

02-1231-CD
DAVID NEARHOOD -vs- PAUL CHERRY

IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID NEARHOOD

Plaintiff

VS.

**CIVIL ACTION
MANDAMUS**

NO. 2002-1231-CD

PAUL CHERRY

Defendant

*

FILED

WRIT OF MANDAMUS

AUG 07 2002

0/3.501 ms (true)
William A. Shaw
Prethenotary po₈₈—

1. Pursuit to volume 26 W&P page 398

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"Mandamus" implies to superior power and is used to require action when there has been inaction on part of public officer charged with duty to act.

Southview Cemetery Ass'n v. Hailey, 34 S.E. 2d 863, 867, 199 Ga. 478.

2. Pursuit to volume 26 W&P page 398

“Mandamus” is not a legal as distinguished from an equitable remedy.

City of Electra v. Carnation Co. of Texas, Civ. App., 207 S.W. 2d 192, 195.

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IN THE COURT OF COMMON PLEAS, CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID NEARHOOD

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Plaintiff

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**CIVIL ACTION
MANDAMUS**

vs.

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PAUL CHERRY

Defendant

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NO. 2002-1231-C0

FILED

WRIT OF MANDAMUS

AUG 07 2002

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William A. Shaw
Prothonotary *ppgo...*

1 C.M. + 10 P.M.

1. Pursuit to volume 26 W&P page 398

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2. Pursuit to volume 26 W&P page 398

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City of Electra v. Carnation Co. of Texas, Civ. App., 207 S.W. 2d 192, 195.

3. Pursuit to volume 26 W&P page 200, Compelling performance of clear legal duty

"Mandamus" compels performance of an act by one who has a duty to perform it. **State ex rel. Haley v. Groose, Mo., 873 S.W. 2d 221, 223.**

4. Plaintiff DAVID NEARHOOD is an individual residing in Clearfield County, Pennsylvania.

5. Plaintiff did file a civil case No. 01-1715-CD in the CLEARFIELD COUNTY COURT OF COMMON PLEAS.

6. Within the case the attorneys for the defendants filed papers that resulted in criminal activities. As stated in the attached criminal complaint.

7. The civil case No. 01-1715-CD was removed to the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA Civil Action No. 01-339-J.

8. Also within this case the attorneys for the defendants filed papers that resulted in criminal activities. As stated in the attached criminal complaint.

9. The plaintiff did file the necessary papers to bring this Private Criminal Complaint to court before MAGISTRATE MICHAEL A. RUDELLA, Kylertown, Pennsylvania.

10. DISTRICT ATTORNEY PAUL CHERRY disapproved the complaints stating:

- (1) Complaint is incomplete.
- (2) Allegations without proof of same do not give rise to criminal charge.

11. I called the District Attorney asking what is incomplete? He stated he had no evidence.

12. I told the District Attorney that MAGISTRATE RUDELLA told me to hold the evidence until asked for.

13. I plaintiff, forwarded the evidence to DISTRICT ATTORNEY PAUL CHERRY for review.

14. Notwithstanding plaintiff's compliance with the procedures and the non-request for evidence from DISTRICT ATTORNEY PAUL CHERRY the plaintiffs attempts for justice have failed and been refused.

15. Plaintiff has, pursuant to the procedures of a private criminal complaint and the suppling of evidence failed and been refused access to the courts.

16. Plaintiff wishes to have summons issued in connection with the complaints of which both are reissued.

17. Plaintiff has no other adequate remedy at law.

Wherefore, plaintiff demands entry of judgement against the defendant and the office of the District Attorney that plaintiffs complaint will be given the insurance of professional prosecution and for damages and costs.

David Nearhood

David Nearhood, Pro Per
R.R. #2 Box 160
Morrisdale PA, 16858

(814) 342-7464

DATE: 8-7-02

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF: **CLEARFIELD**

Magisterial District Number:

46-3-03

District Justice Name: Hon.

MICHAEL A. RUDELLA

Address: **MOUNTAIN VIEW PLAZA
P.O. BOX 210
KYLERTOWN, PA**

16847-0000

Telephone: **(814 345-6789**

Docket No.:

Date Filed:

OTN:

(Above to be completed by court personnel)

**PRIVATE
CRIMINAL COMPLAINT**



COMMONWEALTH OF PENNSYLVANIA

VS.

NAME and ADDRESS

DEFENDANT:

[]

[]

(Fill in defendant's name and address)

Notice: Under PA Rules of Criminal Procedure, your complaint may require approval by the District Attorney before it can be accepted by the magisterial district court. If the District Attorney disapproves your complaint, you may petition the court of common pleas for review of the District Attorney's decision.

Fill in as much information as you have.

Defendant's Race/Ethnicity <input type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Unknown	Defendant's Sex <input type="checkbox"/> Female <input type="checkbox"/> Male	Defendant's D.O.B.	Defendant's Social Security Number	Defendant's SID (State Identification Number)
Defendant's A.K.A. (also known as)		Defendant's Vehicle Information Plate Number _____ State _____	Registration Sticker(MM/YY) _____	Defendant's Driver's License Number State _____

I, David Nearhood

(Name of Complainant - Please Print or Type)

do hereby state: (check the appropriate box) works

- I accuse the above named defendant who lives at the address set forth above
 I accuse the defendant whose name is unknown to me but who is described as _____

I accuse the defendant whose name and popular designation or nickname is unknown to me and whom I have therefore designated as John Doe

with violating the penal laws of the Commonwealth of Pennsylvania at RR#2 Box 160 Morris

PA. 16858 + at the Court of Common Pleas of Clearfield Co
in Clearfield County on or about Nov. 7, 2001

(Place-Political Subdivision)

Participants were: (if there were participants, place their names here, repeating the name of above defendant)

Trooper Thomas Granville and the Pennsylvania State Police
department, D. Michael Fisher, Susan J. Forney, Thomas G.

- The acts committed by the accused were:

(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. A citation to the statute allegedly violated without more, is not sufficient. In a summary case, you must cite the specific section and subsection of the statute or ordinance allegedly violated)

Writing a Motion to the Court of Common Pleas of Clearfield County, Pennsylvania, stating in the Certificate of Service that it is certified to be true and correct and serve the day of the deadline Nov. 7, 2001. When in fact the envelope is dated twice Nov. 8, 2001. The letter is dated on the front & back Nov. 8, 2001. In the letter they also state the deadline is Nov. 7, 2001.

PRIVATE
CRIMINAL COMPLAINT

Defendant's Name:

Docket Number:

all of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act of Assembly, or in violation of _____ and _____
 of the _____ (Section) _____ (Subsection)
 (PA Statute)

3. I ask that process be issued and that the defendant be required to answer the charges I have made.
4. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. §4904) relating to unsworn falsification to authorities.

David L. Neahood
(Signature of Complainant)

Facts alleged to no
constitute a crime

District Attorney's Office Approved

Disapproved because:

PAUL E. CHERRY

(Name of Attorney for Commonwealth - Please Print or Type)

Paul E. Cherry

(Signature of Attorney for Commonwealth)

2/19/02

(Date)

AND NOW, on this date 2/6/02, I certify that the complaint has been
properly completed and verified.

96-3-C

(Magisterial District)

M. Mella

(Issuing Authority)

SEAL



District Court 46-3-03

P.O. Box 210 Kylertown, Pennsylvania 16847
Business Office (814) 345-6789 Fax (814) 345-6444

PRIVATE CRIMINAL COMPLAINT / AFFIDAVIT OF PROBABLE CAUSE

This form is to be completed anytime a citizen wants to file charges in an incident where no police investigation occurred or where police investigated the incident and determined not to file criminal charges and the information on the incident is received from a private citizen who wishes to proceed with criminal charges against the accused.

Date of Complaint: 2-6-02

Name of Complainant: David Nearhood

Mailing Address: RR# 2 Box 160 City/State/Zip Code: Morrisdale, PA 16

Telephone #: (Home) (814) 342-7464 (Work) _____

Name of the Suspect(s): _____

Name of Accused: Next Page

Mailing Address: _____ City/State/Zip Code: _____

Telephone #: (Home) _____ (Work) _____

Offense: Next Page Date: _____ Time: _____

Location of Offense: _____ Municipality: _____

(Summarize the details of the incident, including the events, the facts, and the circumstances. Name the suspect(s) and/or the accused. Identify any and all witnesses using name, address, and telephone number.)

The defendants and their attorneys file a Motion with me in the Court of Common Pleas at Clearfield, PA, stating that they served a true and correct statement of facts on Nov. 7, 2001 when in fact it was served after that deadline date.

Look at the highlighted areas in "the evidence. It is clearly legal prejudice.

Accused: Trooper Thomas Granville and The Pennsylvania Police department. By way of their attorneys: D. Michael Fisher, Susan J. Forney and signed off by Thomas G. Eddy. All are of the Pennsylvania Attorney General's office.

Address: Office of Attorney General
Commonwealth of Pennsylvania
564 Forbes Ave., Manor Complex
Pittsburgh, PA. 15219 Phone: 412-565-3578

Pennsylvania State Police
R.D. #2 Box 314
Woodland, PA. 16881

Offenses: 18 § 5101. Obstructing administration of law or other governmental functions.

18 § 4904 Unsworn falsification to authorities

18 § 4902 Perjury

18 § 4902 materiality

18 § 4902.7. Falsify, element of offenses
The oath must be false.

§ 13.25.1 Combining Accuseds.

§ 13.25.2 advisable to charge with conspiracy to commit the crime. Act of March 10, 1905, P.L. 35, §§ 1 & 2, 19 PS §§ 1293 & 1294.

§ 903 Criminal Conspiracy

§ 5301 Official Oppression
abuse of office

crimen falsi - see Fed. R. Evid. 609 (a)(2)



District Court 46-3-03
P.O. Box 210 Kylertown, Pennsylvania 16847
Business Office (814) 345-6789 Fax (814) 345-6444

Your Honor,

Please forgive me for the poor copies. I sent this private criminal complaint to the D.A. through Michael A. Rudella the District Justice. Twice I sent it. The second time I had an AFFIDAVIT attached on the page after the list of charges. The copy I received back from the D.A.'s office does not include this important paper. So I am signing it again without the District Justice's completion.

Please do what is necessary for this to be acceptable. Thank you,

David L. Harwood

This Affidavit was filled out on the original. But it is not among the copies of the D.A.'s office. so I am signing it again. The original should be at the D.A. office with Michael A. Rudella's signature on it. I am sure it was included with the original.

I verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information or belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code of Pennsylvania (18 PACS 4904) relating to unsworn falsification to authorities. I now ask that criminal charges or traffic charges be brought against the accused or suspect.

Date: _____ Signature of Complainant: David L. Harwood ✓

Sworn to and subscribed before me this _____ day of _____

Date: _____ District Justice: _____

My Commission Expires the first Monday of _____

Seal



OFFICE OF THE DISTRICT ATTORNEY

OF CLEARFIELD COUNTY
SUITE 210
230 EAST MARKET STREET
CLEARFIELD, PENNSYLVANIA 16830

PAUL E. CHERRY

District Attorney
Phone: (814)765-2641

WILLIAM A. SHAW, JR.

First Assistant
District Attorney

February 25, 2002

David Nearhood
RR #2, Box 160
Morrisdale, PA. 16858

Dear Mr. Nearhood;

Enclosed please find the Private Criminal Complaints completed by yourself naming Officer Lombardo and Trooper Granville as the Defendants. Please be advised the District Attorney has disapproved the complaints. The facts alleged in the complaints do not constitute a crime.

If you have any questions, please contact District Justice Michael A. Rudella's office or the Office of the District Attorney.

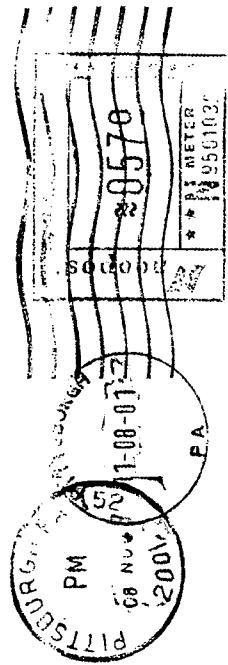
Very truly yours,

A handwritten signature in black ink that reads "Paul E. Cherry". The signature is fluid and cursive, with "Paul" and "E." being more stylized and "Cherry" being more clearly legible.

Paul E. Cherry, Esquire
District Attorney

PEC/cm
enclosure

cc: District Justice Michael Rudella



OFFICE OF ATTORNEY GENERAL
COMMONWEALTH OF PENNSYLVANIA
564 FORBES AVE., MANOR COMPLEX
PITTSBURGH PA 15219

David Nearhood
R.R. 2, Box 160
Morristdale, PA 16858

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COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

MIKE FISHER
ATTORNEY GENERAL

November 8, 2001

Litigation Section
5th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219
(412) 565-3578

Prothonotary
Court of Common Pleas of
Clearfield County
One North Second Street
Clearfield, PA 16830

RE: Nearhood, et al. v. Lombardo, et al.
No. 01-1715 CD

Dear Sir/Madam:

Please file the enclosed Motion for Enlargement of Time
in the above-referenced case.

Sincerely yours,

A handwritten signature in black ink, appearing to read "TGE".
Thomas G. Eddy
Deputy Attorney General

TGE/dls
Enclosures

cc David Nearhood

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DAVID NEARHOOD,
JOSHUA NEARHOOD,

CIVIL DIVISION

Plaintiff

NO. 01-1715 CD

vs

MOTION FOR ENLARGEMENT OF TIME

OFFICER TODD LOMBARDO, et al.,

ISSUE NO:

Defendants.

CODE:

FILED ON BEHALF OF
DEFENDANTS

COUNSEL OF RECORD FOR
THIS PARTY:

Thomas G. Eddy
DEPUTY ATTORNEY GENERAL
PA ID NO. 42915

OFFICE OF ATTORNEY GENERAL
5th FLOOR, MANOR COMPLEX
564 FORBES AVENUE
PITTSBURGH, PA 15219
(412) 565-3578

MOTION FOR ENLARGEMENT OF TIME

Defendants, Granville and the Pennsylvania State Police, by their attorneys, D. Michael Fisher, Attorney General, Thomas G. Eddy, Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief, Litigation Section, and respectfully request an enlargement of time to file a response to plaintiff's complaint in this case for the following reasons:

1. A response to Plaintiff's complaint ~~was due~~ on or about ~~November 7, 2001~~
2. Due to unanticipated litigation responsibilities, counsel will be unable to conduct the necessary legal research in order to timely respond.
3. Defendants' counsel is in the process of obtaining required state records necessary to respond to the complaint, and additional time is needed to receive and review such. Moreover, Defendants' counsel must interview appropriate parties in order to adequately respond to the complaint.
4. This request for additional time is not intended to prejudice the plaintiff's interests nor is it believed that such prejudice will result.

WHEREFORE, it is respectfully requested that defendants be granted an additional thirty days to respond to plaintiff's complaint.

Respectfully submitted:

D. MICHAEL FISHER
Attorney General

By:


Thomas G. Eddy
Deputy Attorney General
PA. I.D. No. 42915

Susan J. Forney
Chief Deputy Attorney General
Litigation Section

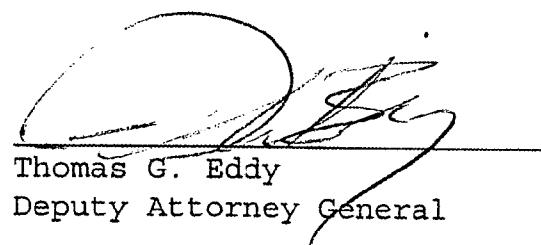
OFFICE OF ATTORNEY GENERAL
5th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

Date: November 8, 2001

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the
within Motion for Enlargement of Time was served upon the following
individual via first-class mail on November 7, 2001.

David Nearhood
R.R. 2, Box 160
Morrisdale, PA 16858



Thomas G. Eddy
Deputy Attorney General

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

ORDER OF COURT

AND NOW, this _____ day of _____, 2001, upon
consideration of the within motion for enlargement of time, it is
hereby ORDERED that an additional period of time until December 7,
2001, is GRANTED to file defendants' response to plaintiff's
complaint.

By the Court:

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

DAVID NEARHOOD,
Plaintiff

v.

PAUL CHERRY,
Defendant

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NO. 02-1231-CD

FILED *PA*

William A. Shaw
MAR 1 6 2007

William A. Shaw
Prothonotary/Clerk of Courts

FILED

SENT TO RIFF, DEPT. +
C.P.

ORDER

NOW, this 19th day of March, 2007, upon the Court's review of the above-captioned case, it is the FINDINGS and ORDER of this Court as follows:

1. The above case was commenced by the filing of a Writ of Mandamus on August 7, 2002 and was assigned to then President Judge John K. Reilly, Jr. (now Senior Judge).
2. On the same date, the Plaintiff filed the same Writ of Mandamus to Case No. 02-1230-CD. A review of the two files shows that the two cases are exactly the same.
3. By Order of September 17, 2002 Judge Reilly dismissed the Mandamus action filed to No. 02-1230-CD. No appeal was taken to the Superior Court and the case is over.
4. The dismissal of case No. 02-1230-CD precludes further litigation of the above-captioned case pursuant to the doctrine of *res judicata*.
5. In addition, the Defendant, Paul E. Cherry, is no longer the Clearfield County District Attorney but instead a Judge of the Court of Common Pleas and is no longer in a position to approve a private criminal complaint.
6. This Court also notes that from a review of the Plaintiff's paperwork it is clear that the matter is frivolous.
7. Therefore, it is the ORDER of this Court that the above-captioned case be and is hereby DISMISSED.

BY THE COURT,

Fredric J. Ammerman
FREDRIC J. AMMERMAN
President Judge