IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
Appellee,	:	Case No.
vs.	:	On Appeal from the Lorain County Court of Appeals,
CLIFTON JACKSON,	:	Ninth Appellate District
Appellant.	:	Court of Appeals Case No. 14CA010555
	:	

NOTICE OF APPEAL OF APPELLANT CLIFTON JACKSON

Clifton Jackson #A652-163

Lake Erie Correctional Institution

501 Thompson Road

P.O. Box 8000

Conneaut, Ohio 44030

APPELLANT IN PRO SE

Mary Slanczka (#0066350)

Assistant Prosecuting Attorney

The Justice Center, 3rd Floor

225 Court Street

Elyria, Ohio 44035

COUNSEL FOR APPELLEE

Notice of Appeal of Appellant Clifton Jackson

Appellant Clifton Jackson hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Lorain County Court of Appeals, Ninth Appellate District, entered in the Court of Appeals Case No. 14CA010555 on February 2, 2017.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,

Clifton a. Jackson

Clifton Jackson #A652-163

APPELLANT IN PRO SE

Certificate of Service

I certify that a copy of the foregoing Notice of Appeal 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 3rd day of March, 2017.

Clifton a. Jackson

APPELLANT IN PRO SE

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AFFIDAVIT OF INDIGENCY OF APPELLANT CLIFTON JACKSON

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IN THE SUPREME COURT OF OHIO

AFFIDAVIT OF INDIGENCY

I, Clifton Jackson, do hereby state that I am without the necessary funds to pay the costs of this action for the following reason(s):

I am currently incarcerated at Lake Erie Correctional Institution. I have been incarcerated since February, 21, 2014 I work at the prison but receive only $20.00 per month for state pay.

Pursuant to Rule 3.06 of the Rules of Practice of the Supreme Court of Ohio, I am requesting that the filing fee and security deposit, if applicable, be waived.

Clifton A. Jackson 3/3/17
Affiant

Sworn to and subscribed to in my presence on this 3rd day of March, 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

IN THE SUPREME COURT OF OHIO

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MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT CLIFTON JACKSON

Clifton Jackson #A652-163

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This cause presents two critical issues that affects protections in place for all citizens traveling Ohio's highways against racial profiling and unreasonable search and seizure: (1) whether the actions of Trooper Christopher Beyer's on June 14, 2011 was the direct result of racial profiling; and (2) whether evidence obtained as the result of an unreasonable search and seizure should have been suppressed pursuant to the Fruit of the Poisonous Tree Doctrine?

In this case, the court of appeals February 2nd, 2017 Decision and Journal Entry denying Appellant's Request for Leave to File Appellant's Application for Reopening of his Direct Appeal was an abuse of proper appellate review of the merits of Appellant's application for reopening pursuant to App.R. 26(B) and R.C. 2953.08.

The decision of the court of appeals threatens the public's trust in the ability of law enforcement's to honor their vows to serve and protect, when discriminatory acts of racial profiling are still being used to date to empose an officers personal will "not the law" on those of a race different than their's. And the February 2nd, 2017 decision and journal entry was completely based on a previous June 22nd, 2015 Decision and Journal Entry based on knowingly false and perjured testimony given by Trooper Christopher Beyer concerning statements made which was void of the trooper's cruiser video which clearly show that Trooper Beyer never possessed Appellant's drivers license nor the rental agreement papers while standing outside of the rental vehicle, nor while he walked back to his cruiser on June 14th, 2011. See Appellant's Affidavit in Support of Request for Leave to File Appellant's Application for Reopening of his Direct Appeal under App.R. 26(B) Delayed and his Assignments of Error I Through VI; Exhibits A Through AAAE in Support. [Specifically Exhibit A - Timeline from 08:40:35 to 08:45:40, the cruiser shows Trooper Beyer never walked to his cruiser with Appellant's drivers license nor a rental agreement papers in his hands].

Now to further cover-up his illegal actions and the fact that he did not have Appellant's drivers license or 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. See June 4th, 2012, Suppression Hearing Transcript, Pages 13-14, Lines 24-13. Because Trooper Beyer and Trooper Trader knew that they were following racial profiling protocol discriminatory nature, to attempt to conseal their selective enforcement against Appellant, these Troopers deliberately turned off their body mics so that only they could hear their plans placed in action under the color of law.

The decision of the court of appeals threatens the public's trust in the ability of law enforecement's to honor their vows to serve and protect, when discriminatory acts of racial profiling are still being used to date to empose an officer's bias personal will "not the law" on those of a race different than their's. And the February 2nd, 2017 decision and journal entry was completely based on a previous June 22nd, 2015 Decision and Journal Entry based on knowingly false and perjured testimony given by Trooper Christopher concerning statements made which was void of the trooper's cruiser audio and video concerning the LEADS System being down. See Exhibit J, Page 6-9, "regarding Trooper Beyer testimony of reviewing rental agreement and license outside the Appellant's car between 8:40 and 8:42 A.M. prior to returning to his cruiser to request for K-9 Assistance and his alleged attempts void of the record about attempting to check the Appellant's credentials by way of LEADS and LEADS alleged response about its operational status.

Trooper Christopher Beyer testified on direct and cross examination that he and Trooper Michael Trader in the illegal process of this search, first systemactically thoroughly searched the inside of the vehicle prior to illegally entering the trunk of the vehicle. The audio & video confirms once the troopers illegally entered the vehicle, they never searched the inside of the vehicle, they immediately illegally entered the trunk.

The decision of the court of appeals threatens the structure of final appellate review created by the General Assembly in R.C. Chapter 2953.08. By its ruling, the court of appeals undermines legislative intent, ignores the plain meaning of the Act, and creates its own unsupported view of denying Appellant's request for leave to reopen his disrect appeal, by simply replying back to its previous ruling of June 22nd, 2015, without stating its reasons on the record for the denial of Appellant's request in its February 2nd, 2017 decision. Moreover, the court of appeals' decision establishes the illogical and untenable rule that Ohio's State Highway Patrol Officers charged with the duty and responsibility of protecting Ohio's citizens, can violate and ignore its own policys in place against troopers action that are based on race. United States v. Avery, 137 F.3d 343, 352 (6th Cir.1997).

The implications of the decision of the court of appeals affect every minority in Ohio apart of an investigative stop which lead to a . K-9 air sniff and search of their vehicle (secured or not secured) without obtaining a search warrant for those vehicles which were in fact secured by the driver prior to being placed in the back seat of the trooper's cruiser. This decision affects and touch the lives of thousands of minority citizens the victims of racial profiling in this state. The public's interest in the orderly operation of government is profoundly affected by a holding that these troopers guilty of such bias actions while acting under the color of law must once and for all be address. If this Court chooses to ignore acts of such a discriminatory nature, it would sabotage the public trust in the integrity of the Ohio's Law Enforcement and Judicial branches of the government, and the fundamental principle that the Constitution is in fact a perminent guardian in place to protect citizens from such acts as racial profiling and selective enforcement motivated by a discriminatory purpose. Wayte v. United States, 470 U.S. 598, 608, 105 S.Ct. 1524, 84 L.Ed.2d 547 (1985). Similarly, the public interest is affective if these troopers continue to be rewarded for such discriminatory misconduct with no punishment, they justifiabily believe they are above the law they swo-

re to serve and uphold.

Appellant contends that the investigation by Trooper Christopher Beyer and Michael Trader violated his Fourteenth Amendment right to be free from discrimination on the basis of race. He contends that the stop and investigation into his secured vehicle without consent occurring in Lorain County was the result of an unconstitutional Troopers' policy to stop all minorities driving Ohio's highways.

If allowed to stand, the decision of the court of appeals would ravage the public's trust in law enforcement's ability to perform its fuctions as an unbias party to minorities in the State of Ohio, this Court must grant jurisdiction to hear this case and review the erroneous and dangerous decision of the court of appeals.

STATEMENT OF THE CASE AND FACTS

Appellant contends that he was traveling eastbound on the Ohio Turnpike in the early morning hours of June 14th, 2011, in the County of Lorain. He was pulled over by Ohio State Trooper Christopher Beyer for an alleged witness of a traffick infraction by Appellant, and initiated a traffick stop. Trooper Beyer approached Appellant's vehicle and asked where he was coming from and where was he going [without entertaining the scope of the alleged traffick infraction]. Then Trooper Beyer asked Appellant for his drivers license and the vehicle's credential [which the trooper did not take]. Once Trooper Beyer discovered Appellant had a New York drivers license [by glancing in the car], Trooper Beyer immediately went back to his cruiser and called for K-9 Assistance, which he received an immediate en route response. After approximately 3.5 minutes, Trooper Beyer return to Appellant's vehicle [with the immediate intent to manipulate the alleged traffic stop] and said "...everything checked out." (But what could Trooper Beyer been checking out if he never took Appellant's drivers license or the vehicle's credentials?). At which point Trooper Beyer made an authoritative gesture and requested that Appellant accompany him b-

ack to his cruiser! Appellant exit his vehicle and secured it with the power lock on the key ring, which automadically set the alarm. Trooper Beyer searched Appellant prior to placing him in the back of his cruiser uncuffed and against Appellant's will. **See Exhibit A, audio & video of Trooper Beyer's cruiser.** Appellant had multiple cell phones in his hand along with the vehicle's keys and remote. According to the cruiser's video, once Trooper Beyer secured Appellant in the back of his cruiser, another cruiser arrived with Trooper Michael Trader and K-9 Argo approximately a minute later. [I notice that these Troopers keep turning their body mics off and back on, off and back on]. Then Trooper Trader and K-9 Argo immediately come into view and go straight to Appellant's secured vehicle. Starting in a counterclockwise search from the trunk to the front of the car witout alerting on Appellant's vehicle. Then Trooper Trader keeps his right hand high and K-9 Argo begins paying close attention to Trooper Traders right hand primarily, at no point did K-9 Argo entertain a sniff in the lower portion of the vehicle starting from the trunk of the vehicle moving counterclockwise. When Trooper Trader and K-9 Argo approach the driver's side of the vehicle, since K-9 Argo was in an apparent artifically induced heightened sense of awareness by Trooper Trader's movements and before the completion of the open air sniff, Trooper Trader slightly pulls back on K-9 Argo's leash, gets Argo's attention, squares himself and Argo toward the vehicle to get K-9 Argo's attention, alerting Argo even further. Trooper Trader then taps the vehicle 2 to 4 times. After a brief pause, K-9 Argo immediately starts to scratch at the exact location that Trooper Trader was tapping a few seconds earlier. **See Exhibit A, audio & video of Trooper Beyer's cruiser.** Then Trooper Beyer informed Appellant [feeling illegally detained and stripped of his rights], in the back set of his cruiser that K-9 Argo has allegedly indicated on the vehicle. Then Trooper Beyer demands Appellant's keys [which were not given, so Trooper Beyer took them without consent], Troopers Beyer and Trader illegally entered Appellant's secured vehicle without consent, and without obtaining a search warrant. These Troopers illegally searched Appellant's secured vehicle at which time he was nowhere near the vehicle

to cause an immanent threat or access to the items in the secured vehicle's trunk. Nothing was discovered or in plain view inside of the vehicle of which area Appellant had direct access to at the time of the stop. In fact, as shown on Trooper Beyer cruiser's video, by clear and convincing evidence, it is clear that the troopers just glanced inside the vehicle and their main focus was on the trunk. These troopers expanded their search beyond the scope of the Fourth Amendment when they opened the trunk where the luggage was secured and illegally searched the contents of the luggage [when nothing was in plain view], thus discovering fruits of a poisonous tree [two kilos of cocaine]. **See Exhibit A, audio & video of Trooper Beyer's cruiser.**

Trooper Christopher Beyer deliberately made a fraudulent (false) report on June 14, 2011, concerning his receiving Appellant's drivers license and a rental agreement. Trooper Beyer's cruiser video shows by clear and convincing evidence the unrebuttible fact that Trooper Beyer never stood outside of Appellant's vehicle looking through a rental agreement nor did he have in either of his hands while walking back to his cruiser the Appellant's drivers license or the rental agreement. **See Exhibit B (Trooper Beyer report of June 14, 2011); Also see Exhibit A, Trooper Beyer cruiser's audio & video.**

Because Appellant was given a copy of the false report, Appellant file a **"Formal Internal Complaint"** against Trooper Christopher H. Beyer on February 5th, 2014, with the Lorain County Elyria Patrol Post, 38000 Cletus Drive, North Ridge, Ohio 44039. **See Exhibit AAE (Copy of the Formal Internal Complaint).**

On February 19, 2014, Lieutenant Lawrence V. Firmi, of the Bucyrus District Criminal Investigations Commander, 3665 State Route 4, Bucyrus, Ohio 44820 covered up any form misconduct committed by Trooper Beyer concerning falsifying reports and perjured testimony at both the Suppression Hearing "and" the trial. **See Exhibit AAJ.**

Appellant was prejudiced by Trooper Beyer's false report at the June 4th, 2012, Suppression Hearing; the February 11th, 2014, Jury Trial; and the June 22nd, 2015, Lorain

County, Court of Appeals, Ninth Appellate District. **See Exhibits A, B, AAE, and AAJ.**

On January 17th, 2017 Appellant filed for leave to file an application for reopening of his direct appeal pursuant to App.R. 26(B); with supporting affidavit and exhibits A through AAAE. **See Appellant's "Request for Leave to File Appellant's Application for Reopening of His Direct Appeal Under App.R. 26(B) Delayed" and Appellant's "Affidavit in Support of Request for Leave to File Appellant's Application for Reopening of His Direct Appeal Under App.R. 26(B) Delayed and His Assignments of Error I Through VI" (and Exhibits A through AAAE, in support of the affidavit).**

On February 2nd, 2017, the court of appeal erred in using its previous June 22nd, 2015, opinion to determine the merits of the Appellant's valid request for leave to reopen his direct appeal under App.R. 26(B), where as in this case, Appellant's request was supported by his affidavit and exhibits.

In support of its position on these issues, the Appellant presents the following argument.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: Appellant was denied effective assistance of counsel as guaranteed by the 6th and 14th Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution, where his appellate counsel omitted a "Dead Bang Winner", prejudicing Appellant of receiving a full review by the court.

Appellant argues that, "a criminal defendant is entitled to effective assistance on appeal as well as at trial. Counsel should act as an advocate rather than merely as a friend of the court. **Evitts v. Lucey (1985), 469 U.S. 387, 105 S.Ct. 830; Pension v. Ohio (1988), 488 U.S. 75, 109 S.Ct. 346."**

The governing standard for effective assistance of counsel is found in **Strickland v. Washington (1984), 466 U.S. 668, 104 S.Ct. 2052.** In **Strickland,** the Supreme Court held: "a defendant must show that counsel's performance was deficient, which require showing that counsel was not functioning as the "counsel" guaranteed by the 6th Amendment. Second, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different. A reasonable probability is a probability sufficient to overcome confidence in the outcome. **Id., 466 U.S. at 694. See also, Darden v. Wainwright (1986), 477 U.S. 168, 106 S.Ct. 2464; Wong v. Money (6th Cir. 1998), 142 F.3d 313, 319; Blackburn v. Foltz (6th Cir. 1987), 828 F.2d 1177.**

The **Strickland** test applies to appellate counsel. **Smith v. Robbins (2000), 528 U.S. 259, 285, 120 S.Ct. 746; Burger v. Kemp (1987), 483 U.S. 776, 107 S.Ct. 3114.** Altough an attorney need not advance every argument urged by appellant, **Jones v. Barnes (1983), 463 U.S. 745, 103 S.Ct. 3308,** counsel can be constitutionally deficient for failing to raise a dead bang winner. **Mapes v. Coyle (6th Cir. 1999), 171 F.3d 408, 427-29, citing United States v. Cook (10th Cir. 1995), 45 F.3d 388, 395; Page v. United States (6th Cir. 1989), 884 F.2d 300, 302.** A dead bang winner has been defined as "an issue which was obvious from the trial record." **Cook, Supra**

Appellant argues that to prevail on his ineffective assistance of counsel claim of appellate counsel, he must show that appellate counsel ignored issues which were clearly stronger than those assignment of errors presented by appellate counsel. **Smith v. Robbins (2000), 528 U.S. 288, 120 S.Ct. 746, quoting Gray v. Greer (7th Cir. 1986), 800 F.2d 644, 646. See also Exhibit A, audio & video of Trooper Christopher Beyer cruiser.**

Appellant contends that there is a reasonable probability that the Court would have ruled differently had counsel on appeal presented the following issues for review.

> **Proposition of Law No. II: Absent reasonable suspicion, troopers extension of a traffic stop in order to conduct a dog sniff violated Appellant's constitutional shield against unreasonable search and seizure under the 4th Amendment to the United States Constitution and Article I, Section 14 of the Ohio Constitution, where evidence seized was unlawful under the fruit of the poisonous tree doctrine.**

Appellant argues that on June 14th, 2011, Trooper Christopher H. Beyer while racial profiling, stopped Appellant for allegedly driving to close to a mobile home, a violation of Ohio law. Yet, after Trooper Beyer stopped Appellant in relation to the alleged traffic violation, Trooper Beyer failed to comply with standard protocol in making a routine traffic stop, including, intra alia, a requirement that he obtain from the driver a valid drivers license and the vehicle's credentials (as in this case, the rental agreement). This is credicial to any proper appellate review, because Trooper Beyer perjured himself at both the Suppression Hearing held June 4, 2012, and during the Jury Trial held February 11, 2014, acts of perjury pertinent to this case by clear and convincing evidence in the record, even though Trooper Beyer was fully aware of the fact that the only witness that could in fact prove these statements to be false, was Trooper Beyer's cruiser audio & video, he still knowingly gave perjured testimony, to-wit:

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

4. Q. Okay. You stated that you walked away from the
5. vehicle then?
6. A. I did. I went back to my vehicle to further look
7. at the rental agreement, which can be a little bit

8. cumbersome and quite large and fine print. I went back and
9. took his license and rental agreement back with me.

It is Trooper Beyer's cruiser that is doing the invalidating of this perjured testimony, because the cruiser's audio & video is void of these events occurance. **See Exhibit A; Suppression Hearing Transcript, Page 10, Lines 4-9.** The cruiser's video shows by clear and convincing evidence that Trooper Beyer on June 14th, 2011, timelines from 08:40:-35 to 08:45:40 are void of the events testified too by Trooper Beyer of June 14th, 2011.

Appellant contends that Trooper Beyer's cruiser's audio & video recording of June 14th, 2011 was/is his strongest ally in these proceedings, because unlike a human this witness cannot tell a lie. Prosecutors all across these United States have used videos of suspects committing crimes to obtain convicts by placing a **prima facie** showing of the act on video. Any judge or jury that viewed such videos always found the defendant guility, and in some cases because of the videos defendants entered guilty pleas. Just as videos were used in those situations to prove a defendant's guilt, in this case it was over looked or deliberately ignored in order to cover-up these Troopers discriminatory act of **Racial Profiling.** Appellant contends that the investigative stop by Trooper Beyer violated his Fourteenth Amendment right to be free from discrimination on the basis of race. He asserts that the stop and investigation into his presence on an Ohio Highway was the result of an unconstitutional Ohio State Highway Patrol policy to stop all minorities driving Ohio's Highways. For evidence of the alleged discriminatory policy, Appellant points to the June 14th, 2011, fraudulent report of Trooper Beyer's concerning events void of his cruiser's video recording with respect to his standing outside of Appellant's vehicle reading a rental agreement, or obtaining Appellant's drivers license or the rental agreement being in his hand/hands while walking back to his cruiser. **See Exhibits A and J.** Also the fact that Trooper Beyer openly admitted that he was a part of a **"Criminal Patrol Team". Suppression Hearing Transcript, Page 32, Lines 2-25; Page 33, Lines 1-13.**

Appellant contends that other similar incidents described herein, demonstrating unconstitutional action taken pursuant to Trooper Beyer's fraudulent report. Furthermore, there is no way that any of the previous attorneys, prosecutors, judges, jurors, troopers, DEA Agents, nor Ninth Appellate Court of Appeals Judges who viewed the video could not have notice the fact that Trooper Beyer's "Fraudulent Report", "Suppression Hearing Perjured Testimony" and "Jury Trial Perjured Testimony" were not supported by his cruiser's audio & video recordings. **See Exhibits A,B, and J; See also, Ninth Appellate District June 22nd, 2015 Decision.** And to further cover up his illegal actions and the fact that he did not obtain Appellant's drivers license until after finding the fruit of the poisonous tree, Trooper Beyer also further the lies in his fraudulent report, perjured testimony given at the June 4th, 2012 Suppression Hearing, and perjured testimony given at the February 11th, 2014 Jury Trial concerning the LEADS System being down on June 14th, 2011 preventing him from running a check on Appellant. **See Exhibits A,B, and J; See also, Ninth App. Dist. June 22nd, 2015 Decision.**

> **Proposition of Law No. III: Appellant was deprived of his right to a fair trial due to the prosecutor withholding of "Brady Material" critical to his claims of obstrution of justice and tampering with evidence committed by Troopers Christopher Beyer and Michael Trader, in violation of his 6th and 14th Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution, where the state failed to disclose the LEADS LOG & CAD REPORTS.**

Appellant argues that the State has failed to comply with **Crim.R. 16** with respect to his requests made for the disclosure of all "**Brady Material**" known or in the custody of the state relating to the LEADS LOG & CAD REPORTS of June 14th, 2011 by way of the **Brady** request filed July 3rd, 2013, to verify in fact that LEADS System was in fact down as stated in Trooper Beyer's "Fraudulent Report","Suppression Hearing Perjured Testimony" and "Jury Trial Perjured Testimony", which facts concerning LEADS System being down are void of the Trooper Beyer cruiser's audio & video recordings. **See Exhibit A,B, and J;**

See also, Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963); See also, State v. Brown, 115 Ohio St.3d 55, 2007-Ohio-4837; and See also, D'Ambrosio v. State, 2013-Ohio-4472, 20-13 Ohio App.LEXIS 4704; See Exhibit B [fraudulent report of Trooper Beyer, Doc. at 0901 that LEADS was out of service]; See Exhibit J [Pages 13-14, Lines 24-13, alleged betwee 8:42 and 8:45 A.M., Trooper Beyer attempted to check Appellant's personal and vehicle credentials via LEADS, and LEADS came back with a detailed response regarding its operational status, it is Trooper Beyer himself that confirmed LEADS is Brady Material.]; See Exhibit AN [Appellant's request for Brady Material filed on July 3rd, 2013 by the Appellant because counsel Jack Bradley refused to request the same, with specific attention of 1-10 requested.]; See Exhibit AR [A partial response to the Brady request, which confirmed there were no warrants requested or issued to Troopers Christopher Beyer nor Michael Trader to enter on June 14, 2011 Appellant's secured vehicle.]; and See Exhibit AT [Page 3, Lines 9 through Page 7, Line 15: "the Asst. Pros. Atty. Peter Gauthier," states the State of Ohio position is the LEADS Log request is not that of Brady Material.]

> Proposition of Law No. IV: Appellant was deprived of his right to a fair trial due to bias on the part of both Common Pleas Court Judges "Edward Zaleski" and "John Miraldi", in violation of his 6th and 14th Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution, where at a suppression hearing Judge Zaleski added facts to the record which never actually occurred to justify denying on the record Appellant's motion to suppress.

Appellant argues that, the term "bias or prejudice," when used in reference to a judge, "implies a hostile feeling or spirit of ill will or undue friendship or favoritism toward one of the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contra distinguished from an open state of mind which will be governed by the law and the facts [evidence]." State ex rel. Pratt v. Waggandt (1956), 164 Ohio St. 463, 58 O.O. 315, 132 N.E.2d 191; In re Disqualification of Cleary (2000), 88 Ohio St.3d 1220, 1222-23, 723 N.E.2d 1106, 1108; In re Disqualification o-

f Burger. State v. Jackson, 138 Ohio St.3d 1271, 2014-Ohio-1458, 7 N.E.3d 1211; In re Disqualification of Sheward. Todd Et AL. v. Axelrod ET AL., 136 Ohio St.3d 1256, 2013-Ohio-3643, 994 N.E.2d 452; In re Disqualification of Winkler. State v. Campbell, 135 Ohio St. 3d 1271, 2013-Ohio-890, 986 N.E.2d 996; See also, Inre Disqualification of Celebrezze. Strauss v. Strauss ET AL., 127 Ohio St.3d 1217, 2009-Ohio-7207, 937 N.E.2d 1009.

Appellant argues that, suppression hearing judge [Zaleski] could not "listen to the perjured testimony of Trooper Beyer, and then add facts to the record that were not a part of the record [after viewing Trooper Beyer cruiser's audio & Video], in an attempt to justify Troopers Beyer's illegal search of Appellant's vehicle." State v. Cockrell (July 25th, 1994), 4th Dist. No. 93CA1957, 1994 WL 390360; See also, Exhibits A,B, and J.

> Proposition of Law No. V: Appellant was deprived of effective assistance of counsel as guaranteed by the 6th and 14th Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution, where trial counsel failed to request a formal decision on his request for Brady Material needed to verify that LEADS LOG & CAD REPORTS of June 14th, 2011, were available of both Troopers cruisers and favorable to the defense.

Appellant argues that, although the **Brady Violation** and his claims of ineffective assistance of counsel claims have been raised independently, their full effect cannot be appreciated isolated from one another. Considered separately, it might be possible to conclude that Appellant was not prejudiced. However, when considered together Trooper Beyer's fraudulent report; perjured testimony given at the suppression hearing; perjured testimony given at the jury trial; the judicial misconduct of Judge Zaleski; the impact Trooper Beyer fraudulent report and perjured testimony and judge Zaleski's boostering of Trooper Beyer's perjured testimony; and the use of these perjured testimony and judicial misconduct call into question the fundamental fairness of Appellant's trial and appellate review. One need look no further than the trial court's and the court of appeals' rationale for why a **Brady Violation** did not occur to understand how Appellant was preju-

diced by the failure of his Suppression Hearing counsel [Jack Bradley] to challenge the **Brady Violation** (**Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963)**, at the June 4th, 2012, Suppression Hearing, nor did new court appointed counsel "**Mark Aufdenkampe**" prior to the February 11th, 2014, Jury Trial. Most importantly to this Appellant, Appellant has been trying at least since 2011 to obtain the exculpatory evidence in possession of the State. The issue hence becomes: When the State purposely secrets exculpatory evidence from Appellant resulting in a '**verdict unworthy of confidence**' and then actively seeks to conceal that evidence for a period of years, is the vacating of the sentences and remanding back to the trial court for a new trial the appropriate remedy? It is clear that the passage of time has gravely prejudiced the Appellant. Whether this is denominated as a **Due Process** "or" **Brady Violation**, the fact clearly remains that where the evidence concealed under **Brady** would successfully rebut/challenge both Troopers Beyer's and Trader's testimony to such a degree, that their actual testimony would in fact be a **prima facie** showing of perjury, and the evidence so illegally obtained was required to be suppressed under the **Fruit Of The Poisonous Tree Doctrine**. The "fruit of the poisonous tree" doctrine bars "introduction of derivative evidence...that is the product of the primary [illegally obtained] evidence [or testimony]." **See Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652, T.D. 1964 (1914); See also, Murray v. United States, 487 U.S. 533, 536-37, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988); Kyles v. Whitley, 514 U.S. 419, 434, 115 S.Ct. 1555 (1995); Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984); and See also, Exhibits A,B, and J.**

> **Prosition of Law No. VI: Appellant's sentence for trafficking in drugs and possession of drugs violates the Double Jeopardy Clause protection guaranteed by the 5th and 14th Amendments to the United States Constitution and Article I, Section 10 of the Ohio Constitution.**

Appellant argues that, the Double Jeopardy Clause of the 5th Amendment to the United States Constitution provides that no person shall "be subject for the same offense to

be twice put in jeopardy of life or limb." This protection applies to Ohio Citizens through the 14th Amendment to the United States Constitution, **Benton v. Maryland, 395 U.S. 784, 794, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969)**, and is additionally guaranteed by the Ohio Constitution, Article I, Section 10. The Double Jeopardy Clause protects against three abuses: 1) "a second prosecution for the same offense after acquittal;" 2) "a second prosecution for the same offense after conviction," and 3) "multiple punishments for the same offense." **North Carolina v. Pearce, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed. 2d 656 (1969), overruled on other grounds. Alabama v. Smith, 490 U.S. 794, 109 S.Ct. 2-201, 104 L.Ed.2d 865 (1989).**

CONCLUSION

For the reasons discussed above, this cases involves matters of public and great general interest and substantial constitutional questions that will have an impact on all future litigation concerning others in Ohio who were or are the knowing or unknowning victims of **Racial Profiling.** The Appellant requests that this court accept jurisdiction in this case so that the important issues presented will receive appropriate review on the merits.

Respectfully submitted,

Clifton A. Jackson

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Conneaut, Ohio 44030

APPELLANT IN PRO SE

CERTIFICATE OF SERVICE

I certify that a copy of this Memorandum in Support of Jurisdiction 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 6th day of March, 2017.

Clifton A. Jackson

APPELLANT IN PRO SE

A P P E N D I X

STATE OF OHIO) ss: COUNTY OF LORAIN)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
STATE OF OHIO Appellee v. CLIFTON JACKSON Appellant	C.A. No. 14CA010555 JOURNAL ENTRY

On January 17, 2017, Appellant, Clifton Jackson, filed a "Request for Leave to File Appellant's Application for Reopening of His Direct Appeal Under App.R. 26(B) Delayed." This Court determined Jackson's direct appeal in a decision dated and journalized on June 22, 2015. *See State v. Jackson*, 9th Dist. Lorain No. 14CA010555, 2015-Ohio-2473.

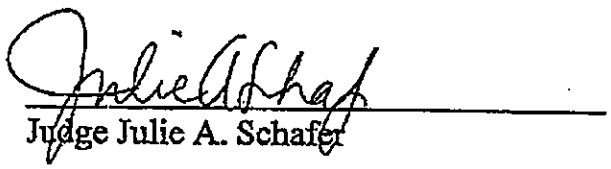
Pursuant to App.R. 26(B), Jackson was required to file his application for reopening within 90 days of the journalization of our judgment entry. "Consistent enforcement of the rule's deadline by the appellate courts in Ohio protects on the one hand the state's legitimate interest in the finality of its judgments and ensures on the other hand that any claims of ineffective assistance of appellate counsel are promptly examined and resolved." *State v. Gumm*, 103 Ohio St.3d 162, 2004–Ohio–4755, ¶ 7.

Here, this Court issued its judgment entry and opinion in the direct appeal giving rise to this proceeding on June 22, 2015. To be considered timely, Jackson must have filed his application for reopening on or before September 21, 2015. Jackson, however,

filed his application on January 17, 2017, nearly 16 months beyond the time provided for in App.R. 26(B). Jackson concedes that his application is untimely. If an application for reopening is not filed within the 90-day period set forth in App.R. 26(B)(1), an appellant must make a showing of good cause for the untimely filing. App.R. 26(B)(2)(b).

In arguing the existence of good cause, Jackson contends that his appellate counsel refused to communicate with him, which compromised his "abilities to receive appropriate appellate review." Jackson also argues that he received late notification of this Court's June 22, 2015 decision. However, a review of the docket indicates that Jackson appealed this Court's decision to the Supreme Court of Ohio on September 3, 2015. The notice of appeal is signed by Jackson and dated August 20, 2015. Jackson was thus aware of this Court's June 22, 2015 decision at least one month before the timeframe for filing his application for reopening under App.R. 26(B) had expired. Accordingly, Jackson has failed to demonstrate good cause for the delay in seeking reopening.

Appellant's application is denied.



Judge Julie A. Schafer

Concur:
Hensal, P.J.
Moore, J.