_.
- Bond is continued as posted in Municipal Court, previously set.

II. Conditions

- The Defendant shall have no contact, directly or indirectly, with the following individuals: \_\_\_\_\_
- The Defendant shall abstain from the consumption of alcohol or any controlled substance without a prescription and immediately submit to alcohol or drug testing.
- Defendant shall report to Adult Court Services immediately following court or upon release.
- \_\_\_\_\_

It is so ordered.

W. David Branstool  
Judge W. David Branstool

Copies:

- Licking County Prosecutor
- Defense Counsel
- Defendant served in Court

814  
535

**IN THE LICKING COUNTY COMMON PLEAS COURT**

2011 APR 13 PM 1:49

State of Ohio, :  
Plaintiff, :  
-vs- :  
Errol L. Anglada, :  
Defendant. :

GARY R. WALTERS  
CLERK

THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

: Case No. 11 CR 00100  
: Judge W. David Branstool

JUN - 5 2013

Deputy

**JUDGMENT ENTRY**

On April 12, 2011, this case came before the Court for a hearing on the Defendant's Motion to Modify Bond. The Defendant appeared with attorney Cecily Ferris. The State of Ohio was represented by Assistant Prosecuting Attorney Tracy Van Winkle.

The Court considered the information available to it concerning the nature and circumstances of the offense charged; the weight of the evidence against the defendant from the investigative reports; the defendant's family ties to the Licking County community; the defendant's employment, financial resources, character and mental condition, the defendant's length of residence in the community; the defendant's record of convictions, record of appearances at court proceedings or of flight to avoid prosecution; and all other information the Court found relevant.

Therefore, pursuant to Crim. R. 46, the Court set bond as follows. The Defendant shall be released, subject to following conditions.

I. Type and Amount of Bail

- The personal recognizance of the Defendant.
- The execution of an unsecured bail bond in the amount of \$\_\_\_\_\_.
- The execution of an appearance bond in the amount of \$5,000.00. The accused or bond depositor may deposit 10% of the full amount of bond directly with the Licking County Clerk of Courts. Upon breach, the accused/depositor will forfeit the amount deposited and will owe the balance on the full amount of bond. Upon compliance, 90% of the amount deposited shall be returned to the defendant or the bond depositor.
- The execution of a Cash or Surety bond in the amount of \$\_\_\_\_\_.

816-532

II. Conditions of Bail

- The Defendant shall have no contact, directly or indirectly, with the following individuals: \_\_\_\_\_.
- The Defendant shall abstain from the consumption of any alcoholic beverage or illegal drugs and immediately submit to an alcohol or drug test at the request of any law enforcement officer or probation officer during the period he/she is subject to these conditions.
- The Defendant shall be placed on a condition of continuous alcohol use monitoring the terms of which shall be established supervised by the Probation Department. The Defendant shall bear all costs and fees associated with this condition.
- The Defendant is restricted to his or her residence, at all times, except for employment; education; religious services; medical, substance abuse or mental health treatment; attorney visits, court appearances, court-ordered obligations; or other activities pre-approved by the supervising officer.
- The Defendant shall report weekly to the Adult Court Services Department Monday - Thursday 8:00 A.M. to 11:30 A.M. or 1:00 P.M. to 4:00 P.M.
- The Defendant shall obtain an assessment from LAPP.

The Clerk shall serve a copy of this Judgment Entry upon all parties or counsel.

It is so ordered.

  
\_\_\_\_\_  
Judge W. David Branstool

Copies to:

Tracy Van Winkle, Esq., Assistant Prosecuting Attorney  
20 South Second Street, 4th Floor, Newark, OH 43055

Will Champlin, Probation Officer  
Adult Court Services Department, Court House, Newark, OH 43055

Cecily Ferris, Esq., Attorney for Defendant  
905 South High Street, Columbus, OH 43206

IN THE COURT OF COMMON PLEAS

LICKING COUNTY, OHIO

LICKING COUNTY  
COMMON PLEAS COURT

STATE OF OHIO

CASE NO. 2011 CR 00100

OFFENSE: POSSESSION OF HEROIN (F4)

vs.

2011 MAY -2 P 4:01

ERROL L ANGLADA

FILED  
GARY R. WALTERS  
CLERK

THE STATE OF OHIO, LICKING COUNTY

ON May 2, 2011 THE DEFENDANT ERROL L ANGLADA AND GABRIEL ANGLADA PERSONALLY APPEARED BEFORE ME AND INDIVIDUALLY/JOINTLY AND ACKNOWLEDGED THAT ERROL L ANGLADA WOULD BE RESPONSIBLE TO OWE TO THE STATE OF OHIO THE SUM OF \$5,000 APPEARANCE BOND TO BE LEVIED ON PERSONAL PROPERTY AND REAL PROPERTY, IF HE/SHE SHOULD DEFAULT ON THE CONDITIONS OF THE BAIL AS SET FORTH BELOW:

- 1. THAT THE DEFENDANT SHALL PERSONALLY APPEAR BEFORE THE COMMON PLEAS COURT WHEN REQUIRED TO DO SO ON THE CHARGES FILED HEREIN.
- 2. REPORT TO ADULT COURT SERVICES *immediately upon release*
- 3. NO DRUGS OR ALCOHOL
- 4. URINALYSIS AND BREATH TESTING
  - OTHER CONDITIONS

THIS IS A TRUE and CERTIFIED COPY OF ORIGINAL ON FILE COMMON PLEAS COURT LICKING COUNTY, OHIO

- LAPP EVALUATION
- NO CONTACT WITH ALLEDGED VICTIM
- NO OPERATING A MOTOR VEHICLE
- NO WEAPONS
- OTHER

*Def shall report to ACS weekly*

*June Trial on 5/10/11 @ 9:00am*

JUN 5 2011

Deputy

*Chm Sharp*

Clerk of Courts

GABRIEL P. ANGLADA

INDIVIDUAL POSTING BOND

126 N. 24TH ST

ADDRESS

NEWARK OH. 43055

CITY STATE ZIP CODE

(740) 475-8648

PHONE NUMBER

DEFENDANT'S SIGNATURE

*[Signature]*  
212 S. 5th St. Apt. D

ADDRESS

NEWARK OH 43055

CITY STATE ZIP CODE

740-281-9847

PHONE NUMBER

GARY R. WALTERS  
CLERK

TAKEN AND ACKNOWLEDGED BEFORE ME UPON THE DATE ABOVE-STATED.

GARY R. WALTERS

BY *Aimee Bradley*  
DEPUTY CLERK

NO 8 V E JAN 1102

BY

COMMON PLEAS COURT  
DEPUTY



**ATTACHMENT V**

CERTIFIED ENTRIES REFERENCED BY RESPONDENTS REGARDING *STATE OF OHIO v. CHEDALE LANCASTER*  
CASE NO. 2011 CR 106

In the Court of Common Pleas, Licking County, Ohio

JUN 5 2011

State of Ohio,

Plaintiff,

Deputy

*Chris Throp*

vs.

Case No: 11-CR-106

Chedale Lancaster

Defendant.

**JUDGMENT ENTRY  
INITIAL APPEARANCE**

On the 25<sup>th</sup> day of March, 2011, came the State of Ohio through The Licking County Prosecutor's Office, and also came the Defendant, personally, and with legal counsel, and this matter came on for initial appearance hearing.

At the hearing, the Defendant requested the proceedings constitute as his/her arraignment. The Defendant waived a reading of, or in the alternative was read the indictment, and entered a plea(s) of Not Guilty to the charge(s) contained in the indictment. The Court accepted the plea(s).

The Defendant is to appear for Arraignment on 4 / 5 / 11 at 8:30 a.m. at the Licking County Justice Center.

Defendant is appearing pursuant to the summons issued in the above referenced matter.

For appearance of Defendant, the Court:

- Sets bond at \$5,000 own recognizance reporting.
- Sets bond at \_\_\_\_\_ cash or surety.
- Continues bond as set / posted through Municipal Court.
- Other \_\_\_\_\_

Recall  
warrant

With the added conditions:

- The Defendant shall report in person to the Adult Court Services Department, immediately following Arraignment and/or upon the posting of bond, and as they shall suggest.
- The Defendant shall not consume, or have in his possession, any alcohol or drugs, and shall submit to random urinalysis and breathalyzer testing.
- The Defendant shall submit to a LAPP evaluation. (or equiv. program)
- The Defendant shall have no contact, either directly or indirectly, with the alleged victim(s) in this matter and / or with any co-defendant(s).
- The Defendant shall not possess or have in his possession any firearm(s) and / or weapons.
- Other \_\_\_\_\_

Judge  
Thomas M. Marcelain  
740-670-5777

Judge  
David Branstool  
740-670-5770

Courthouse  
Newark, OH 43055

cc: Licking County Prosecutor's Office  
Adult Court Services Department

- Defense Counsel: \_\_\_\_\_
- Defendant Served in Court

*[Signature]*

Magistrate Mattie Klein  
Licking County Common Pleas Court

Judge  
Licking County Common Pleas Court

8/14/879

IN THE LICKING COUNTY COMMON PLEAS COURT

CLERK OF COURTS  
COMMON PLEAS COURT  
LICKING CO., OHIO

2011 AUG 31 AM 11:10

State of Ohio, :  
Plaintiff, :  
-vs- : Case No. 11 CR 00106  
Chedale Lancaster, : Judge W. David Branstool  
Defendant. :

GARY R. WALTERS  
CLERK

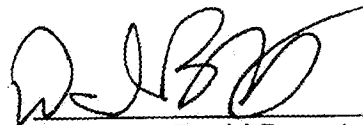
JUDGMENT ENTRY

This case came before the Court on August 31, 2011, for a Jury Trial. Assistant Prosecuting Attorney, Brian Waltz, appeared on behalf of the State of Ohio. Joshua Hall appeared on behalf of the defendant. The defendant failed to appear.

The Court hereby revokes the defendant's bond and orders a capias issued for the defendant's arrest.

Speedy trial time is tolled due to the act of the Defendant.

The Clerk of Courts is hereby ORDERED to serve a copy of the Judgment Entry upon all parties or counsel.



Judge W. David Branstool  
Common Pleas Court


THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

Copies to:

Brian Waltz, Esq., Assistant Prosecuting Attorney  
20 South Second Street, 4th Floor, Newark, OH 43055

Kevin Gossett, Probation Officer  
Adult Court Services Department, Court House, Newark, OH 43055

Joshua E. Hall, Esq., Attorney for Defendant  
825 South Front Street, Columbus, OH 43206

JUN 5 2013  
Deputy   
Gary R. Walters  
Clerk of Courts

889354

**IN THE LICKING COUNTY COMMON PLEAS COURT**

COMMON PLEAS COURT  
LICKING CO., OHIO

State of Ohio, :  
Plaintiff, : Case No. 11 CR 00106  
-vs- :  
Chedale Lancaster, : Judge W. David Branstool  
Defendant. :

2011 SEP 20 AM 11:31

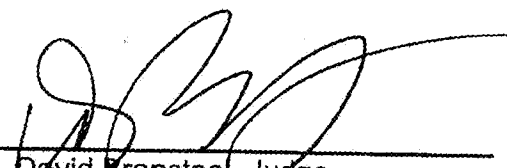
GARY R. WALTERS  
CLERK

**JUDGMENT ENTRY**

The Court finds the Defendant is currently incarcerated on the pending charges. Accordingly, John Craven General Agency, Inc., dba AA-Craven Bail Bonds, is hereby discharged from all obligations and liability on the recognizance of the Defendant. The Bond Forfeiture Hearing scheduled September 26, 2011, is hereby cancelled.

IT IS SO ORDERED.

The Clerk of Courts shall deliver a copy of this Judgment Entry upon all parties and counsel of record.

  
\_\_\_\_\_  
W. David Branstool, Judge

Copies to:

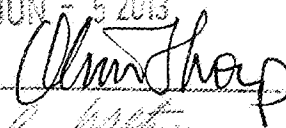
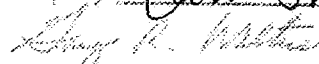
Earl Frost, Esq., Assistant Prosecuting Attorney  
20 South Second Street, 4th Floor, Newark, OH 43055

Kevin Gossett, Probation Officer  
Adult Court Services Department, Court House, Newark, OH 43055

Joshua E. Hall, Esq., Attorney for Defendant  
825 South Front Street, Columbus, OH 43206

Candace Reeder, Agent  
AA-Craven Bail Bonds, 109 North Fountain Avenue, Springfield, OH 45502

THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

JUN - 5 2013  
Deputy   
  
Clerk of Courts

831/237



**In the Court of Common Pleas, Licking County, Ohio**

PLEAS COURT  
LICKING CO. OHIO

State of Ohio,

2011 OCT -7 PM 3:40

Plaintiff, GARY R. WALTERS  
CLERK

vs.

Case No. 11 CR 0106

Chedale Lancaster,

Defendant.

**MAGISTRATE'S ORDER**

\*\*\*\*\*

On the 7<sup>th</sup> day of October, 2011 this matter came on for a bond hearing.

For the appearance of the defendant, the Court sets bond at \$100,000 cash or surety, with conditions as previously set. The defendant shall report immediately to Adult Court Services upon posting of said bond and release from incarceration.

The Clerk of Courts is hereby ORDERED to serve a copy of the Magistrate's Order upon all parties or counsel.

Mattie Klein, Magistrate

cc: Licking County Prosecutor's Office  
Adult Court Services Department  
Joshua Hall, Esq., Attorney for the Defendant

THIS IS A TRUE and CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

Judge  
Thomas M.  
Marcelain  
740-670-5781

Judge  
W. Babitt  
Branstool  
740-670-5770

Courthouse  
Newark, Ohio  
43055

JUN - 5 2012  
Deputy   
GARY R. WALTERS  
Clerk of Courts

832/893

IN THE COURT OF COMMON PLEAS, LICKING COUNTY, OHIO  
LICKING COUNTY  
COMMON PLEAS COURT

STATE OF OHIO

Plaintiff,

vs.

CHEDALE LANCASTER

Defendant,

Case No. 2011 CR 106

2011 OCT 31 P 2:45

JUDGE BRANSTOOL

FILED  
GARY R. WALTERS  
CLERK

MOTION TO REDUCE BOND

Now comes the Defendant, through undersigned counsel, to request a reduction of his bond. Defendant's bond is currently set at \$100,000 cash or surety. The reasons for this motion are set forth in the following memorandum in support.

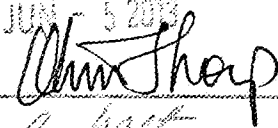


Joshua E. Hall (0076414)  
Attorney for Defendant  
825 S. Front St.  
Columbus, OH 43206  
(614) 445-8287

THIS IS A TRUE AND CERTIFIED  
COPY OF ORIGINAL ON FILE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

JUN 5 2013

Deputy



MEMORANDUM IN SUPPORT

If granted a recognizance bond, or a significant reduction of his bond, Defendant shall return to his grandmother's (Sandra Johnson) house at: 1597 Rosehill Rd. Reynoldsburg, OH 43068. The phone number is 614-725-3899. Chedale and his grandmother have been at this residence since January of this year.

Prior to be initially incarcerated on this offense, Defendant was employed at Giant Eagle, where he was charged with the responsibility of handling thousands of dollars a day as a cashier.

After being incarcerated, Defendant found employment at FedEx until they found he was currently charged with a felony offense in this Honorable Court. Upon his termination from FedEx, Defendant was no longer capable of making payments to his bail bondsman and was therefore told his bond was to be revoked. Upon learning that his bond had officially been revoked and that he had also missed his Court date, Defendant contacted his bondsman and turned himself in.

Perhaps most importantly, Defendant is 22 years old and has no prior criminal record. Defendant has a long term girlfriend and is essentially the father to her 4 year old daughter. Also, since Defendant is charged with a fourth degree felony drug charge, he is likely eligible for Intervention in Lieu.

For the foregoing reasons, Defendant requests a significant reduction of his bond.

Respectfully submitted,



Joshua Hall (0076414)  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and exact copy of the foregoing document was served upon the office of Earl Frost, Assistant Prosecutor, via facsimile, this 31 day of October, 2011.



Joshua E. Hall (0076414)  
Attorney for Defendant

IN THE LICKING COUNTY COMMON PLEAS COURT

CLERK COMMON PLEAS COURT LICKING COUNTY OHIO

2011 NOV 10 11:12 AM

State of Ohio, :  
Plaintiff, :  
-vs- :  
Chedale J. Lancaster, :  
Defendant. :

GARY B. WALTERS  
CLERK

: Case No. 11 CR 00106  
: Judge W. David Branstool

JUDGMENT ENTRY

On November 9, 2011, this case came before the Court for a hearing on the Defendant's Motion to Modify Bond. The Defendant appeared with attorney, Joshua Hall. The State of Ohio was represented by Assistant Prosecuting Attorney Brian Waltz.

The Court considered the information available to it concerning the nature and circumstances of the offense charged; the weight of the evidence against the defendant from the investigative reports; the defendant's family ties to the Licking County community; the defendant's employment, financial resources, character and mental condition, the defendant's length of residence in the community; the defendant's record of convictions, record of appearances at court proceedings or of flight to avoid prosecution; and all other information the Court found relevant.

Therefore, pursuant to Crim. R. 46, the Court set bond as follows. The Defendant shall be released, subject to following conditions.

THIS IS A TRUE & UNALTERED COPY OF ORIGINAL ON FILE COMMON PLEAS COURT LICKING COUNTY, OHIO

I. Type and Amount of Bail

- Bond is set in the amount of \$5,000.00, to be posted as follows:
- The personal recognizance of the Defendant.
- The execution of an unsecured bail bond in the amount of \$\_\_\_\_\_
- The execution of an appearance bond in the amount of \$5,000.00. The accused or bond depositor may deposit 10% of the full amount of bond directly with the Licking County Clerk of Courts. Upon breach, the accused/depositor will forfeit the amount deposited and will owe the balance on the full amount of bond. Upon compliance, 90% of the amount deposited shall be returned to the defendant or the bond depositor.
- The execution of a Cash or Surety bond in the amount of \$\_\_\_\_\_.

JUN - 8 2013  
Deputy *[Signature]*  
*[Signature]*  
Clerk of Courts

832-824

II. Conditions of Bail

- The Defendant shall have no contact, directly or indirectly, with the following individuals: \_\_\_\_\_.
- The Defendant shall abstain from the consumption of any alcoholic beverage or illegal drugs and immediately submit to an alcohol or drug test at the request of any law enforcement officer or probation officer during the period he/she is subject to these conditions.
- The Defendant shall be placed on a condition of continuous alcohol use monitoring the terms of which shall be established supervised by the Probation Department. The Defendant shall bear all costs and fees associated with this condition.
- The Defendant is restricted to his or her residence, at all times, except for employment; education; religious services; medical, substance abuse, or mental health treatment; attorney visits, court appearances, court-ordered obligations; or other activities pre-approved by the supervising officer.
- Further, the Defendant's compliance with this provision shall be supervised by the Probation Department using an electronic monitoring device.
- The Defendant shall report once per week to the Adult Court Services Department.
- \_\_\_\_\_

The Clerk shall serve a copy of this Judgment Entry upon all parties or counsel.

It is so ordered.

  
\_\_\_\_\_  
Judge W. David Branstool

Copies to:

Brian Waltz, Esq., Assistant Prosecuting Attorney  
20 South Second Street, 4th Floor, Newark, OH 43055

Walter Barnes, Probation Officer  
Adult Court Services Department, Court House, Newark, OH 43055

Joshua E. Hall, Esq., Attorney for Defendant  
825 South Front Street, Columbus, OH 43206

225

IN THE COURT OF COMMON PLEAS

LICKING COUNTY, OHIO

STATE OF OHIO

LICKING COUNTY  
COMMON PLEAS COURT NO. 2011 CR 00106  
OFFENSE: POSSESSION OF CRACK COCAINE (F4)  
THIS IS A PUBLIC OFFENSE  
COMMON PLEAS COURT  
LICKING COUNTY, OHIO

vs.

CHEDALE J LANCASTER

GARY R. WALTERS  
FILED  
CLERK

JUN 8 2013

Deputy *Chris Sharp*  
Clerk of Courts

THE STATE OF OHIO, LICKING COUNTY, SS

ON November 18, 2011 THE DEFENDANT CHEDALE J LANCASTER AND L'AYSA HARRIS PERSONALLY APPEARED BEFORE ME AND INDIVIDUALLY/JOINTLY AND ACKNOWLEDGED THAT CHEDALE J LANCASTER WOULD BE RESPONSIBLE TO OWE TO THE STATE OF OHIO THE SUM OF \$5,000 APPEARANCE BOND TO BE LEVIED ON PERSONAL PROPERTY AND REAL PROPERTY, IF HE/SHE SHOULD DEFAULT ON THE CONDITIONS OF THE BAIL AS SET FORTH BELOW:

1. THAT THE DEFENDANT SHALL PERSONALLY APPEAR BEFORE THE COMMON PLEAS COURT WHEN REQUIRED TO DO SO ON THE CHARGES FILED HEREIN.
2. REPORT TO ADULT COURT SERVICES *immediately upon release*
3. NO DRUGS OR ALCOHOL
4. URINALYSIS AND BREATH TESTING
  - OTHER CONDITIONS

- LAPP EVALUATION or equiv. program
- NO CONTACT WITH ALLEGED VICTIM
- NO OPERATING A MOTOR VEHICLE
- NO WEAPONS
- OTHER  
*DPT must report to ACS Dept. once per week*
- June Trial on 12/16/11 @ 9:00am*

L'aysa Harris  
INDIVIDUAL POSTING BOND

Chedale Lancaster  
DEFENDANT'S SIGNATURE

6348 James Rouse Blvd  
ADDRESS

1597 Rosehill Rd  
ADDRESS

Canal Winchester Ohio  
CITY STATE ZIP CODE

Bensalem Pa 19068  
STATE ZIP CODE

(614) 288-4514  
PHONE NUMBER

614-333-4266  
PHONE NUMBER

TAKEN AND ACKNOWLEDGED BEFORE ME UPON THE DATE ABOVE-STATED.

GARY R. WALTERS  
BY Gaussen Bradley  
DEPUTY CLERK

LICKING COUNTY  
BY Scott Clouse Sr  
DEPUTY



Not Reported in N.E.2d, 2006 WL 621697 (Ohio App. 11 Dist.), 2006 -Ohio- 1170  
(Cite as: 2006 WL 621697 (Ohio App. 11 Dist.))

CHECK OHIO SUPREME COURT RULES FOR  
REPORTING OF OPINIONS AND WEIGHT OF  
LEGAL AUTHORITY.

Court of Appeals of Ohio,  
Eleventh District, Portage County.  
STATE of Ohio, ex rel. Peter M. Williams, Relator,  
v.  
Linda FANKHAUSER, Portage County Clerk of  
Courts, Respondent.

No. 2006-P-0006.  
Decided March 10, 2006.

Original Action for Writ of Mandamus. Petition  
dismissed.

Karl R. Rissland, Streetsboro, for Relator.

Victor V. Vigluicil, Portage County Prosecutor,  
and Denise L. Smith, Chief Assistant Prosecutor,  
Ravenna, for Respondent.

PER CURIAM.

\*1 ¶ 1 This action in mandamus is presently before this court for consideration of the motion to dismiss of respondent, Linda Fankhauser, the Clerk of Courts for Portage County, Ohio. As the primary basis for her motion, respondent asserts that the petition of relator, Peter M. Williams, fails to state a viable claim for the writ because his factual allegations support the conclusion that she does not have a legal duty to accept for filing a surety bond which he is attempting to submit to her. For the following reasons, we hold that the motion to dismiss has merit.

¶ 2 The ensuing statement of facts is a synopsis of the allegations contained in relator's mandamus petition. On December 29, 2005, relator was placed under arrest by certain Portage County authorities and charged with three counts of receiving

stolen property, fourth-degree felonies under R.C. 2913.51(C). The following day, relator was brought before Judge John A. Enlow of the Portage County Court of Common Pleas for arraignment. Upon accepting relator's initial plea of not guilty, Judge Enlow appointed counsel to represent him in the criminal action.

¶ 3 As part of the arraignment hearing, Judge Enlow also set the amount of relator's bail for purposes of his pretrial release. In his judgment entry of December 30, 2006, Judge Enlow expressly stated that relator's "bond" had been set at "\$25,000.00 Ten Percent."

¶ 4 Over the next two weeks, relator's family attempted to collect the sum of \$2,500 for the purpose of posting his bail. When they were unable to do so, the family contacted David Mayfield, a licensed bail bondsman who operated a company known as BDM Bail Bonds. Eventually, Mayfield agreed to submit a surety bond for relator for the full amount of \$25,000. In return, the family was obligated to pay him the sum of \$2,500, but could make periodic payments on the debt instead of having to pay the entire sum at once.

¶ 5 On January 17, 2006, Mayfield went to respondent's office for the purpose of posting the surety bond. However, respondent's deputies would not accept the bond, stating that relator could only obtain his release by submitting cash in the amount of \$2,500. As a result, relator is still in the custody of the Portage County Sheriff awaiting his trial in the underlying criminal case.

¶ 6 In light of respondent's actions regarding the surety bond, relator instituted the instant action before this court, seeking a writ of mandamus to compel her to allow the bond to be filed so that he can be released. As the legal basis for his claim, relator asserted in his petition that, pursuant to Judge Enlow's judgment entry and Crim.R. 46, he had the option of either posting a surety bond for the full

Not Reported in N.E.2d, 2006 WL 621697 (Ohio App. 11 Dist.), 2006 -Ohio- 1170  
(Cite as: 2006 WL 621697 (Ohio App. 11 Dist.))

sum of \$25,000 or posting cash in the amount of \$2,500. He further stated that, by not accepting Mayfield's surety bond, respondent was forcing him to use a "cash only" bond to obtain his release from the Portage County Jail. Finally, relator contended that the requirement of "cash only" violated his right under the Ohio Constitution to obtain bail by sufficient sureties.

\*2 {¶ 7} In now moving to dismiss the entire mandamus claim, respondent argues that Judge Enlow's "bail" order was legally correct because it was made in accordance with Crim.R. 46(A)(2). Respondent also asserts that, under the specific language of that order, only the posting of \$2,500 in cash would be sufficient to warrant relator's release pending his trial. Based on this, she maintains that she had no duty to accept the surety bond because she had to follow the specific order contained in Judge Enlow's judgment regarding relator's bail.

{¶ 8} As both parties aptly note in their present submissions, the basic right of a criminal defendant to be released pending his trial is protected under Section 9, Article I of the Ohio Constitution. At the present time, Section 9 provides, in pertinent part:

{¶ 9} "All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great, and except for a person who is charged with a felony where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community. Where a person is charged with any offense for which the person may be incarcerated, the court may determine at any time the type, amount, and conditions of bail. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted."

{¶ 10} Even though Section 9 of Article I was amended in January 1998, the prior versions of this provision also contained the "bailable by sufficient sureties" phrase. In interpreting that phrase, the

courts of this state have consistently held that it grants the defendant an absolute right to nonexcessive bail unless one of the two exceptions in the provision is applicable to him. See *Gallagher v. State* (1998), 129 Ohio App.3d 775, 719 N.E.2d 60. In addition, it has been held that the phrase guarantees that a defendant can use a surety to post bail in his behalf. *State ex rel. Baker v. Troutman* (1990), 50 Ohio St.3d 270, 553 N.E.2d 1053.

{¶ 11} Since the "bail" requirements of Section 9, Article I are stated in somewhat general terms, the Supreme Court of Ohio has enacted procedural rules to assist trial courts in implementing those basic requirements. Specifically, Crim.R. 46 sets forth the various factors and conditions a trial court should consider in determining bail. In regard to the types of bail which can be used, subsection (A) of the rule states:

{¶ 12} "(A) \* \* \* Any person who is entitled to release shall be released upon one or more of the following types of bail in the amount set by the court:

{¶ 13} "(1) The personal recognizance of the accused or an unsecured bail bond;

{¶ 14} "(2) A bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond;

\*3 {¶ 15} "(3) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant."

{¶ 16} As the wording of Crim.R 46(A) readily indicates, each of the three types of bail listed in the rule can be used separately as a valid means of setting a defendant's bail. In addition, the courts of this state have recognized a fourth type of bail, which is a combination of the two types in Crim.R. 46(A)(2) and (A)(3). Under this fourth type, the defendant has the option of posting his bail by satisfying any of the methods listed in the two provisions.



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See *Smith v. Leis*, 1st Dist. No. C-050957, 2006-Ohio-450, at ¶ 22.

{¶ 17} In applying both the present and prior versions of Crim.R. 46(A)(3), some trial courts have attempted to limit a defendant's "posting" options by stating that he had to post "cash" for the entire amount of the bond. For example, in *State ex rel. Jones v. Hendon* (1993), 66 Ohio St.3d 115, 609 N.E.2d 541, the municipal court set an accused murderer's bond at \$50,000 "cash only." At the time of the *Jones* case, the type of bail set forth presently in Crim.R. 46(A)(3) was set forth under a different section of the rule; however, although the wording of the prior version was slightly different than the current one, it still gave a defendant three options for satisfying the "bond" requirement, including the deposit of cash. After the clerk for the municipal court in *Jones* refused to accept a surety bond in lieu of the cash, the accused's bondsman filed a mandamus action to require the judge and the clerk to allow the surety bond. Initially, the court of appeals denied the writ on the basis that the prior version of Crim.R. 46(A)(3), i.e., Crim.R. 46(C)(4), gave the trial judge the discretion to order a "cash only" bond under some circumstances. On appeal, though, the Supreme Court reversed, concluding that the appellate court's interpretation of the rule had been erroneous and had resulted in a violation of Section 9, Article I:

{¶ 18} "However, Crim.R. 46(C)(4) constitutes but a single condition which the judge may impose—the condition of a bond. Once a judge chooses that condition and sets the amount of bond, we find no legitimate purpose in further specifying the form of bond which may be posted. Indeed, the only apparent purpose in requiring a 'cash only' bond to the exclusion of the other forms provided in Crim.R. 46(C)(4) is to restrict the accused's access to a surety and, thus, to detain the accused in violation of Section 9, Article I. \* \* \*

{¶ 19} "Accordingly, we find that where a judge imposes a bond as a condition of release under Crim.R. 46(C)(4), the judge's discretion is lim-

ited to setting the amount of the bond. Once that amount is set, and the accused exercises his constitutional right to enlist a surety to post bail on his behalf, that being one of the options set forth in Crim.R. 46(C)(4), the clerk of courts must accept a surety bond to secure the defendant's release, provided the sureties thereon are otherwise sufficient and solvent." *Jones*, 66 Ohio St.3d at 118, 609 N.E.2d 541.

\*4 {¶ 20} Five years after the decision in *Jones*, Crim.R. 46 and Section 9, Article I of the Ohio Constitution were amended to their present form. As a result, a new dispute arose concerning whether the amendments to the rule and the constitutional provision had had the effect of essentially overruling *Jones* as to the permissibility of a cash only bond. This dispute was settled in *Smith v. Leis*, 106 Ohio St.3d 309, 835 N.E.2d 5, 2005-Ohio-5125 .

{¶ 21} Like *Jones*, *Smith* involved the bail of an accused murderer. At the end of his first trial, the *Smith* defendant was found guilty of, inter alia, murder and attempted murder. On appeal to the First Appellate District, the conviction was reversed and the case was remanded for a new trial. A "bond" hearing was then held before the common pleas judge to determine if the defendant should be released pending the second trial. After concluding that bail had to be granted because the death penalty could no longer be imposed, the trial judge set the bond at "\$1,000,000 straight, cash only."

{¶ 22} When the trial judge would not reconsider the matter, the *Smith* defendant filed a habeas corpus action in the First Appellate District. In appealing the decision of that court to dismiss the petition, the *Smith* defendant argued before the Supreme Court that, despite the modification of the wording of Section 9, Article I and Crim.R. 46, both provisions did not allow for a "cash only" bond. The Supreme Court agreed, expressly upholding its prior decision in *Jones*. In the first segment of its analysis, the *Smith* court concluded that the phrase "bailable by sufficient sureties" retained

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 (Cite as: 2006 WL 621697 (Ohio App. 11 Dist.))

the same meaning in the amended version of Section 9, Article I as it had in the prior versions; i.e., pursuant to the phrase, an accused could not be denied the use of sureties in satisfying a bond order. In the second segment, the *Smith* court held that, even if the Section 9, Article I had been changed to permit a “cash only” bond, such bond still could not be ordered by trial courts because the new Crim.R. 46 did not provide for them. As to this latter point, the Supreme Court stated: “ \* \* \* if we had intended to authorize cash-only bail when we amended Crim.R. 46, we would have so provided with appropriate language.” *Smith*, 106 Ohio St.3d at ¶ 71.

{¶ 23} In the instant case, relator has asserted in his petition that the outcome of the present matter is dictated by the holding in *Smith* and *Jones*; i.e., relator maintains that, by not accepting the surety bond from his bail bondsman, respondent is requiring him to post a “cash only” bond which is not permissible under either Section 9, Article I or Crim.R. 46. As to this argument, this court would emphasize that each of the bonds in *Smith* and *Jones* was set pursuant to Crim.R. 46(A)(3) and its prior versions. As was noted above, this type of bail delineates three different means which a defendant can use to satisfy the bond requirement: a surety bond, a bond security by property or securities, or cash. In contrast, the bond in the underlying case involving relator was set pursuant to Crim.R. 46(A)(2). Under this form of bail, a defendant is only given one option; i.e., he must deposit ten percent of the amount of the bond in cash.

\*5 {¶ 24} As the analysis in *Smith* and *Jones* readily indicate, if a defendant decides under Crim.R. 46(A)(3) to invoke the “cash” option, it will be necessary for him to submit cash covering the entire amount of the bond. However, even though Crim.R. 46(A)(2) does not provide the defendant with any options, it requires him to deposit with the clerk only ten percent of the entire bond in cash. That is, under Crim.R. 46(A)(2), he is given the benefit of not having to cover ninety percent of the full amount set by the trial court. To this extent,

this court holds that the bond requirement of Crim.R. 46(A)(2) cannot be characterized as a “cash only” bond in the same respect as the bonds in the *Smith* and *Jones* cases.

{¶ 25} Furthermore, we would restate that, although the bail order in *Smith* was made solely pursuant to Crim.R. 46(A)(3), the Supreme Court's pronouncement was set forth in very broad terms. Specifically, the Supreme Court stated that the new version of the entire Crim.R. 46 was not intended to permit the use of a “cash only” bond. Despite the fact that the general legality of Crim.R. 46(A)(2) was not technically before the *Smith* court at the time, this court cannot envision that the Supreme Court would state such a broad holding if there was any doubt as to the constitutionality of the “ten percent cash” requirement. Therefore, we ultimately conclude that the provisions of Crim.R. 46(A)(2) do not violate the “bailable by sufficient sureties” requirement of Section 9, Article I of the Ohio Constitution.

{¶ 26} In bringing the instant case, relator attached to his petition a copy of Judge Enlow's judgment entry of December 30, 2005. Our review of that judgment indicates that Judge Enlow fully met the requirements of Crim.R. 46(A)(2) in setting relator's bond in the underlying criminal case. As a result, respondent was not obligated to accept the surety bond which the bail bondsman tried to submit in behalf of relator; instead, her duty was simply to accept a deposit of cash pursuant to Judge Enlow's judgment entry. Under these circumstances, relator's sole remedy would be to move for an amendment of the “bond” order to allow for the submission of the surety bond. If such a motion was not granted, relator could then bring a habeas corpus action on the possible basis that the bond requirement allegedly was excessive.

{¶ 27} As a general proposition, a writ of mandamus will be issued only when the relator can demonstrate, inter alia, that the respondent has a clear legal duty to perform the requested action. See *State ex rel. Smith v. Enlow* (July 20, 2001),

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11th Dist. No.2000-P-0131, 2001 Ohio App. LEXIS 3282, 2001 WL 822810. Pursuant to the foregoing discussion, this court concludes that, even when relator's allegations in the instant case are construed in a manner most favorable to him, they are still legally insufficient to show that he would be able to prove a set of facts under which respondent would be obligated to accept the surety bond. Thus, the dismissal of the mandamus claim is warranted under Civ.R. 12(B)(6). See *State ex rel. Brown v. Logan*, 11th Dist. No.2004-T-0088, 2004-Ohio-6951, at ¶ 11.

\*6 {¶ 28} Respondent's motion to dismiss the mandamus petition is granted. It is the order of this court that relator's entire mandamus petition is hereby dismissed.

DONALD R. FORD, P.J., CYNTHIA WESTCOTT  
RICE, J., COLLEEN MARY O'TOOLE, J., concur.

Ohio App. 11 Dist.,2006.  
State ex rel. Williams v. Fankhauser  
Not Reported in N.E.2d, 2006 WL 621697 (Ohio  
App. 11 Dist.), 2006 -Ohio- 1170

END OF DOCUMENT

C

Effective: October 16, 2009

Baldwin's Ohio Revised Code Annotated Currentness  
 Title XXIX. Crimes--Procedure (Refs & Annos)  
 Chapter 2937. Preliminary Examination; Bail  
 Bail  
 →→ 2937. 22 Forms of bail; surcharge; receipt

(A) Bail is security for the appearance of an accused to appear and answer to a specific criminal or quasi-criminal charge in any court or before any magistrate at a specific time or at any time to which a case may be continued, and not depart without leave. It may take any of the following forms:

(1) The deposit of cash by the accused or by some other person for the accused;

(2) The deposit by the accused or by some other person for the accused in form of bonds of the United States, this state, or any political subdivision thereof in a face amount equal to the sum set by the court or magistrate. In case of bonds not negotiable by delivery such bonds shall be properly endorsed for transfer.

(3) The written undertaking by one or more persons to forfeit the sum of money set by the court or magistrate, if the accused is in default for appearance, which shall be known as a recognizance.

(B) Whenever a person is charged with any offense other than a traffic offense that is not a moving violation and posts bail, the person shall pay a surcharge of twenty-five dollars. The clerk of the court shall retain the twenty-five dollars until the person is convicted, pleads guilty, forfeits bail, is found not guilty, or has the charges dismissed. If the person is convicted, pleads guilty, or forfeits bail, the clerk shall transmit the twenty-five dollars on or before the twentieth day of the month following the month in which the person was convicted, pleaded guilty, or forfeited bail to the treasurer of state, and the treasurer of state shall deposit it into the indigent defense support fund created under section 120.08 of the Revised Code. If the person is found not guilty or the charges are dismissed, the clerk shall return the twenty-five dollars to the person.

(C) All bail shall be received by the clerk of the court, deputy clerk of court, or by the magistrate, or by a special referee appointed by the supreme court pursuant to section 2937.46 of the Revised Code, and, except in cases of recognizances, receipt shall be given therefor.

(D) As used in this section, "moving violation" has the same meaning as in section 2743.70 of the Revised Code .

## CREDIT(S)

(2009 H 1, eff. 10-16-09; 128 v 97, eff. 1-1-60)

## HISTORICAL AND STATUTORY NOTES

**Ed. Note:** 2937. 22 contains provisions analogous to former 2937.21, repealed by 128 v 97, eff. 1-1-60.

**Ed. Note:** Former 2937. 22 repealed by 128 v 97, eff. 1-1-60; 1953 H 1; GC 13435-2; see now 2937.23 for provisions analogous to former 2937. 22.

**Pre-1953 H 1 Amendments:** 113 v 149, Ch 14, § 2

**Amendment Note:** 2009 H 1 designated divisions (A) and (C); redesignated former divisions (A) through (C) as divisions (A)(1) through (A)(3); added divisions (B) and (D); and made other nonsubstantive changes.

## CROSS REFERENCES

Additional costs in criminal cases in all courts to fund reparations payments, bail, defined, see 2743.70

Bail, see Crim R 46

Bail allowed pending hearing to revoke probation, see Crim R 32.3

Bailable offenses, excessive bail prohibited, see O Const Art I §9

Domestic violence, bail schedule, see 2919.251

Procedure on affidavit or complaint, withdrawal of unexecuted warrants, see 2935.10

Proceedings upon arrest, see 2935.13

## LIBRARY REFERENCES

Bail  39, 73.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings §§ 2, 4 to 7, 31 to 32, 88 to 92.

## RESEARCH REFERENCES

## Encyclopedias

OH Jur. 3d Criminal Law: Procedure § 728, Definitions.

OH Jur. 3d Criminal Law: Procedure § 743, Generally; Upon Arrest or Appearance.

OH Jur. 3d Criminal Law: Procedure § 761, Receipt of Bail and Recognizance; Who Authorized.

OH Jur. 3d Criminal Law: Procedure § 767, Forms of Bail, Generally.

C

Effective: September 30, 2011

Baldwin's Ohio Revised Code Annotated Currentness  
 Title XXIX. Crimes--Procedure (Refs & Annos)  
 Chapter 2937. Preliminary Examination; Bail  
 Bail  
 → → 2937. 36 Forfeiture proceedings

Upon declaration of forfeiture, the magistrate or clerk of the court adjudging forfeiture shall proceed as follows:

(A) As to each bail, the magistrate or clerk shall proceed forthwith to deal with the sum deposited as if the same were imposed as a fine for the offense charged and distribute and account for the same accordingly provided that prior to so doing, the magistrate or clerk may satisfy accrued costs in the case out of the fund.

(B) As to any securities deposited, the magistrate or clerk shall proceed to sell the same, either at public sale advertised in the same manner as sale on chattel execution, or through any state or national bank performing such service upon the over the counter securities market and shall apply proceeds of sale, less costs or brokerage thereof as in cases of forfeited cash bail. Prior to such sale, the clerk shall give notices by ordinary mail to the depositor, at the depositor's address listed of record, if any, of the intention so to do, and such sale shall not proceed if the depositor, within ten days of mailing of such notice appears, and redeems said securities by either producing the body of the defendant in open court or posting the amount set in the recognizance in cash, to be dealt with as forfeited cash bail.

(C) As to recognizances the magistrate or clerk shall notify the accused and each surety within fifteen days after the declaration of the forfeiture by ordinary mail at the address shown by them in their affidavits of qualification or on the record of the case, of the default of the accused and the adjudication of forfeiture and require each of them to show cause on or before a date certain to be stated in the notice, and which shall be not less than forty-five nor more than sixty days from the date of mailing notice, why judgment should not be entered against each of them for the penalty stated in the recognizance. If good cause by production of the body of the accused or otherwise is not shown, the court or magistrate shall thereupon enter judgment against the sureties or either of them, so notified, in such amount, not exceeding the penalty of the bond, as has been set in the adjudication of forfeiture, and shall award execution therefor as in civil cases. The proceeds of sale shall be received by the clerk or magistrate and distributed as on forfeiture of cash bail.

CREDIT(S)

(2011 H 86, eff. 9-30-11; 128 v 97, eff. 1-1-60)

C

Effective:[See Text Amendments]

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIX. Crimes--Procedure (Refs &amp; Annos)

Chapter 2937. Preliminary Examination; Bail

Bail

→ → 2937. 40 Release of bail and sureties; use to satisfy fine or costs only when deposited by accused

(A) Bail of any type that is deposited under sections 2937. 22 to 2937.45 of the Revised Code or Criminal Rule 46 by a person other than the accused shall be discharged and released, and sureties on recognizances shall be released, in any of the following ways:

(1) When a surety on a recognizance or the depositor of cash or securities as bail for an accused desires to surrender the accused before the appearance date, the surety is discharged from further responsibility or the deposit is redeemed in either of the following ways:

(a) By delivery of the accused into open court;

(b) When, on the written request of the surety or depositor, the clerk of the court to which recognizance is returnable or in which deposit is made issues to the sheriff a warrant for the arrest of the accused and the sheriff indicates on the return that he holds the accused in his jail.

(2) By appearance of the accused in accordance with the terms of the recognizance or deposit and the entry of judgment by the court or magistrate;

(3) By payment into court, after default, of the sum fixed in the recognizance or the sum fixed in the order of forfeiture, if it is less.

(B) When cash or securities have been deposited as bail by a person other than the accused and the bail is discharged and released pursuant to division (A) of this section, or when property has been pledged by a surety on recognizance and the surety on recognizance has been released pursuant to division (A) of this section, the court shall not deduct any amount from the cash or securities or declare forfeited and levy or execute against pledged property. The court shall not apply any of the deposited cash or securities toward, or declare forfeited and levy or execute against property pledged for a recognizance for, the satisfaction of any penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea, except upon express approval of the per-

son who deposited the cash or securities or the surety.

(C) Bail of any type that is deposited under sections 2937. 22 to 2937.45 of the Revised Code or Criminal Rule 46 by an accused shall be discharged and released to the accused, and property pledged by an accused for a recognizance shall be discharged, upon the appearance of the accused in accordance with the terms of the recognizance or deposit and the entry of judgment by the court or magistrate, except that, if the defendant is not indigent, the court may apply deposited bail toward the satisfaction of a penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea, and may declare forfeited and levy or execute against pledged property for the satisfaction of a penalty or fine, and court costs, assessed against the accused upon his conviction or guilty plea.

(D) Notwithstanding any other provision of this section, an Ohio driver's or commercial driver's license that is deposited as bond may be forfeited and otherwise handled as provided in section 2937.221 of the Revised Code.

#### CREDIT(S)

(1990 S 338, eff. 11-28-90; 1989 H 381; 1986 S 356; 1980 H 402; 128 v 97)

#### HISTORICAL AND STATUTORY NOTES

**Ed. Note:** 2937. 40 contains provisions analogous to former 2937. 36, repealed by 128 v 97, eff. 1-1-60.


**Ed. Note:** Former 2937. 40 repealed by 128 v 97, eff. 1-1-60; 1953 H 1; GC 13435-20.

**Pre-1953 H 1 Amendments:** 113 v 155, Ch 14, § 20

#### CROSS REFERENCES

Additional costs in criminal cases in all courts to fund reparations payments, bail, defined, see 2743.70  
Bail, see Crim R 46

#### LIBRARY REFERENCES

Bail  78.  
Westlaw Topic No. 49.  
C.J.S. Bail; Release and Detention Pending Proceedings §§ 136, 167 to 175.

#### RESEARCH REFERENCES

ALR Library

42 ALR 5th 547, Propriety of Applying Cash Bail to Payment of Fine.



Westlaw

R.C. § 2303.26

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**C****Effective:[See Text Amendments]**

Baldwin's Ohio Revised Code Annotated Currentness

Title XXIII. Courts--Common Pleas

▣ Chapter 2303. Clerk of the Court of Common Pleas(Refs &amp; Annos)

▣ Costs and Fees; Responsibility for Books; Duties Generally

→→ 2303.26 Duties of clerk

The clerk of the court of common pleas shall exercise the powers conferred and perform the duties enjoined upon him by statute and by the common law; and in the performance of his duties he shall be under the direction of his court.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 2899)

HISTORICAL AND STATUTORY NOTES

**Pre-1953 H 1 Amendments:** RS 4965

CROSS REFERENCES

Change of venue in criminal case, **duties of clerk**, see 2931.29 to 2931.31**Duties of clerk** when tenant deposits rent with, see 5321.08**Duty of clerk** to transmit record on appeal, see App R 10Out-of-state service of process, **duties of clerk**, see Civ R 4.3Registration of land titles, **duties of clerk**, see 5309.25Service of subpoena by **clerk**, see Civ R 45

LIBRARY REFERENCES

**Clerks of Courts** ↪ 64.

Westlaw Topic No. 79.

C.J.S. **Courts** §§ 249, 254.

NOTES OF DECISIONS

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