EXHIBIT

H

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 14th, 2011 AND OCTOBER OF 2015 TO THE BEST OF MY LAYMEN LEGAL ABILITIES.
THIS EXHIBIT "H" IS REFERENCED IN ¶ 58 not limited too.

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

STATE OF OHIO Plaintiff, v. CLIFTON A. JACKSON Defendant.	)	CASE NO. 11-CR-083104 JUDGE EDWARD ZALESKI **MOTION TO SUPPRESS**

Now comes Clifton Jackson, by and through undersigned counsel, and respectfully moves this Honorable Court to issue an order suppressing all evidence obtained as a result of the violation of Jackson's rights under both the Fourth Amendment of the United States Constitution, as well as Article I, Section 10 of the Ohio Constitution.

A memorandum in support is attached hereto and incorporated herein by reference.

Respectfully submitted,

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Facts

On or about June 14th of this year, Trooper Christopher H. Beyer, a Caucasian Trooper of the Ohio State Highway Patrol, while on routine patrol, stated that at the time he was 300-400 feet behind Mr. Jackson's vehicle and observed what he felt was a violation of following too closely (which was 2 to 3 car lengths as documented). The Trooper alleged he had occasion to witness a vehicle that appeared to him to be travelling too closely to a mobile home on the Ohio Turnpike at milepost 135EB. After the vehicle had switched lanes so that it could pass the other, slower moving mobile home, Trooper Beyer continued to monitor the vehicle without observing any further violations. Still, Trooper Beyer executed a stop of the driver, later identified as Clifton Jackson an African American. Mr. Jackson was unlawfully detained against his wishes while Trooper Beyer informed Mr. Jackson that if everything checked out he would get him on his way with a warning. (See Affidavit attached hereto as Exhibit "A").

Mr. Jackson cooperated fully with Trooper Beyer during this time of detainment, providing the officer with a valid license and other requested documentation immediately upon request. He was forthcoming with his travel plans and provided the rental agreement for the vehicle he was driving. Equipped with this information, Trooper Beyer could have either let Mr. Jackson go or proceed with issuing the traffic ticket for the offense for which Mr. Jackson was allegedly stopped (the Defense does not concede the validity of the traffic stop in the first instance). Instead, Trooper Beyer returned to his vehicle and specifically requested assistance from the canine unit, which appears on the scene thereafter. He then walked back to Mr. Jackson's vehicle and asked if he could

search the vehicle. Mr. Jackson said, "No." Trooper Beyer responded that he was going to search the car anyway. Mr. Jackson was removed from his vehicle, searched, and placed in the back of the Trooper's vehicle. The canine then conducted an exterior search of the vehicle, again, without Mr. Jackson's consent. The canine allegedly was alerted to the driver side of the vehicle, however, per the Trooper's on board camera, if the canine hit at all, it hit on the front hood, not the left side of the vehicle as stated. The troopers then performed an exhaustive search of the vehicle and its contents. Contraband was ultimately recovered inside of a duffel bag in the trunk, without a warrant or any request for a warrant. Therefore, a grave question is raised, when did the probable cause start? Trooper Beyer, as documented, stated it started after the dog allegedly hit on the left side of the vehicle, however throughout this illegal stop in its entirety, Mr. Jackson was illegally removed from his vehicle, again after refusing a search, without his license and/or the car documents being checked via L.E.A.D.S. Trooper Beyer alleged L.E.A.D.S. was out of service. So not only is there a question regarding the validity of the initial stop as a whole, but all the fruit from the poisonous tree, Mr. Jackson appeared to be profiled and removed from his vehicle as documented, the vehicle keys were taken and Mr. Jackson was forced to exit his vehicle. He again refused the Trooper's request to search and ultimately the troopers proceeded to use the car keys to travel around the vehicle with no respect for protocol or law. Therefore, arguably the probable cause started when Mr. Jackson was forced to exit his vehicle after refusing the Trooper's requested search.

Law

An investigatory stop must be justified by some objective manifestation that the person stopped is engaged or about to engage in some form of criminal activity. United States v. Cortez (1981), 449 U.S. 411, 101 S.Ct. 690, 66 L.Ed.2d 621. Mr. Jackson's perceived traffic violation, even if it did occur, is among the most de minimis of traffic offenses, certainly not warranting a protracted custodial stop of a vehicle and its occupants.

R.C. 4511.34 provides, "The operator of a motor vehicle [...] shall not follow another vehicle [...] more closely than is reasonable and prudent, having due regard for the speed of the vehicle [...] and the traffic upon and the condition of the highway." Id. At the time Trooper Beyer observed Mr. Jackson driving behind a mobile home, from 300 to 400 feet away (per the Trooper's on board camera over various vehicles), he observed Mr. Jackson to be driving sixty (60) miles per hour and at a distance of two to three, though arguably at least three, car lengths behind the other vehicle. Trooper Beyer gave no indication or reason for believing that this distance was unreasonable or imprudent. Moreover, at the time that Mr. Jackson was seen driving behind the mobile home, there was no other traffic in the vicinity and the road conditions were excellent. Trooper Beyer continued to observe Mr. Jackson, watching him overtake the other mobile home in a reasonable and prudent manner. When Mr. Jackson got within three car lengths, he maneuvered his vehicle so as to pass the slower moving vehicle and comply with the traffic code.

Evidence flowing from an illegal stop, detention or arrest cannot be used to convict Mr. Jackson. State v. Chatton (1984), 11 Ohio St. 3d 59, 463 N.E. 2d 1237; State v. Timson (1974), 38 Ohio St. 2d 122, 311 N.E. 2d 16; State v. Walters (March 27,

1985), Hamilton App No. C-848413, 1985 WL 6718. And even if the Court were to find that the traffic stop itself was lawful, the subject officers clearly were not entitled to detain Mr. Jackson beyond the amount of time necessary to investigate the alleged violation. The canine search call and subsequent all-out search, detention, and seizure of Mr. Jackson and his vehicle based upon the alleged violation was outrageous and a violation of his Constitutional rights.

An officer "may not expand the investigative scope of the detention beyond that which is reasonably necessary to effectuate the purposes of the initial stop unless any new or expanded investigation is supported by a reasonable, articulable suspicion that some further criminal activity is afoot." State v. Retherford (1994), 93 Ohio App.3d 586, 600, citing U.S. v. Brignoni-Ponce (1975), 422 U.S. 873, 881-882. The continued detention of Mr. Jackson beyond the length of time reasonably necessary to issue a traffic citation was not justified (State v. Sherrod (2010), 2010 Ohio 1273) and Trooper Beyer was not authorized to detain Mr. Jackson until a canine unit could be dispatched.

At the time Trooper Beyer dispatched a canine unit, (which was on the scene within 2 to 3 minutes); he was in possession of Mr. Jackson's valid New York State Driver's License and other requested documentation. Mr. Jackson provided Trooper Beyer with proper documentation for his rental vehicle, and described his comings and goings for June 14, 2011. At most, the totality of the exchange and the information supplied to Trooper Beyer authorized him to effectuate the issuance of a traffic citation. The continued detention of Mr. Jackson was not justified and clearly was based on nothing more than a hunch and/or suspicion. Rather than proceed with the stop, Trooper Beyer requested a canine unit with the singular purpose of investigating his hunch. This

constitutes an illegal seizure followed by an illegal search of Mr. Jackson's vehicle. When police conduct a warrantless search, the State bears the burden of establishing the validity of the search. Searches and seizures without a warrant are "*per se* unreasonable' except in a few well-defined and carefully circumscribed instances. State v. Roberts (2009) 110 Ohio St. 3d 71, *internal citations omitted*. Up to this point, the government has not attempted to characterize the search of Jackson's vehicle as being constitutionally justifiable.

A warrantless search of an automobile is unreasonable unless the police search a vehicle incident to a recent occupants arrest- and *only when* the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search, or when it is reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle. *Arizona v. Gant* (2009), 556 U.S. ____, 129 S.Ct. 1710. At the time of the search at bar, Mr. Jackson was not within reaching distance of the passenger compartment of the vehicle. It is unreasonable to believe that the car contained evidence of the following too closely violation.

Furthermore, even if the Court were to find that the search was somehow justified, the scope of the search was limited to the passenger compartment of the vehicle. In State v. Farris (2006), 109 Ohio St. 3d 519, the Supreme Court of Ohio recognized, "A trunk and a passenger compartment of an automobile are subject to different standards of probable cause to conduct searches. In State v. Murrell (2002), 94 Ohio St.3d 489, 2002 Ohio 1483, 764 N.E.2d 986, syllabus, this court held that '[w]hen a police officer has made a lawful custodial arrest of the occupant of an automobile, the officer may, as a contemporaneous incident of that arrest, search the passenger compartment of that

automobile.' (Emphasis added.) The court was conspicuous in limiting the search to the passenger compartment." At the point in time when Trooper Beyer took Mr. Jackson into custody, any subsequent search of his vehicle should have been limited to the passenger compartment.

In Farris, the odor of burnt marijuana in the passenger compartment was not even enough to establish probable cause to search the trunk of the vehicle. Like the search that took place in the defendant's vehicle in Farris, the search conducted by Trooper Beyer on the passenger compartment of Mr. Jackson's vehicle revealed no contraband. Also, almost immediately after beginning his search, Trooper Beyer went into the trunk without having observed any evidence of illegal activity in the passenger compartment. Thus, the officers lacked probable cause to search beyond the passenger compartment of Mr. Jackson's vehicle.

A canine's senses are limited in the same manner that an officer's senses are, being that if an officer smells an odor of marijuana in the passenger compartment, his search is limited to the passenger compartment. Farris. Here, the drug detecting canine alerted that there was an odor in the passenger compartment, not the trunk. As such, any subsequent search should have been limited to the passenger compartment.

In State v. Carlson, 102 Ohio App. 3d 585, the court addressed the issue of whether a search should be confined to an area where a canine alerts. The Ninth District adopted the opinion that a drug dog's alert on the exterior of a vehicle provides probable cause to conduct a dog sniff of the vehicle's interior and its contents. Id. The court, entertaining the issue, found that a search may be confined to the interior of a truck and not the bed of the truck, even though the court ultimately found the search of the bed

valid due to the canine alerting specifically on bags in the truck bed. Id. Therefore, the search of Defendant's vehicle should have been limited to the passenger compartment and a warrant should have been obtained to search the closed opaque containers in the trunk. Additionally, the sealed contents of the trunk could not be searched without a warrant. In State v. Taulbee (2d Dist., 1982), 1982 Ohio App. LEXIS 15575, the court held, "a [closed, opaque] container may not be opened without a warrant, even if it is found during the course of the lawful search of an automobile."

Any evidence, including statements, obtained as a result of the search of Jackson's person and vehicle should be suppressed as fruit of the poisonous tree. Wong Sun v. United States (1962) 371 U.S. 471. The government cannot rely on evidence illegally obtained in an attempt to later legitimize their search. Also, the Ninth District uses this doctrine to prohibit the introduction of derivative evidence, both tangible and testimonial, that is the product of the primary [illegally obtained] evidence. State v. Moore (9th Dist., 2004), 2004 Ohio App. WESTLAW 5496468. The evidence obtained by Trooper Beyer is clearly tangible and derivative evidence that is a product of the primary illegally obtained evidence. Specifically, the cocaine found in Mr. Jackson's trunk was obtained after an unlawful vehicle search.

Additionally any statements Mr. Jackson made were custodial statements taken in violation of his constitutional rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments of the Constitution of the United States, and Article I, Section 10 of the Ohio Constitution. Miranda v. Arizona (1966), 384 U.S. 436; Berkemer v. McCarty (1984), 468 U. S. 420; State v. Buchholz (1984), 11 Ohio St.3d 24, 462 N.E.2d 1222.

WHEREFORE, Jackson respectfully requests that this court issue an order suppressing any and all evidence obtained from him based on the foregoing violations of his constitutional rights. If the Court finds it necessary, the Defense would consent to an evidentiary hearing in this matter to further explore the issues involved.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Suppress was served on the State by hand-delivering a copy of same on Lorain County Prosecutor Dennis Will, or his representative, 225 Court Street, 3rd Floor, Elyria, Ohio 44035, this 4th day of November, 2011.

Jack W. Bradley