

IN THE SUPREME COURT OF OHIO

KAY LACKEY
c/o Attorney Michela Huth
PO Box 17
Bolivar, Ohio 44612

Relator,

vs.

THE HON. GARY F. WERNER
Medina Municipal Court
135 North Elmwood Ave.
Medina, OH 44256

Respondent.

* Case No.

*

*

*

**ORIGINAL ACTION FOR
WRIT OF PROHIBITION**

*

*

*

**COMPLAINT FOR EXPEDITED ALTERNATIVE WRIT AND
WRIT OF PROHIBITION**

Michela Huth
Attorney Reg. No. 0091353
PO Box 17
Bolivar, Ohio 44612
Tel: 330 440 4027
Michelahuth.esq@gmail.com

Attorney for Relator Kay Lackey

Judge Gary F. Werner
Medina Municipal Court
135 North Elmwood Ave.
Medina, OH 44256
Tel: (330)723-3287

Respondent

For her Complaint for an Expedited Alternative Writ and Writ of Prohibition, Relator Kay Lackey states as follows,

INTRODUCTION

1. This original actions seeks an expedited alternative writ and a peremptory writ of prohibition from this Court forbidding Respondent Honorable Gary F. Werner, Judge of the Medina Municipal Court, from further exercising jurisdiction in *State v. Kay Lackey*, Case No. 23CRB00271.
2. Respondent has exercised, and is about to further exercise, judicial power without both subject matter and personal jurisdiction.
3. Attached as Exhibit A, is the supporting Affidavit of Kay Lackey, as required by S.Ct.Prac.R. 12.02(B)(1).
4. A jury trial is scheduled for July 20, 2023. (Ex. C).
5. Denying the writ will require Relator to further subject herself to criminal process (a trial is set for July 20, 2023), despite a patent and unambiguous lack of both subject matter and personal jurisdiction.
6. Relator has been significantly harmed by Respondent's unauthorized exercise of power.

JURISDICTION

1. Ohio Constitution, Article IV, Section 2(B)(1)(d) and the Rules of Practice of the Supreme Court of Ohio, Rule X, vest this Court with original jurisdiction to grant a writ of mandamus, a writ of prohibition, and other writs.

PARTIES

7. Relator Kay Lackey is a resident of the State of Ohio, County of Medina.

8. Respondent Judge Gary F. Werner is a duly elected judge of the Medina Municipal Court. The Medina Municipal Court is the judicial body for crimes alleged to have been committed within statutorily designated territories within the County. Respondent is empowered to decide only those cases and controversies over which the Medina Municipal Court has proper subject matter jurisdiction.

FACTS

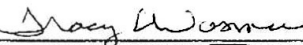
9. On March 2, 2023 Medina County SPCA Humane Agent Rachel Batten filed three complaints in the Medina Municipal Court alleging violations of R.C. 959.131(D)(1) a misdemeanor of the second degree (Count One), R.C. 959.131(F)(1) a misdemeanor of the first degree (Count Two), and R.C. 959.131(D)(1), a misdemeanor of the second degree (Count Three). (Ex B).

10. The criminal complaints show that Rachel Batten a “Humane Society Agent” signed the criminal complaints. (Ex. B)

11. No date is set forth in the oath section of the criminal complaints,


Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this ____ day of _____, 2023.


Notary Public/ Deputy Clerk

Ex. B.

12. The Medina Municipal Court docket¹ of the case shows that on March 2, 2023 the “Summons on Complaint” was “Served by Bailiff”. (Ex. C)

13. On March 21, 2023 Relator Lackey’s former defense attorney Donald Gallick filed a Motion to Dismiss, arguing that the criminal complaints were defective due to the missing date. (Ex. D)

14. On April 5, 2023 Respondent issued a Judgment Entry stating, in relevant part,

1. Defendant’s 3/21/23 Motion to Dismiss is denied as moot. The State shall forthwith cause the complaint(s) in this case to be re-sworn under Crim. R. 3(A), properly notarized by the Clerk, and filed for record. Defendant agrees to accept regular mail service of the re-filed complaint(s).

(Ex. E).

15. Despite the Judgment Entry stating so, Relator Lackey never agreed to accept regular mail service of the “re-filed complaint(s).”

16. On April 7, 2023 Humane Agent Rachel Batten filed three criminal complaints, which the docket labels as “Re-Sworn” complaints. (Ex. F – Re-Sworn Complaints; *see also* Ex. C).

17. The docket shows that on April 7, 2023 “Copies of Citation/Complaint (Count 103) Mailed to Def and Emailed to Atty on 4/7/2023”. (Ex. C)

18. The docket does not evidence that a Summons on the re-sworn criminal complaints was “mailed” to Relator Lackey.

19. On July 11, 2023 Relator Lackey’s substitute criminal defense attorney filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. (*see* Ex. G).

20. This Motion argued that “[t]he criminal complaints filed in Defendant Kay Lackey’s case are defective on their face due to a defect in the oath section of the complaints. Consequently, [Respondent] lacks subject matter jurisdiction and the above captioned case must be dismissed.” (Ex. G).

¹ Available at <https://benchmark.medinamunicipalcourt.org/Home.aspx/Search>

21. On July 14, 2023 the State Responded to the Motion to Dismiss for Lack of Subject Matter Jurisdiction, claiming,

[a]t the April 5, 2023 pretrial in this matter, the parties agreed to moot this very issue by refiling new complaints. Defendant agreed to accept those complaints by regular mail. * * * This matter is both res judicata and again moot.

(Ex. H).

22. Despite Special Prosecutor Jeffrey Holland stating there was a pretrial (Ex. H), the Court should note that no pretrial was held on April 5, 2023, instead there was an off-the-record “pretrial conference” on that day. (*See* Ex. E – April 5, 2023 Judgment Entry).

23. Relator Lackey was not part of that conference, and her attorney (Donald Gallick) never consulted with her on any purported decisions.

24. To date, Relator Lackey has never been before Respondent in a courtroom or elsewhere for any pre-trial proceedings in this case.

25. On July 15, 2023 Respondent issued a Judgment Entry denying Relator’s Motion to Dismiss for Lack of Subject Matter Jurisdiction for the following reasons,

Defendant’s 7/12/23 motion to dismiss this action is denied. Defendant contends that the absence of the jurat on the complaint(s) originally filed was a jurisdictional defect requiring dismissal of this action. Defendant cites one case for support of this proposition, to wit, *State v. W.T.D.*, 2d Dist. Montgomery No. 29238, 2022-Ohio-632 (aka *Daly*). (Motion, at p. 2.)

W.T.D. does not assist Defendant. That case does stand for the proposition that a complaint not sworn and executed with a proper jurat presents a jurisdictional defect. It also arguably stands for the proposition that correcting this defect may not be done upon the State’s motion to amend the complaint. *W.T.D.* directs that the proper remedy is to file a new valid complaint:

[as] the defect was jurisdictional, the State’s remedy was to file a new valid complaint. The trial court abused its discretion in permitting the State to file an amended complaint instead.

W.T.D., at ¶ 31. The Court’s 4/5/23 Judgment Entry ordered precisely this corrective action. It ordered the execution of proper complaints in this action, their re-filing, and their proper service. Defendant agreed to accept regular mail service of these correctly executed complaints. (4/5/23 Judgment Entry, par. 1.) The Judgment Entry was not issued in response to a motion to amend the complaint by the State, but in response to Defendant’s prior motion to dismiss. The parties actually agreed concerning this corrective procedure.

(Ex. I).

26. Respondent incorrectly states in his July 15, 2023 Judgment Entry that Relator Lackey agreed to accept regular mail service.
27. Relator Lackey never agreed to accept the re-sworn complaints by regular mail.
28. Relator Lackey also never agreed that a re-sworn complaint could be filed.
29. No pretrial was ever held and no consultation was ever had with her regarding any purported agreements.
30. In fact, Relator Lackey has never been part of any pretrials in this case, and has never met Respondent in the courthouse in relation to this case.

**CLAIMS FOR RELIEF
(EXPEDITED ALTERNATIVE WRIT AND WRIT OF PROHIBITION)**

**FIRST CLAIM FOR RELIEF
RESPONDENT LACKS SUBJECT MATTER JURISDICTION**

31. Relator incorporates by reference the foregoing paragraphs, as if fully rewritten and set forth herein.
32. Respondent lacks subject matter jurisdiction over this criminal case, and he has exercised unauthorized judicial power since the filing of the defective criminal complaints on March 2, 2023.
33. “A writ of prohibition is an extraordinary remedy that is granted in limited circumstances with great caution and restraint.” *State ex rel. Corn v. Russo*, 90 Ohio St.3d 551, 554, 740 N.E.2d 265 (2001).
34. To be entitled to the requested writ of prohibition, Relator must demonstrate that (1) Respondent is about to exercise or has exercised judicial power, (2) the exercise of that power is unauthorized by law, and (3) denying the writ would result in injury for which no other adequate remedy exists in the ordinary course of law. *State ex rel. Bell v. Pfeiffer*, 131 Ohio St.3d 114,

2012-Ohio-54, 961 N.E.2d 181, ¶ 18; *State ex rel. Miller v. Warren Cty. Bd of Elections*, 130 Ohio St.3d 24, 2011-Ohio-4623, 955 N.E.2d 379, ¶ 12.

35. However, the last requirement need not be established if the lack of jurisdiction is patent and unambiguous. *Chesapeake Exploration, L.L.C. v. Oil & Gas Comm.*, 135 Ohio St.3d 204, 2013-Ohio-224, 985 N.E.2d 480, ¶ 11.

36. Where a lower court's lack of jurisdiction is "patent and unambiguous," the Court will undo past acts by a trial court as well as prevent future ones. *State ex rel. Ohio Dept. of Mental Health v. Nadal*, 98 Ohio St.3d 405, 2003-Ohio-1632, 786 N.E.2d 49, ¶ 19, citing *State ex rel. Sartini v. Yost*, 96 Ohio St. 3d 37, 2002-Ohio-3317, 770 N.E.2d 584, ¶ 24.

37. "Subject matter jurisdiction refers to a court's power to hear and decide a particular case on its merits." *State v. Mitchell*, 4th Dist. Meigs No. 20CA8, 2021-Ohio-4386, ¶ 10, citing *State v. Wycuff*, 4th Dist. Pickaway No. 19CA28, 2020-Ohio-5320, at ¶ 9; *BCL Enterprises, Inc. v. Ohio Dept. of Liquor Control*, 77 Ohio St.3d 467, 469, 1997-Ohio-254, 675 N.E.2d 1; *Morrison v. Steiner*, 32 Ohio St.2d 86, 290 N.E.2d 841, paragraph one of the syllabus (1972).

38. "The filing of a valid complaint is a necessary prerequisite to a court's acquisition of jurisdiction." *State v. Turner*, 3^d Dist. Allen No. 1-11-01, 2011-Ohio-4348, P20, citing *State v. Mbodji*, 129 Ohio St. 3d 325, 2011 Ohio 2880, 951 N.E.2d 1025, ¶ 12.

39. Pursuant to Crim.R. 3, the complaint is "a written statement of the essential facts constituting the offense charged. It shall also state the numerical designation of the applicable statute or ordinance. It shall be made upon oath before any person authorized by law to administer oaths."

40. "In *Green*, the charging officer signed the complaint, but did not sign the jurat. The Eleventh District Court of Appeals held that an unsworn complaint 'is void and any conviction

resulting therefrom would be void also.” *State v. Turner*, 3^d Dist. Allen No. 1-11-01, 2011-Ohio-4348, ¶ 20, citing *State v. Green* (1988), 48 Ohio App.3d 121, 122.

41. The three criminal complaints filed on March 2, 2023 are jurisdictionally defective due to the oath portion being incomplete (missing date), and this defect deprives Respondent of judicial power to do anything but, dismiss this case.

42. Respondent had no jurisdiction over the case, and therefore any action by the Court, other than to dismiss the case, is void and a nullity. *See Patton v. Diemer* (1988), 35 Ohio St.3d 68, 70 (“[A] judgment rendered by a court lacking subject matter jurisdiction is void *ab initio*.”) (italics in original); *see also State v. Henderson*, 161 Ohio St. 3d 285, 290, citing *Sheldon's Lessee v. Newton*, 3 Ohio St. 494, 498-99 (1854) (“A judgment was void only if the court proceeded without jurisdiction.”).

43. Respondent found “the parties agreed to [the filing of a new complaint]” (Ex. I); however subject matter jurisdiction cannot be waived.

44. The Supreme Court of Ohio has held, “a party cannot waive subject matter jurisdiction regardless of procedural sins.” *Columbus City School Dist. Bd. of Edn. v. Wilkins*, 101 Ohio St. 3d 112, 2004 Ohio 296, 802 N.E.2d 637, at ¶ 20, quoting *Shawnee Twp. v. Allen Cty. Budget Comm.* (1991), 58 Ohio St. 3d 14, 15, 567 N.E.2d 1007; *see also State ex rel. White v. Cuyahoga Metro. Hous. Auth.* (1997), 79 Ohio St. 3d 543, 544, citing *State v. Wilson* (1995), 73 Ohio St. 3d 40, 46, 652 N.E.2d 196, 200 (“Subject-matter jurisdiction may not be waived or bestowed upon a court by the parties to the case.”).

45. “[T]he filing of an unsworn complaint is a jurisdictional defect that cannot be waived by the parties.” *State v. Daly*, 2nd Dist. Montgomery No. 29238, 2022-Ohio-632 at ¶ 22 (internal citations omitted); *see also State v. Turner*, 3^d Dist. Allen No. 1-11-01, 2011-Ohio-4348, ¶ 20

(“[T]he failure to present a properly sworn complaint is a defect that deprives a court of subject matter jurisdiction and cannot be waived by a defendant.”) (internal citations omitted).

46. Any purported agreements to “moot” the original complaints is of no consequence to the relief requested herein, as subject matter jurisdiction can never be waived.

47. The July 20, 2023 criminal trial is fast approaching.

48. Respondent has no choice in this case, except to dismiss the case.

49. As explained in *State v. Daly*, an unsworn complaint requires Respondent to,
find the complaint defective and dismiss the case for lack of jurisdiction, because a jurisdictional defect cannot be waived or consented to.

State v. Daly, 2022-Ohio-632, ¶ 9, citing *State v. Davies*, 11th Dist. Ashtabula No. 2012-A-0034, 2013-Ohio-436, ¶ 12.

50. Respondent is exercising unauthorized judicial power by continuing this criminal case

51. Relator has been, and continues to be, harmed by the unauthorized acts of Respondent.

52. Relator Lackey asks this Court to order Respondent to dismiss this case based upon the fact that Respondent lacks subject matter jurisdiction.

**SECOND CLAIM FOR RELIEF
RESPONDENT LACKS PERSONAL JURISDICTION OVER
RELATOR KAY LACKEY**

53. Relator incorporates by reference the foregoing paragraphs, as if fully rewritten and set forth herein.

54. Respondent lacks personal jurisdiction over Relator Lackey because the April 7, 2023 re-sworn complaints and a summons were not served in accordance with the criminal rules and the Constitution.

55. “A court acquires personal jurisdiction in a criminal matter ‘by lawfully issued process, followed by the arrest and arraignment of the accused and his plea to the charge.’” *State v. Gravelly*, 10th Dist. Nos. 22AP-17, 22AP-18, 2022-Ohio-2153, ¶ 12, quoting *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, ¶ 36.

56. The Constitution of Ohio mandates that Relator receives service of the charging document,

Section 10, Article I of the Ohio Constitution provides, in pertinent part, that the accused in a criminal action has the right ‘* * * to demand the nature and cause of the accusation against him, and to have a copy thereof; * * *.’ Under this provision, a criminal defendant is entitled to be served with a copy of the charging document. Even though this is a constitutional right, it can be waived by the defendant.

State v. Neff, 11th Dist. Trumbull No. 93-T-4876, 1994 Ohio App. LEXIS 367, *4-5.

57. The case docket states that Relator Lackey was sent a copy of the re-sworn complaint on April 7, 2023, by “mail.” (Ex. C).

58. “Crim.R. 4(D) does not provide for service via regular U.S. mail.” *See State v. Gallant*, 174 Ohio App. 3d 264, 272, 2007-Ohio-6714, ¶ 28; *see also State v. Guy*, 2nd Dist. Montgomery No. 23680, 2010-Ohio-6341, ¶ 12 (“Crim. R. 4(D)(3) does not allow for service via regular mail, only certified mail.”).

59. This Court lacks personal jurisdiction over Defendant Kay Lackey because she was not served in the manner required by the criminal rules.

60. Relator Lackey has never waived any error as to proper service of the criminal complaint.

61. Even if Relator Lackey waived service of the re-sworn complaints, she was never served with a summons as required by Criminal R. 4.

62. Even if Ms. Lackey waived service of the re-sworn complaint, and had received a copy of the summons, she was never arraigned and never plead to the re-sworn complaint charges contained in the re-sworn complaints.

63. Respondent lacks personal jurisdiction over Relator Lackey because was not arraigned on the re-sworn criminal complaints filed on April 7, 2023, and did not enter a plea as to these re-sworn criminal complaints.

64. As explained by the Supreme Court of Ohio,

[w]ithout an arraignment and a plea, a trial court is without jurisdiction to proceed to trial. Also, failure of the record to show affirmatively an arraignment and a plea is a matter of substance and not form.

Krauter v. Maxwell (1965), 3 Ohio St. 2d 142, 149. (internal citations omitted).

65. Respondent's exercise of judicial power is unauthorized by law.

66. Respondent is patently and unambiguously without jurisdiction.

67. Immediate relief is necessary to prevent Relator from being further subjected to criminal prosecution.

68. Relator has been, and continues to be, harmed by the unauthorized acts of Respondent.

69. In the event this Court finds that Respondent had subject matter jurisdiction despite the omission of the date in the oath portion of the original criminal complaints (First Claim for Relief), Relator asks this Court to order Respondent to dismiss the case based upon the lack of personal jurisdiction.

RELIEF REQUESTED

WHEREFORE, Relator prays that the Court grant an alternative writ prohibiting Respondent from further exercising jurisdiction over *State v. Kay Lackey*, Case

No.123CRB00271, and a preemptory writ declaring the Respondent, in Case No. 23CRB00271, lacks subject matter jurisdiction and lacks personal jurisdiction over Relator Lackey. Relator also requests such other relief as the court deems just and proper.

Respectfully submitted,

/s/ Michela Huth

MICHELA HUTH (Reg. No. 0091353)

PO Box 17, Bolivar, OH 44612

Phone: 330-440-4027

Email: michelahuth.esq@gmail.com

Attorney for Kay Lackey

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2023 a copy of the above Writ (and Exhibits) was faxed to Respondent Gary F. Werner at 330-225-1108.

/s/ Michela Huth

MICHELA HUTH (Reg. No. 0091353)

IN THE SUPREME COURT OF OHIO

KAY LACKEY

Relator,

vs.

THE HON. GARY F. WERNER

Respondent.

* Case No.

*

* ORIGINAL ACTION FOR
WRIT OF PROHIBITION

*


*

AFFIDAVIT OF KAY LACKEY
Pursuant to S.Ct.Prac.R. 12.02

STATE OF OHIO)
)SS:
COUNTY OF MEDINA)

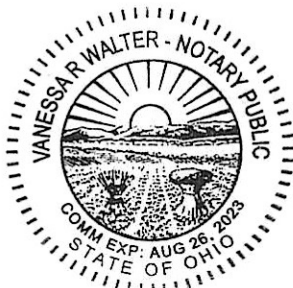
I, Kay Lackey, being first duly sworn and cautioned, depose and state as follows:

1. I have personal knowledge regarding the matters set forth in the Original Action for Writ of Prohibition.
2. I have reviewed the Original Action for Writ of Prohibition Complaint and affirm that the facts set forth therein are true and accurate based on my personal knowledge and based upon the docket in my criminal case.


Kay Lackey

Sworn to before me and subscribed in my presence on this 15th day of July, 2023.


Notary Public



Ex. B

IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO

STATE OF OHIO

vs.

KAY LACKEY
10620 Spencer Lake Road
Spencer, OH 44275

CASE NO.

JUDGE GARY WERNER

COMPLAINT

2023 MAR -2 PM 2:05
MEDINA MUNICIPAL COURT

COUNT ONE

Complainant, being duly sworn, states that:

On or about January 1, 2023, through January 28, 2023 at 10620 Spencer Lake Road, Spencer, Ohio, within the jurisdiction of the Medina Municipal Court, Medina County, Ohio, KAY LACKEY, who did confine or who was the custodian or caretaker of a companion animal: to wit **1 or more of 9 dogs identified as dogs #1-9**, did negligently torture, torment, or commit an act of cruelty against the companion animal, in violation of §959.131(D)(1) of the Ohio Revised Code, a misdemeanor of the second degree.


Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this ____ day of _____, 2023.


Notary Public Deputy Clerk

Sex: F Height: Unk. Race: White

Hair Color: Brown Eye Color: Unk.

Birthdate: 02/19/1987



IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO

STATE OF OHIO

vs.

KAY LACKEY
10620 Spencer Lake Road
Spencer, OH 44275

CASE NO.

JUDGE GARY WERNER

COMPLAINT

23CRB00271

MEDINA MUNICIPAL COURT

2023 MAR -2 PM 2:05

COUNT TWO

Complainant, being duly sworn, states that:

On or about January 1, 2023, through January 28, 2023 at 10620 Spencer Lake Road, Spencer, Ohio, within the jurisdiction of the Medina Municipal Court, Medina County, Ohio, KAY LACKEY, who was the owner, manager, or employee of a dog kennel and who did confine or was the custodian or caretaker of a companion animal: to wit **1 or more of 7 dogs identified as dogs #10-17**, did negligently torture, torment, or commit an act of cruelty against the companion animal, in violation of §959.131(F)(1) of the Ohio Revised Code, a misdemeanor of the first degree.

Rachel Batten

Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this ____ day of _____, 2023.

Tracy L. Warner

Notary Public/Deputy Clerk

Sex: F Height: Unk. Race: White

Hair Color: Brown Eye Color: Unk.

Birthdate: 02/19/1987



IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO

STATE OF OHIO

vs.

KAY LACKEY
10620 Spencer Lake Road
Spencer, OH 44275

CASE NO.

JUDGE GARY WERNER

COMPLAINT

2023 MAR -2 PM 2:05
MEDINA MUNICIPAL COURT

COUNT THREE

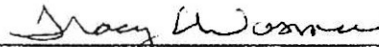
Complainant, being duly sworn, states that:

On or about January 1, 2023, through January 28, 2023 at 10620 Spencer Lake Road, Spencer, Ohio, within the jurisdiction of the Medina Municipal Court, Medina County, Ohio, KAY LACKEY, who did confine or who was the custodian or caretaker of a companion animal: to wit **1 or more of 4 cats identified as cats #1-4**, did negligently torture, torment, or commit an act of cruelty against the companion animal, in violation of §959.131(D)(1) of the Ohio Revised Code, a misdemeanor of the second degree.



Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this ____ day of _____, 2023.



Notary Public/Deputy Clerk

Sex: F Height: Unk. Race: White

Hair Color: Brown Eye Color: Unk.

Birthdate: 02/19/1987



SUMMARY

Judge:	Court Type:	Case Type:
WERNER, GARY F.	CRIMINAL	Criminal
Case Number:	Uniform Case Number:	Status:
23CRB00271		OPEN
Clerk File Date:	Status Date:	Waive Speedy Trial:
3/2/2023	3/2/2023	<input type="checkbox"/>
Total Fees Due:	Custody Location:	Agency:
249.00		SOCIETY PREVENTION OF CRUELTY
Agency Report Number:		

PARTIES

TYPE	PARTY NAME	ADDRESS	ATTORNEY
ATTORNEY	HUTH, MICHELA	P.O. BOX 17 BOLIVAR, OH 44612	
ATTORNEY	SPCA PROSECUTOR	P.O. BOX 345 SHARON CENTER, OH 44274	
PLAINTIFF	STATE OF OHIO	COLUMBUS, OH	1 SPCA PROSECUTOR (Main Attorney) 2 MEDINA CITY PROS (Deactivated: 3/2/2023)
DEFENDANT	LACKEY, KAY	10620 SPENCER LAKE ROAD SPENCER, OH 44275	1 HUTH, MICHELA (Main Attorney) Email: MICHELAHUTH.ESQ@GMAIL.COM 2 GALLICK, DONALD (Deactivated: 6/6/2023) 3 HAMRICK TRUCK DRIVING SCHOOL (Deactivated: 6/6/2023)
OFFICER	BATTEN, RACHEL	MEDINA COUNTY SPCA 8790 GUILFORD RD SEVILLE, OH 44273	

CHARGES

COUNT	DESCRIPTION	LEVEL	DEGREE	PLEA	DISPOSITION	DISPOSITION DATE
1	CRUELTY TO ANIMALS (959.131F1)	M	1	NOT GUILTY		
2	CRUELTY TO ANIMALS (959.131D1)	M	2	NOT GUILTY		
3	CRUELTY TO ANIMALS (959.131D1)	M	2	NOT GUILTY		

EVENTS

DATE	EVENT	JUDGE	LOCATION	RESULT
7/20/2023 8:30 AM	JURY TRIAL NEW	WERNER, GARY F.	COURTROOM 1	
5/25/2023 8:30 AM	JURY TRIAL NEW	WERNER, GARY F.	COURTROOM 1	CANCELLED
5/17/2023 9:00 AM	PRETRIAL WITH JUDGE	WERNER, GARY F.	COURTROOM 1	HELD
4/13/2023 8:30 AM	JURY TRIAL NEW	WERNER, GARY F.	COURTROOM 1	CANCELLED
4/5/2023 8:30 AM	PRETRIAL WITH JUDGE	WERNER, GARY F.	COURTROOM 1	CONTINUED
3/13/2023 8:30 AM	ARRAIGNMENT	MAGISTRATE	COURTROOM 2	HELD

COMPLIANCES

TYPE	REQUIRED BY	COMPLETE	COMPLETE DATE
No Compliances on Case			

OUTSTANDING AMOUNT

COUNT	CODE	DESCRIPTION	ASSESSMENT	PAID	WAIVED	BALANCE	PAYMENT PLAN / JUDGMENT	DUE DATE
1	MYCOST	MOVING COURT COSTS	\$92.00	\$0.00	\$0.00	\$92.00		
2	FINEOTHER	FINE ALL OTHER	\$0.00	\$0.00	\$0.00	\$0.00		
3	FINEOTHER	FINE ALL OTHER	\$0.00	\$0.00	\$0.00	\$0.00		
4	FINEOTHER	FINE ALL OTHER	\$0.00	\$0.00	\$0.00	\$0.00		
Total Outstanding:							\$92.00	
COURT_FEES								
1	SPFCR	SPECIAL PROJECTS FUND CRIMINAL	\$20.00	\$0.00	\$0.00	\$20.00		
2	BAILIFFCRTR	BAILIFF FEES - CRIMINAL	\$7.00	\$0.00	\$0.00	\$7.00		
3	JD	JURY DEMAND TR/CR	\$10.00	\$0.00	\$0.00	\$10.00		

COUNT	CODE	DESCRIPTION	ASSESSMENT	PAID	WAIVED	BALANCE	PAYMENT PLAN / JUDGMENT	DUE DATE
4	MTN	MOTION	\$5.00	\$0.00	\$0.00	\$5.00		
5	SUM	SUMMONS (TRAFFIC/CRIMINAL)	\$10.00	\$0.00	\$0.00	\$10.00		
6	BND	BOND & RELEASE	\$5.00	\$0.00	\$0.00	\$5.00		
7	SUM	SUMMONS (TRAFFIC/CRIMINAL)	\$10.00	\$0.00	\$0.00	\$10.00		
8	SUM	SUMMONS (TRAFFIC/CRIMINAL)	\$10.00	\$0.00	\$0.00	\$10.00		
9	SUB	SUBPOENA ISSUED	\$5.00	\$0.00	\$0.00	\$5.00		
10	SUB	SUBPOENA ISSUED	\$5.00	\$0.00	\$0.00	\$5.00		
11	MTN	MOTION	\$5.00	\$0.00	\$0.00	\$5.00		
12	SUB	SUBPOENA ISSUED	\$30.00	\$0.00	\$0.00	\$30.00		
13	MTN	MOTION	\$5.00	\$0.00	\$0.00	\$5.00		
14	SUM	SUMMONS (TRAFFIC/CRIMINAL)	\$10.00	\$0.00	\$0.00	\$10.00		
15	MTN	MOTION	\$5.00	\$0.00	\$0.00	\$5.00		
16	SUM	SUMMONS (TRAFFIC/CRIMINAL)	\$10.00	\$0.00	\$0.00	\$10.00		
17	MTN	MOTION	\$5.00	\$0.00	\$0.00	\$5.00		
				Total Outstanding:		\$157.00		

RECEIPTS

DATE	RECEIPT #	APPLIED AMOUNT
No Receipts on Case		

CASE DOCKETS
































IMAGE	DIN	DATE	ENTRY	
	1	100	7/15/2023	JUDGMENT ENTRY FILED
	1	99	7/15/2023	JUDGMENT ENTRY FILED
		98	7/14/2023	CORRECTION TO THE STATES BRIEF IN OPPOSITION TO MOTION TO VACATE STIPULATED FACTS FILED BY THE STATE
		97	7/14/2023	BILL OF PARTICULARS FILED BY STATE
		96	7/14/2023	STATES BRIEF IN OPPOSITION TO DEFENDANTS' SECOND MOTION TO DISMISS
		95	7/14/2023	STATES BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO COMPEL
		94	7/14/2023	BREIF IN OPPOSITION TO MOTION TO VACATE STIPULATED FACTS
		93	7/12/2023	MOTION FOR RETURN OF ANIMALS SEIZED
		92	7/12/2023	MOTION TO VACATE STIPULATED FACTS
		91	7/12/2023	MOTION TO COMPEL THE STATE TO PRODUCE THE RECORDS OF THE MEDINA COUNTY SHERIFF
		90	7/12/2023	BILL OF PARTICULARS FILED
		89	7/12/2023	MOTION FOR A BILL OF PARTICULARS
	8	88	7/11/2023	MOTION TO DISMISS
	1	87	6/7/2023	JUDGMENT ENTRY FILED - EMAILED 6/12/23 TO ATTY HUTH, ATTY GALLICK AND PROS
		86	6/5/2023	NOTICE OF SUBSTITUTION OF COUNSEL
	1	85	6/5/2023	JUDGMENT ENTRY FILED - EMAILED 6/12/23 TO ATTY HUTH, ATTY GALLICK AND PROS (HEARING NOT SET - SEE NOTES/JE 6/7/23
		84	6/2/2023	ATTORNEY DONALD GALLICK'S NOTICE OF MANDATORY WITHDRAWAL
	2	83	5/25/2023	JUDGMENT ENTRY FILED - EMAILED 6/12/23 TO ATTY HUTH, ATTY GALLICK AND PROS
	1	82	5/25/2023	SUMMONS ON COMPLAINT - CRIMINAL EMAILED TO ATTY. GALLICK & SPCA PROS & DEF.
		80	5/25/2023	JURY TRIAL NEW SET FOR 07/20/2023 AT 8:30 AM IN C1 , JDG: WERNER, GARY F.
		79	5/24/2023	STATE WITNESS AND EXHIBIT LIST
	1	78	5/22/2023	JUDGES JUDGMENT ENTRY - EMAILED TO DEFTS ATTY AND PROSECUTOR EMAILED TO M. HUTH
		77	5/22/2023	PLEADINGS
		76	5/22/2023	SECOND MOTION TO INTERVENE WITH ORDER
	4	75	5/19/2023	JUDGMENT ENTRY FILED EMAILED ATTY GALLICK / EMAILED DEF / EMAILED SPCA EMAIL 5/22/23 TO M. HUTH
		74	5/18/2023	MOTION TO INTERVENE, WITH PROPOSED ORDER ATTACHED
		73	5/17/2023	FPT HELD. ALL COUNSEL APPEAR AND DISCUSS FINAL ISSUES PRIOR TO TRIAL.
		72	5/17/2023	SUBPOENA WITH PRECIPE FILED BY DEFENSE ATTY - SERVED BY REG U.S. MAIL
		71	5/17/2023	SUBPOENA WITH PRECIPE FILED BY DEFENSE ATTY - SERVED BY REG U.S. MAIL
		70	5/17/2023	SUBPOENA WITH PRECIPE FILED BY DEFENSE ATTY - SERVED BY REG U.S. MAIL
		69	5/17/2023	SUBPOENA WITH PRECIPE FILED BY DEFENSE ATTY - SERVED BY REG U.S. MAIL
		68	5/17/2023	SUBPOENA WITH PRECIPE FILED BY DEFENSE ATTY - SERVED BY REG U.S. MAIL
		67	5/17/2023	SUBPOENA WITH PRECIPE FILED BY DEFENSE ATTY - SERVED BY REG U.S. MAIL
	2	66	5/17/2023	JUDGMENT ENTRY FILED EMAILED ATTY GALLICK / EMAILED DEF / EMAILED SPCA
		65	5/17/2023	DEFENDANT'S WITNESS LIST
	4	64	5/17/2023	MOTION TO CONTINUE JURY TRIAL / DENIED
	1	63	5/9/2023	SUBPOENA WITH PRECIPE
	1	62	5/9/2023	SUBPOENA WITH PRECIPE - SERVED BY MAIL
		60	5/8/2023	PRECIPE FOR SUBPOENA FILED BY SPCA PROSECUTOR FOR REG MAIL SERVICE ON ONE WTNESS IN OBERLIN, OH .
		59	5/8/2023	PRECIPE FOR SUBPOENA FILED BY SPCA PROSECUTOR FOR REG U.S. MAIL SERVICE ON BAILIFF SERVICE ON AGENT RACHEL BATTEN.
	1	58	5/2/2023	JUDGMENT ENTRY FILED EMAILED ATTY / EMAILED DEF / EMAILED SPCA PROS.
		57	5/1/2023	AFFIDAVIT OF RACHEL BATTEN
	2	56	4/24/2023	JUDGMENT ENTRY EMAILED TO DEFENSE COUNSEL AND SPCA PROS

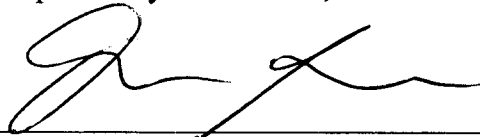
IMAGE	DIN	DATE	ENTRY
	55	4/21/2023	STATE'S MOTION TO PERMIT DISPOSITION OF ANIMAL
	54	4/7/2023	COPIES OF CITATION/COMPLAINT (COUNT 1-3) MAILED TO DEF AND EMAILED TO ATTY ON 4/7/2023
	53	4/7/2023	CITATION/ COMPLAINT FILED - COUNT 3 RE-SWORN
	52	4/7/2023	CITATION/COMPLAINT FILED - COUNT 2 RE-SWORN
	51	4/7/2023	CITATION/COMPLAINT FILED - COUNT 1 RE-SWORN
	2	50	4/5/2023 TRIAL ORDER AND NOTICE CONCERNING EXHIBITS EMAILED TO ATTY. GALLICK & SPCA PROS & DEF.
	1	48	4/5/2023 SUMMONS ON COMPLAINT - CRIMINAL EMAILED TO ATTY. GALLICK & SPCA PROS & DEF.
	46	4/5/2023	JURY TRIAL NEW SET FOR 05/25/2023 AT 8:30 AM IN C1 , JDG: WERNER, GARY F.
	49	4/5/2023	ADMINISTRATIVE ORDER & JUDGMENT ENTRY EMAILED TO ATTY. GALLICK & SPCA PROS & DEF.
	1	47	4/5/2023 SUMMONS ON COMPLAINT - CRIMINAL EMAILED TO ATTY. GALLICK & SPCA PROS & DEF.
	45	4/5/2023	PRETRIAL WITH JUDGE SET FOR 05/17/2023 AT 9:00 AM IN C1 , JDG: WERNER, GARY F.
	44	4/5/2023	AGREED DATES 5/25,6/1, & 6/22
	43	4/5/2023	PT HELD. ALL COUNSEL APPEAR. SEE 4/5/23 JE FOR DISPOSITION.
	1	42	4/5/2023 JUDGMENT ENTRY FILED EMAILED TO DEFENSE COUNSEL AND PROSC HOLLAND
	41	4/3/2023	BRIEF IN OPPOSITION TO MOTION TO SUPPRESS ****UNDER SUBMISSION****
	40	4/3/2023	BRIEF IN OPPOSITION TO MOTION TO DISMISS - HEARING REQUESTED *** UNDER SUBMISSION**
	1	37	3/23/2023 SUMMONS ON COMPLAINT - CRIMINAL EMAILED TO ATTY.. GALLICK & SPCA PROS & DEF
	1	36	3/22/2023 JUDGMENT ENTRY FILED EMAILED TO ATTY.. GALLICK & SPCA PROS & DEF
	2	35	3/22/2023 JUDGMENT ENTRY FILED EMAILED TO DEFT'S ATTY AND SPCA PROS
	34	3/21/2023	MOTION TO DECLARE ORC 959.131(D) AND 959.131(F) VOID SENT TO JUDGE
	33	3/21/2023	MOTION TO SUPPRESS AND EVIDENTIARY HEARING REQUESTED SENT TO JUDGE
	4	32	3/21/2023 MOTION TO DISMISS SENT TO JUDGE
	1	31	3/20/2023 SUMMONS ON COMPLAINT - CRIMINAL EMAILED TO ATTY. GALLICK, SPCA PROS & DEF.
	30	3/20/2023	PRETRIAL WITH JUDGE SET FOR 04/05/2023 AT 8:30 AM IN C1 , JDG: WERNER, GARY F.
	29	3/17/2023	NOTICE OF EMAIL SERVICE EMAILED TO ATTY. GALLICK, SPCA PROS & DEF.
	2	28	3/17/2023 TRIAL ORDER AND NOTICE CONCERNING EXHIBITS EMAILED TO ATTY. GALLICK, SPCA PROS & DEF.
	1	27	3/17/2023 SUMMONS ON COMPLAINT - CRIMINAL EMAILED TO ATTY. GALLICK, SPCA PROS & DEF.
	26	3/17/2023	JURY TRIAL NEW SET FOR 04/13/2023 AT 8:30 AM IN C1 , JDG: WERNER, GARY F.
	1	25	3/13/2023 JUDGES JUDGMENT ENTRY EMAILED TO DEFT'S ATTY AND SPCA PROS
	24	3/13/2023	SHERIFF RETURN
	23	3/13/2023	SIGNATURE ORDERED ON THIS CASE
	22	3/13/2023	PLEA OF NOT GUILTY ENTERED ON CASE SENT TO ASSIGN COMMISSIONER
	21	3/13/2023	PLEA OF NOT GUILTY ENTERED ON CASE SENT TO ASSIGN COMMISSIONER
	20	3/13/2023	PLEA OF NOT GUILTY ENTERED ON CASE SENT TO ASSIGN COMMISSIONER
	19	3/13/2023	EVIDENTIARY HEARING REQUESTED SENT TO MAGISTRATE
	18	3/13/2023	MOTION TO PRESERVE EVIDENCE SENT TO MAGISTRATE
	16	3/13/2023	OR BOND RECOGNITION
	2	15	3/10/2023 REQUEST FOR DISCOVERY-DEFENDANT
	1	14	3/10/2023 JURY DEMAND FILED - GRANTED
	1	13	3/10/2023 NOTICE OF APPEARANCE FILED
	1	9	3/2/2023 SUMMONS ON COMPLAINT - CRIMINAL / SERVED BY BAILIFF
	8	3/2/2023	ARRAIGNMENT SET FOR 03/13/2023 AT 8:30 AM IN C2 , JDG: MAGISTRATE
	7	3/2/2023	SHERIFF RETURN / BAILIFF
	5	3/2/2023	PROBABLE CAUSE CHECKLIST
	4	3/2/2023	NOTICE OF FILING DESIGNATION OF COUNSEL. ATTY J. JEFFREY HOLLAND
	3	3/2/2023	INSTRUCTIONS FOR PERSONAL SERVICE BY BAILIFF
	12	3/2/2023	CITATION/COMPLAINT FILED - COUNT 3
	11	3/2/2023	CITATION/COMPLAINT FILED - COUNT 2
	10	3/2/2023	CITATION/COMPLAINT FILED - COUNT 1
	1	3/2/2023	WERNER, GARY F.: ASSIGNED

IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO

STATE OF OHIO	)	CASE 23 CRB 00271
)	
Plaintiff,	)	JUDGE GARY WERNER
)	
v.	)	MOTION TO DISMISS
)	
KAY LACKEY,	)	Ohio Rule of Criminal Procedure
	)	Rule 3(A)
Defendant.)	

Defendant, by and through counsel, files this Motion to Dismiss pursuant to Ohio Rule of Criminal Procedure 3(A). Defendant proffers the following Brief in Support as well.

Respectfully submitted,



DONALD GALLICK (#0073421)
COUNSEL FOR DEFENDANT
190 North Union Street #102
Akron, Ohio 44304
(330) 631-6892
ohioappeals@ymail.com

2023 MAR 21 PM 1:11
FILED
MEDINA MUNICIPAL COURT

BRIEF IN SUPPORT

Ohio Rule of Criminal Procedure 3(A) requires that a criminal complaint "**
* *be made under oath before any person authorized by law to administer oaths."

On the morning of March 13, 2023, Defendant and her retained counsel appeared at arraignment. No prosecutor appeared, nor is the name of any specific prosecutor listed on the docket of this Court's website.

At arraignment, defense counsel stated that neither he nor his client have ever seen any complaint in the case; the magistrate stated that she would obtain a copy of the three misdemeanor complaints and provide them in short order. Defense counsel waived any defect in service of the complaint, and entered not guilty pleas. Court staff then produced copies of the three complaints.

A review of three complaints show that they are defect, not due to improper service, but for non-compliance with Ohio rules and law. A misdemeanor complaint must be sworn with a valid oath. See e.g., *State v. Shutway*, 2015-Ohio-2433. Ohio Revised Code § 147.07 lists "this date of (date)" as a requirement for an affidavit's form. Courts have found an undated affidavit as valid in one case where a judge issued a search warrant with a specific date, despite the undated

2023 MAR 21 PM 1:11
FILED
MEDINA MUNICIPAL COURT

search warrant affidavit. *State v. Gervin*, 2016-Ohio-5670. Other undated affidavits have been excused, when the notary stated the affidavit was signed in "August 2006* * *" *Chase Manhattan Mtge. Corp. v. Locker & Locker*, 2003-Ohio-6665.

In this case, the affidavit contains no date of signing, no suggestion of any day, month, or even year of signing and it is not even clear if the "notary" is actually a notary or authorized clerk to receive criminal complaints. Counsel also asks this Court to consider these three questionable complaints in pari materia with the search warrant, which appears to be backdated and containing false information on its face. (See motion to suppress, pending). An affidavit that appears defective on its face should not be considered an affidavit. *HSBC Bank v. Thompson*, 2010-Ohio-4158, at ¶26-27, citing *In re Disqualification of Pokorny* (1992), 74 Ohio St.3d 1238.

Respectfully submitted,

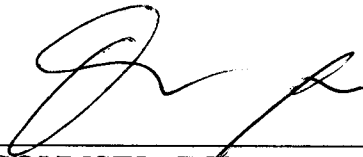


DONALD GALLICK (#0073421)
COUNSEL FOR DEFENDANT
190 North Union Street #102
Akron, Ohio 44304
(330) 631-6892
ohioappeals@ymail.com

2023 MAR 21 PM 1:11
FILED
MEDINA MUNICIPAL COURT

CERTIFICATE OF SERVICE

The undersigned certifies that this Motion to Dismiss was sent by regular U.S. mail to the SPCA Prosecutor at P.O. Box 345, Sharon Center, Ohio 44274 on this twenty-first day of March, 2023.



COUNSEL FOR DEFENDANT

2023 MAR 21 PM 1:11
FILED
NEEDHAM MUNICIPAL COURT

Ex. E

MEDINA MUNICIPAL COURT
135 NORTH ELMWOOD AVENUE
MEDINA, OHIO 44256
(330) 723-3287 (330) 225-3047 FAX (330) 225-1108
www.medinamunicipalcourt.org

April 05, 2023

CASE NO. 23CRB00271

STATE OF OHIO
Plaintiff(s)

vs

KAY LACKEY
Defendant(s)


JUDGMENT ENTRY

The matter came on before the Court for a 4/5/23 pretrial conference with the Judge. All counsel appeared. The parties reviewed with the Court the outstanding motions filed by the Defendant and the case's procedural posture. Consequent to those discussions, and for cause shown,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Defendant's 3/21/23 Motion to Dismiss is denied as moot. The State shall forthwith cause the complaint(s) in this case to be re-sworn under Crim. R. 3(A), properly notarized by the Clerk, and filed for record. Defendant agrees to accept regular mail service of the re-filed complaint(s).
2. Defendant's 3/21/23 Motion to Suppress is denied. The challenge Defendant asserted to the absence of an affidavit in support of the 1/27/23 search warrant issued by an Acting Judge of this Court lacks merit. The 3/31/23 Brief in Opposition filed by the State attaches the warrant and the associated affidavit. The Court has reviewed the affidavit and finds that it states sufficient probable cause for the issuance of the warrant.
3. Defendant shall have until 4/7/23 to file a notice with this Court identifying any challenge raised in his Motion to Suppress that is not disposed of by the ruling stated in the previous paragraph. If no issue remains to be determined, Defendant shall timely file the required notice so informing the Court.
4. The Clerk shall set this case for a jury trial at the earliest available date. Consult all counsel before scheduling the date.
5. If on or before 4/7/23 Defendant files a written waiver of the right to a speedy trial, the Clerk shall, as circumstances dictate, either convert the scheduled jury trial to a pretrial conference with the Judge, or set a pretrial conference with the Judge in 3 weeks OFADT if no jury trial date has at that point yet been set.
6. Time is charged to the Defendant.

The Clerk shall cause a copy of this Judgment Entry to be served on the attorney for all parties represented by an attorney in this action and on all parties who are not represented by an attorney.


4/5/2023 12:32 PM
GARY F. WERNER - JUDGE
e-Signed 4/5/2023 12:33 PM 23CRB00271
CERTIFICATE OF SERVICE

The foregoing Judgment Entry was served on all parties or their attorney(s) by sending a copy to them by regular mail and/or email on April 05, 2023, pursuant to Loc.R. 10(C)(4).

Ex. F

IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO

2023 APR -7 PM 12:52
MEDINA MUNICIPAL COURT

STATE OF OHIO

vs.

KAY LACKEY
10620 Spencer Lake Road
Spencer, OH 44275

CASE NO.

JUDGE GARY WERNER

COMPLAINT

COUNT ONE

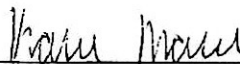
Complainant, being duly sworn, states that:

On or about January 1, 2023, through January 28, 2023 at 10620 Spencer Lake Road, Spencer, Ohio, within the jurisdiction of the Medina Municipal Court, Medina County, Ohio, KAY LACKEY, who did confine or who was the custodian or caretaker of a companion animal: to wit **1 or more of 9 dogs identified as dogs #1-9**, did negligently torture, torment, or commit an act of cruelty against the companion animal, in violation of §959.131(D)(1) of the Ohio Revised Code, a misdemeanor of the second degree.



Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this 7 day of April, 2023.



Notary Public/ Deputy Clerk

Sex: F Height: Unk. Race: White

Hair Color: Brown Eye Color: Unk.

Birthdate: 02/19/1987



IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO

2023 APR -7 PM 12:52
MEDINA MUNICIPAL COURT

STATE OF OHIO

vs.

KAY LACKEY
10620 Spencer Lake Road
Spencer, OH 44275

CASE NO.

JUDGE GARY WERNER

COMPLAINT

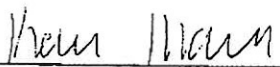
COUNT TWO

Complainant, being duly sworn, states that:

On or about January 1, 2023, through January 28, 2023 at 10620 Spencer Lake Road, Spencer, Ohio, within the jurisdiction of the Medina Municipal Court, Medina County, Ohio, KAY LACKEY, who was the owner, manager, or employee of a dog kennel and who did confine or was the custodian or caretaker of a companion animal: to wit **1 or more of 7 dogs identified as dogs #10-17**, did negligently torture, torment, or commit an act of cruelty against the companion animal, in violation of §959.131(F)(1) of the Ohio Revised Code, a misdemeanor of the first degree.


Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this 7 day of April, 2023.


Notary Public/Deputy Clerk

Sex: F Height: Unk. Race: White
Hair Color: Brown Eye Color: Unk.
Birthdate: 02/19/1987



IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO

2023 APR -7 PM 12:52

MEDINA MUNICIPAL COURT

STATE OF OHIO

vs.

KAY LACKEY
10620 Spencer Lake Road
Spencer, OH 44275

CASE NO.

JUDGE GARY WERNER

COMPLAINT

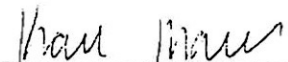
COUNT THREE

Complainant, being duly sworn, states that:

On or about January 1, 2023, through January 28, 2023 at 10620 Spencer Lake Road, Spencer, Ohio, within the jurisdiction of the Medina Municipal Court, Medina County, Ohio, KAY LACKEY, who did confine or who was the custodian or caretaker of a companion animal: to wit **1 or more of 4 cats identified as cats #1-4**, did negligently torture, torment, or commit an act of cruelty against the companion animal, in violation of §959.131(D)(1) of the Ohio Revised Code, a misdemeanor of the second degree.


Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this 7 day of April, 2023.


Notary Public Deputy Clerk

Sex: F Height: Unk. Race: White
Hair Color: Brown Eye Color: Unk.
Birthdate: 02/19/1987



**IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO**

STATE OF OHIO

Plaintiff,

vs.

KAY LACKEY

Defendant.

* Case No. 23CRB00271

* Judge Gary F. Werner

* **MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER
JURISDICTION**

*

Now comes Defendant Kay Lackey, by and through undersigned counsel, and hereby moves this Honorable Court to dismiss this case for lack of subject matter jurisdiction. A Memorandum of Law is attached hereto and incorporated herein.

Respectfully submitted,

/s/ Michela Huth

MICHELA HUTH (Reg. No. 0091353)

PO Box 17, Bolivar, OH 44612

Phone: 330-440-4027

Email: michelahuth.esq@gmail.com

Attorney for Kay Lackey

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above Motion and the below Memorandum in Support, was emailed on July 10, 2023 to Prosecutor Jeffrey Holland at jjholland@hmlawohio.com.

/s/ Michela Huth

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER JURISDICTION**

I. Introduction

The criminal complaints filed in Defendant Kay Lackey's case are defective on their face due to a defect in the oath section of the complaints. Consequently, this Court lacks subject matter jurisdiction and the above captioned case must be dismissed.

II. Relevant Facts

The docket in the above captioned case shows that on March 2, 2023 the "Summons on Complaint" was "Served by Bailiff". As can be seen from each of the criminal complaints, they are not properly sworn,



Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this ____ day of _____, 2023.



Notary Public/Deputy Clerk

Ex. A.

III. Law and Argument

"The filing of a valid complaint invokes the jurisdiction of a municipal court." *State v. Daly*, 2d Dist. Montgomery No. 29238, 2022-Ohio-632, ¶ 21, citing *State v. Mbodji*, 129 Ohio St.3d 325, 2011-Ohio-2880; *see also State v. Postlethwait*, 11th Dist. Trumbull No. 2022-T-0077, 2023-Ohio-674, ¶ 52, citing *State v. Sallee*, 6th Dist. Erie No. E-11-042, 2012-Ohio-3617, ¶ 11-13) ("A valid complaint must be filed in order to vest a court with subject-matter jurisdiction.").

In order for a criminal complaint to be valid under Criminal Rule 3, it must, *inter alia*, be “made upon oath before any person authorized by law to administer oaths.” *See State v. Postlethwait*, 11th Dist. Trumbull No. 2022-T-0077, 2023-Ohio-674, ¶ 27, quoting *State v. Jones*, 11th Dist. Portage Nos. 2010-P-0051 and 2010-P-0055, 2011-Ohio-5109, ¶ 16, quoting *State v. Patterson*, 11th Dist. Trumbull No. 96-T-5439, 1998 Ohio App. LEXIS 2289, 1998 WL 310737, *7 (May 22, 1998). “[T]he filing of an unsworn complaint is a jurisdictional defect that cannot be waived by the parties.” *Daly*, 2022-Ohio-632 at ¶ 22, (internal citations omitted).

The complaints in Ms. Lackey’s case are fatally flawed because the complaints were not properly sworn, and therefore the only option this Court has is to dismiss the case for lack of jurisdiction. *See Daly*, 2022-Ohio-632 at 22, quoting *Daly*, 2d Dist. Montgomery Nos. 28741 & 28764, 2021-Ohio-873, at ¶ 14 (“In our opinion, we instructed the court, upon remand, ‘to determine if there were a properly signed and notarized complaint. If the unsworn complaint in the record is all that exists, as we suspect, the court must find the complaint defective and dismiss the case for lack of jurisdiction * * *.’”)

The State’s re- sworn complaints do not cure the lack of jurisdiction. The State had no authority to file a re- sworn complaint, and a trial court abused its discretion in permitting the State to file an amended complaint when the Court lacks subject matter jurisdiction.

Respectfully submitted,

/s/ Michela Huth

MICHELA HUTH (Reg. No. 0091353)

IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO

Ex. A

STATE OF OHIO

vs.

KAY LACKEY
10620 Spencer Lake Road
Spencer, OH 44275

CASE NO.

JUDGE GARY WERNER

COMPLAINT

2023 MAR -2 PM 2:05
MEDINA MUNICIPAL COURT


COUNT ONE

Complainant, being duly sworn, states that:

On or about January 1, 2023, through January 28, 2023 at 10620 Spencer Lake Road, Spencer, Ohio, within the jurisdiction of the Medina Municipal Court, Medina County, Ohio, KAY LACKEY, who did confine or who was the custodian or caretaker of a companion animal: to wit **1 or more of 9 dogs identified as dogs #1-9**, did negligently torture, torment, or commit an act of cruelty against the companion animal, in violation of §959.131(D)(1) of the Ohio Revised Code, a misdemeanor of the second degree.


Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this ____ day of _____, 2023.


Notary Public Deputy Clerk

Sex: F Height: Unk. Race: White

Hair Color: Brown Eye Color: Unk.

Birthdate: 02/19/1987



IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO

STATE OF OHIO

vs.

KAY LACKEY
10620 Spencer Lake Road
Spencer, OH 44275

CASE NO.

JUDGE GARY WERNER

COMPLAINT

23CRB00271

MEDINA MUNICIPAL COURT

2023 MAR -2 PM 2:05

COUNT TWO

Complainant, being duly sworn, states that:

On or about January 1, 2023, through January 28, 2023 at 10620 Spencer Lake Road, Spencer, Ohio, within the jurisdiction of the Medina Municipal Court, Medina County, Ohio, KAY LACKEY, who was the owner, manager, or employee of a dog kennel and who did confine or was the custodian or caretaker of a companion animal: to wit **1 or more of 7 dogs identified as dogs #10-17**, did negligently torture, torment, or commit an act of cruelty against the companion animal, in violation of §959.131(F)(1) of the Ohio Revised Code, a misdemeanor of the first degree.

Rachel Batten

Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this ____ day of _____, 2023.

Tracy L. Warner

Notary Public/Deputy Clerk

Sex: F Height: Unk. Race: White

Hair Color: Brown Eye Color: Unk.

Birthdate: 02/19/1987



IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO

STATE OF OHIO

vs.

KAY LACKEY
10620 Spencer Lake Road
Spencer, OH 44275

CASE NO.

JUDGE GARY WERNER

COMPLAINT

2023 MAR -2 PM 2:05
MEDINA MUNICIPAL COURT

COUNT THREE

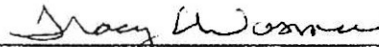
Complainant, being duly sworn, states that:

On or about January 1, 2023, through January 28, 2023 at 10620 Spencer Lake Road, Spencer, Ohio, within the jurisdiction of the Medina Municipal Court, Medina County, Ohio, KAY LACKEY, who did confine or who was the custodian or caretaker of a companion animal: to wit **1 or more of 4 cats identified as cats #1-4**, did negligently torture, torment, or commit an act of cruelty against the companion animal, in violation of §959.131(D)(1) of the Ohio Revised Code, a misdemeanor of the second degree.



Humane Society Agent Rachel Batten

Sworn to and subscribed before me by Humane Society Agent Rachel Batten
this ____ day of _____, 2023.



Notary Public/Deputy Clerk

Sex: F Height: Unk. Race: White

Hair Color: Brown Eye Color: Unk.

Birthdate: 02/19/1987



**IN THE MEDINA MUNICIPAL COURT
MEDINA COUNTY, OHIO**

STATE OF OHIO	)	CASE NO. 23 CRB 00271
)	
Plaintiff)	
)	
vs.	)	JUDGE GARY WERNER
)	
KAY LACKEY)	
)	
Defendant	)	<u>BRIEF IN OPPOSITION TO</u>
	)	<u>DEFENDANT'S [SECOND] MOTION</u>
	)	<u>TO DISMISS</u>
)	

Now comes the State of Ohio, by counsel, and submits the following brief in opposition to Defendant's [Second] Motion to Dismiss. The State incorporates its April 3, 2023 brief in opposition to Defendant's original Motion to Dismiss as if it is fully restated herein.

At the April 5, 2023 pretrial in this matter, the parties agreed to moot this very issue by refiling new complaints. Defendant agreed to accept those complaints by regular mail. This is reflected in the Court's journal entry of April 5, 2023. This matter is both res judicata and again moot. Defendant's motion is without merit and should be denied.

Respectfully submitted,
HOLLAND & MURDEN



DanaMarie K. Pannella (#0090021)
1343 Sharon-Copley Road, P. O. Box 345
Sharon Center, Ohio 44274
(330) 239-4480; Fax (330) 239-6224
E-mail: dpannella@hmlawohio.com

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent via email to:

Michela Huth, Esq. *micelahuth.esq@gmail.com*

7/14/23

Date

A handwritten signature in black ink, appearing to read 'DanaMarie K. Pannella', written over a horizontal line.

DanaMarie K. Pannella
Prosecutor

Ex. I

MEDINA MUNICIPAL COURT
135 NORTH ELMWOOD AVENUE
MEDINA, OHIO 44256
(330) 723-3287 (330) 225-3047 FAX (330) 225-1108
www.medinamunicipalcourt.org

July 15, 2023

CASE NO. 23CRB00271

STATE OF OHIO
Plaintiff(s)

vs

KAY LACKEY
Defendant(s)

JUDGMENT ENTRY


Defendant's 7/12/23 motion to dismiss this action is denied. Defendant contends that the absence of the jurat on the complaint(s) originally filed was a jurisdictional defect requiring dismissal of this action. Defendant cites one case for support of this proposition, to wit, *State v. W.T.D.*, 2d Dist. Montgomery No. 29238, 2022-Ohio-632 (aka *Daly*). (Motion, at p. 2.)

W.T.D. does not assist Defendant. That case does stand for the proposition that a complaint not sworn and executed with a proper jurat presents a jurisdictional defect. It also arguably stands for the proposition that correcting this defect may not be done upon the State's motion to amend the complaint. *W.T.D.* directs that the proper remedy is to file a new valid complaint:

[as] the defect was jurisdictional, the State's remedy was to file a new valid complaint. The trial court abused its discretion in permitting the State to file an amended complaint instead.

W.T.D., at ¶ 31. The Court's 4/5/23 Judgment Entry ordered precisely this corrective action. It ordered the execution of proper complaints in this action, their re-filing, and their proper service. Defendant agreed to accept regular mail service of these correctly executed complaints. (4/5/23 Judgment Entry, par. 1.) The Judgment Entry was not issued in response to a motion to amend the complaint by the State, but in response to Defendant's prior motion to dismiss. The parties actually agreed concerning this corrective procedure.

For these reasons, Defendant's second motion to dismiss is also denied. The Clerk shall cause a copy of this Judgment Entry to be served on the attorney for all parties represented by an attorney in this action and on all parties who are not represented by an attorney.


7/15/2023 8:27 AM
23CRB00271
GARY F. WERNER -- JUDGE
e-Signed 7/15/2023 8:27 AM 23CRB00271

CERTIFICATE OF SERVICE

The foregoing Judgment Entry was served on all parties or their attorney(s) by sending a copy to them by regular mail and/or email on July 15, 2023, pursuant to Loc.R. 10(C)(4).