IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
LORAIN COUNTY, OHIO

STATE OF OHIO,	:	Case No. 14CA010555
Appellee,	:	On Appeal from Lorain County Court of Common Pleas Case
vs.	:	No. 11CR083104
CLIFTON JACKSON,	:	**Appellant's Reply To Appellee's Response To Appellant's Delayed Application To Reopen**
Appellant.	:	

Now comes the Appellant, Clifton Jackson [hereinafter "Appellant"], acting in pro se, and hereby respectfully requests that this Honorable Court grant Appellant's Delayed Application to Reopen in this case where the trier of fact "clearly lost its way and created such a **manifest miscarriage of justice** that the conviction must be reversed and a new trial ordered." **State v. Thompkins, 78 Ohio St.3d 380, 1997-Ohio-52, 678 N.E.2d 541; State v. Martin, 20 Ohio App.3d 172, 485 N.E.2d 717 (1st Dist. 1983).**

For the reasons as set forth more fully in the Memorandum which is attached hereto and incorporated herein.

Respectfully submitted,

Clifton A. Jackson

Clifton Jackson #A652-163
Lake Erie Correctional Inst.
501 Thompson Road
P.O. Box 8000
Conneaut, Ohio 44030

APPELLANT PRO SE

MEMORANDUM IN SUPPORT

In support of his being granted the relief herein sought Appellant pursuant to App.R. 26(B)(2) states that his request for leave to file delayed was in compliance with App.R. 26(B)(2)(a)(b)(c)(d) and (e) and placed issues for appellate review with merits before this Honorable Court, to-wit:

App.R. 26(B)(5) which states in pertinent part:

> **"An application for reopening shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal."**

In rebuttal of the Appellee's Response to Appellant's Delayed Application to Reopen (A.R.A.D.A.R.) filed Jan. 26, 2017, Appellant gives the following rebuttal of additional and deliberate statement of the case and facts devoid of the record:

FALSE STATEMENTS IN THE CASE AND FACTS

1. First false statement on June 14, 2012, [it was actually June 14, 2011, when violation/infringements upon Appellant's Fourth Amendment occurred]. **See Appellant's "Request For Leave To File Appellant's Application For Reopening Of His Direct Appeal Under App. R. 26(B)" [R.L.F.A.A.R.D.A., Page 2, ¶3]; Affidavit in Support; and Exhibit A.**

2. Second false statement, Trooper Christopher Beyer approached the Camry and asked Jackson , the driver, for his license, registration and insurance. Supp. Tr. 6. Jackson gave Trooper Beyer a rental agreement for the car, which did not list Jackson as an authorized driver. Supp. Tr. 7; Tr. 99. [the record is void of Appellant giving Trooper Beyer a rental agreement, it is also void o-

f Trooper Beyer ever taking Appellant's drivers license, once Trooper Beyer observed that Appellant had New York drivers license, he immediately went back to his cruiser and called for K-9 assistance]. **See Appellant's R.L.F.A.A.R.D.A., Page 2, ¶4; and Appellant's Affidavit in Support "Exhibit A" [the audio & video of Trooper Beyer's cruiser, a prima facie showing that Trooper Beyer did not have the Appellant's drivers license nor the alleged rental agreement in his hands when he walked back to his cruiser to call for K-9].**

Even though Trooper Beyer was fully aware of the fact that his every move was being recorded on his cruiser's audio & video equipment, he knowingly gave perjured testimony to place knowingly false statements on the record, concerning obtaining Appellant's drivers license and the rental agreement as stated:

June 4, 2012, Suppression Hearing Transcript, Page 10, Lines 4-9:

Q. Okay. You stated that you walked away from the vehicle then?
A. I did. I went back to my vehicle to further look at the rental agreement, which can be a little bit cumbersome and quite large and fine print. I went back and took his license and rental agreement back with me.

It is Trooper Beyer's cruiser that is doing the rebuttal here of the State's false statements, because the audio & video does not at any time show Trooper Beyer walking to his cruiser or away from his cruiser with Appellant's drivers license nor an alleged rental agreement. **See Appellant's Affidavit in Support "Exhibits A and J".**

Now to further cover up his illegal actions and the fact that he did not have Appellant's drivers license nor the alleged rental agreement, the only way Trooper Beyer could attempt to cover himself, was to give further perjured testimony that the LEADS System was

down as he stated:

June 4, 2012, Suppression Hearing Transcript, Pages 13-14, Lines 24-13:

Q. At what point did you call dispatch with the defendant's information, and were they able to determine anything?
A. At the time, I'm not exactly sure of the exact time I was able to get a hold of dispatch with this info. Our LEADS was down at the time. They were doing maintenance on it or there was some issues with it. So at the time, I wasn't able to give them, or able to have them check that information. I believe at the time there, while I was waiting for Trooper Trader, I tried running checks through LEADS there, and they were all -- they came back that LEADS was down at time. So after the, after there was probable cause to search the vehicle, LEADS had then came up, and then I radioed district, which would be believe dispatch center.

3. Third false statement, even though the Appellee was fully aware of the fact that the LEADS System was never down, it focus its attention to false action void of the record to further infringe upon Appellant Civil and Constitutional Rights by stating that:

> "Jackson gave Trooper Beyer a rental agreement for the car, which did not list Jackson as an authorized driver. Supp. Tr. 7,8; Tr. 98, 99. Instead, it listed Latrice Thomas as the renter. Supp. Tr. 7; Tr. 99. Jackson provided Trooper Beyer with differing stories on his relationship to the vehicle's renter and how long he had the vehicle. Supp. Tr. 8-9, Tr. 98." See A.R.A.D.A.R., Page 3, ¶3

Now if the above was in fact true, and Trooper Beyer believing based on his training and experience that there was something more going on than a mere traffic violation. Supp.Tr. 9-10; Tr. 97-98. And Trooper Beyer deciding the situation warranted further investing due to Jackson's odd behavior, his alleged contradictory stories [which the parties have to take Trooper Beyer's word for, being that he conveniently shut off his body mic, so the parties will never know]. And even though Trooper Beyer stated under oath that LEADS came back up, and then he radioed district/dispatch center, but fails to state

whether he ever ran Appellant's drivers license or the vehicle's plates.

4. Fourth false statement, Trooper Beyer called K-9 officer Trooper Trader to the scene. Supp. Tr. 10; Tr. 99. Trooper Trader and his dog Argo arrived on the scene. Supp. Tr. 10-11; Tr. 1-00. Jackson was removed from the car prior to the search for safety reasons. Supp. Tr. 12; Tr. 100. Trooper Beyer asked Jackson if everything in the car was his. Tr. 105. Jackson first said no and that there were no drugs in the car. Id. Then Jackson quickly changed his answer and admitted everything in the car was his. Id. Jackson sat in the back of the cruiser for safety while Trooper Trader deployed Argo for a free air sniff. Supp. Tr. 13; Tr. 100. Argo gave a positive alert for the presence of narcotics. Supp. Tr. 16; Tr. 154. Trooper Beyer then gave Jackson his Miranda rights and placed him back in the cruiser. Supp. Tr. 13; Tr. 105. Upon searching the car, the troopers discovered 2 kilograms of cocaine in an orange duffle bag in the trunk 191-192.

Rebuttal-Appellant's Conviction is Void under Illegal Search:

On June 14, 2011 at approximately 08:45.30, after being illegally detained, and informed by Trooper Beyer that everything checked out, yet ordered out of his vehicle, Appellant complied with Trooper Beyer's order, but as he exist his vehicle he secured the vehicle with a remote key. **See Appellant's Affidavit in Support, ¶10; and Exhibit A..** Appellant was illegally detained after Trooper Beyer seen he had New York drivers license, Appellant was searched by Trooper Beyer and placed in the back of the cruiser with out being under arrest in violation of his Fourth

Amendment, then after Trooper Beyer called Trooper Trader and K-9 Argo, Trooper Trader gave K-9 Argo a command to alert on areas of Appellant's vehicle. **See Appellant's Affidavit in Support, ¶18; Also see Exhibit A.**

LAW AND ARGUMENT

Here, this Court's prior decision affirming the judgment of the trial court was based on knowingly false statements placed on the record with respect to Trooper Beyer's viewing of a rental agreement that was never received by Trooper Beyer nor reviewed by Trooper Beyer. And the perjured testimony given by Trooper Beyer at the June 4th, 2012 Suppression Hearing asserting that he received Appellant's drivers license and the alleged rental agreement is void of the record of ever occurring during the entirety of Trooper Beyer's cruiser's audio & video from 08:40.04 A.M. through 09:51.00 at which time Trooper Beyer deliberately turned off! **See Appellant's Affidavit in Support, ¶¶6 - 41.**

Appellant contends that although the investigative stop took place on a Highway in the State of Ohio, that factor alone is not sufficient to justify an investigative stop. **Brown v. Texas (1979), 443 U.S. 47, 52, 99 S.Ct. 2637, 2641, 61 L.Ed.2d 357, 362-363.** Being on the highway frequented by thousands of other drivers, standing alone, was not a basis for concluding that Appellant himself was engaged in criminal conduct. To hold otherwise would result in the wholesale loss of the personal liberty of those with the misfortune of driving on Ohio's highways.

Trooper Beyer's articulated reason for calling Trooper Trader and K-9 Argo to engage in a free air sniff was that he suspected

that there was something more going on than a mere traffici violation. Supp.Tr. 9-10; Tr. 97-98. At the June 4, 2012, Suppression Hearing, the trial court based on events void of the record as shown on the audio & video [Trooper Beyer never possessed Appellant's drivers license nor the alleged rental agreement], created a manifest miscarriage of justice depriving Appellant of Due Process and Equal Protection of the law. Trooper Beyer knew nothing about Appellant at that time. In short, Trooper Beyer was unable to point to specific articulable facts that would lead a reasonable person to believe a crime was being committed by Appellant. An trooper's inarticulate hunch would not provide a sufficient basis for an investigative stop.

In this case the trial court clearly lost its way and erred in its failure to suppress the evidence illegally seized on June 14, 2011, when it entered an altered ruling on September 28, 2012, Appellant's counsel provided him with a copy of a ruling stating the motion to suppress was granted, then imagine Appellant content when he received the altered ruling saying it was denied.

Appellant argues that the stop of the camery was unlawful, the evidence seized as a result of the warrantless search should have been suppressed because the troopers executing that search should have obtained a valid search warrant. **United States v. Leon (1984), 468 U.S. 897, 104 S.Ct. 3405, 82 L.Ed.2d 677.**

The court in **Leon** held that the exclusionary rule is designed to deter police misconduct rather than to punish the error of judges and magistrates. The court further held that even assuming that the exclusionary rule effectively deters some police misconduct and pro-

vides incentives for the law enforcement as a whole to conduct itself in accord with the Fourth Amendment, it cannot be expected, and should not be applied, to deter objectively reasonable law enforcement activity. Also, a police officer's reliance on the magistrate's probable cause determination must be objectively reasonable.

Appellant contends that in the present case the exclusionary rule reaches not only primary evidence obtained as a result of an unlawful search or seizure, but also the derivative evidence which is the indirect product of unlawful police conduct, citing **Segura v. United States (1984), 468 U.S. 769, 104 S.Ct. 3380, 82 L.Ed. 2d 599.** Appellant found that without the tainted evidence, i.e., the cocaine found as a result of the illegal stop of the Camery, was **fruit of the poisonous tree.**

Appellant further contends that the reason for the rule is the concern that if derivative evidence were not suppressed, troopers would have an incentive to violate constitutional rights [as in this case] in order to secure admissible derivative evidence even though the primary evidence secured as a result of the constitutional violation would be inadmissible. **See Katz, Ohio Arrest, Search and Seizure (3 Ed.1992), Section 2.07.**

Appellant contends that to forbid the direct use of methods thus characterized but to put no curb on their full indirect use would only invite the very methods deemed 'inconsistent with ethical standards and destructive of personal liberty.' **Nardone, supra, at 340, 60 S.Ct. at 267, 84 L.Ed. at 311.**

Appellant argues that the ignoble shortcut to conviction left open to the State tends to destroy the entire system of constitutional restraints on which the liberties of the people rest. Having once recognized that the right to privacy embodied in the Fourth Amendment is enforceable against the States, and that the right to be secure against rude invasions of privacy by State troopers is, therefore, constitutional in origin, this court can no longer permit that right to remain an empty promise. Because it is enforceable in the same manner and to like effect as other basic rights secured by the Due Process Clause, this court can no longer permit it to be revocable at the whim of any trooper who, in the name of law enforcement itself, chooses to suspend its employment.

The Ohio Supreme Court has held, decisions, founded on reason and truth, gives to the Appellant no more than that which the Constitution guarantees him, to the trooper no less than that to which honest law enforcement is entitled, and, to the courts, that judicial integrity so necessary in the true administration of justice.

CONCLUSION

For the above-herein stated reasons Appellant respectfully requests that these issue be heard to correct a gross manifest miscarriage of justice and to uphold Appellant's constitutional rights as guaranteed under the Due Process Clause and Equal Protection Clause, and requests that his direct appeal be reopen.

Clifton A. Jackson

APPELLANT PRO SE

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellant's Reply To Appellee's Response To Appellant's Delayed Application To Reopen was sent by regular U.S. Mail to the office of the Lorain County Prosecutor, at The Justice Center, 3rd Floor, 225 Court Street, Elyria, Ohio 44035 on this 8th day of February, 2017.

Clifton A. Jackson 2/8/2017

APPELLANT PRO SE

Sworn to and subscribed to in my presence on this 8 day of February, 2017.

NOTARIAL SEAL · STATE OF OHIO ·

Deborah Silvasy
Notary Public, State of Ohio
Recorded in Ashtabula County
My Commission Expires
March 26, 2019

Deborah Silvasy

NOTARY PUBLIC