

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
GUERNSEY COUNTY, OHIO

IN RE: AFFIDAVIT FOR
CRIMINAL COMPLAINT FILED
BY MARVIN BENSON

Case No. 26CA000025

Opinion And Judgment Entry

Appeal from the Guernsey County Court of
Common Pleas, Case No. 26CV000175

Judgment: Affirmed

Date of Judgment Entry: September 15, 2026

BEFORE: Andrew J. King; William B. Hoffman; Robert G. Montgomery, Judges

APPEARANCES: MARVIN BENSON, PRO SE, Appellant.

Montgomery, J.

{¶1} Affiant-Appellant Marvin Benson appeals the judgment entered by the Guernsey County Common Pleas Court dismissing his citizen criminal affidavit filed pursuant to R.C. 2935.09.

STATEMENT OF THE FACTS AND CASE

{¶2} On April 16, 2018, paramedics found the six-year-old son of Appellant's girlfriend deceased at their home. The body of the child was battered and bruised. The

coroner found the cause of death was a ruptured bowel, which was caused by blunt force trauma to the abdomen by something of substance inflicted hard and fast, such as a punch or a kick. The coroner estimated the injury occurred 8-24 hours prior to the child's death. The child's brain was swollen, and he had twice the amount of diphenhydramine in his system as is the therapeutic dose for an adult. The child was malnourished, weighing only 35 pounds at the time of his death.

{¶3} Appellant was interviewed by Detective Greg Clark of the Cambridge Police Department. Appellant admitted to kicking the child the night before his death and the morning of his death. Appellant was convicted after jury trial of felony murder and sentenced to a term of incarceration of fifteen years to life. This Court affirmed Appellant's conviction and sentence on appeal. *State v. Benson*, 2020-Ohio-1258 (5th Dist.).

{¶4} On May 8, 2026, Appellant filed a citizen criminal affidavit pursuant to R.C. 2935.09, alleging that Det. Clark's actions toward Appellant when he was interviewed after the child's death constituted kidnapping, abduction, sexual battery, gross sexual imposition, sexual imposition, interference with custody, intimidation, retaliation, perjury, tampering with evidence, falsification, obstruction, dereliction of duty, and interference with civil rights.

{¶5} Pursuant to R.C. 2935.10, the trial court referred the complaint to the Guernsey County Prosecuting Attorney, Lindsey Donahue-Angler, for investigation. On May 14, 2026, the prosecutor filed a response stating these allegations were previously investigated in 2025 by both the Guernsey County Prosecutor's Office and the Cambridge Police Department. Counsel represented to the court that she had reviewed all the material from that investigation, as well as the recorded interview with Det. Clark during which Appellant claimed the inappropriate interaction took place. The prosecutor informed Appellant by letter

in January of 2026 that she found no evidence whatsoever supporting any of his claims. The opinion of the State, through the Guernsey County Prosecutor, remained that no crime was committed by Det. Clark in conjunction with Appellant's police interview. The trial court dismissed Appellant's affidavit based upon the prosecutor's response.

{¶6} It is from the May 15, 2026, judgment of the trial court Appellant prosecutes this appeal, assigning as error:

{¶7} "I. THE TRIAL COURT ABUSED ITS DISCRETION AND/OR COMMITTED REVERSIBLE LEGAL ERROR BY ALLOWING A CRIMINAL AFFIDAVIT FILED PURSUANT TO R.C. 2935.09 AND R.C. 2935.10 TO BE DOCKETED AND TREATED AS A CIVIL ACTION UNDER GUERNSEY COUNTY COMMON PLEAS CASE NO. 26CV000175, EVEN THOUGH THE FILING SOUGHT CRIMINAL REVIEW, ARREST, PROSECUTION, AND STATUTORY ACTION FOR ALLEGED FELONY OFFENSES."

{¶8} "II. THE TRIAL COURT ABUSED ITS DISCRETION BY REFERRING THE MATTER TO THE LOCAL PROSECUTOR'S OFFICE AFTER THE FILING PLACED THE COURT ON NOTICE OF A CONFLICT OF INTEREST INVOLVING LOCAL LAW ENFORCEMENT, DETECTIVE GREGORY CLARK, PROSECUTOR LINDSAY ANGLER, AND ROY ANGLER, WHO APPELLANT KNOWS ARE PERSONALLY CONNECTED TO THE FACTS AND PERSONS INVOLVED IN THE COMPLAINT."

{¶9} "III. THE TRIAL COURT ABUSED ITS DISCRETION AND VIOLATED DUE PROCESS BY RECEIVING THE PROSECUTOR'S RESPONSE AND CLOSING THE CASE THE NEXT DAY WITHOUT PERMITTING APPELLANT A

MEANINGFUL OPPORTUNITY TO RESPOND, OBJECT, CORRECT THE RECORD, OR SUBMIT OPPOSITION TO THE PROSECUTOR’S DISPUTED ASSERTIONS.”

{¶10} “IV. THE TRIAL COURT ABUSED ITS DISCRETION BY DISMISSING AND CLOSING THE MATTER WITHOUT ISSUING FINDINGS OF FACT AND CONCLUSIONS OF LAW EXPLAINING WHETHER THE AFFIDAVIT WAS NOT FILED IN GOOD FAITH, WAS NOT MERITORIOUS, LACKED PROBABLE CAUSE, OR OTHERWISE FAILED TO SATISFY R.C. 2935.09 AND R.C. 2935.10.”

ACCELERATED CALENDAR

{¶11} This case comes to us on the accelerated calendar. App.R. 11.1, which governs accelerated calendar cases, provides, in pertinent part:

(E) Determination and judgment on appeal.

The appeal will be determined as provided by App.R. 11.1. It shall be sufficient compliance with App.R. 12(A) for the statement of the reason for the court's decision as to each error to be in brief and conclusionary form.

The decision may be by judgment entry in which case it will not be published in any form.

{¶12} This appeal shall be considered in accordance with the aforementioned rule.

APPLICABLE LAW AND STANDARD OF REVIEW

{¶13} Appellant filed his affidavit pursuant to R.C. 2935.09(D):

A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution under this section may file an affidavit charging the offense committed with a reviewing official for the purpose of review to determine if a

complaint should be filed by the prosecuting attorney or attorney charged by law with the prosecution of offenses in the court or before the magistrate. A private citizen may file an affidavit charging the offense committed with the clerk of a court of record before or after the normal business hours of the reviewing officials if the clerk's office is open at those times. A clerk who receives an affidavit before or after the normal business hours of the reviewing officials shall forward it to a reviewing official when the reviewing official's normal business hours resume.

{¶14} R.C. 2935.10(A) governs the proceedings in the trial court following the filing of an affidavit alleging a felony:

Upon the filing of an affidavit or complaint as provided by section 2935.09 of the Revised Code, if it charges the commission of a felony, such judge, clerk, or magistrate, unless the judge, clerk, or magistrate has reason to believe that it was not filed in good faith, or the claim is not meritorious, shall forthwith issue a warrant for the arrest of the person charged in the affidavit, and directed to a peace officer; otherwise the judge, clerk, or magistrate shall forthwith refer the matter to the prosecuting attorney or other attorney charged by law with prosecution for investigation prior to the issuance of warrant.

{¶15} We apply the abuse of discretion standard to our review of a judge's decision not to issue a warrant following an accusation by affidavit filed pursuant to R.C. 2935.09 and 2935.10. *Hillman v. O'Shaughnessy*, 2017-Ohio-489, ¶ 7 (10th Dist.). An abuse of discretion is more than merely an error of judgment; it connotes a decision that is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

I.

{¶16} In his first assignment of error, Appellant argues the trial court erred in allowing or directing the clerk of courts to assign a civil case number to his affidavit, rather than a criminal case number.¹

{¶17} R.C. 2935.09 directs the clerk of courts to “forward” the affidavit to a reviewing official. An affiant has no clear legal right to have the clerk file-stamp and assign a case number to an affidavit filed under R.C. 2935.09(D). *State ex rel. Ju v. Mayer*, 2026-Ohio-1481, ¶ 12 (2d Dist.). Because the clerk was not required to assign any case number to Appellant’s affidavit, we find no error in the designation of the case number as civil rather than criminal. Furthermore, the trial court acted on the affidavit in accordance with the statutory procedure set forth in R.C. 2935.09 and R.C. 2935.10, and the designation of the case as civil or criminal had no effect on the trial court proceedings.

{¶18} The first assignment of error is overruled.

II.

{¶19} In his second assignment of error, Appellant argues the trial court erred in referring his affidavit to the Guernsey County Prosecuting Attorney, Lindsey Donahue-Angler, because she had a conflict of interest in this case.

{¶20} In his affidavit, Appellant requested the appointment of a special prosecutor because “the accused [Det. Greg Clark] is a local former law-enforcement detective, who worked side by side with Roy Angler that was part of complainants criminal case, who is the Husband of the now Head Prosecuting Attorney for Guernsey County Prosecutors Office,

¹ Appellant has a pending writ of mandamus filed in this Court seeking to order the Clerk of Courts of Guernsey County to assign this action a criminal case number.

Lindsay [sic] Angler, (aka Donahue) who is personally involved in this matter, referral to the ordinary prosecuting authority presents institutional conflict.” Affidavit, page 15.

{¶21} When an R.C. 2935.09 affidavit alleges crimes by the prosecuting attorney and their governmental clients, the prosecuting attorney is necessarily conflicted and cannot perform the investigative function contemplated by R.C. 2935.10(A). *In re Appointment of Special Prosecutor (Martin P. Desmond)*, 2025-Ohio-5013, ¶ 25 (7th Dist.). In the instant case, the affidavit does not allege crimes by the prosecuting attorney, nor does it allege crimes by her husband. The allegations are against a former City of Cambridge police detective, and the affidavit does not allege that as such he is a client of the county prosecutor’s office. The mere allegation that the current prosecutor’s husband formerly worked with the detective against whom the allegations are levied is insufficient to require the appointment of a special prosecutor.

{¶22} The second assignment of error is overruled.

III., IV.

{¶23} In his third assignment of error, Appellant argues that the trial court erred in dismissing the case the day after the prosecutor filed her statement concerning the investigation without giving him an opportunity to respond. In his fourth assignment of error, Appellant argues that the trial court erred in dismissing his affidavit without providing findings of fact and conclusions of law.

{¶24} Once a judge refers a matter to the prosecutor for an investigation, the judge’s duty under R.C. 2935.10(A) is extinguished. *Nikooyi v. Affidavit of Crim. Complaint*, 2020-Ohio-192, ¶ 14 (8th Dist.). The statute does not contemplate a judge’s subsequent review of the

prosecutor's investigation or decision whether to prosecute, and it does not require a judge to issue a final order of dismissal if a prosecutor decides not to prosecute. *Id.*

{¶25} Because the trial court's duty ended when the matter was referred to the prosecutor, the trial court was under no obligation to allow Appellant to respond to the prosecutor's statement, nor was the trial court required to provide findings of fact and conclusions of law.

{¶26} The third and fourth assignments of error are overruled.

CONCLUSION

{¶27} The judgment of the Guernsey County Common Pleas Court is affirmed.

{¶28} Costs are assessed to Appellant.

By: Montgomery, J.

King, P.J. and

Hoffman, J. concur.