

solemnly swear under

OATH that all facts contained intrinsically here-in are TRUE to the best of my knowledge under penalty of perjury of law.

**In the Ohio Supreme Court**

In the Matter of Relator

) Docket No. 2020-1397  
)  
)  
)  
)  
)  
)  
)  
)

) Proposed Findings of Fact/Law  
)  
)  
)

State Ex Rel. Kevin Banks

) and Incorporated Motion to Amend based )

)upon delay of Discovery

) Procedendo/Mandamus

) Oral Hearing Requested

)  
1344 Honeysuckle Dr. Fairborn, )  
)  
)

Ohio 45324 )  
)  
)

Respondent Judges of Medina County )  
)

Christopher Collier and Joyce Kimbler )  
)

60 Public Square )  
)

Medina Ohio 44256  
Counsel for Respondents Vincent Vigluicci and  
Forrest Thompson  
63 Public Square Medina, Oh 44256

**RESPONDENT'S PROPOSED FINDINGS OF FACT**  
**AND CONCLUSIONS OF LAW**

Now comes Relator in 2020-1397: *State of Ohio ex rel., Kevin W. Banks v. Judges of*

I Relator \_\_\_\_\_ /s Kevin W. Banks 1/6/2021 the undersigned do solemnly swear under OATH that all facts contained intrinsically here-in are TRUE to the best of my knowledge under penalty of perjury of law.

*the Medina County Court of Common Pleas* makes these proposed findings of facts and conclusion of law to facilitate justice in Original Action in Mandamus and Procedendo, by and through Pro se , hereby submits the following Proposed Findings of Fact and Conclusions of Law. Relator also moves this Honorable Court for Leave of Court to file an Amendment to the

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Original Writ's filed JANUARY 13, 2020 IN SAID CASE AS NOTICE OF PROOF OF SERVICE WAS JUST GIVEN THE NEWLY RECEIVED LATE 14/2021 said to be mailed December 9, 2020 Motion to Dismiss. May the Relator have a one-time chance to amend his Contra Motion against Motion to Dismiss, review of the State of Ohio Respondents unruled upon motions in which Relator claims He has never given a definitive response from either Judge of Medina County and Legal Notice was given to the Court and the Respondent's. To avoid a minefield of procedural pitfall Relator has been servicing by certified mail to each person named as a likely Representation where no Notice of Appearance is given and therefore Relator must address the Respondents. (See Proof of Services) Likewise, unfinished legal procedures in non-feasance related to the Relator's due process have [NOT] performed and may have a substantial impact on other subsequent unfinished issues in the case. As such, Relator claims that Judge Christopher Colliers nonfeasance may strip him of subject- matter jurisdiction when on November 2, 2020 Judge Christopher Collier explicitly refused to rule without delay as required by law under Crim.R. 29 A.

Relator shows cause for said argument of Writ of Mandamus and Procedendo against Judge Christopher Collier and to add an additional claim in original complaint where Judge Collier has not filed a notice of Appearance of which of the three Medina Township Attorney represent him in said matter.

**Affadavit as to Crim. Rule 9 as it relates to Judge Kimbler Writ of Procedendo in which Civ. R. 60B Findings of Facts and Conclusion of Law requested.**

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I Kevin W. Banks ss: \_\_\_\_\_ e/s 1/6/2021 \_\_\_\_\_ the undersigned do solemnly swear under OATH that all facts contained intrinsically here-in are TRUE to the best of my knowledge under penalty of perjury of law.

### **Affadavit of RULE 9. Pleading Special Matters**

As it relates to Relator's:

1. (A) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are -part to Mr. Banks the Relator claims he only has a working knowledge of received discovery as to peculiarly within the pleader's knowledge. Where the record has only been provided in Negative Averment of the proposed record.

As it relates directly to Judge Joyce Kimbler may the Hon. Ohio S.Ct Relator avers the following facts of fraud in said record.

2. (B) Fraud , mistake, condition of the mind. In all averments of fraud or mistake, the A. Fraud was made as it relates to the Constitutional Due Porcess Rights of comments objected to which were objected to at trial by Chad Mulkey Assistant Public Defender when the Assistant Prosecutor Scott Salisbury did circumstances constituting fraud or mistake [AND] shall be stated with particularity. **(Relator's emphasis: Which occurred during**

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**Relator's trial testimony when the issue of nudity and photos as it related to the bill of particulars docketed on July 19, 2016 Not Available for view in said docket. This Writ has a particularized need for the bill of particulars.**

**Affidavit of Discovery Withholding: This Bill of Particulars must be included in the Civ.R.60 B Motions outstanding to Judge Kimbler where the Bill of Particulars must line up to proof beyond a reasonable doubt as to each element proved in order to comply with Due Process emphasis mine)**

**17CA0082-M particulars should serve to settle the dispute between nudity as it relates to the required definitions of said criminalization of felony voyeurism. Likewise, the argument that was never amended by Crim. R. 7 as it related to two search warrants not yielding a favorable defense. However, the trial Counsel Chad Mulkey illegally stipulated to use the competency sanity test which would become the instrument which Banks objected to its use where the Assistant Prosecutor made false and immaterial statements as to elements especially the sexual purpose and nudity elements of cri me and state evidence. Likewise, the State made false fraudulent Statements on Appeal in 16CA0084 as well. Assistant Prosecutor Vincent Viggliuci stated that he had no knowledge of Relator's phone and camera capabilities against when he had prima facie evidence of said phone. Moreover, the same State representative claimed that the pictures "must have been deleted" when BCI two warrants showed that no voyeurism material existed or was deleted per Alan Buxton on Medina City Forensics)**

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I signature X /s Kevin W. Banks 1/7/2021 the undersigned do solemnly swear under OATH that all facts contained intrinsically here-in are TRUE to the best of my knowledge under penalty of perjury of law.

Statement of Discovery Issue:Trial Transcript Exhibits never discovered including Competency  
Sanity Test

End of Affadavit as to Crim.R. 9

## **OHIO NOTARIAL CERTIFICATES (Inclusive AFFIDAVIT)**

State of Ohio      Florida } JGR

County of Greene- Hillsborough }

Being duly sworn, Kevin W. Banks Kevin Banks [Name of Signer] says as follows:

1. Affidavit named in the "Proposed Findings of Facts and Conclusion of Law" ..... 1-
2. Incorporated Affidavit of Innocence ..... 7-24
3. Statement  
Issue ..... of ..... 6
4. Affidavit of Appellant Oral Argument ..... 20-24

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**5. Statement of Verity for Statement of Innocence Affidavit: based upon Trial**

**Transcript 379-381 AND Statement of Innocence**

**Affidavit..... 7-10**

6. Affadavit  
body..... 5-6

7. **Statement of Verity for Statement of Innocence Affidavit: based upon Trial**

**Transcript** 379-  
381.....6

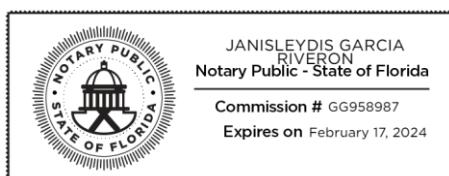
<b>8. Statement of the Issue AND Incorporated Statement of Exhaustion Affidavit</b>	
Statement.....	5
<b>9. Affidavit of Discovery Withholding .....</b>	4
<b>10. <u>PROPOSED FINDINGS OF FACT for Arrest</u> .....</b>	<u>24-35</u>
<b>11. Affadavit of Verity of Complaint made by H.E. against Kevin Banks.....</b>	<b>36-51</b>

Kevin w Banks

Relator Signature  
Kevin W. Banks  
Name of signer Relator

Sworn to and subscribed in my presence this 7th day of January,  
2021 by Kevin Banks [Name of Signer].

(Seal)



Janell

Janisleydis Garcia Riveron

Notarized online using audio-video communication

## Online Notary

### Title or rank

GG958987

Serial number, if any

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**The undersigned claims he has exhausted all adequate State remedies**

**STATEMENT OF THE ISSUE AND Affadavit of Exhaustion**

I signature X\_\_ /sKevin W. Banks 1/7/2021\_\_

It Appearing that Relator has exhausted all State direct appeal and collateral appeal remedies  
may Writ(s) originally prayed for be Granted in the best interest of preservation of Justice

Kevin W. Banks

1344 Honeysuckle Dr.

Fairborn, Ohio

45324

**Beginning of Innocence Affidavit**

As so stated at trial by defense counsel Chad Mulkey so stated fact for 16CR0369 that is duly

noted as true in as it was just received by this Relator from Assistant Ohio Attorney General

William Lamb

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**Statement of Verity for Statement of Innocence Affidavit: based upon Trial Transcript 379-**

**381**

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Beginning of: **Statement of Innocence Affidavit: based upon Trial Transcript 379-381**

“ MR. MULKEY:

1. Your Honor, with respect I know that the view of the evidence favorable light to the and I know these motions are not routinely granted; however, in this particular instance,

2. I think in order get this to the Jury, I don't think that reasonable minds can come to the conclusion -- well, with Count I. So I don't think that the trier of fact would be able to come to the

voyeurism charge without drawing inference upon inference upon inference, which the trier

permitted to do under the...I think, specifically, with multiple inferences

that chain up with each other, the evidence that you've heard regarding the elbow and the phone does not show evidence that Mr. Banks necessarily took pictures with the outward-facing camera towards the dressing across the hall. Even if that inference can be made, the inference that has to be drawn that the angle was phone was proper -- that his angle actually' do what is charged in Count of the namely, take video, photograph, and surreptitiously invade her privacy.

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3. THE COURT: Sure, (As Judge Collier made a proposed finding of innocence as argued in 60 B based on inadvertence and mistake I n this case)

4. Mr. Mulkey: You've the forward-facing camera inference, then you've got the angle inference. Then you've determined from that, that a picture was, snapped at a time that the alleged was in a state of nudity, your Honor. [As argued in both direct appeal and Civ.R. 60B pending Writ before this court in "Motion to compel findings of fact and conclusion of law before Judge Kimbler where Judge Collier essentially granted the Criminal; Rule 29 as noted in 60 B.

5. So from that and the fact that there were pictures video or audio or anything found on Mr. Banks' phone for that purpose, well for added fun, we'll throw in there was semen identified on these napkins that were taken from him, I think that, together with the multiple inferences,

6. plus the fact that we heard that the alleged victim was five-three, the dressing room door on her side of the row of dressing rooms, add to that there is about five feet of hallway there...

7. Mr. Banks' arm and hand were on the other side in his own dressing room and that from that angle that he was able to take a video, or other type recording of her in a state of undress, I don't think that inferential chain can be permitted...

8. THE COURT:Take your time,

9. MR. MULKEY:

10. Intentionally left blank

11. That's okay. That's the Rule 29 as to Count I of the indictment. Do you want rule on that now?

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12. THE COURT: No. Keep going I'm taking notes while you're talking.

13. MR. MULKEY: Thanks, your Honor, again, viewing the evidence in the favorable light to the prosecutor's case the reasonable minds of the Jurors must come to the conclusion that, even if that license plate was sometime covered, there's enough evidence.

14. I think one of the witnesses said that, that the license plate was only one indicator of identification. we look at what the big picture in"

### **End of Innocence Affidavit**

#### ***Affidavit of Appellant Oral Argument Transcript August 1, 2017***

The speakers in this transcript coordinate to the three-panel Ninth District Appellant Court Judges in said case. Hesal/Carr/Teodosio:

1. The first matter to come before us this morning is State of Ohio versus Kevin Banks. Both sides will have 15 minutes to present oral argument. The Appellate may reserve up to five minutes for rebuttal. If you're the Appellate and wish to reserve any time for rebuttal, if you'll let me know when you get started, i can peek at the clock and I can keep you apprised of the passage of time. We've read the briefs. We're ready to proceed when you are. Ronald Spears: Thank you.
2. Your Honor. Your Honor I would like to reserve the five minutes for rebuttal. Ronald Spears: Your Honors, and representative for the State of Ohio, first, of all good morning and thank you for the opportunity to argue on behalf of Mr. Banks. Your Honor, there is three assignments of error from the trial from which he was found guilty and sentenced.

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The first assignment of error deals with manifest weight that we believe, and Mr. Banks believes, that the evidence was insufficient to sustain the convictions as to Count One and Count Two. Specifically, Your Honor, the brief outlines, in reverse, with respect to Count Two of the indictment. The State failed to establish that he knew that an official proceeding or investigation was in progress, or was likely to be instituted, in that his conduct was with the purpose to impair its value or availability. Frankly, Your Honor, it's Mr. Banks' position that there was nothing beyond just assuming he would have known that there was an investigation started. He walked out of the booth; he was pointed at. The record is clear, served two terms.

3. Teodosio: How about would likely to be instituted?
4. Ronald Spears: Well Your Honor, frankly, and I understand it because those are one of the issues that i looked at. The problem is if he is in ... From his testimony, he is in there. He had been in more than one booth that day. if he's in there and he's doing something that's completely legal, and he comes out, and then he's (**This oral argument is available on YOUTUBE search 16CA0084**) Case: 1:18-cv-02844-JGC Doc #: 20-7 Filed: 05/31/19 1 of 11. PageID #: 1174
5. Prosecutor: As I was reading I was just assuming that these were unisex (**Relator notes that the Target dressing room staff let him into the room where H.E. never sought to ask Admission to area. Emphasis mine**) because nobody raised anything when they were both in there together in the first place, but I don't think the Target employee was paying much attention as this was getting started. So that may not be the case either, but that really never did come out of the record I don't believe.
6. Prosecutor Vigluicci: The fact is, she looks up and she sees a forearm high over the stall across from her. It's holding a phone with the camera pointed towards her. (**As Defense**

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**argued on motion for acquittal that the angel of the phone held up and pointed downward as testimony of H.E. claimed would serve to exonerate Relator even if the State never amended the voyeurism complaint as it would be impossible to see a live screen by Relator in doings so emphasis Relator emphasis mine)** Hensal: Let me ask you this, I don't know if this came out on cross examination or whatever, but if you hold a camera and you want to take a picture of yourself, or view yourself, would the camera be facing outwardly? Prosecutor: Actually, these new phones have cameras on both sides so you can actually (**Due process Error proof beyond reasonable doubt emphasis mine**) Hensal: So do we know what kind of phone this was? Whether it did or it did not? Vigluicci: (**Relator's emphasis and annotation mine**) I do not recall.] (**noted as Due Process Err and Fraud in said Writs. Where the State knew that the phone camera was fully functioning but failed to state this fact as it would be fatal to the prosecutions speculative evolving claim.**) Your Honor, but again, I think the fact of whether photographs were actually taken is actually irrelevant because (**Again Bill of Particulars will serve to remedy dispute of law emphasis mine**) Hensal: I'm not getting, I'm not getting at. I'm getting at his argument that he was merely trying to view himself from behind to see how the garment was, you know... Prosecutor Vigluicci; And that, to me, does not seem to make much sense. I mean, if you've got mirrors in a dressing room. The idea that you need a phone also to do that, I think if you kind of use common sense, then why would the phone need to be that high up. (**As argued in affidavit of innocence and originally in Crim. R. 29 the distance between the hall and rooms begets proof of reasonable doubt where Judge Collier failed to timely rule upon the Crim. R. 29 at the end of trial but he did make a statement of innocence which is being argued before Kimble in 60B [Must this Court Grant Procedendo against Kimbler subdecum to**

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*include a finding consistent with the State's own bill of particulars to include affidavit of innocence details)* (Hensal: I mean it just, to me: Do you not change in dressing rooms very much? Anyway, we can only go by what's in the record, but I think that that is maybe more of a common thing nowadays, that people do try to take pictures of themselves from behind to see how things look and how, you know, maybe not too low In the back or whatever. But anyway, regardless, we can only go with what's in the record. Prosecutor Vigluicci Perfect. So, when the victim sees all this, she's so startled by all this that she actually slides under the dressing room door so that she's not detected by Mr. Banks, goes and gets a Target employee and says, "Hey, this person Is doing this." She's very scared at this point. ( **If she was being covert to escape then why does the record suggest in her testimony that she is quite? If she was being watched by Relator's cellphone why would she sneak out? Emphasis mine**) He walks out and she points him out, and that's when Mr. Banks just takes off running through the Target store. (All the way through the store and goes out, actually, through the cart doors In the middle. So, this is not normal behavior by any stretch of the imagination. Then, as he's running to his truck out in the parking lot he's taking off his shirt, as he's running out in public through this parking lot, then he places... he scrunches up the shirt in between the trailer hitch and that's how he wedges it over the license plate. These are all not actions that you would ... things you would call the actions of an innocent man, that he does immediately after being pointed out. Vigluicci: In terms of being for the purpose of sexually arousing or gratifying himself, I think the case law is very instructive here when you look at the very appellate courts and how they've tackled this Issue.

7. They've held that the sexual arousal or gratification element can actually be inferred when there's no innocent or non-sexual explanation for the offender's conduct. (**Relator**

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**disagrees as to this as several shopping receipts found in his truck from same day and**

**Target employee testimony that he was actually trying on exchanging clothes**

**emphasis Relators and the competency sanity test used to support this permissive**

**inference was not admissible per Ohio legislators intent in codified law emphasis**

**mine) So you don't need all this physical evidence and so forth, and those kind of things,**

**to Infer that. In some cases, one that comes to mind is somebody having a mirror in a**

**bathroom, putting it under a stall, using it that way. (Here Prosecutor Vigluicci**

**mischaracterize State v. Larry Million of Dayton and City of Middeltown v. Reuss**

**where the voyeurism was reversed Million should not stand as authority to sustain**

**Relators felony voyeurism conviction as argued in Relators Motion to Certify**

**Conflict filed in 16CA0084. Likewise, as it has been extensively argued by Relator**

**that the state of Ohio could have changed its compliant to spying without photograph**

**or video but it chooses not to do so. This reiterates the two fatal search warrants**

**executed by Al Buxton on the phone before trial where no Crim.R.7 complaint was**

**amended and the State of Ohio Prosecutor at trial Scott Vigluicci at trial attempted**

**to ignore the bill of particulars and make the statute all-inclusive where Relator**

**extensively argued several collateral appeals noting that the State of Ohio made**

**conflicting false statements made by Scott Salisbury during Relators's bench trial**

**testimony as to the state of nudity (where the Ninth District sustained and it on**

**unproved facts stating H.E. was in a state of undress not tantamount with states**

**definition of nudity oin 2907.01 H, whereas, Relator has also argued that the rules of**

**lenity play in his favor for innocence but State of Ohio disagreed and that there were**

**pictures when it explicitly knew none existed by its own forensics the language Or**

**reiterates a need for the bill of particulars docketed in said case to RESOLVE**

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**CONFLICT in the Ohio voyeurism statute Relators emphasis)** Similar to what we have Mr. Banks doing here. No non-sexual or innocent explanation for that conduct readily comes to mind. That is the case here The case the State is claiming as authority in Appellant review is State v. Million where the Court reversed the voyeurism based upon speculation like case in bar. as well, where you can Infer that just based on the conduct.

Hensal: I think all the circumstances, again, belay the explanation that he was just looking at himself. You have to look at the entire conduct, what happens before and what happens after, the following her around the dressing room, then obviously the bizarre behavior that happens afterwards, the running. **(Another false and mischaracterized fact where the record and the Ninth District claimed in its Opinion that the running out of the store was not proved beyond a reasonable doubt as it was questioned by defense to the alleged victim during her testimony where this false argument may constitute fraud by Prosecutor Vigluicci as he is trying to invoke prohibited legal concepts where the State of Ohio does not subscribe to “Unmistakable Crime as argued in Appellant brief emphasis mine)** Why would he be running if he did not believe that he had done something wrong or committed a crime. Was there anything, I do not remember from the briefs, was there any discussion, or not discussion, but any testimony in regard to whether or not those were unisex dressing rooms because usually they have male and female.

Ronald Spears: Your Honor, what I do know is that there was an area in which the first time he went in, which I think is important because obviously it pertains to a men's section, and he went in to the closest one in that section. When he tried everything on and then left, he was unable to use the ones up there because they were full so he went to the next one **(Relator switch dressing rooms because the floor was messy as did H.E. emphasis mine )** I think that, probably, the record should have been impounded that this... he went in

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twice. His conduct showed he was trying on clothes. There is nothing in here, no testimony, that seem to show that he was shopping around for what booth that he was going to. Hensal: Well, I thought there was testimony that the young girl said that she had gone into a couple different try-on areas and had finally settled on one particular one, like the second or third one down, and he actually was moving with her to different places.

Ronald Spears: Your Honor, I would suggest that his conduct, he went in twice and that he never suggests that his conduct was anything other than to try on... and the amazing thing is if that would be the case, the evidence of... if he is following her around why would there be no pictures? Hensal: Well, he could have deleted them. (**Not allowed by Res**

**judicate no amended complaint can't change story on appeal regardless in Appellant**

**Copunsel was in err).** That is what the prosecutor is saying, he could have deleted them. I understand you're saying that maybe they could have retrieved them, I don't know whether they could or not, but we can only go by what's in the record and there's nothing in the record either way. Right? Ronald Spears: I would absolutely agree with that. Speaker 1:

You're just now reaching at five minutes of time. Case: 1:18-cv-02844-JGC Doc #: 20-7

Filed: 05/31/19 4 of 11. PageID #: 1177 Ronald Spears: Thank you. Prosecutor: Good

morning Your Honors. My name is VInce Beiushi and i am the Assistant Prosecuting

Attorney with the Medina County Prosecutors Office for the State of Ohio. Prosecutor: i

wiii start with Mr. Banks' first assignment of error, the sufficient challenge, and it's

actually combined with a manifest weight challenge. I'll actually start with the first count,

the voyeurism. I'll start with the first argument that has to do with finding no incriminating

photographs or video on Mr. Banks' phone. That is true, but ultimately does not matter

because it's not an element of the crime of voyeurism that you have to have taking of

photographs or videos. Simply spying, or eavesdropping, on somebody is sufficient to

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sustain a voyeurism charge. So, it doesn't matter whether he took photographs or video of this young girl or not. (**Again mischaracterized emphasis mine**) Absolutely, he had sufficient time to delete any photos or videos If he did take any. So I don't think there's much stock in the fact that none were found in any defense. (**Again mischaracterized emphasis mine**) Vigluicci : The facts are that HE, the victim, testified that, first Mr. Banks did follow her around the dressing room, I would clarify that. She starts out in the second dressing room down and Mr. Banks is right across from her in the second one down, in the stall across. She, I believe, sees that there is some clothes and some Items In that dressing room and she wants to move to one where there's not all that clutter. So, I think she moves to the third one down and Mr. Banks follows her to the third one down right across from her. So, he absolutely is following her, and then Hensal: What is it in record whether these were unisex or whether it was male or female? Vigluicci: It really was not. Hensal: I'm just amazed that nobody asked that. Case: 1:18-cv-02844-JGC Doc #: 20-7 Filed: 05/31/19 5 of 11. PageID #: 1178 Speaker 4: I think It's Interesting that Immediately after Mr. Banks was pulled over he stated for the reason why he ran, and this changed at trial, but Initially he states that he was scared because he had an OVI on his record. Why would he be scared If he didn't think an official Investigation was In progress or that he had done something wrong like commit voyeurism? Why would he say that? Why would he have any reason to be scared at the scene? At trial, of course, he changes this and says he went into some PTSD-like trance state, (**Again mischaracterized as competency sanity reports are prohibited by Ohio Law to find guilt emphasis mine**) that this wasn't really him. His story changed. The victim's story never changed and that goes to manifest weight, again, and why the victim was more credible. (**Again mischaracterized and substantially aggravated where Ninth District has not**

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**performed the proper Manifest reweighing as a 13 juror emphasis mine) Hensal;**

Counsel, I know there's no a lot of time and I'm very Interested In the second assignment of error. I'm wondering If you, are you planning on addressing this? Hensal: The other acts evidence, aspects? Sure. Vigluicci: I understand It's simply an error argument, but...

Vigluicci: It Is because this was not objected to below, **[False statement as to State**

**Assistant Prosecutor Vince Vigluicci Relator di contemporaneously object emphasis**

**mine) as the trial record reflects: “ and this really has to do with the pornography was one.**

**(Again mischaracterized prohibited emphasis mine) There was a past charge, I**

**believe, of fleeing and eluding. (Again mischaracterized where Prohibited emphasis**

**mine) First of all, I would say on the plain error aspect of this, the term plain error was**

**used In Banks' brief, but there was no plain error argument made, and as this court has said**

**many times. It will not construct a plain error argument on an Appellant's behalf. There's no explanation of why this Is obvious error or why It changed the outcome of the trial.**

Teodoslo: Did Mr. Banks testify? Correct, he did. And that's my next point. He testified,

and he opened the door to this evidence first of all, he brought In his own character

evidence. His explanation, of course. Is that I was In this PTSD Induced trance, and he not

only talks about that Case: 1:18-cv-02844-JGC Doc #: 20-7 Filed: 05/31/19 6 of 11.

PageID #: 1179 Hensal: But you're not allowed to use other acts to show that he acted In conformity with his character, right? Vigluicci: And this evidence was not for that purpose

Your Honor, it was for, under 404b, when you look at the pornography it went to Banks'

modus operandi, **(Again mischaracterized emphasis mine) it went to his motive, it went**

**to his intent, (Again mischaracterized emphasis mine) it went to the absence of mistake**

**or accident, (Again mischaracterized emphasis mine) I think when you look at the**

**fleeing and eluding charge, that goes more to tampering, I think it goes, again, to the**

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modus operandi. Banks' intent when it comes to evading law enforcement. Hensal: So, because he's done it in the past he's doing it again? S: No. Vigluicci; [inaudible 00:20:41]. it's to prove intent, but in terms of the character evidence I'd just like to expand upon that a little bit about what he brought out and how he opened the door to this kind of evidence, it's actually rebuttal evidence by the State as well. Speaker 4: He talked about his two tours of duty in Iraq. He talked about working with special needs children. He talked about dealing with his son's cancer. Ail to bolster his PTSD story and to bolster his character. These things had nothing to do with what he was being charged with. This was pure character evidence that he was introducing on himself to garner sympathy with the judge and the jury. So the State had every right to bring out it's own character evidence when that door was opened. Filed: 05/31/19 7 of 11.

Hensal: But that's what I'm saying. You're arguing It as a character admission and that's my whole point. You have to show that, like you just said, that there's modus operandi somehow a scheme of planned Intent. It's not just... you can't say, "Oh, well you're arguing character so I'll come in with prior bad acts to show you're a bad character." Speaker 4: Yeah, and again, that's not what happened here. This was proper 404b evidence. So...

Hensal: I know It's not objected to, (**Again mischaracterized Vigluicci fraudulently mislead the three panel emphasis mine**) but I'm just trying to figure out how It was allowed In. That's all. Vigluicci: I think those two reasons. I think he opened the door to some of this and that It wasn't objectionable under 404b. May I a show much time I have?

Vigluicci1: Certainly. Just over three minutes, and I'm sorry. I kind of got you probably off course with your argument, so I apologize. : I would just mention, again. In terms of Impairing It's availability as evidence. We talked about that too, or he did with Mr. Spears, in terms of the tampering. I would just point out that two people

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prove that this actually did impair the investigation. Speaker 4: Mrs. Brunig at Target, the Target employee, testified that she tried to get Mr. Banks' license plate number. As he's running out the cart door she follows him. She's out in the parking lot watching this vehicle and she's trying to get a license plate number, like any reasonable person would, and she can't because it's been covered up by Mr. Banks' shirt, and then you have a former police officer that's following Mr. Banks In his truck, and he's looking trying to get the license plate too and trying to relay It to authorities, but he can't because that license plate is covered up by Mr. Banks' shirt. Case: 1:18-cv-02844-JGC Doc #: 20-7 Filed: 05/31/19 8 of 11. PageID #: 1181 Speaker 4: So he impairs it really from two people who were trying to relay this license plate, and the license plate never does get relayed to law enforcement. He does end up getting pulled over. That's true, and that's lucky because he eventually was found, and I think that brings me to another point that the case law makes clear that it doesn't matter whether the defendant is actually successful in his concealment, in his tampering. Just the fact that he ultimately is caught, and what he doesn't isn't successful, does not matter. So the fact that he's pulled over two minutes, five minutes later, however many minute it is, he still committed this crime. Speaker 4: Just in terms of the, quickly, the criminal rule 14 issue, it was a motion to separate the voyeurism and tampering charges for trial. That was properly denied, I would also bring up the standard of review here, it's abuse of discretion, and not only that, but Banks would have to affirmatively show that he was prejudiced by this decision. He can do neither here. Juries are believed to be capable of segregating proof between two charges when the evidence is simple and distinct which is certainly is here. Banks doesn't really explain how the jury was going to be confused between a voyeurism and a tampering charge. Under criminal rule eight, actually, these two charges were ideal to be joined and tried together. The occurred at the

same time and place within seconds of each other. They were part of a common scheme.

They were part of a common course of criminal conduct. These were ideal cases to be joined together. You needed evidence of one to fully understand the other, in fact, it would have prejudice the State for these to not have been tried together. You need them together to fully understand all of the facts. There's also this argument about, "Well, I would not have testified in a voyeurism trial, but I would have testified in a tampering trial." I would submit that this is really self-serving and has no evidentiary or legal significance when Banks says this. He's asking this court to basically engage in speculation as to what he would or would not have done. There's simply no way of knowing what he might have done in these various situations. The fact is that the cases were ideal for joining. Speaker 1:

Counsel i need to inform you've utilized your 15 minutes of time. Thank you. Speaker 4:

Thank you Your Honor, I would just respectfully request that this court confirm the

judgment of the trial court. Thank you. Case: 1:18-cv-02844-JGC Doc #: 20-7 Filed:

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remaining. Ronald Spears; Thank you Your Honor. Quickly as to the suggestion on the manifest weight argument there was no innocent explanation. He actually testified to what the explanation for his conduct was with the phone. So, we would submit that... Mr. Banks would submit that there was an innocent explanation, one in which he provided. Ronald Spears: In regards to the other acts, the issue there was it was very difficult to understand what the purpose of the introduction of the testimony concerning the porn, and that his wife disapproved of porn, even more so than the other two crimes which were domestic

violence and fleeing and eluding. The other aspect was that there didn't even seem to be any foundation, or guidelines, or timeframe in which these things were occurring, how they went to proving a motive or any of those other things, it just seemed to have just

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come in. Ronald Spears: When we're dealing with a case concerning voyeurism like this, the truth is an adult can watch pornography that includes adults and that is properly licensed by state and/or federal laws from where the jurisdiction is. They can do that legally. If we believe the State's position in the crimes he was ultimately convicted of, you can never partake in that conduct legally. It is always illegal to tape someone, view someone, spy on someone, take pictures someone in a partial or complete state of nudity for the purposes of sexually gratifying yourself. So, even the introduction I think it just further muddies everything because if there was a need to bring it in, I can only speculate as to what some of those things were from the State's perspective, and that was to somehow reach at the trier of fact to suggest that there is something inherently wrong with watching porn. That's exactly what these rules are intended for us to avoid. So that they don't have to consider those things because they do not have any appropriate value as to proving the elements in this case. Also, too, we really don't know whether there is a sufficient [tempero nexus 00:29:10] because we don't know when the allegations are supposed to be, it's just like sometimes in the past. Ronald Spears: Now we obviously have an understanding of when the other crimes actually occurred, but when it comes to the porn we don't know that, and it just concerned every time i looked at that, it just concerned that that came in and that was in the mind of the trier of fact that he watched porn and it was in a manner in which it was objectionable to, and i think when we hear in testimony husband, wife. Case: 1:18-cv-02844-JGC Doc #: 20-7 Filed: 05/31/19 10 of 11. PageID #: 1183 child, those are highly close and special relationship and many times the State of Ohio, and many times defense attorneys in trial, use those relationships to heighten better understanding of the defendant, better understanding of the victim. I know this person better so if they're nice, and kind, and loving and that's the testimony it lends credibility

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because they have that specialized information. To suggest that someone's wife was so upset with that conduct that they had issues, or they brought it up and there was a problem with it, I just think puts the trier of fact in a horribly difficult position and I think, honestly, that's exactly why these rules would exist. Ronald Spears: As to the joinder issue, very briefly, it just appears that... and I understand resources and different things like that, but I always suggest that there's one person in every trial that is sitting in a hot seat. What can our laws, what can the Constitution, what can our assurances do to make sure that that person that's sitting in the hot seat, regardless of what the outcome is, has due process and a fair day in court. The State attempt to get a conviction, and ultimately a punishment that could result, and In this case did result. In a prison sentence we should endeavor to make sure that that happens. Speaker 1: Counsel, regretfully I need to inform you that you have utilized the remainder of your time. Ronald Spears: We would ask the court to grant the release [inaudible 00:31:30]. Thank you Your Honor. Thank you for your time. Speaker 1: Thank you both for your presentations today. The court will take the matter Into advisement. We will issue a written decision. It will be mailed to both sides as well as posted on the Ohio Supreme Court website. Thank you. Case: 1:18-cv-02844-JGC Doc #: 20-7 Filed: 05/31/19 11 of 11. PageID #: 118

**(Emphasis of argument mine Upon the foregoing belief and information readily available Relator claims that Vigluicci for Ohio raised new compliant facts in Appellant Brief and during oral argument August 1, 2017 on appeal against resjudicata where no State charges**

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amended under crim.R. 7 which is fatal to the felony voyeurism conviction Where the three panel of Ninth District Appellant's presiding Hesal, Carr, Teodosio [AND] Mr. Banks' constitutional rights to view pornography based on wife's testimony where Mr. Banks made these facts available only for purposes of competency to stand trial where erroneously used and stipulated by the State/Court on the record to permissively imply the required "sexual purpose" element of the felony voyeurism which was codified by the Ohio Legislators to prevent abuse of discretion against the mentally ill charged per O.R.C. Ohio Revised Code 2945.371 Evaluations and reports of the defendant's mental condition. As it is clearly codified that: (J) No statement that a defendant makes in an evaluation or hearing under divisions (A) to (H) of this section relating to the defendant's competence to stand trial or to the defendant's mental condition at the time of the offense charged shall be used against the defendant on the issue of guilt in any criminal action or proceeding, but, in a criminal action or proceeding, the prosecutor or defense counsel may call as a witness any person who evaluated the defendant or prepared a report pursuant to a referral under this section. Neither the appointment nor the testimony of an examiner appointed under this section precludes the prosecutor or defense counsel from calling other witnesses or presenting other evidence on competency or insanity issues. See Proposed facts as it relates to Mr. Banks Testimony in bench trial 16CR0369 and as a final note NGRI report entered and marked at the last minute did object to the reports on record)

I. **[AND] the trial transcript clearly notes that Mr. Banks had first knowledge of the**

## **II. Statement of Facts Arrest/Interrogation/Charge of Plaintiff Kevin Banks' Case**

**III. The original trial record of case number 16CR0369 first docketed in Municipal Court as**

16Cr0369

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**IV. PROPOSED FINDINGS OF FACT for Arrest Made by Clifford Nicholson and Carla**

**Ragone both Police Officers in Ohio Substantially aggrevates claim against Judge Collier**

Arrest made initially by Officer Clifford Nicholson of Medina Township and Officer Carla Ragaone of Medina City Police. Police Audio Video clearly shows both the Township Officer and the City Officers named above drawing/ pointing service weapons and handcuffing Relator in concert as Officer Nicholson of the township takes Relator's left hand and Officer Ragone binds Relator's right hand in handcuffs. No verbal Miranda present. No Miranda waiver was signed.

**Statement of Facts Arrest/Interrogation/Charge of Plaintiff Kevin Banks' Case**

1. The original trial record of case number 16CR0369 first docketed in Municipal Court as CRA00834 in bind over-hearing the morning after initial arrest June 23, 2016 before Judge Gary Werner for \$200,000 cash. (Begs question of Constitutionality of unlawful arrest and seizure of Mr. Banks where excessive fines and bail were made) The trial transcript and original police report for Medina City and Township reports reveals that Plaintiff/Petitioner (here-in after also known as Mr. Banks) was first apprehended by Medina City Police on Fenn Rd in Medina Township according to the official report time of arrest documented in UIR police dispatcher Julie Bennett 367 . Officer Clifford Nicholson of Medina Township had testified at 16CR0369 trial; that he had handcuffed Kevin Banks and placed Banks in his cruiser until Medina City had arrived, asked Banks

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what he was doing at Target, removed Banks Cell phone from Banks' hand and placed it on the hood of his own cruiser. (begs the question of a valid arrest and constitutionality of conviction under improper search and seizure. First warrant is not issued for several days. Nicholson also testified that Banks requested an attorney to be present. (begs the question of a valid arrest and constitutionality of conviction under self-incrimination void a Miranda warning by Nicholson. [AND] warrant is not issued for several hours later On 6/23/16 "I received this warrant, and (Completed A):

2. A. Warrant served. On 6/23/16 . at 1858 hours docketed June 24, 2016 at 2:28 PM. I executed this warrant at the place
3. or upon the person named therein. Thereafter (X one)  
on phone"
4. [AND] Officer Clifford Nicholson's trial testimony notes that; " Since Medina Township claimed in Nicholson's testimony that he was just holding Banks for the proper jurisdiction, no Miranda was given by Nicholson (as a pertinent negative not noted in his report). Then at **14:32** Timestamp on report for Medina Township Uniform Incident Report noting "Unit Numbers" dispatched 236, 241, 260. Then a few seconds later **14:36** timestamp on report for Medina Township Uniform Incident Report noting "Unit Number" dispatched/enroute/on scene **Sgt. Todd A. Zieja, #1508. 14:52**

Then the official arresting jurisdiction arrived on the scene as the timestamp of initial official custodial interview recorded on audio video by Detective (formerly) Grusendorf Medina Police Department viewed by Banks through his R.C. 149.43 request for all police records from Medina City Police December 2019. A Miranda reading is then given by the Detective; "is then given by Grusendorf:

"Obviously we want to talk to you about what happened at Target, all right? Before we do that,

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you're obviously in handcuffs and in the back of a police car, okay?" Banks responds "yeah".

Followed by Grusendorf's stating; "Grusendorf: "So, you have the right to remain silent.

Anything you say can and will be used against you in court. You have the right to an attorney and have him present with you before any questioning. If you cannot afford an attorney, one will be appointed to you by the court. You can decide at any time to exercise these rights and not answer any questions and make any statements. Do you understand all of that?" Banks responds "yes". Grusendorf then says; "Grusendorf:

Okay. Do you want to talk to me about what happened at Target?" Banks immediately requests a lawyer by name: "Well, my attorney is Megan Philbin from Medina Public Defender's Office.

Would you be able to at least give the office a call and see if she's there?" Grusendorf replies; "I don't call attorneys for people. That's not my job, that's not ... I have no business doing that. One, because I'm not allowed, because I can't recommend people or whatever." Banks replies, "Could I call" Grusendorf replies, "Obviously you can't call her at the moment". Grusendorf responds; "Grusendorf: "Because I'm not going to give you that phone back. I think you know why". After a brief interrogation Banks reasserts; "Kevin Banks: "That's why I asked if I could talk to my lawyer, but you said no". Grusendorf: "No, I didn't say no. I said I'm not going to call your lawyer for you. I didn't tell you couldn't talk to a lawyer at all. You asked if I would call an attorney for you. I said I'm not going to do that". Banks responds a third time; "I want to speak with Megan Philbin". Grusendorf responds, "Okay, very good."

Upon belief and information the verbal transaction between former Detective Joshua Grusendorf and Kevin Banks on 6/23/2016 was noted as follows based on official audio video transcript:

Grusendorf:

Obviously we want to talk to you about what happened at Target, all right? Before we do that, you're obviously in handcuffs and in the back of a police car, okay?

I Relator \_\_\_\_\_ /s Kevin W. Banks 1/6/2021 the undersigned do solemnly swear under OATH that all facts contained intrinsically here-in are TRUE to the best of my knowledge under penalty of perjury of law.

Kevin Banks:

Yeah.

Grusendorf:

So, you have the right to remain silent. Anything you say can and will be used against you in court. You have the right to an attorney and have him present with you before any questioning. If you cannot afford an attorney, one will be appointed to you by the court. You can decide at any time to exercise these rights and not answer any questions and make any statements. Do you understand all of that?

Kevin Banks:

Yes.

Grusendorf:

Okay. Do you want to talk to me about what happened at Target?

Speaker 2:

Well, my attorney is Megan Philbin from Medina Public Defender's Office. Would you be able to at least give the office a call and see if she's there?

Speaker 1:

I don't call attorneys for people. That's not my job, that's not ... I have no business doing that. One, because I'm not allowed, because I can't recommend people or whatever.

I Relator \_\_\_\_\_ /s Kevin W. Banks 1/6/2021 the undersigned do solemnly swear under OATH that all facts contained intrinsically here-in are TRUE to the best of my knowledge under penalty of perjury of law.

Kevin Banks:

Could I call?

Grusendorf:

Obviously you can't call her at the moment.

Kevin Banks:

But the question-

Grusendorf:

Because I'm not going to give you that phone back. I think you know why.

Kevin Banks:

Sure, but the questioning ... And I told him, if he wants to look on my phone for anything ... I thought they got me for stealing.

Grusendorf:

Okay. Did you steal something?

Kevin Banks:

No, because I was taking pictures of my ... Like, I hold my phone up to take pictures of ... with tank tops on. So, I thought they were ... that somebody-

I \_\_\_\_\_/s Relator Kevin W. Banks 1/7/2021 the undersigned do solemnly swear under OATH that all facts contained intrinsically here-in are TRUE to the best of my knowledge under penalty of perjury of law.

Well, what's the password for your phone?

Kevin Banks:

It's 3705.

Kevin Banks:

3705?

Kevin Banks:

Yeah.

Grusendorf:

Well, here's the thing, okay?

Kevin Banks:

I have nothing to hide.

Grusendorf:

Okay. I don't ... Did you steal anything?

Kevin Banks:

The reason I ran out-

I \_\_\_\_\_ /s Relator Kevin W. Banks 1/7/2021 the undersigned do solemnly swear under OATH that all facts contained intrinsically here-in are TRUE to the best of my knowledge under penalty of perjury of law.

Did you steal anything?

Kevin Banks:

No.

Grusendorf:

Okay.

Kevin Banks:

But the reason I ran out is because some chick that was across from me in the dressing room was like something like, "Oh, that guy," and that's all I heard and I'm like ... Because I just got done with a bunch of stuff with an OVI and a reckless [inaudible 00:01:47] and a bunch of other crap as well. [inaudible 00:01:50]. So I'm like ... That's why I ran, because I felt guilty, because I'm like, [crosstalk 00:01:57]-

Grusendorf:

I think you took pictures of her.

Kevin Banks:

Nope.

Grusendorf:

Okay, well, here's the thing. That phone? Even if you deleted those pictures, I'm going to find

them.

Kevin Banks:

Good.

Grusendorf:

Okay? So, you're saying you were taking pictures of yourself.

Kevin Banks:

Yeah.

Grusendorf:

Okay. What if I told you that there's video in there?

Kevin Banks:

In the dressing rooms?

Grusendorf:

Yeah, well, not inside the dressing room, but in Target, obviously. Right in the area of the dressing room. Of course, they're not putting videos inside the dressing room.

Kevin Banks:

Well, yeah, [crosstalk 00:02:31].

Grusendorf:

That would be a little awkward, right?

Kevin Banks:

Yeah, and [crosstalk 00:02:32].

Grusendorf:

That would be inappropriate, I believe. So, you hear her say something and you just decide to take off running and cover your plate up.

Grusendorf:

Yeah, because-

Grusendorf:

Because you, for whatever reason, even though you didn't do anything wrong, you just took off running.

Speaker 2:

Yeah. Even the officer that's over there on the far right, I had been in jail, first at Laurelwood, hospitalized for my sight condition. Then in jail, then he picked me up because I had a warrant that I didn't even know about.

Grusendorf:

So, why would you hold your phone up over the dressing room wall into the other dressing room?

Kevin Banks:

It wasn't into the other dressing room.

Grusendorf:

Up above the wall so that you can see the other dressing room.

Kevin Banks:

Because you can ... The picture that you have on your own phone, you can change the screen at your own ... You know that.

Grusendorf:

I'm aware of that.

Grusendorf:

Selfie, yeah.

Grusendorf:

I also know that that's a really, really bad, really, really bad story. Because one, there are mirrors inside of a dressing room that are designed so that you can see what you look like. And two, if you're going to take a picture of yourself, you're going to take a picture of yourself in the mirror because you see the whole thing. Because when you turn your camera around, you don't get a very good picture of yourself. I'm aware of that, too. I'm also aware that when we go into that phone, which we will do, and when we find those pictures, all that's going to do is show that you're lying

at the moment, which doesn't help you at all. Because that's obstruction.

Kevin Banks:

Whatever you have to do.

Grusendorf:

Well, no, that is what we're going to do. I mean, there's no question about it. That's what we're going to do.

Kevin Banks:

That's why I asked if I could talk to my lawyer, but you said no.

Grusendorf:

No, I didn't say no. I said I'm not going to call your lawyer for you. I didn't tell you you couldn't talk to a lawyer at all. You asked if I would call an attorney for you. I said I'm not going to do that. I said-

Kevin Banks:

I want to speak with Megan Philbin.

Grusendorf:

Okay, very good.

Statement of solemnly sworn oath under penalty of perjury:

I printed name X Kevin W. Banks

I /s Relator Kevin W. Banks 1/7/2021 the undersigned do solemnly swear under OATH that all facts contained intrinsically here-in are TRUE to the best of my knowledge under penalty of perjury of law.

Kevin Banks claim that upon the belief and information the above stated information to be true to the best of my physical and mental capability which warrants relief in Mandamus/Procedendo where it is clearly established in State and Federal Law that a void/voidable judgement must be set aside and is able to be heard in any court at any time as the err may be “Structural and or against due process” in 2020-1420 State ex rel. Banks v. Judges of Medina County

**Affadavit of Verity of Complaint made by H.E. against Kevin Banks**

1.) Hannah:

[inaudible 00:00:01], and when I skipped that one and [inaudible 00:00:05]. So, he went in the next room, which I thought that was weird, but didn't think anything of it. I was [crosstalk 00:00:14].

2.) Speaker 2:

[inaudible 00:00:14].

3.) Hannah:

I looked over, and his phone was above the door taking pictures of me.

4.) Speaker 2:

[inaudible 00:00:20].

5.) Hannah:

[crosstalk 00:00:23]. So, I looked over, and I saw a see through ... The first thing I saw, I

went in the room, and I told her, and then as soon as I did, he ran out of the dressing room. And I didn't. I didn't see him after that. He just ran off. I know he was wearing a tank top. I think he was old. He was a lot older, but that's all I got of him.

6.) Speaker 3:

[inaudible 00:00:42]?

7.) Officer D.:

Yeah. He didn't run off [inaudible 00:00:45].

8.) Speaker 3:

Okay. [inaudible 00:00:47].

9.) Speaker 2:

[inaudible 00:00:50].

10.) Speaker 5:

Go ahead.

11.) Speaker 2:

Robert Lincoln 199. Robert Lincoln 22 into 199, just hold for that [inaudible 00:00:59].

12.) Speaker 5:

[inaudible 00:01:04].

13.) Officer D.:

260 PD

14.) Speaker 6:

This is him running out.

15.) Officer D.:

Okay. Can you have 1519 describe the male that he's out with just to make sure it's the same?

16.) Speaker 6:

[inaudible 00:01:23] his truck.

17.) Officer D.:

That's his truck? Can you ... You said you can't get him at the front door?

18.) Speaker 6:

He ran out like where the carts are. There's not a camera over there.

19.) Speaker 2:

[crosstalk 00:01:33]. [inaudible 00:01:35]. Your 39 make it through out [inaudible 00:01:38] paperwork.

20.) 260 PD:

Green cargoes, [inaudible 00:01:45] shoes and blue tank top, [crosstalk 00:01:47].

21.) Officer D.:

Can you rewind that?

22.) Speaker 6:

Yeah.

23.) 260 PD:

White and red. [crosstalk 00:01:50].

24.) Officer D.:

I just wanted them to describe him to make sure it's the same. 260 PD, I copy. Tom shift traffic. That's the same male.

25.) Speaker 2:

Can you ...

26.) Officer D.:

He's out of the city now, but ...

27.) Speaker 2:

[inaudible 00:02:05].

28.) Speaker 6:

Yeah. Hey, Brian, go to two.

29.) Brian:

Hey, does she know all that [crosstalk 00:02:21].

Speaker 2:

Is that him?

30.) Hannah:

Yes. Right there in the tank top. I was in that back room, and he ...

31.) Officer D.:

[inaudible 00:02:33].

32.) Speaker 2:

Okay. You can come down and have a seat. Okay?

33.) Officer D.:

Hey, [inaudible 00:02:37]. Can you ... I don't know if you can burn copies or someone else can, but eventually we're going to need a copy of that.

34.) Speaker 6:

Yeah.

35.) Speaker 9:

Did you have him ... Did you get his car at all?

36.) Speaker 6:

I don't know what to [inaudible 00:02:49].

37.) Speaker 9:

Oh.

38.) Speaker 6:

But I have [crosstalk 00:02:50] of the car.

39.) Officer D.:

You said that trunk.

40.) 260 PD:

260.

41.) Officer D.:

Go ahead.

42.) 260 PD:

Do you have some statement forms in your bag? I only have two.

43.) Officer D.:

Affirmed. If you go in my little black binder, they're in there.

44.) Speaker 9:

[crosstalk 00:03:12] going in the fitting room [crosstalk 00:03:13].

45.) Officer D.:

Disregard. We have some.

46.) Speaker 9:

Because you can see his face as he's walking in.

47.) 260 PD:

Okay.

48.) Officer D.:

Thank you. Do you want me to get her started on one? Okay. What's your name?

Hannah:

Hannah.

49.)       Officer D.:

Hannah. I'm sorry. I'm Officer [Doney 00:03:37]. I'm going to have you get started on a statement. I'll see if they have an extra pen for you. So, on the front here, is there someone you need to call or anything, your parents?

50.)       Hannah:

I called my mom. She actually has a flat tire right down the road, so-

51.)       Officer D.:

Okay. Does she need one of us to go pick her up?

52.)       Hannah:

She's waiting for the insurance company right now.

53.)       Officer D.:

Oh, okay. Well, if she does, let us know. Fill out your name, the date. This is just contact info for you, if you want to put mom and dad's info on there, too. And then just write down what happened. Try to be as descriptive as you can about what he was wearing, everything like that. And then let me get you a pen. I'll get you started. Do you guys have any pens in here?

54.)       Speaker 6:

[inaudible 00:04:22].

55.)       Officer D.:

I only have one. That's perfect. Thank you. Here's a pen for you.

End of affidavit

As an internal “question of constitutionality” The trial record shows that Banks was [NOT] given a chance to call Megan Philbin or any other attorney either at holding in Medina City, or at Medina County Jail. Banks did speak directly to Ms. Philbin the following morning on video arraignment in CRA00834 before At the initial bind-over hearing Megan Philbin tells Banks that she only represents misdemeanor cases for Medina City Public Defenders Office. Banks is later told by the Court that he will be represented by someone from the Medina Public Defender’s Office. June 23, 2016 as Banks was still in Medina Township custody having been handcuffed by officer Nicholson and placed in his cruiser. The record reveals that the official transfer of custody occurs at 14.59 Timestamp of Officer Clifford Nicholson trading handcuffs from his original custody of Kevin Banks to MPD Officer Al Roland who transported Kevin Banks to Medina Station. Audio Video file first discovered by Kevin Banks by and through Medina P.D. 149,43 request December 2018). The record then reveals that at

The chain of custody reports that the same day at 15:05 Medina Police Officer 236 Al Roland takes custody of Kevin Banks and reports that he is taking Banks to the booking room where the Medina Police Report and videos show Banks handcuffed next to the telephone and phone book, but never given a chance to call his attorney.

June 24, 2016 at around 9:12 am video arraignment occurred as stated no attorney present to represent Banks. To substantially aggravate the “question of constitutionality” where Banks demanded an attorney and was explicitly denied one, the bind-over court imposed a high bail of two-hundred thousand dollars cash on Banks in 16CRA00834 where no counsel was present to defend Banks. Subsequently, as a matter of procedure though Banks was already in custody at Medina County Jail ; as stated by Medina City Police on June 24, 2016 9am warrant for arrest issued Executed 10:18 by 258 Monica Juka copy faxed to Prosecutor. On the same day, at 12:28

Warrant executed to extract digital data forensically from Kevin Banks' phone. On the same day at 12:54 Jeanne Masters 382 two copies of felony packet filed put on 241 desk followed at 13:52 Banks is officially charged Patrick Sloan 2907.08 C charged

15:33 First search warrant issued for napkins and phone. Then three days later on June 27, 2016 9:34 am. Alan Buxton a Medina City cyber forensics expert states in Medina Police Report that No incriminating evidence found on android cellphone. The following day on June 28, 2016 8:35 the napkins sent to BCI Richland cyber forensics for suspicion of sexual purpose during voyeurism claim. paper towel to bci Gregory Habrat 250. The following day on June 29, 2016 BCI reports that no semen found by BCI forensics on napkins as it relates to the sexual purpose element of R.C. 2907.08 C. Laster the same day at 1:18pm the Grand Jury returns an indictment for Count 1 R.C. 2907.08 c and Count 2 R.C. 2921.12(A) (1). A second warrant is issued after the indictment was issued. Alan Buxton performed a manual search of the phone and a search of any remote storage of Banks' digital cloud. No incriminating files were found on Banks' phone. On July 11, 2016 Banks is first represented by Attorney Chad Mulkey for the public defender's office. A plea of not guilty is entered before the said Common Pleas Court. Where the State of Ohio has never changed the bill of particulars levied against Kevin Banks on June 23, 2016 the record is void of any criminalizing facts. As a concrete injury, Relator is still aggrieved by said conviction jointly and severally by and through having two-felony on his record and having to register as a tier-one sex offender until 2031. This fact is docketed in 16CR0369 on January 4, 2017

Registered as a sex-offender by Mathew Fitz 249 11:02 tier one

TEODOSIO, Judge. ¶1 Appellant, Kevin Banks, appeals from his convictions in the Medina County Court of Common Pleas. We affirm. ¶1. While in a state of undress, H.E. looked in her fitting room mirror and saw an arm holding a cell phone up above Mr. Banks' fitting room door with the phone's camera16CRA facing her. She quickly clothed herself, snuck out of the fitting room, and told a store employee. ¶2 Mr. Banks left his own fitting room twenty-five seconds after H.E. left hers, looked toward H.E. and the employee while he was walking away, and quickly headed toward the store's exit after H.E. said, "That's the man." He left the store through the shopping cart only doors, removed the tank top he was wearing, and used it to cover up his rear license plate number. By chance, a retired police officer was in the store's parking lot and saw Mr. Banks running out of the store while removing his shirt, so he followed Mr. Banks' vehicle and called police. A few minutes later, Mr. Banks pulled into a driveway, exited his vehicle to retrieve his tank top, and then re-entered the vehicle and resumed driving until a uniformed officer conducted a traffic stop of the vehicle. ¶4 Mr. Banks was arrested and charged with voyeurism and tampering with evidence. He waived his right to a jury trial on the voyeurism count only. The case proceeded to trial whereby a jury heard and decided the tampering with evidence count and the trial court judge heard and decided the voyeurism count. Mr. Banks was found guilty of both charges and sentenced to an aggregate total of twenty-four months in prison.

1.

2.

3. June 29, 2016 Confidential Identifiers in Case 16CR0369 were docketed.

The same date

4. As it relates to the original complaint made and filed by Sgt. Sloan of Medina City

Police on 9/24/2016 at 9:00AM; "Did for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously Invade the privacy of another to videotape, film, photograph, otherwise record, or spy or eavesdrop upon the other person In a state of nudity If the other person Is a minor. To Wit, Medina PD was notified that a male was taking pictures of a younger female In the dressing rooms of the Target Department Store.

The victim was a sixteen-year-old female with the Initials H.E. She reported to Detective Grusendorf that she was changing clothes and observed a males arm extended over the dressing room wall with a cell phone In his hand. The cell phone camera was pointed In her direction, H.E. was partially nude at this time. The male then fled the store attempting to hide his license plate. The male was ultimately located and was found to be Kevin W. Banks. Banks admitted to being at Target and in the dressing room area. Banks also matched the description provided by the victim and observed on the surveillance video. Sgt Sloan Is aware of this Incident after reading the police report."]

5. June 29, 2017 at 1:18 PM A True Bill of the Indictment signed by Dean Hollman the testimony at July 11, 2016 Dean Hollman makes a precise complaint that Relator was video tapping alleged victim H.E. (This was likely done out of an abundance of caution not to perjure himself on record as at this point Alan Buxton the Medina City forensicx cyber detective had returned several findings that no pictures were taken of

H.E. nor was any data deleted.

6. Intentionally left blank
7. As it relates to the age requirement for one to perpetrate a criminalization of felony voyeurism, Relator agrees that H.E. was a minor At time of alleged felony voyeurism complaint. Relator does claim that the indictment may be fatally flawed with false information. Trial testimony of personal identifier alleged victim 17 year old female claims her birth age as 1.) As it relates to the original materials used by Medina City Detective Joshua Grusendorf 7/22/98 in pertinent part of her testimony (See Tr. Trans. 213).

As it relates to the original materials used by Medina City Detective Joshua Grusendorf to prepare the case for the Grand Jury In said case; The alleged Complainant stated in her original video testimony on 6/23/2016 H.E. declared that Both Kevin Banks and were In the unisex dressing room area on 6/23/2016.

8. As it relates to the original materials used by Medina City Detective Joshua Grussendorf to prepare the case for the Grand Jury in said case; The alleged Complainant stated in her original video testimony on 6/23/2016 A H.E. declared that H.E. was trying on both dresses and bikinis (Tr Iran 215). When H.E. was questioned by the trial defense she stated that Banks did have clothes on his hanger when he entered; B. "Did you state to Officer Ragone that Kevin had clothes with him on hangers? When he walked into the dressing room, yes" (Tr Trans 232).
9. As it relates to the original materials used by Medina City Detective Joshua Grusendorf to prepare the case for the Grand Jury in said case; The alleged Complainant stated in her

original Case: 1:18-cv-02844-JGC Doc #: 14 Filed: 03/27/19 2 of 19. PageID #: 56 video testimony and on 6/23/2016 and subsequent trial testimony November 1,2016 she believed she was being A. "photographed".

10. No one else in the trial testimony alleged that H.E. had tried on the clothing that she testified as to wearing. As H.E stated in her testimony; A. "There was a lady working in the dressing room...I was kinda waiting for her to let me in but, she was kind of doing her own thing, so I walked into the dressing room after that... (Tr Trans 215).
11. H.E. declared in her testimony that; A. "I noticed a man standing to the left of me when I walked in the dressing room, and he kind of followed me in there. The only thing I noticed is he looked like he was dressed as a teenager...Stripes thick. I don't know if any of that would make sense to you. But thick (Tr Trans 216). Henna also stated; B. "'I recognized him when I first walked in the dressing room, I mean he was pretty much, could say following me, I guess" (Tr Iran 223). The Target store manager testified that Mr. Banks was wearing a holiday patriotic tank-top; He was wearing like a Fourth of July looking tank top. It was like striped. It was like red, white and blue. (Tr Tran 294).
12. H.E. claims that the first dressing room she attempted to enter had a messy floor so she moved; A. went straight in the dressing room after that...There was a bunch of clothes In there.... So went in the third dressing room, just the next one" (Tr Trans 217). H.E. stated why she moved dressing rooms; B. "There was clothes hung up and clothes on the ground. .That's why I didn't go in there, because there was a ton of clothes in there" (Tr Tran 238). When asked if Kevin Banks changed rooms H.E. replied; "And you can't say for certain that there were not clothes or a reason for him to also switch dressing rooms/ is that correct?; C. "That's correct" replied H.E. Tr Tran 239).
13. The Prosecutor made the first suggestion that there was a stool in the dressing rooms; A.

"All right, and when you went to change—is there anything else in there? Any stools in there?" AND H.E. declared: B."Yes, there is a seat right next to the mirror thaſs movable" (Tr Trans 218). H.E.h also replied to the defense counsel's question about the stool; C. "And you mentioned about a stool. That there was a stool's in the dressing room, is that correct? Yes. But again, you didn't personally observe him standing on a stool. Correct. (H.E.h replied, I did not" Tr Tran 235

14. claimed In her testimony about the door height and her height; If your standing In your bare feet, you could touch the top of the door... B. Im 5'3" (Tr Trans 219). stated; C. "I'm tiny" Tr Trans 220). When asked to recite her complaint H.E.h Initially denied that she stated Mr. Banks was; D. "a taller gentleman" when she stated; "...that the man was a taller gentleman" Tr Trans 231). H.E.h replied. Not "taller" cf.
15. When asked "H.E. Would It surprise you to learn that he's 6'1"? F. "He didn't seem that tall to me. My boyfriend Is six foot..." Tr Trans 232). H.E responds to the defense counsel; "I think he would have to be pretty tall" (Tr Tran 240). H. "Either very, very tall or standing on the stool" (Tr Tran 243).
16. When the prosecutor asked H.E. ; A. "What state of dress or undress were you in? H.E. claimed that she was wearing underwear in her trial testimony? "I had on underwear, but nothing else covering me at ail. Thats all I had on" Tr Trans 219).
17. 12.) H.E.h based her belief that Kevin Banks was taking pictures of her in her testimony; A. "I noticed the camera was facing me, and it looked like most of his forearm with the phone was above the door across from me, as if he was trying to get as much angle into getting a picture of me as possible" (Tr Trans 220). The Prosecutor asked H.E. ; 8. "What kind of phone did you notice that was above the door that you believed to be either taking pictures of you or watching you? (Tr Tran 223). H.E.h replied; C. "It was a black phone"

(Tr Trans 224). When asked if she saw a flash H.E.h replied; D/ "No I did not" Tr Tran 224. The prosecution claimed that almost every phone can have the flash and clicking noise disabled; E. "Can every cell phone that you know of do that" (Tr Tran 224). When asked if H.E. heard a click she replied that; F. "I did not" (Tr Tran 236). When asked if H.E.h "personally know if the phone that you observed that day even had the capabilities of deactivating those features" she replied; G. "Correct". When asked; "is it possible for someone to take a selfie with either side of there phone" H.E.h replied. It is" Tr Tran 237. When H.E. was asked by the prosecution; H"Now, if the phone or a phone on in camera mode. Even if you don't take a picture. Can you view whatever the camera is viewing from that side? You cannot. I mean, unless he was facing the front of the camera with the back facing me" (Tr Tran 242). Detective Grusendorf claimed that there were no pictures as alleged by complaint on Kevin Banks' phone; I "All right detective, as a result of your investigation, did you find any pictures, video, and audio on the phone. Yes, there were a number of pictures, video and audio on the phone... Okay, anything depicting Ms. on that phone? No" (answered the detective) Tr Tran 234-235)."As a result of your investigation and your consult with Alan Buxton, was Alan Buxton, or were you both, able to forensically extract data from Kevin Banks' phone. Yes sir. And did you didn't find any pictures or videos from the Target dressing room area, correct? Thafs correct on June 23 right"? i Thafs correct" (Tr Tran 244-245). After a second search warrant was prosecuted the result was the same; "So the phone was subject to two search warrants is Case: 1:18-cv-02844-JGC Doc #: 14 Filed: 03/27/19 10 of 19. PageID #: 64 that correct? That's correct...As a result of those searches, no pictures of Ms. Elsenhut and no video of Ms. was found contained within his phone, correct?" K (Tr Iran 245). According to the published Oral Argument of Petitioner's Appeal in said case the State of Ohio claimed; L

"The fact that whether photographs were actually taken is irrelevant" 13:50-1351 mark.

H.E. stated in her trial testimony; A. "I'm positive the person across from me is taking pictures of me without clothes on" (Tr Trans 220).

18. H.E. claimed that she was intently quite in exiting the dressing room; A. "I guess that my instinct was that I wanted to be as quiet as possible...So that he wouldn't hear me...I thought if I opened the door he would hear it you know...(Tr Trans 221).

19. H.E. declared in her testimony that as she exited the dressing room she was wearing a dress; A. "...which was the dress on the hanger next to me, and I clothed myself Tr Trans 220).

20. H.E. made a written report about her complaint on 6/23/2016; A/then they showed me the surveillance videos and I made my report" (Tr Trans 227).

21. As It relates to the testimony that Banks ran out of the dressing room defense asked ; A. "On the video It shows him walking, And you used the word "fast" correct? H.E.h replied. "Subject to interpretation, I suppose. All right" Tr Iran 233

22. As it relates to the first pertinent fact regarding the Tampering with evidence Charge, Trial counsel asks the alleged complainant if Banks would know an official investigation had started; A."Mr. Banks could not have known there was any sort of official investigation in progress at this point. Yes" replied H.E. (TrTran 234).

23. A. The trial court's first recess in the joint bench/jury trial was given at 11A,m on November 1, 2016?

24. Officer Clifford Nicholson testified as it relates to the Tampering with evidence count 2, Was the rear license plate in A/'plain view" "And you learned the license plate number from dispatch, correct? Replied Officer Nicholson (Tr Tran 265). When asked by the prosecutor, B. "Had the license plate been covered and you were unable to see it, would

that have impaired your availability for your investigation,? If a descriptor of the vehicle was given without the license plate, it would be one less descriptor of the vehicle" (TrTran 266).

25. A. On November 2 at 11:40 am the court took a recess (Tr Tran 290)
26. Detective Joshua Grusendorf was asked what was found in Banks' truck; A. "Are you aware, as a result of your investigation, other shopping receipts were found in the vehicle? Yes" replied Grusendorf TrTran 341).
27. ) A. The court takes a brief recess on November 2,2016 until three oclock. (Tr Tran 253)
28. The Jury trial as to Count Two Tampering With Evidence lasted from the morning of October 31, 2016- November 2 late afternoon. The bench trial only lasted less than a couple hours on November 2,2016 as to Count One Voyeurism.
29. A. As it relates to Count Two Tampering with Evidence conviction; The rear license plate (the thing allegedly tampered with) was [NOT] entered as an exhibitory piece of evidence on page 4 of the Index of trial exhibits.
30. End of Compliant Affidavit

## **V. PROPOSED CONCLUSIONS OF LAW**

As it relates to Judge Kimbler:’s nonfeasance The State of Ohio failed to give Relator a Fundamentally fair trial in 16CR0369 based upon false arrest/prosecutorial mischaracterization of evidence as affirmed in Civ.R9 affadavit of particularity/prosecutorial failure to properly amend complaint under Crim.R7 after two search warrants showed exculpatory evidence where civr60b Kimbler’s nonfeasance has resulted in aggrievances to Relators due process withheld and not ruled upon said Motion for findings of fact and conclusion of law. Must the Ohio saving statute be given to Relator as a question of law.

As it relates to Judge Collier The State of Ohio

Nonfeasdanc: failure to timely rule upon Crim. R.29A motion when he said No and took  
under advisement. Allowance of a prohibited competency sanity report to be used against  
defendant now Relator which is strictly Prohibited by Ohio Law under

## **VI. CONCLUSION**

Must justice be granted in some form of legal relief/remedy for Relator?

Dated: Jan 7,

2021

By: e/s January 7, 2021 \_\_\_\_\_

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Pro se for Respondent Kevin W.

Banks

Certificate of Service

Relator certifies that he sent a copy

of the foregoing to both

Respondents and their counsels by

regular US mail on 1/7/2021

Signature of Relator X \_\_\_ E/S

