

FILED

IN THE MUNICIPAL COURT OF CLARK COUNTY, OHIO

24 OCT -7 PM 1:09

IN THE MATTER OF:

SHEILA E. HENRY, CLERK  
MUNICIPAL COURT  
CASE NO. 24 SPM 00101

AFFIDAVIT OF MICKEAL WALTERS  
CHARGING ERIKA MICHELLE LEE  
WITH CRIMINAL ACTS

3

\* DEPUTY  
DECISION AND ORDER

\* \* \* \* \*

This matter is before the Court on an Affidavit of Mickeal Walters charging Erika Michelle Lee with criminal acts pursuant to Revised Code Section 2935.09(D), filed October 1, 2024. The purpose stated therein for the Affidavit was to criminally charge Erika Michelle Lee to seek her prosecution, and ask that a judge “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.”

While both this Affidavit and Bench Memorandum only reflect the signature of the Affiant, Mickeal Walters, without listed Counsel, it is very similar in content and structure to the Amended Bench Memorandum and Affidavit of Guerline Jozef, charging Donald J. Trump and JD Vance with Criminal Acts, filed through Counsel with this Court on September 30, 2024. Because much of the same legal analysis applies, much of the Court’s *en banc* decision and order in that case will be restated herein.

The Affidavit in this case includes 7 pages of alleged factual statements purported to satisfy the elements of criminal behavior on the part of Erika Michelle Lee. The crimes alleged are as follows:

- Disrupting Public Services under R.C. 2909.04(A) and (B), a 4<sup>th</sup> degree felony.
- Inducing Panic under R.C. 2917.31(A), ranging from a 1<sup>st</sup> degree misdemeanor up to a 2<sup>nd</sup> degree felony.
- Making False Alarms under R.C. 2917.32, ranging from a 1<sup>st</sup> degree misdemeanor up to a 3<sup>d</sup> degree felony.
- Telecommunications Harassment under R.C. 2917.21(A) and (B)(1), a 1<sup>st</sup> degree misdemeanor.

The statute which empowers the Affiant to seek the requested relief states in pertinent part:

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.

R.C. 2923.09(D).

The procedure for the Court to follow once such an Affidavit has been filed with the Court, requesting that a judge review the allegations is set forth as follows:

- (A) 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.
- (B) If the offense charged is a misdemeanor or violation of a municipal ordinance, such judge, clerk or magistrate may:
  - (1) Issue a warrant for the arrest of such person, directed to any officer named in section 2953.03 of the Revised Code but in cases of ordinance violation only to a police officer or marshal or deputy marshal of the municipal corporation;
  - (2) Issue summons, to be served by a peace officer, bailiff, or court constable, commanding the person against whom the affidavit or complaint was filed to appear forthwith, or at a fixed time in the future, before such court or magistrate. Such summons shall be served in the same manner as in civil cases.

R.C. 2935.10(A) and (B).

Since the Affiant is empowered to request the Court review the matter, what the Court is to do upon its filing is the first step in the analysis. For allegations of felony behavior, the Court is to issue a warrant for the arrest of the accused person, unless the Court questions whether the Affidavit was filed in good faith or questions whether probable cause exists to support the charge. In the event the Court questions either good faith or probable cause, the court shall refer the matter to the prosecutor for further investigation. R.C. 2935.10(A). As such, unless the Court issues a warrant for the accused's arrest, the Court must refer the matter to the prosecutor for investigation.

Where the offense is a misdemeanor, the Court may issue a warrant for the person's arrest or issue a summons commanding the person to appear before the Court.

R.C. 2935.10(B)(1) and (2). The Court has the discretion to determine whether a warrant or summons is appropriate. Before that discretion may be exercised, the Court must find that probable cause exists.

Where a misdemeanor arises from the same conduct as alleged involving a felony, the misdemeanor shall be prosecuted in conjunction with the felony in the Court of Common Pleas. Crim. R. 5(B)(1) and Crim. R. 7(A). All of the charges in this case arise from a single Facebook post made by Erika Michelle Lee and, therefore, all misdemeanor and felony allegations arise from the same conduct.

In examining whether the claim is meritorious, the Court must examine whether the facts and circumstances are sufficient to warrant a prudent person to believe that the suspect has committed a criminal offense. *Beck v. Ohio*, 379 U.S. 89, 91 (1964). The culpability alleged is based not on what Erika Michelle Lee did, so much as what she said. According to the Affidavit, the conduct alleged as the basis of each criminal charge stems from a single Facebook post of Erika Michelle Lee to a Springfield, Ohio Crime Page on September 14, 2024 that states:

Warning to all about our beloved pets & those around us!!  
My neighbor informed me that her daughters friend had lost her cat. She checked pages, kennels, asked around, etc. One day she came home from work, as soon as she stepped out of her car, looked towards a neighbors house, where Haitians live, & saw her cat hanging from a branch, like you'd do a deer for butchering, & they were carving it up to eat. I've been told they are doing this to dogs, they have been doing it at Snyder park with the ducks & geese, as I was told that last bit by Rangers & police. Please keep a close eye on these animals.

The Affiant concludes that Erika Michelle Lee knowingly made false statements at the time of this communication because she made no verification and had no proof to support those reports she had been told. The Affiant claims that these assertions were subsequently shown to be false. Assuming that the assertions were subsequently shown to be false, there is still no factual basis set forth in the Affidavit to establish that Erika Michelle Lee knew the allegations to be false at the time that her communication was made.

Moreover, the Court is not convinced that Erika Michelle Lee actually made an allegation of fact. It appears to the Court that the statement of Erica Michelle Lee in this post is clearly recounting reports that she had heard from other people and not making her own allegations. The Affidavit does not contain any factual assertion that Erika Michelle Lee simply fabricated the conversations she recounted from her neighbor, Rangers & police.

The charge of Inducing Panic under R.C. 2917.31(A)(1) and the charge of Making False Alarms under R.C. 2917.32(A)(1) each contain a requisite element that the accused knowingly made a false statement. While the charge of Telecommunication Harassment under R.C. 2917.21(A) and (B)(1) cover a wide range of prohibited

communications, page 5 of the Affiant's Bench Memorandum specifies that Erica Michelle Lee is alleged to have spread claims they she knew to be false. The Court does not find that probable cause exists to establish that the accused knowingly made a false statement at that time and, therefore, the Court does not find those charges to be meritorious.

With regard to the charge of Disrupting Public Service under R.C. 2909.04(A) and (B), page 5 of the Affiant's Bench Memorandum specifies that Erika Michelle Lee is alleged to have caused widespread bomb and other threats that resulted in massive disruptions to the public services in Springfield, Ohio. The central issue in this allegation is causation.

The Ohio Jury Instructions define "Cause" as

an act or failure to act that in a natural and continuous sequence directly produces the physical harm to (person)(property), and without which it would not have occurred.... The defendant's responsibility is not limited to the immediate or most obvious result of the defendant's act. The defendant is also responsible for the natural and foreseeable consequences that follow, in the ordinary course of events, from the act.

Ohio Jury Instructions CR 417.23 Cause; natural consequences.

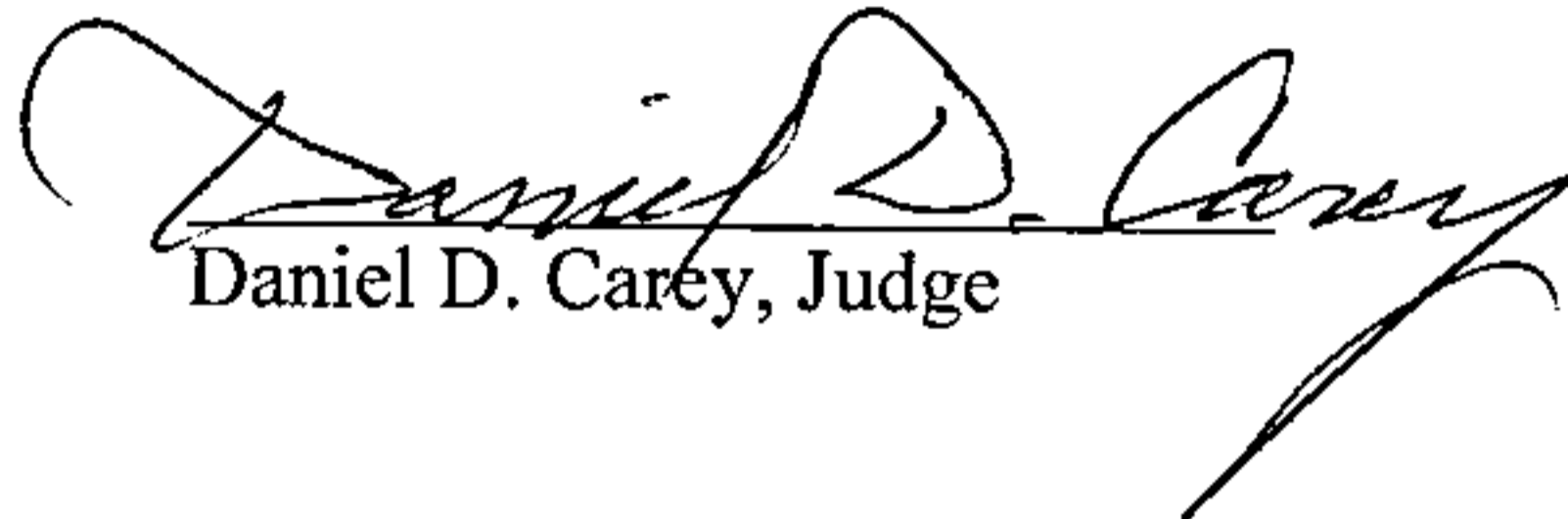
Nothing in the Affidavit establishes a factual basis that "widespread bomb and other threats that resulted in massive disruptions to the public services in Springfield, Ohio" were the actual, intended, or even reasonably foreseeable consequences of Erika Michelle Lee's Facebook post. The Court does not find that probable cause exists to establish that the accused had the necessary *mens rea* and did, in fact legally "cause" the harm complained of. Consequently, the Court does not find that charge to be meritorious.

The statutory scheme under which the Affidavit is filed does not permit this Court to simply deny the request and dismiss the allegations as it relates to the felony charges. *State ex. Rel. Brown v. Jeffries*, 2012-Ohio-522, par. 10 (4<sup>th</sup> Dist. App.). Rather should the Court question the existence of probable cause, or the good faith nature of the Affidavit, the Court is required to refer the felony charges to the appropriate prosecuting authority for further investigation. R.C. 2935.10(A). Therefore, this Court cannot dismiss the Affidavit and its request in their entirety. Courts are not investigative bodies. It is appropriate for the Court to act in reliance on the prosecutor's investigations. *Nikooyi v. Affidavit of Crim. Complaint*, 2020-Ohio-192, par. 16 (11<sup>th</sup> Dist. App.) This is particularly true where the allegations are of a serious nature. *Id.*

Since misdemeanor charges may be filed in conjunction with felony charges arising out of the same facts or circumstances, it is appropriate to refer all alleged charges to the felony prosecutor for Clark County, Ohio, for further investigation and

determination as to whether probable cause exists to file criminal charges as alleged against Erica Michelle Lee.

IT IS THEREFORE ORDERED that all matters set forth in the Affidavit filed October 1, 2024 are hereby referred to the Clark County Prosecuting Attorney for further investigation and determination whether any prosecution is warranted.

  
Daniel D. Carey, Judge

cc: Clark County Prosecutor  
Mickael Walters, Affiant  
Erika Michelle Lee