

[Cite as *State ex rel. Barb v. Cuyahoga Cty. Jury Comm.*, 2010-Ohio-6190.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 95005**

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**STATE OF OHIO, EX REL.  
HERBERT E. BARB, JR.**

RELATOR

vs.

**CUYAHOGA COUNTY JURY COMMISSIONER**

RESPONDENT

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**JUDGMENT:  
WRIT DENIED**

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Writ of Mandamus  
Motion No. 434291  
Order No. 439791

**RELEASE DATE:** December 10, 2010

**FOR RELATOR**

Herbert E. Barb, Jr., pro se  
7014 Lawn Avenue  
Cleveland, Ohio 44102

**ATTORNEYS FOR RESPONDENT**

William D. Mason  
Cuyahoga County Prosecutor

By: Charles E. Hannan, Jr.  
Assistant County Prosecutor  
8th Floor Justice Center  
1200 Ontario Street  
Cleveland, Ohio 44113

PATRICIA A. BLACKMON, J.:

{¶ 1} Relator, Herbert E. Barb, Jr., avers that he is the brother of Danny Barb and is seeking the following records in cases in which Danny Barb is the defendant:

1. Verdict Forms: Cuyahoga Cty. Court of Common Pleas Case Nos. CR-287393, 318289 and 395619; and
2. "The Prospective petit jury list": Cuyahoga Cty. Court of Common Pleas Case Nos. CR-287393, 318289, 395619 and 428291. Complaint, ¶2.

{¶ 2} In an affidavit accompanying the complaint, Herbert Barb avers that he has made various efforts in his “pursuit to obtain documents that would clearly show the violation of Danny Barbs [sic] right to a fair trial.” Complaint, page 6.

{¶ 3} Respondent has filed a motion for summary judgment and argues that: 1) relator has not complied with the public records law; and 2) the records which Herbert Barb seeks are not public records. For the reasons stated below, we grant respondent’s motion for summary judgment.

{¶ 4} In *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, Cuyahoga App. No. 93326, 2009-Ohio-3301, Danny Barb sought “lists of jurors that were summoned or served in” Case Nos. CR-287393, 318289 and 395619 as public records under R.C. 149.43. This court denied Danny Barb’s request for relief in mandamus and observed that he had not complied with R.C. 149.43(B)(8) which provides: “A public office or person responsible for public records is *not required to permit a person who is incarcerated* pursuant to a criminal conviction or a juvenile adjudication *to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution* or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, *unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in*

office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.” (Emphasis added.)

{¶ 5} In Case No. 93326, this court stated that Danny Barb did not receive the requisite finding from a sentencing judge. “It must also be noted that the names and addresses of jurors are not public records. *State ex rel. Beacon Journal Publishing Co. v. Bond*, 98 Ohio St.3d 146, 2002-Ohio-7117, 781 N.E. 2d 180 [paragraph one of the syllabus].” *Barb*, Case No. 93326, supra, ¶4. In light of the fact that the names and addresses of jurors are not public records, we must deny Herbert Barb’s request for relief in mandamus with regard to the prospective juror lists as well as that portion of the verdict forms which includes the jurors’ names<sup>1</sup> in Case Nos. CR-287393, 318289 and 395619. As respondent observes, the docket in Case No. CR-428291 reflects that the trial court entered a nolle prosequi and did not call a jury. Relief in mandamus is not possible, therefore, with respect to Case No. CR-428291.

{¶ 6} The Supreme Court affirmed this court’s judgment in Danny Barb’s Case No. 93326 in *State ex rel. Barb v. Cuyahoga Cty. Jury Commr.*, 124 Ohio St.3d 238, 2010-Ohio-120, 921 N.E.2d 236, and held: “We affirm the judgment of

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<sup>1</sup> Relator has attached to his brief in opposition to respondent’s motion for summary judgment a copy of a jury verdict form from *State v. Danny Barb*, Cuyahoga Cty. Court of Common Pleas Case No. CR-500071. Jurors sign the form and that portion of the verdict form would necessarily reveal their names.

the court of appeals denying the writ of mandamus sought by appellant, inmate Danny Barb, to compel appellee, the Cuyahoga County Jury Commissioner, to provide lists of prospective jurors and jurors who served in three criminal cases in which Barb was the defendant. Barb is not entitled to the requested records because he did not comply with R.C. 149.43(B)(8), which requires a finding by Barb's sentencing judge or the judge's successor that the requested information is necessary to support what appears to be a justiciable claim. *State ex rel. Russell v. Thornton*, 111 Ohio St.3d 409, 2006-Ohio-5858, 856 N.E.2d 966, ¶16. Although we acknowledge that a person's status as a designee and the person's purpose in obtaining records are not normally issues in public-records cases, see *State ex rel. Steckman v. Jackson* (1994), 70 Ohio St.3d 420, 427, 639 N.E.2d 83, R.C. 149.43(B)(8) provides an exception in which incarcerated persons and the purpose for which they seek records relating to a criminal investigation or prosecution are dispositive. *Steckman* is further inapposite here because Barb's purported designee did not institute the mandamus action." *Barb*, supra, 2010-Ohio-120, ¶1.

{¶ 7} As Herbert Barb acknowledges in his affidavit quoted above, he is seeking these records in his "pursuit to obtain documents that would clearly show

the violation of Danny Barbs [sic] right to a fair trial.” Clearly, Herbert Barb is acting as a designee<sup>2</sup> for Danny Barb.

{¶ 8} In *State ex rel. Roberson v. Mason*, Cuyahoga App. No. 91783, 2009-Ohio-1884, Roberson sought “the following records relating to the underlying case, *State of Ohio v. Leonard Hughes*, Cuyahoga County Common Pleas Court Case No. CR346343: ‘Reports of Evidentiary and / or Scientific Information findings, specifically ballistic reports, and autopsy reports concerning any type of ballistics, which are not exempt by statute [sic].’” Id. ¶1. The defendant, Hughes, had previously sought “examination and test reports,” Id. ¶3-4, by way of an action in mandamus and a motion in the trial court as well as an action in mandamus in this court. All of the requests by Hughes were denied.

{¶ 9} Roberson filed an action in mandamus in CR-346343 which the court of common pleas denied as duplicative of Hughes’s action in mandamus. In Case No. 91783, this court held that res judicata barred Roberson’s claim.

{¶ 10} “The principles of res judicata are well established: ‘a valid, final judgment rendered upon the merits bars are subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.’ *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 1995-Ohio-331, 653 N.E.2d 226. In other words, ‘an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were

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<sup>2</sup> The terms “surrogate” or “strawman” might also be used.

or might have been litigated in a first lawsuit.’ *Id.* and *Rogers v. Whitehall* (1986), 25 Ohio St.3d 67, 494 N.E.2d 1387 and *Natl. Amusements, Inc. v. Springdale* (1960), 53 Ohio St.3d 60, 558 N.E.2d 1178. Furthermore, res judicata provides a complete bar on such actions between the parties or those in privity with them. 73 Ohio St.3d at 381.

{¶ 11} “In the present case Hughes and his designee, Roberson, have made four previous attempts under the public records law to obtain the requested records. The courts denied each effort. Accordingly, res judicata properly bars this attempt.” *Roberson*, supra, at 8-9.

{¶ 12} Danny Barb previously attempted to access records identifying the jurors in Case Nos. CR-287393, 318289 and 395619. Herbert Barb’s efforts duplicate those of Danny’s. As was the case in *Roberson*, we must hold that res judicata bars Herbert’s action in mandamus.

{¶ 13} We also note that, as was the case, in *Roberson*, Herbert may not do indirectly what Danny is prohibited from doing directly. That is, as noted above, R.C. 149.43(B)(8) prohibits Danny from inspecting or copying records pertaining to his criminal investigation or prosecution without a sentencing judge’s finding of the need for the records to support a justiciable claim. As was the case in *Roberson*, Herbert Barb is acting as a designee of Danny Barb. We must conclude, therefore, that Danny Barb must comply with R.C. 149.43(B)(8) and secure the requisite finding from a sentencing judge before Herbert Barb may

receive relief in mandamus to compel the release of the records which are the subject of this action.

{¶ 14} As a consequence, Herbert Barb's request for relief in mandamus fails because:

1. The names and addresses of jurors are not public records;
2. R.C. 149.43(B)(8) prevents Danny Barb or his designee, Herbert Barb, from receiving relief in mandamus; and
2. Res judicata bars this action.

{¶ 15} Accordingly, respondent's motion for summary judgment is granted. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Writ denied.

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PATRICIA A. BLACKMON, JUDGE

SEAN C. GALLAGHER, A.J., and  
MARY J. BOYLE, J., CONCUR