IN THE COURT OF APPEALS

NINTH APPELLATE DISTRICT

LORAIN COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellee	:	Case No. 14CA010555
vs.	:	
Clifton Jackson	:	Trial Case No. 11CR083104
Defendant-Appellant	:	

REQUEST FOR LEAVE TO FILE APPELLANT'S APPLICATION FOR

REOPENING OF HIS DIRECT APPEAL UNDER APP.R. 26(B) DELAYED

Clifton Jackson #A652-163

Lake Erie Correctional Institution

501 Thompson Road

P.O. Box 8000

Conneaut, Ohio 44030

DEFENDANT-APPELLANT PRO SE

Mary Slanczka (0066350)

Assistant Prosecuting Attorney

The Justice Center, 3rd Floor

225 Court Street

Elyria, Ohio 44035

COUNSEL FOR APPELLEE

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

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	Case No. 14CA010555
vs.	:	
CLIFTON JACKSON,	:	Trial Case No. 11CR083104
Defendant-Appellant.	:	

REQUEST FOR LEAVE TO FILE APPELLANT'S APPLICATION FOR REOPENING OF HIS DIRECT APPEAL UNDER APP.R. 26(B) DELAYED

Now comes the Defendant-Appellant, Clifton Jackson [hereinafter "Appellant"], acting in pro se, and respectfully moves this Honorable Court for leave to file his App.R. 26(B) delayed for the reasons as set forth in the Memorandum, Affidavit and Exhibits in Support attached.

Rebecca M Jr - Notary
5/5/16

REBECCA PRYOR
Notary Public, State of Ohio
Recorded in Ashtabula County
My Commission Expires
November 08, 2020

Respectfully submitted,

Clifton A. Jackson

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

DEFENDANT-APPELLANT PRO SE

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing REQUEST FOR LEAVE TO FILE APPELLANT'S APPLICATION FOR REOPENING OF HIS DIRECT APPEAL UNDER APP.R. 26(B) DELAYED was sent by certified (certified tracking #7014 2120 0003 2166 7752) U.S. Mail to the office of the Lorain County Prosecutor, at The Justice Center, 3rd Floor, Elyria, Ohio 44-035; also four copies was sent by certified (certified tracking #7014 2120 0003 77-69) to the office of the Clerk of Courts for the Ninth Appellate District, with a specific copy to verify that the audio & video [DVD] has sound and images on them and are not blank, with a PDF File, at [three copies to the Clerk] The Justice Center, 1st Floor, 225 Court Street, Elyria, Ohio 44035 and one copy was sent to the Court of Appeals, Ninth Appellate District, at The Ocasek Government Bldg., 161 S. High Street, Ste. 504, Akron, Ohio 44308 on this 5th day of May, 2016.

Clifton A. Jackson

DEFENDANT-APPELLANT PRO SE

MEMORANDUM IN SUPPORT

In support of the Appellant being able to justify the herein request for leave to file delayed based on circumstances beyond his and the Court's control, Appellant submits the following reasons to justify his being granted leave to file delayed this application for reopening under App. R. 26(B) his direct appeal as of right:

I INTRODUCTION:

Appellant contends that this case is not your every day case, where those in law enforcement was actually going about their normal daily duties, and in fact, this case, based on the conduct of all law enforcement directly or indirectly involved, and the unrebuttable evidence entirely supported by documentation and the audio & video, exposes corrupt "law enforcement" and "judicial injustice" at its core. These forms of corruptions, which are entirely consistent with Civil and Constitutional violations of "due process" and "equal protection", are prohibited and are just the tip of the iceberg. However, just like the iceberg, the mass of the violations lie beneath the surface **(See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video).**

Appellant is a United States citizen entitled to all the rights, privileges and immunity under the State of Ohio and the United States Constitutions, as he was so protected on June 14th, 2011 and continues to be protected to this date. Because of the complications associated with the litigation of a subject of corruption of this magnitude, and the fact that the Appellant is acting in pro se capacity, the severity of the civil and Constitutional violations should not be diminished. The Appellant is a citizen fully aware of his civil and Constitutional rights and the safeguards in place, and in introducing you to such a citizen as himself, he must stand against any infringements by "law enforcement" and "judicial" bodies upon those civil and Constitutional rights secured under the 4th, 5th, 6th, 8th, and 14th amendments to the United States Constitution, and Article I, Section 10 of the Ohio Constitution.

II. STATEMENT OF THE CASE AND FACTS:

Appellant asserts 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 traffic infraction by appellant, and initiated a traffic stop. Trooper Beyer approached appellant's vehicle and asked where he was coming from and where he was going without entertaining the scope of the alleged traffic infraction. Then Trooper Beyer asked appellant for his drivers license and the vehicles credential which he 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 the cruiser and called for K-9 assistance, which received and

immediately en route response. After approximately 3.5 minutes, Trooper Beyer came back to the vehicle with the immediate intent to manipulate the alleged traffic stop and immediately said "...everything checked out." At which point he made an authoritative gesture and requested that I accompany him back to his vehicle. I get out of my vehicle and secured (locked the vehicle doors), the vehicle and set the alarm. He searched me and found nothing. After he searched me not handcuffed, and against my will, he placed me in the back of his patrol cruiser. Supported by the audio and vehicle deriving from Trooper Beyer patrol cruiser, I had multiple phones in my hand, along with the vehicle keys and remote. According to the video (See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video)), once he put me in the car, another cruiser arrived with Trooper Michael Trader and K-9 Argo approximately a minute later. Then Trader and Argo immediately come into view and go straight to my car. Starting in a counterclockwise search from the trunk to the front of the car. The trooper keeps his right hand high and the K-9 watches him and primarily his right hand. At no point did the K-9 entertain a sniff in the lower portion of the vehicle starting from the trunk of the vehicle moving counterclockwise. When they approach the drivers side of the vehicle, since the K-9 was in an apparent artificially induced heightened sense of awareness by the troopers movements and before the completion of open air sniff, the trooper slightly pulls back on the leash, gets K-9 Argo attention, squares himself and K-9 Argo towards the vehicle to get K-9 Argo's attention, alerting the K-9 even further. Trooper Traded then taps the vehicle 2-4 times. After a brief pause, the K-9 immediately starts to scratch at the exact location the trooper was tapping. [See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video] Then, Trooper Beyer informed appellant, feeling illegally detained and stripped of his rights, in the back of his cruiser, that K-9 Argo has allegedly indicated on the vehicle. Then Trooper Beyer demands appellants keys which were not given so he took them, and without consent, Troopers Beyer and Trader illegally enters a secured vehicle without legally requesting or obtaining a search warrant [See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video]. The troopers illegally searched the secured vehicle in which I was in no where near it to cause an immanent threat or illegal item. Nothing was discovered on the inside of the vehicle of which appellant had direct access to at the time of the stop. In fact, as shown on the video, it is clear that the Troopers are just glancing inside the vehicle and their main focus is on the trunk. They expanded their search beyond the scope of the 4th amendment when they opened the trunk where the luggage was secured and illegally searched the luggage when nothing was in plain view, thus discovering two kilos. See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video).

On June 14th, 2011, charges were filed with the Vermillion Municipal Court, where appellants bond was set at $500,000. After which, appellant was transported to the Lorain County Jail in the city of Elyria, county of Lorain, state of Ohio, 44035. On August 11th, 2011, the Lorain County Grand Jury issued an indictment charging appellant with count one, Trafficking in Drugs, in violation of R.C. 2925.03(A)(2) F1, with specification one, MDO, and specification two, forfeitures; count two, possession of drugs, in violation of R.C. 2925.11(A) F1, with specification one, MDO, and specification two, forfeitures; and count three, Possession of criminal tools, in violation of R.C. 2925.24(A) F5.

On February 11th, 2014, a jury trial commenced. On February 12th, 2014 at trial, the appellant requested to re-cross examine, both Trooper Beyer and Trader on fourth amendment infringement concerns. The court [Judge: John Miraldi] denied appellants request, stating that "Trooper Beyer was out of state on vacation", in the middle of the trial [when the trial was rescheduled from January of 2014 to February of 2014 to assure the availability of both Troopers the life of the trial]. Subsequently, I feel, the jury lost it's way and returned a verdict of guilty as to count one, Trafficking in Drugs, and the MDO spec. The jury also found that appellant did not use his ownership interest in the $1,262.00 in cash in the commission of a felony drug offense, although to date the funds were never returned to the appellant. A similar finding of guilt was as to count two, possession of the same drugs. Appellant was also found guilty of possession of criminal tools. Appellant was also sentenced to eleven (11) months on count three; all sentences to be served concurrently, sentences imposed by Judge John Miraldi. Appellant counsel Paul Griffin was appointed. A Notice of Appeal was timely filed. The case was assigned Court of Appeals No. 14CA010555. Based on 6th amendment concerns, appellant counsel was replaced, with retained counsel Paul Mancino Jr., Paul Griffin was notified of the same by Mancino on or around May 1st, 2014. Mancino never communicated [until on or around July 10th, 2015] with the appellant, nor did he procedurally notify the appellate court of the status of his representation. After Griffin had to file a request for an extension July 15th, 2014 to submit the appellant brief which was actually due July 15th, 2014, again, without ever and refusing to communicate with the appellant, Mancino submitted the appellant brief filed July 29th, 2014 [See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video]. The Court of Appeals affirmed the judgment of the trial court on June 22nd, 2015. Appellant has been transported back and forth between New York and Ohio on unrelated cases. As a direct result of Mancino direct refusal to communicate or counsel the appellant to any degree, compromised the appellant abilities to receive the appropriate appellate review, in addition the appellant has received notification late, of the courts ruling and requests leave of this Honorable Court to file his application delayed due to circumstances beyond his control. The appellant has attempted due diligence in his efforts to file

timely and the delay is approximately 180 days beyond the September 22nd, 2015 deadline for filing of his App. R. 26(B).

Here, appellant moves the Court to determine whether he presents both a genuine issue for the delay, and a genuine issue as to whether he was deprived of the effective assistance of counsel on appeal and at trial.

III. Ineffective assistance of Counsel

A. Generally.

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 show 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.

IV. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR 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 of counsel 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; Penson v. Ohio (1988), 488 U.S. 75, 109 S.Ct. 346."

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. Although 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 assignments of error presented by appellate counsel. Smith v. Robbins, 528 U.S. At 288, 120 S.Ct. 746, quoting Gray v. Greer (7th Cir. 1986), 800, F.2d 644, 646. See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video.

Appellant declares that there is a reasonable probability that the Court would have ruled differently had Counsel on appeal presented the following issues for review:

ASSIGNMENT OF ERROR 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 seizures 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 Beyer, stopped appellant "Jackson" for allegedly driving too close to a mobile home, a violation of Ohio law. Yet, after Trooper Beyer stopped appellant in relation to the alleged traffic violation he 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 driver's license and the vehicle credentials (as in this case, the rental agreement) [which is the immediate area where perjured testimony was given by Trooper Beyer at the suppression hearing and during trial]. Yet, Trooper Beyer went back to his cruiser and called Trooper Trader for K-9 assistance. Then, Trooper Beyer walked back to the appellants vehicle and informed him that everything checked out, but did appellant mind accompanying him back to his cruiser. In response to the request, appellant exited his vehicle and securely locked its doors prior to accompanying Trooper Beyer to his cruiser. Appellant had his cell phones and the vehicle keys at the time of accompanying Trooper Beyer to his cruiser [clearly supported by appellants attached affidavit and exhibits in support (documentation and audio/video)]. Trooper Beyer did a search (pat down) of appellant before securing him in the back of his cruiser. Trooper Beyer never got back to his cruiser during this period of time that Appellant remained detained beyond completion of the alleged traffic stop. Once Trooper Michael Trader and K-9 Trooper Argo arrived, they immediately went to the rear of appellants vehicle and began a walk around. K-9 Trooper Argo, at some point was given a command by Trooper Trader to alert on appellants vehicle. The ensuing illegal search revealed drugs secured in luggage in the trunk of appellants vehicle. One (1) to one and a half (1.5) minutes elapsed from the time appellant was illegally placed in the back of Trooper Beyers Cruiser, until K-9 Argo was

given the command to alert on appellants vehicle by Trooper Trader.

ARGUMENT

Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitutions Shield against unreasonable seizures.

Appellant argues that a routine traffic stop is more like a brief stop under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, than an arrest, see Arizona v. Johnson, 555 U.S. 323, 330, 129 S.Ct. 781. Its tolerable duration is determined by the seizures "mission", which is to address the traffic violation that warranted the stop, Illinois v. Caballes, 543 U.S. 405, 407, 125 S.Ct. 834 and attend to related safety concerns. Authority for the seizure ends when tasks tied to the traffic infraction are or reasonable should have been completed. The 4th amendment may tolerate certain unrelated investigations that do not lengthen roadside detention, Johnson, 555 U.S., at 327-28, 129 S.Ct. 781 (questioning); Caballes, 543 U.S., at 406, 408, 125 S.Ct. 834 (dog sniff), but a traffic stop "Become[s] unlawful if it is prolonged beyond the time reasonable required to complete the mission" of issuing a warning ticket, Id., at 407, 125 S.Ct. 834, and as in the instant case sub judice, any evidence so unlawfully obtained, are inadmissible under the "fruit of the poisonous tree doctrine". U.S. v. Ferguson, 2014 U.S. Dist. LEXIS 115486; State V. Caulfield, 2013-Ohio-3029, 995 N.E.2d 941; See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video.].

ASSIGNMENT OF ERROR NO. III

> Appellant was deprived of his right to a fair trial due to the prosecutors withholding of "Brady Material" critical to his claims of obstruction of justice and tampering with evidence committed by Troopers C. Beyer and M. 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 request 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. See Brady v. Maryland (1963), 373 U.S. 83, 83 S.Ct. 1194; State v. Brown, 115 Ohio St.3d 55, 2007-Ohio-4837; and D'Ambrosio, 2013-Ohio-4472, 2013 Ohio App. LEXIS 4704; See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video.

ASSIGNMENT OF ERROR 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 E. Zaleski added facts to the record which never actually occurred to justify denying on the record appellants 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 of Burger. State v. Jackson, 138 Ohio St.3d 1271, 2014-Ohio-1458, 7 N.E.2d 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, **In Re 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 perjured testimony of Trooper Beyer, and then add facts to the record that were not a part of the record, in an attempt to justify the Troopers illegal search of appellants vehicle." **State v. Cockrell (July 25th, 1994), 4th Dist. No 93CA1957, 1994 WL 390360;** See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video.

ASSIGNMENT OF ERROR 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 these two errors call into question the fundamental fairness of appellants trial. One need look no further than the trial courts own rationale for why a Brady violation did not occur to understand how appellant was prejudiced by the failure of his suppression hearing counsel [Jack Bradley] to challenge the Brady violation at the

suppression hearing or trial counsel [Mark Aufdenkampe] prior to trial. Where the evidence requested under Brady would successfully challenged both Trooper Beyer's and Trader's testimony to such a degree, that their actual testimony would in fact be perjury, the evidence should have been suppressed under the fruit of the poisonous tree doctrine, and merits appellants sentences vacated and his order discharge. **Kyles v. Whitley (1995), 514 U.S. 419, 434, 115 S.Ct. 1555; Strickland v. Washington (1984), 466 U.S. 668, 687, 104 S.Ct. 2052; and Brady v. Maryland (1963), 373 U.S. 83, 83 S.Ct. 1194;** See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video.

ASSIGNMENT OF ERROR NO. VI

Appellants sentences 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 Citizen 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. 2201, 104 L.Ed.2d 865 (1989)**; See Attached Affidavit (Appendix of Exhibits), Exhibit in support (documentation and audio/video.

Respectfully submitted,

Clifton a. Jackson

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

Defendant-Appellant Pro Se