

[Cite as *State ex rel. Hubbard v. Fuerst*, 2010-Ohio-2489.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
No. 94799

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**STATE OF OHIO, EX REL.  
ANTHONY HUBBARD**

RELATOR

vs.

**GERALD E. FUERST, CLERK  
OF COURT, ET AL.**

RESPONDENTS

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**JUDGMENT:  
WRIT DENIED**

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Writ of Mandamus  
Motion No. 432403  
Order No. 433969

**RELEASE DATE:** May 28, 2010

**FOR RELATOR**

Anthony Hubbard, pro se  
939 E. 147th Street  
Cleveland, Ohio 44110

**ATTORNEYS FOR RESPONDENT**

William D. Mason  
Cuyahoga County Prosecutor

By: James E. Moss  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} On March 11, 2010, the relator, Anthony Hubbard, commenced this mandamus action against the respondent, Gerald Fuerst, Cuyahoga County Clerk of Court (hereinafter the “Clerk”), to compel him pursuant to the Ohio Public Records Act, R.C. 149.43, to release the final jury verdict forms in *State of Ohio v. Cordell Hubbard*, Cuyahoga County Common Pleas Court Case No. CR-435700.<sup>1</sup> Anthony states that in November and December 2009, he requested that the Clerk provide him with the jury verdict forms. The Clerk refused because the office did not have possession of those forms and could not produce them. On March 26, 2010, the Clerk, through the Cuyahoga County

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<sup>1</sup> Anthony Hubbard is the brother of Cordell Hubbard. In his supporting affidavit, Anthony states that he sought the jury verdict forms on behalf of his brother.

Prosecutor, moved for summary judgment, inter alia, on the grounds that the Clerk does not possess those forms. Anthony never filed a response to the Clerk's dispositive motion. For the following reasons, this court grants the Clerk's motion for summary judgment and denies Anthony Hubbard's application for a writ of mandamus.

{¶ 2} The Clerk's motion for summary judgment is supported by the affidavit of Brent Bartell, an Administrative Officer in the Criminal Division of the Clerk's office. In paragraphs four and five of his affidavit, he states: "I have reviewed all documents and records in the case of CR-03-435700-A, *State of Ohio vs. Cordell Hubbard* ("*Hubbard Case*") in the possession of the Clerk's Office. [¶ 5] The Clerk's Office is not currently in possession of any completed jury verdict forms pertaining to the *Hubbard Case*." Anthony does not rebut this assertion of fact.

{¶ 3} The writ of mandamus will not issue to compel a custodian of public records to furnish records which are not in his possession or control. *State ex rel. Cobb v. Guyton* (Apr. 16, 1998), Cuyahoga App No. 72199; *State ex rel. Calabrese v. Clerk of Courts* (Jan. 2, 1997), Cuyahoga App. No. 71534; *State ex rel. Fant v. Mengel* (1991), 62 Ohio St.3d 197, 580 N.E.2d 1085; and *Hughes v. City of North Olmsted* (Jan. 23, 1997), Cuyahoga App. No. 70705.

{¶ 4} Accordingly, this court grants the Clerk's motion for summary judgment and denies the application for a writ of mandamus. Relator to pay

costs. The court further orders the clerk to serve upon all parties notice of this judgment and the date of entry pursuant to Civ.R. 58(B).

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FRANK D. CELEBREZZE, JR., JUDGE

PATRICIA A. BLACKMON, P.J., and  
MARY J. BOYLE, J., CONCURS