

STATE OF INDIANA
COUNTY OF LAKE

IN THE LAKE SUPERIOR COURT
CIVIL DIVISION ROOM ONE
HAMMOND, INDIANA

OSCAR MARTINEZ, JR., personally
and as Lake County Sheriff,
Plaintiff,

v.
BERNARD A. CARTER in his
official capacity as Prosecuting
Attorney for the 31st Judicial Circuit,
and STANLEY M. LEVCO, in his
official capacity as Special Prosecuting
Attorney,
Defendants.

CASE NO. **45D01-2211-PL-000649**

Filed in Open Court
August 24, 2023
CLERK LAKE SUPERIOR COURT

SP

ORDER MOTION TO CORRECT ERROR

*And nothing in this world travels faster than a pithy turn of a phrase,
---Cambridge Dictionary quoting The Atlantic Magazine*

The plaintiff, Oscar Martinez, Jr., personally and as Lake County Sheriff, by Attorneys James Woods, Peter Fouts and Paul Stracci and the defendants, Bernard A. Carter in his official capacity as Prosecuting Attorney for the 31st Judicial District and Stanley M. Levco in his official capacity as Special Prosecuting Attorney, by Attorneys Christopher Anderson, have stipulated that the Court rule on Martinez's Motion to Correct Error based upon the pleadings filed. The Court approves this stipulation and vacates the hearing set September 6, 2023 at 3:00 p.m.

The Order of May 19, 2023, made the following statement, which might be characterized as a "...pithy turn of a phrase...":

If Martinez were not indicted for Resisting Law Enforcement with Use of a Vehicle and Reckless Driving, but charged by information

with Murder, IC 35-47-2-1.5(b)(6) would not prohibit him from carrying a handgun.

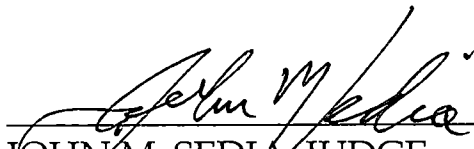
That "...pithy turn of a phrase..." did, indeed, travel fast, precipitating criticism of this Judge's ability to read a statute and, at least in part, this Motion to Correct Error.

The core rationale for the Court's ruling was set forth in the sentences which immediately preceded that hyperbolic phrase in its May 29, 2023 Order which observed that IC 35-47-2-1.5(b)(6) makes little rational sense in prohibiting anyone under indictment¹ from carrying a handgun without paying any regard to that individual's actual demonstrated danger to society.

The Court's ruling of May 19, 2023 did not rest on its regrettable "...pithy turn of a phase..." set forth above, but upon the notion that the failure of IC 35-47-2-1.5(b)(6) to prohibit only specific individuals in specific situations from possessing a firearm in a manner consistent with historical tradition, codified into law and well-established by numerous appellate court decisions over the years, does not pass constitutional muster.

IT IS THEREFORE ORDERED that the Motion to Correct Error filed by Bernard A. Carter in his official capacity as Prosecuting Attorney for the 31st Judicial District and Stanley M. Levco in his official capacity as Special Prosecuting Attorney, is denied.

Dated August 24, 2023



JOHN M. SEDIA, JUDGE
LAKE SUPERIOR COURT
CIVIL DIVISION, ROOM ONE

¹ "Indictment" being defined under IC 35-47-2-1.5(b)(6) as a formal accusation of a crime made by a prosecuting attorney in any court for a crime punishable by a term of imprisonment exceeding one (1) year.)