

18 Ohio St. 3d 234, \*; 480 N.E.2d 779, \*\*;  
1985 Ohio LEXIS 441, \*\*\*; 18 Ohio B. Rep. 292

LEXSEE

**THE STATE, EX REL. LIGHTTISER, PROSECUTING ATTORNEY,  
APPELLANT, v. SPAHR, JUDGE; DIEHL, APPELLEE**

**No. 84-1584**

**Supreme Court of Ohio**

**18 Ohio St. 3d 234; 480 N.E.2d 779; 1985 Ohio LEXIS 441; 18 Ohio B. Rep. 292**

**July 17, 1985, Decided**

**PRIOR HISTORY:** [\*\*\*1] APPEAL from the Court of Appeals for Licking County.

Judge Jon R. Spahr is a judge in the Court of Common Pleas of Licking County. Judge Spahr was assigned to preside over the case of *State v. Diehl*, No. 84-S-15795, which is an aggravated murder prosecution against Dale R. Diehl, the intervenor-appellee herein.

In response to Diehl's motion for discovery, Judge Spahr entered an order granting certain discovery including the pretrial disclosure of all written statements made by any person who was a potential witness at Diehl's trial. No sanctions had yet been imposed for failure to comply with the order when the appellant herein, David E. Lighttiser, Prosecuting Attorney for Licking County, filed this action in prohibition in the Court of Appeals for Licking County. Lighttiser's request for the issuance of a writ to prohibit Judge Spahr from enforcing his discovery order was summarily dismissed by the court of appeals, which held that "[t]he complaint does not state facts entitling relator [Lighttiser] to the extraordinary remedy of prohibition."

The cause is now before the court upon an appeal as of right.

**DISPOSITION:** *Judgment affirmed.*

**HEADNOTES**

*Criminal law* [\*\*\*2] -- *Writ of prohibition will not issue to prevent discovery order, when.*

**COUNSEL:** *David E. Lighttiser*, prosecuting attorney, and *William F. McKee*, for appellant.

*Randall M. Dana*, public defender, *S. Adele Shank*, *Scott C. Kenney* and *J. Michael King*, for intervenor-appellee.

*John W. Allen*, urging reversal for *amicus curiae*, Ohio

Prosecuting Attorneys Association.

**JUDGES:** CELEBREZZE, C.J., SWEENEY, LOCHER, HOLMES, C. BROWN, DOUGLAS and WRIGHT, JJ., concur.

**OPINION BY:** PER CURIAM

**OPINION**

[\*235] [\*\*780] The issue presented herein is whether prohibition will lie to prevent the trial court from enforcing its discovery order against the prosecutor in the criminal proceeding below. We recently addressed this very issue in *State, ex rel. Corrigan, v. Griffin* (1984), 14 Ohio St. 3d 26, in which it was stated at 27:

"\* \* \* The trial court has authority to enter pretrial orders regarding discovery. Crim. R. 16. Moreover, appellant could have sought leave to appeal pursuant to R.C. 2945.67, wherein any errors with respect to appellee's order could have been raised. The availability of an appeal under R.C. 2945.67 is an adequate remedy at law sufficient [\*\*\*3] to preclude the granting of an extraordinary writ. *State, ex rel. Cleveland, v. Calandra* (1980), 62 Ohio St. 2d 121, 122 [16 O.O.3d 143]; *State, ex rel. Zoller, v. Talbert* (1980), 62 Ohio St. 2d 329, 330 [16 O.O.3d 391]."

The *amicus* attempts to distinguish *Griffin* from the instant case by noting that sanctions for failure to comply with discovery had been ordered by the trial court in *Griffin*, whereas no such sanctions had been ordered by the trial court herein. The *amicus* then asserts that an appeal pursuant to R.C. 2945.67 is unavailable unless sanctions have been ordered; and, since no sanctions were ordered herein, the appellant had no right to seek an appeal and no adequate remedy at law.

R.C. 2945.67(A) provides, in relevant part:

"A prosecuting attorney \* \* \* may appeal by leave of

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the court to which the [\*\*781] appeal is taken any other decision, except the final verdict, of the trial court in a criminal case \* \* \*."

This code section clearly does *not* require the imposition of sanctions as a condition to the availability of appeal. We conclude, therefore, that the instant case can not be distinguished from *Griffin*, [\*\*\*4] *supra*; that appellant [\*236] had an adequate remedy at law; and that

the court of appeals properly denied the extraordinary writ sought by the appellant.

Accordingly, the judgment of the court of appeals is affirmed.

*Judgment affirmed.*