

CLIFTON JACKSON AFFIDAVIT AND APPENDIX OF EXHIBITS ARE NUMBERED [first two cover pages of affidavit unnumbered, iii-ixiii] IN ROMAN NUMERAL. EXHIBIT PAGES ARE CROSS REFERENCED AS APPENDIX [Appendix Pages are numbered 1-655] PAGES. AFFIDAVIT AND EXHIBITS ARE IN SUPPORT OF 26B MOTION TO REOPEN STATE OF OHIO v. CLIFTON JACKSON, CASE NO. 11CR083104, NINTH DISTRICT COURT OF APPEALS CASE NO. 14CA010555, Not Limited Too.

# EXHIBIT

## AAQ

EXHIBITS A-AAAE IN SUPPORT OF CLIFTON JACKSON ENCLOSED AFFIDAVIT AND APPENDIX PREPARED MARCH OF 2016 OF A DETAILED TIME LINE OF FACTUAL EVENTS BETWEEN JUNE 14<sup>th</sup>, 2011 AND OCTOBER OF 2015 TO THE BEST OF MY LAYMEN LEGAL ABILITIES.  
THIS EXHIBIT "AAQ" IS REFERENCED IN ¶ 134 not limited too.

**IN THE COURT OF APPEALS  
NINTH APPELLATE DISTRICT  
LORAIN COUNTY, OHIO**

**CASE NO. 14 CA 010555**

**STATE OF OHIO**

**Plaintiff-Appellee,**

**vs.**

**CLIFTON JACKSON**

**Defendant-Appellant.**

**AN APPEAL FROM THE  
COURT OF COMMON PLEAS  
OF LORAIN COUNTY**

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**REPLY BRIEF OF APPELLANT**

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**DEFENDANT WAS DENIED DUE PROCESS OF LAW WHEN THE**

## **COURT OVERRULED HIS MOTION TO SUPPRESS.**

The prosecution asserts that the stop was lawful and distinguishes other cases cited by defendant because the testimony of the officer was refuted by the video. However, when the court reviews the video, Ex.2, offered at the suppression hearing on June 4, 2012 the court will conclude that the video supports defendant's claim that not only was the stop was illegal but the continued and extensive detention of defendant was also improper and unconstitutional.

On careful review of the video generated by the Ohio State Highway Patrol, it shows that there was no violation. Defendant was unreasonably detained beyond what was necessary to issue a ticket for allegedly following too close. The video recording on August 14, 2011 begins at 8:39.19 when the trooper in the middle lane and the defendant's Toyota was in the right lane. The Toyota was at least two car lengths behind the mobile home. Shortly thereafter the Toyota puts on its left blinker and moves to the center lane and the trooper speeds up and moves to the left lane to stay one lane to the left of the Toyota. After the Toyota passes the mobile home the trooper gets close to the car that was in the center lane and directly behind the Toyota. The Toyota pulls over then off to the

shoulder at 8:40:20.

The trooper approached the vehicle and defendant was told he was stopped because he was following the mobile home too close before he changed lanes. After obtaining information concerning a driver's license the trooper asked defendant where he is going and whether the car was rented by him. Thereafter the trooper returned to his car at 8:42:40. Three minutes later, 8:45:30, the trooper returns to the passenger window and tells defendant everything checks out ok, we'll get you out of here with a warning, but he wants defendant to come back here to the police car and roll up the passenger window. As directed defendant gets out of the vehicle and is ordered to sit in the back seat of the car and he will have a dog walk around the car. Defendant is patted down in front of the car at 8:46:09-:30.

At 8:47:55 the dogs walks up to the car and jumps at the driver's side and the dog is walked away at 8:48:25. Thereafter defendant was read his **Miranda** rights and he stated he wants representation. Nevertheless, the trooper asks him if there was any reason the dog would indicate drugs in the car, defendant response no, denying he smoked marijuana in the car.

Defendant initially states everything in the car is not his but then says it is his. 8:48:55.

Minutes later the Toyota was approached, one officer with gloves on and the search of the car began. This was definitely too long in order to issue a ticket as the officer had sufficient information. Even the Ohio Supreme Court has ruled that a motorist who is stopped for a traffic violation cannot be delayed longer than sufficient to issue a ticket or a warning. This includes a period of time sufficient to run a computer check on the driver's license, registration and vehicle plates. **State v. Batchili**, 113 Ohio St.3d 403, 406, 865 N.E.2d 1282, 1285-86 (2007).

The video and the evidence shows that the detention was unlawful and prolonged more than was necessary to issue either a ticket or a warning as the trooper indicated.

**“Once the reasonable period of time for issuing the traffic citation has passed, a police officer must have a reasonable articulable suspicion of criminal activity in order to continue the detention.”** **State v. Nelson**, Case No. 22718, 2009-Ohio-2546, \_ 37 (quoting **State v. Wilkins**, Case No. 20152, 2004-Ohio-3817, at \_ 11.) **“As explained by the Supreme Court of Ohio: ‘When a police officer’s**

**objective justification to continue detention of a person stopped for a traffic violation for the purpose of searching the person's vehicle is not related to the purpose of the original stop, and when that continued detention is not based on any articulable facts giving rise to a suspicion of some illegal activity justifying an extension of the detention, the continued detention to conduct a search constitutes an illegal seizure.”** *Id.* (quoting *State v. Robinette*, 80 Ohio St.3d 234, 685 N.E.2d 762, 1997-Ohio-343 (paragraph one of the syllabus). *See also*, [*State v.*] *Mays* [119 Ohio St.3d 406, 894 N.E.2d 1204, (2009), 2008-Ohio-4539 at \_ 13-14] 894 N.E.2d 1204; *Wilkins* at \_ 11).” In this case, the purpose of the trooper's detention of defendant ended as soon as he asked defendant to exit the vehicle, or at the least, at the time to confirm defendant was not alcohol impaired. The traffic stop should have lasted no more than a couple of minutes - necessary to write defendant a traffic ticket. There was no probable cause to continue to extend the traffic stop and search defendant's vehicle, and all evidence obtained should be suppress.

In *United States v. Torres-Ramos*, 536 F.3d 542 (6<sup>th</sup> Cir.2008), the purpose of a traffic stop for speeding ended when the driver was placed in

the back of a patrol car and the passenger was questioned. 536 F.3d at 551. Once the driver was placed in the patrol car for reasons such as failing to identify the owner of the vehicle he was driving, the court considered the original stop to have ended and a detainment requiring reasonable suspicion to have begun. *Id.* It held, “[i]ssuing a speeding ticket does not require an officer to detain an individual in order to separately question a passenger regarding ownership or travel plans” and therefore concluded it was at this point that the original purpose of the stop ended. 536 F.3d @ 551. Likewise, the purpose of the trooper’s stop ended as soon as he placed defendant in his police vehicle; the trooper ended the purpose of the original seizure - following too close to a motor home - as soon as he ordered defendant to exit the Toyota, or at the least, when he ordered defendant to sit inside his police vehicle and questioned him. At that point the trooper did not have reasonable suspicion of other criminal activity to justify defendant’s extended stop. Therefore, the subsequent search and seizure of defendant’s vehicle was unlawful, and any evidence obtained from defendant’s trunk was the fruit of the poisonous tree and should be suppressed.

In a case very similar to the one before this court, the United States

Court of Appeals for the Sixth Circuit reversed Gerardo Bonilla's conviction for (1) conspiracy to possess with the intent to distribute in excess of 5 kilograms of cocaine in violation of 21 U.S.C. \_\_841(a)(1),(b)(1)(A)(ii), and 846; (2) possession with the intent to distribute in excess of 5 kilograms of cocaine in violation of 21 U.S.C. \_\_841(a)(1) and (b)(1)(A)(ii); and (3) traveling in interstate commerce with the intent to distribute cocaine in violation of 21 U.S.C. \_\_841 and 846, reversing his 5 year prison sentence because the officers lacked probable cause to search Bonilla's car despite a positive "hit" on the vehicle by a drug detection dog. See *United States v. Bonilla*, 357 Fed.Appx. 693 2009 WL 4906906 (6<sup>th</sup> Cir.2009). The relevant holding in *Bonilla* is as follows:

In order to remain within the scope of the initial traffic stop, the officer's actions must reasonably relate to the purpose of the original stop. *United States v. Bell*, 555 F.3d 535, 541 (6<sup>th</sup> Cir.2009) (In the absence of reasonable suspicion, "**all the officer's action must be reasonably related in scope to the circumstances justifying the original interference.**" (citing *United States v. Townsend*, 305 F.3d 537, 541 (6<sup>th</sup> Cir.2002) (internal quotations omitted))). The core question concerning when a traffic stop turns into a Fourth Amendment issue has been framed as: "**at what point in time did the purpose of the traffic stop end and the detention of the driver and the [vehicle] occupants .... begin?**" *Torres-Ramos*, 536 F.3d at 550. 357 Fed Appx. @696.

Requesting a driver's license, registration, rental papers, running a computer check thereon, and issuing a citation do not



exceed the scope of a traffic stop for a speeding violation, United States v. Hill, 195 F.3d 258, 269 (6<sup>th</sup> Cir.1999).

In United States v. Blair, 524 F.3d 740, 752 (6<sup>th</sup> Cir.2008), the court ruled that the purpose of a tag-light stop was fulfilled as soon as the officer obtained all the information necessary to write a citation for the violation and no proof of insurance.

### **DEFENDANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL**

The prosecution asserts that many of the errors and omissions claimed by defendant in his brief were a matter of “**trial strategy.**” However, the “**trial strategy, must be reasonable.**”

In a similar case, State v. Pawlak, Case No. 99555, 2014-Ohio-2175, the court ruled that similar missteps and omissions by defense counsel deprived the defendant of effective assistance of counsel when improper evidence was offered to the jury.

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### **CERTIFICATE OF COMPLIANCE**

I certify that this Brief complies with the wordcount provision set forth in Ninth District Local Rule 7(E)(2). This Brief is printed using Times new Roman 14-point typeface using WordPerfect software and contains 1537 words.

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### **SERVICE**

The foregoing ***Reply Brief of Appellant*** has filed with the court. A copy of the foregoing will be sent to Dennis P. Will, Attorney for Plaintiff-Appellee, 225 Court Street, 3<sup>rd</sup> Floor, Elyria, Ohio 44135 on this 17<sup>th</sup> day of September, 2014.

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### AUTHORITIES

State v. Batchili, 113 Ohio St.3d 403, 406, 865 N.E.2d 1282, 1285-86 (2007).

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State v. Nelson, 2d Dist. No. 22718, 2009-Ohio-2546, \_ 37

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(quoting State v. Wilkins, Montgomery App. No. 20152, 2004-Ohio-3817, at \_ 11.)

State v. Pawlak, Case No. 99555, 2014-Ohio-2175

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State v. Robinette, 80 Ohio St.3d 234, 685 N.E.2d 762, 1997-Ohio-343

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(paragraph one of the syllabus).

State v. Mays [119 Ohio St.3d 406, 894 N.E.2d 1204, (2009),

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2008-Ohio-4539 at \_ 13-14] 894 N.E.2d 1204; Wilkins at \_ 11).

United States v. Blair, 524 F.3d 740, 752 (6<sup>th</sup> Cir.2008)

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United States v. Bonilla, 357 Fed.Appx. 693 2009 WL 4906906 (6<sup>th</sup> Cir.2009)

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