

IN THE SUPREME COURT OF OHIO

MR. DEREK FOLLEY, PRO SE

APPELLANT

v.

STATE OF OHIO

APPELLEE

CASE NO. GEN-2021-1054

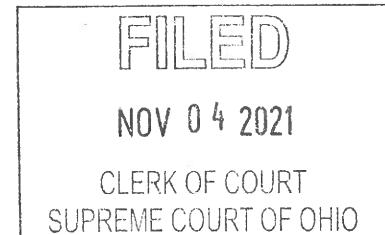
ON APPEAL FROM THE COURT
OF APPEALS OF OHIO SECOND
APPELLATE DISTRICT COURT
OF MONTGOMERY COUNTY
CASE NO. CA-29142

TRIAL COURT CASE NO. 2019 CR 01878

MOTION FOR SUMMARY JUDGMENT

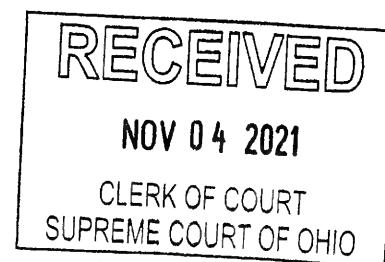
OF APPELLANT MR. DEREK FOLLEY, PRO SE

MR. DEREK FOLLEY, PRO SE #A-787-384
GRAFTON CORRECTIONAL INSTITUTION
LOCATION: B/6
2500 SOUTH AVON BELDEN ROAD
GRAFTON, OHIO 44044;
#2- C/O MS. LISA FOLLEY
POST OFFICE BOX 18174
FAIRFIELD, OHIO 45018;
#3-MAILING ADDRESS IN CALIFORNIA
6230 WILSHIRE BOULEVARD, SUITE 154
LOS ANGELES, CALIFORNIA 90048.



“PRO SE” LITIGANT FOR THE APPELLANT, MR. DEREK FOLLEY, PRO SE

MR. ANDREW THOMAS FRENCH, ESQ. (0069384)
MONTGOMERY COUNTY PROSECUTOR’S OFFICE
APPELLATE DIVISION
MONTGOMERY COUNTY COURT’S BUILDING
P.O. BOX 972
301 WEST THIRD STREET, 5TH FLOOR
DAYTON, OHIO 45422
Phone: (937) 225-4117
Email: FrenchA@MCOhio.org



COUNSEL FOR APPELLEE, STATE OF OHIO

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

Now comes, Mr. Derek Folley, Pro Se, hereafter, "The Appellant" hereby moves this Supreme Court of Ohio with this "***Motion For Summary Judgment Of Appellant***
Mr. Derek Folley, Pro Se" in pursuant to:

THE SUPREME COURT OF OHIO RULES OF PRACTICE
SECTION 4. GENERAL MOTIONS AND APPLICATIONS.

S.Ct.Prac.R. 4.01. Motions; Responses.

(A) Motion for order or relief

(1) Unless otherwise addressed by these rules, an application for an order or other relief shall be made by filing a motion for the order or relief. The motion shall state with particularity the grounds on which it is based.

"The Appellant" shall present this "***Motion For Summary Judgment Of Appellant***

Mr. Derek Folley, Pro Se as an exhaustion instrument prior to seeking Federal Review in this adversarial proceeding.

RESPECTFULLY,



MR. DEREK FOLLEY, PRO SE #A-787-384
GRAFTON CORRECTIONAL INSTITUTION
LOCATION: B/6/200
2500 SOUTH AVON BELDEN ROAD
GRAFTON, OHIO 44044;
#2- C/O MS. LISA FOLLEY
POST OFFICE BOX 18174
FAIRFIELD, OHIO 45018;
#3-MAILING ADDRESS IN CALIFORNIA
6230 WILSHIRE BOULEVARD, SUITE 154
LOS ANGELES, CALIFORNIA 90048.
PHONE: (937) 830-4796

"PRO SE" LITIGANT FOR THE APPELLANT, MR. DEREK FOLLEY, PRO SE

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

2/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

MEMORANDUM OF THE LAW

PROPOSITION OF LAW No. I:

SPEEDY TRIAL RIGHT by the United States Constitution.

[In all criminal Prosecutions, the accused shall enjoy the right to a Speedy and Public Trial, UNITED STATES CONSTITUTION, AMENDMENT VI (1791)]

In this appellate causation, this designated introduction segment shall notable be the commencement of “The Appellant” “Speedy Trial” right.

PROPOSITION OF LAW No. II:

FOURTEENTH AMENDMENT NEXUS TO SPEEDY TRIAL RIGHT by the United States Supreme Court.

[The Fourteenth Amendment (Applying) the Sixth Amendment Right to a Speedy Trial is enforceable against the States as one of the most basic rights preserved by our Constitution. DICKEY V. FLORIDA, 398 U.S. 30, 37, 90 S.Ct. 1564, 26 L.Ed.2d 26 (1970)]

This judicial proceeding was instigated in the State of Ohio. “The Appellant” vigorously relied upon his “Equal Protection of the Laws” right for this State of Ohio judicial forum to thoroughly render its judicial duty for a “Speedy Trial” assessment. Thereby, “The Appellant” will have his Federal “*Due Process of Law*” and “*Equal Protection of the Laws*” rights simultaneously.

PROPOSITION OF LAW No. III:

ONE YEAR PRESUMPTIVELY PREJUDICIAL RULE to initiate the Speedy Trial Balancing Test by the Federal Courts.

[The Court acknowledge that lower courts had concluded that depending on the charges, a delay that approaches one year would be “Presumptively Prejudicial,” triggering the Speedy Trial inquiry and appeared to accept that conclusion. UNITED STATES V. WALKER, 92 F.3d 714, 717 (8th Cir.1996)]

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

*On June 7, 2019, "The Appellant" was placed in confinement at the Montgomery County (Ohio) Jail. On May 17, 2021 is when the trial commenced. There was almost twenty-three (23) months of delay. This almost double the one-year Pre-Requisite to trigger the *Speedy Trial Balancing Test*.*

PROPOSITION OF LAW No. IV:

BARKER BALANCING TEST FOR SPEEDY TRIAL RIGHT ASSESSMENT by the United States Supreme Court.

*[IV a Balancing Test necessarily compels court to approach Speedy Trial cases on An Ad Hoc Basis. We can do little more than identify some of the factors which courts should asses in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: Length of Delay, The Reason for Delay, the Defendant's Assertion of his right, and prejudice to the defendant. **BARKER V. WINGO 8212 5255, 407 U.S. 517, 530, 92 S.Ct. 2182, 2192, 33 L.Ed.2d 101, 116-117 (1972)**]*

The above Barker Balancing Test has been implemented by the United States Supreme Court since 1972.

PROPOSITION OF LAW No. V:

OHIO TRIPLE COUNT by way of the *Ohio Revised Code*.

*[A person against whom a charge of felony is pending:
(2) Shall be brought to trial within two hundred seventy days after the person arrest.
For purpose of computing time under division (A), (B), (C) (2) and (D) of this section, each day during which the accused is held in jail in lieu on bail on the pending charge shall be counted as three days. This division does not apply for purpose of computing time under division (C) (1) of this section. **OHIO REVISED CODE 2945.71 TIME FOR TRIAL**]*

1. LENGTH OF DELAY

"The Appellant" had a three (3) count indictment for unlawful sexual conduct with a minor. These charges are a felony three offense. "The Appellant" was placed in confinement on **June 7, 2019**. The trial was on **May 17, 2021** is when the trial commenced. "The Appellant" was in pretrial confinement for over **689 actual days** which amount to **2,067 days** of the **Ohio Triple Count Provision**. Thus the **Ohio Triple Count Provision** stated that the accused must

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

4/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

be brought to trial within **90 actual days** when the accused is in jail in lieu of bail. "The Appellant" was in jail in lieu of bail from June 7, 2019 to and beyond May 17, 2021.

PROPOSITION OF LAW No. VI:

DELAYS COUNT AGAINST THE GOVERNMENT AND NOT THE DEFENSE as stipulated by the "Tigano" court.

2. REASON FOR DELAY

[It will be an exceptional case where, as here, a delay caused by a defense attorney counts against the government, Under the Barker analysis, and not the defense. Unless the record shows otherwise, we normally presume that a defense attorney is carryout his or her clients chosen trial strategy and that any delays resulting from that strategy count against the defendant. UNITED STATES V. TIGANO, 880 F.3d 602, 616-617 (2nd Cir. 2018)]

"The Appellant" was apprehended by the Dayton (Ohio) Police on June 7, 2019. One June 20, 2019, "The Appellant" instructed former defense counsel Kevin Lennen that he did not want anything to stop his speedy trial right and clock. "The Appellant" asserted his speedy trial right also on June 20, 2019 to the Montgomery (Ohio) County Sheriff, Captain J. Stephens by way of the jail kiosk system.

TO WIT.

/CAPTAIN J. STEPHENS

Case No. 2019 CR 01878 ATTENTION TO: DEAR JUDGE BARBARA P. GORMAN today I was at the hearing in pursuant to my indictment. The Public Defender that was present stated that I had a court appointment attorney that was assigned to my case. She stated that I waived my right to a speedy trial. However, I did not agree to this. I do not waive my right to a speedy trial. I want a Speedy Trial RESPEC TFULLY, MR. FOLLEY]

SEE: EXHIBIT A-1

Captain J. Stephens RESPONDED ON 6/21/19 AT 8:51 AM

[I CUT AND PASTED YOUR MESSAGE IN AN EMAIL TO HER BAILIFF]

SEE: EXHIBIT A-1

On **JUNE 24, 2019 AT 8:58 PM**, "The Appellant" sent another correspondence by way of the jail kiosk system.

TO WIT:

/ CAPTAIN J. STEPHENS

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

5/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

I WANT TO LET YOU KNOW THAT I GAVE MY MOTION FOR A SPEEDY TRIAL TO REC. OFFICER J. HAINES AND HE STATED THAT HE WILL PUT IT INSIDE OF YOUR MAILBOX SO THAT YOU CAN HAVE IT FILED FOR ME. RESPECTFULLY, DEREK FOLLEY]

SEE: EXHIBIT A-2

RESPONSE BY CAPTAIN J. STEPHENS ON 6-25-2019 at 3:03 PM.

[I got it and it's going to the court]

SEE: EXHIBIT A-2

On June 27, 2019 at 12:58 PM, "The Appellant" corresponded a request to Montgomery County Jail Staff.

TO WIT:

[CAPTAIN J. STEPHENS]

Have both of my motion been filed with the court of common pleas yet? I am referring to the: Motion for A Speedy Trial 2) Motion to cite "I did not engage" defense. It is imperative that my motion have been file stamp. I understand that leaving Ohio means that I will never see my children again, however that is the price that I have to pay. I maybe a horrible husband but I am a great dad. My civil rights should not be violated in pursuant to this matter

RESPECTFULLY DEREK FJ #4,594,600

SEE: EXHIBIT A-3

Note by JAIL BOOKKEEPER P. SURBER on 6/27/2019 at 1:17 PM

[ASKED FOR YOU SPECIFICALLY]

SEE: EXHIBIT A-3

RESPONSE BY CAPTAIN J. STEPHENS on 06/27/2019 at 1:51 PM

[SGT. ROSENKRANZ FILED IT WITH THE COURT]

SEE: EXHIBIT A-3

On Tuesday, July 2, 2019, "The Appellant" "Motion for a Speedy Trial" was filed stamp at 11:53 AM (DOCKET ID: 33572456);

SEE: EXHIBIT "B"

On July 5, 2019, "The Appellant" found out that former defense counsel, Mr. Kevin L.Lennen, ESQ., deviated from "The Appellant" chosen trial strategy of not to tolled the Speedy Trial Clock by filing:

- (1) "Motion to Suppress and Memorandum in Support", and
- (2) "Motion for Plea of Not Guilty by Reason of Insanity and Suggestion of Incompetency to

Stand Trial" on June 27, 2019. **EXHIBIT KLL-5; KLL-1; and, KLL-2.**

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

6/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

Thereby, "The Appellant" sent the following **REQUEST** on **July 5, 2019 AT 1:02 PM** on the Montgomery County Jail Kiosk System.

TO WIT:

[CAPTAIN J. STEPHENS

PLEASE FORWARD TO: JUDGE BARBARA P. GORMAN

I, DEREK O. FOLLEY hereby FIRED KEVIN L. LENNEN, ESQ. as my attorney in pursuant to the case against me as of July 5, 2019 the time that this message was sent. Keep all motions that I filed in pursuant to my case on record and make an order on them as well. And, I wish Kevin L. Lennen, ESQ., the best in his endeavors. RESPECTFULLY,

DEREK O. FOLLEYJ # 4,635,600

SEE: EXHIBIT A-4

RESPONSE BY CAPTAIN J. STEPHENS on 07/05/2019 at 2:24 PM

[OK DEREK I SENT THIS TO MR LENNEN AS WELL]

SEE: EXHIBIT A-4

There is insurmountable evidence that Mr. Kevin Lennen deviated from "The Appellant" chosen trial strategy and subsequently committed a "*Tigano*" violation. Mr. Lennen could have withdrawal his motions prior to the forensic hearing but chosen not to do so. Mr. Kevin L. Lennen, ESQ., knew that "The Appellant" made an assertion of his Speedy Trial Right. However, Mr. Lennen clearly ignored his client chosen trial strategy.

On July 12, 2019, "The Appellant" filed "*Motion to Waiver of Counsel*."

On August 23, 2019, "The Appellant" filed a "Pro Se" hybrid "*Motion to Withdrawal Motion To Suppress*." . EXHIBIT-WAVCOUNSEL & KLL-14;

PROPOSITION OF LAW No. VII:

SPEEDY TRIAL BELONGS TO DEFENDANT as outlined by the "*Tigano*" court.

[Accordingly, we conclude that in the context of a Speedy Trial action such as this one, a defendant's assertion of his own right to a speedy trial- even though ignored or contravened by his counsel-is the relevant fact for purposes of Sixth Amendment Analysis. Quite simply, the right to a Speedy Trial belongs to the Defendant, not to Defendant's Counsel. UNITED STATES V. TIGANO, 880 F.3d 602, 618 (2nd Cir. 2018)]

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

The delayed from **June 27, 2019**, to **August 27, 2019** should be **weighed against the State of Ohio** since Mr. Lennen *clearly ignored his clients chosen trial strategy* of not to stop the Speedy Trial Clock. “The Appellant” never seek to file a “*Motion to Suppress*” in the trial court judicious proceeding or to “*Plead Not Guilty By Reason of Insanity*.” By this evidence, Mr. Lennen committed a “*Tigano*” *Violation* and the delays cause by Mr. Lennen must be charged to the State of Ohio. Thus, the *Speedy Trial Right belongs to* “The Appellant” *and not to* Mr. Lennen.

PROPOSITION OF LAW No. VIII:

DELAY TO HAMPER THE DEFENSE as cited by the “Barker” Court.

[A deliberate attempt to delay the trial in order to hamper the defense should be weighted heavily against the government. BARKER V. WINGO 8212 5255, 407 U.S. 517, 531, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)]

On Thursday, **August 29, 2019** at **4:48 PM** trial court filed **ORDER FINDING**

DEFENDANT COMPETENT TO STAND TRIAL (DOCKET ID: 33771378).

TO WIT:

[This matter came before the court on August 28, 2019, the defendant being present in open court with counsel for a competency hearing. All parties stipulated to the content of the psychiatric report as submitted by the Forensic Psychiatry Center For Western Ohio, and, upon review of the report and evidence, the court finds that defendant is presently competent to stand trial.]

SEE: EXHIBIT

On **September 13, 2019**, Judge Barbara P. Gorman **ORDERED** of appearance setting **FINAL PRE-TRIAL** for **November 4, 2019** and **TRIAL** for **NOVEMBER 18, 2019**.

On Thursday, **September 26, 2019**, trial court filed: “*Decision, Order, and Entry RE: MOTIONS*”, hereafter, “**Docket ID: 33861583**”

TO WIT:

[On September 25, 2019, a hearing on pending motions in the above-captioned matter was held in open court. For the reasons set forth on the record, the following motions filed by defendant Derek O. Folley were OVERRULED: 1. Motion For Polygraph Examination FILED ON September 23, 2019; and, 2. Motion To Charge Any Witness That Commit Perjury

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

8/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

With Maximum Sentence filed on September 23, 2019. Defendants Motion To Wear Civilian Clothing is SUSTAINED in part as it relates to his right to wear civilian clothing at trial.]
SEE: EXHIBIT

On Tuesday, **October 8, 2019**, trial court filed: "**ENTRY RE: DEFENDANT'S MOTION TO ACCESS THE COURT**," hereafter, "**DOCKET ID: 33899778**".

TO WIT:

[On October 3, 2019, a hearing on "**Motion To Access The Court and Memorandum in Support Of Motion To Access The Court**," hereafter, "**DOCKET ID: 33899778**."
TO WIT:

I On October 3, 2019, a hearing on Motion To Access The Court and Memorandum In Support Of Motion To Access The Court filed by Defendant Derek O. Folley ("DEFENDANT") was held in open court. DEFENDANT FOLLEY'S made several requests. Captain Brad Daugherty from the Montgomery County Jail and Defendant's Stand-By Counsel John Pinard were present. Set forth below at the court's ruling at the hearing on those requests: (i) Use A Professional Visiting Room At The Montgomery County Jail: DEFENDANT will be permitted to Use the Professional Visiting Rooms In Accordance With Jail Policy...]

STATE'S SUBPOENAS

On October 29, 2019, **STATE SUBPOENA FILED AND ISSUED, OUT OF COUNTY SHERIFF TO SERVE M.R.W. (a minor) APPEARING MONDAY, NOVEMBER 18, 2019 FILED BY ASHLEY ADKINSON.**
SEE: EXHIBIT

On October 29, 2019, **STATE SUBPOENA FILED AND ISSUED, OUT OF COUNTY SHERIFF TO SERVE CHERYL MAYES APPEARING MONDAY, NOVEMBER 18, 2019 FILED BY ASHLEY ADKINSON.**
SEE: EXHIBIT

The relatively evidence of the two (2) above subpoenas, is, that, "M.R.W." is the State's Star-Witness and Cheryl Mayes is the grandmother and at the time the legal guardian of the State's Star-Witness.

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

9/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

CANCELLATION OF FINAL PRE-TRIAL

On November 4, 2019, is the date in which “The Appellant” was initially schedule for “Final Pre-Trial.” However, “The Accuser” and her legal guardian at the time subpoenas had seasonably abandoned the adversarial proceeding. Their subpoenas never returned to the Montgomery County Common Pleas Court by the time of the November 4, 2019, Final Pre-Trial with the **STATUS of HAVING BEEN SERVED.**

SUSTAINED FOR A BENCH TRIAL

On Tuesday, **November 5, 2019**, the trial court filed “**DECISION, ORDER, AND ENTRY SUSTAINING DEFENDANT’S MOTION TO WAIVE TRIAL BY JURY: OVERRULING VARIOUS MOTIONS FILED BY DEFENDANT,**” hereafter, “**DOCKET ID: 33898735.**”

TO WIT:

[Defendant Derek O. Folley (“DEFENDANT”) filed his Motion To Waive Trial By Jury on October 18, 2019. Upon review of said motion, the court finds it is well-taken and hereby SUSTAINS the SAME. Accordingly, DEFENDANT will be tried by the bench.]
SEE: EXHIBIT

On **November 6, 2019**, the trial court **ORDERED** “The Appellant” to a second competency evaluation.

The trial court only issued the ORDER for the Competency Evaluation in **ORDER TO HAMPERED THE DEFENSE** (See: Proposition of Law No. VIII) since the State’s Star-Witness and her grandmother **subpoenas** did not return to the Montgomery County Common Pleas Court with the **STATUS** of having been **SERVED**. Furthermore, Dayton Police Detective Zachary Fehrman needed more time for his investigation.

On Friday, **November 8, 2019**, “The Appellant” filed “**NOTICE DOES NOT WAIVE SPEEDY TRIAL**” as a “Pro Se” hybrid motion.

SMOKING GUN EVIDENCE

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

10/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

On November 19, 2019, Dayton (Ohio) Police Detective Zachary Fehrman made a REQUEST to the MIAMI VALLEY REGIONAL CRIME LABORATORY for the following:

- (1) One Sexual Assault Evidence Collection Kit from "M.R.W."; and,
- (2) One Sexual Assault Evidence Collection Kit from Derek Folley.

The Laboratory Report was not COMPLETED until April 22, 2020. This is substantial proof that the trial court 2nd competency evaluation was **ORDER TO HAMPERED THE DEFENSE**

(See: Proposition of Law No. VIII) SEE: EXHIBIT SMOKING-GUN

PROPOSITION OF LAW No. IX: CORRUPTED JUDGES by the Justice Breyer.

CORRUPTED JUDGES BY MR. JUSTICE BREYER

[The trial judge- particularly one such as the judge in this case, who presided over one of Edwards' Competency Hearings and his two trials-will often prove best able to make more fine-tuned mental capacity decisions, tailored to particular defendant's individualized circumstances... (C) Indiana's proposed standard, which would deny a criminal defendant the right to represent himself at trial if he cannot communicate coherently with the court or a jury, is REJECTED because this COURT is uncertain as to how that standard would work in practice. The COURT also DECLINES INDIANA'S REQUEST TO OVERRULE FARETTA because today's opinion may well remedy the unfair trial concerns previously leveled against the case. INDIANA V. EDWARDS, 128 S.Ct. 2379, 171 L.Ed.2d 345, 554 U.S. 164, 165-166 (2008)]

THE FIRST TWO COMPETENCY EVALUATIONS

<u>EVALUATOR</u>	SCOTT T. KIDD, PSY	MASSIMO DE MARCHIS CLINICAL PSYCHOLOGIST
<u>DATE</u>	7/23/2019	11/11/2019
<u>JUDGE</u>	<i>He knew the defendant would be sentenced by the judge if he pleads guilty, and the case would be closed</i>	<i>Her added, The judge is supposed to be impartial, interpret the rule of law, and at the end of the trial, determine guilt or innocence.</i>

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

11/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

<u>PLEADINGS</u>	<p><i>Mr. Folley stated that GUILTY, NOT GUILTY, NO CONTEST and NOT GUILTY BY REASON OF INSANITY are pleas available to the defendant.</i></p> <p><i>-Mr. Folley said the defendant pleads not guilty when he is innocent of the charges.</i></p> <p><i>He knew the case goes to trial if the defendant pleads NOT GUILTY. He said the defendant is free to leave and return to his life if he is found NOT GUILTY.</i></p> <p><i>Mr. Folley said NOT GUILTY BY REASON OF INSANITY refers to a defendant who is mentally ill, such as schizophrenia, when he committed the crime. He said the defendant would be evaluated by a psychiatrist. He said the insanity acquitter would be sent to a state mental institution if he is found NOT GUILTY BY REASON OF INSANITY.</i></p>	<p><i>-The Defendant accurately described the available pleas (Guilty, Not Guilty, No Contest, and Not Guilty By Reason Of Insanity).</i></p> <p><i>-He understand that by pleading guilty, he would give up his right to a trial and would be totally</i></p>
<u>PROSECUTOR</u>	<p><i>Regarding the function of the Prosecutor, Mr. Folley stated, "They try to make sure the defendant is found guilty at the trial and they represent the person that filed the complaint against the accused."</i></p>	<p><i>He described the role of the prosecutor as "provide justice." The prosecutor has been trying to keep me in jail.</i></p>

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

<u>JURY</u>	<i>Mr. Folley said the jury listens to both sides and determines whether or not the defendant is guilty based on the evidence.</i>	<i>The role of the jury as "find you guilty or not guilty, all 12 of them need to agree, they have to be 100%.</i>
<u>WITNESSES</u>	<i>Mr. Folley said witnesses testify about the alleged offense or about anything related to the case.</i>	<i>The role of the witnesses as "give testimony to the events, honest fashion."</i>
<u>DEFENSE COUNSEL</u>	<i>When asked about defense attorney's responsibilities, Mr. Folley stated, "They represent the defendant make sure the defendant receives a "Not Guilty Verdict," files motions for the defendant, and "give effective counsel.</i>	<i>His role as his own legal counsel as "prepare an excellent defense in regard to my case."</i>
<u>THE ACCUSED TESTIMONY</u>		<i>Mr. Folley stated that no one could ask him to testify, as he could not be a witness against himself. He also understood that should he testify, then the prosecutor could ask him questions and that if he did not wish to answer them, he could take the fifth.</i>

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

<u>RESULTS</u>	COMPETENT TO STAND TRIAL	NOT COMPETENT TO STAND TRIAL
SEE: EXHIBIT	& EXHIBIT	

“The Appellant” answered more question in the second Competency Evaluation and was correct in both. Thus, Mr. Justice Breyer was absolutely correct on the fraudulent competency evaluation by unethical trial judges. The trial court **SUSTAINED** three motions prior to instigating a 2ND Competency Evaluation on **November 6, 2019**. The trial court stated in its actions that “The Appellant” is competent to stand trial when it **SUSTAINED** his “*Motion to Waive Trial By Jury*” on **November 5, 2019**.

Thereby, the trial court, the Montgomery County Prosecutor’s Office, and the Dayton Police Detective conspired to fraudulently have “The Appellant” sent to Summit Behavior Healthcare in Cincinnati, Ohio. The State of Ohio was not prepared to go to trial on **November 18, 2019**.

“The Appellant” graduated from Central State University of Wilberforce, Ohio with a Bachelor Degree in Political Science (English/Pre-Law). He worked for Thompson, Hine, & Flory, P.L.L. fulltime under the supervisory of his mentor Mr. Lawrence T. Burick, ESQ., while attending Central State University full-time as a student. “The Appellant” attended law school in Los Angeles, California for two fall semesters. Thereby, “The Appellant” was very **COMPETENT TO STAND TRIAL**. The competency Evaluations were undoubtedly fraudulent. The trial court wanted a “*Fine-Tuned*” Competency Evaluation that would tailor to “The Appellant” individualized personality. This was a “Due Process of Law” violation in the trial court adversarial proceeding.

SEE: EXHIBITS – GOVERNMENT PROFILE SERIES

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

14/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

<u>DATE</u>	<u>NUMBER OF DAYS</u>	<u>WEIGH AGAINST</u>	<u>REASON FOR ACTION</u>
6/27/2019 THRU 8/29/2019	SIXTY (60) DAYS	THE STATE OF OHIO	“TIGANO” VIOLATION BY MR. LENNEN
9/11/2019 THRU 9/23/2019	TWELVE (12) DAYS	THE STATE OF OHIO	PENDING MOTIONS
11/6/2019 THRU 8/25/2020	AT A MINIMUM- TWO HUNDRED SEVENTY (270) DAYS	THE STATE OF OHIO	TRIAL COURT CONSPIRED TO HAMPER THE DEFENSE BY WAY OF FRAUDULENT COMPETENCY EVALUATIONS
9/4/2020 THRU 10/13/2020	THIRTY-NINE (39) DAYS	THE STATE OF OHIO	NO MOTIONS PENDING BY THE APPELLANT
	MINIMUM GRAND TOTAL 381 DAYS	90 DAYS BY OHIO TRIPLE COUNT PROVISION	TWO HUNDRED NINETY-ONE (291) LEFT OVER AFTER SUBTRACTING THE OHIO TRIPLE COUNT

PROPOSITION OF LAW No. X:

ASSERTION OF SPEEDY TRIAL by the “*Black*” court.

3. ASSERTION OF DEFENDANT SPEEDY TRIAL RIGHT

[The third Barker Factor weighs against a defendant who weakly asserts his Speedy-Trial right long after he could have, but the factor weighs in favor of a defendant who early, frequently, and forcefully asserts his right. UNITED STATES V. BLACK, 930 F.3rd 1099, 1120 (10th Cir. 2016)]

“The Appellant” was arrested on June 7, 2019. He asserted his Speedy Trial Right on June 20, 2019 and July 2, 2019 (by motion)

SEE: EXHIBIT A-1 & EXHIBIT “B”

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

15/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

“The Appellant” reached and passed the element for asserting the Speedy Trial right **early**. “The Appellant” asserted his Speedy Trial right in over forty (40) occurrences in the trial court adversarial proceeding. Thus, “The Appellant” met and exceeded the element for asserting his Speedy Trial right **frequently**. “The Appellant” made over forty (40) Speedy Trial assertions by motion. Thereby, “The Appellant” again exceeded the element for **forcefully** asserting his Speedy Trial right.

SEE: VOLUME I- EXHIBITS A-1 to R-3

VOLUME II- EXHIBITS AA-1 to AN-4, and

VOLUME III EXHIBIT BA-1 to BO-2;

EXHIBITS A-1 through EXHIBITS BO-2

By these evidence it is revealed that “The Appellant” asserted his Speedy Trial right early, frequently, and forcefully. This factor weighs strongly in “The Appellant” favor.

PROPOSITION OF LAW No. XI:

PREJUDICE TO THE DEFENDANT by the United States Supreme Court in “*Barker*.”

4. PREJUDICE TO THE DEFENDANT

[A fourth factor is Prejudice To The Defendant. Prejudice of course, should be assessed in light of the interests of defendants which the Speedy Trial Right was designed to protect. This Court has identified three such interests: (i) To Prevent Oppressive Pretrial Incarceration; (ii) To Minimize Anxiety and Concern of The Accused; and, (iii) To Limit the Possibility that the Defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. BARKER V. WINGO 8212 5255, 407 U.S. 514, 532, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972)]

(i) To Prevent Oppressive Pretrial Incarceration

While being detained at the Montgomery County Jail, Ms. Jessika Folley had taken \$3,600 from the Checking Account of “The Appellant” checking account with Bank of America and closed the account soon after. In August 2019, “The Appellant” was attacked while sleeping

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

as he was housed at the Montgomery County Jail. He was transported to Grandview Hospital Emergency Room to have his injuries addressed. While at Summit Behavior Healthcare of Cincinnati, Ohio, "The Appellant" was attacked from behind while he was playing chess. He suffered neck and back pains as a result contributed to the incident.

SEE: EXHIBIT

(ii) To Minimize Anxiety And Concern of the Accused

Ms. Jessika Folley obtained an order from child Support against "The Appellant." "The Appellant" feared and have anxieties of being sent back to prison for failure to keep up with the Child Support payments. He also has anxieties about losing his license for failure to pay child support.

PROPOSITION OF LAW No. XII:

IMPAIRED THE DEFENSE by "Blanas."

(iii) To Limit the Possibility That The Defense Will Be Impaired

PREJUDICE BY MCNEELY

[In this case, the defense has been hindered by the passage of time, particularly given the nature of the charges which are most likely proved or rebutted through testimonial evidence. In addition, Petitioner indicates that he has been forced to undergo treatment with medication that impairs his memory, thus aggravating the impact of the delay on his ability to defend himself. MCNEELY V. BLANAS, 336 F.3d 822, 832 (9th Cir. 2003)]

On Tuesday, February 11, 2020, the trial court ORDERED "The Appellant" with
"ORDER COMMITTING DEFENDANT TO SUMMIT BEHAVIORAL HEALTHCARE ON INCOMPETENT RESTORABLE FINDING O.R.C. Section 2945.38 (B)." SEE: EXHIBIT
DDD-1; DDD-2; DDD-3; and, DDD-4.

While at Summit Behavioral Healthcare ("SBC"), "The Appellant" was **FORCE TO**

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

17/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

UNDERGO TREATMENT by a Court **ORDERED** and prescribed "*Risperdal*." This "*Risperdal*" impaired the thinking ability and delayed the reaction of "The Appellant." As a "Pro Se" litigant, these side effects immediately subjected the defense to suffered a great deal of prejudice at trial do to his **delay of "objections."**

SEE: EXHIBIT SBH-1; SBH-2; SBH-3; SBH-4; SBH-5; and, SBH-6.

PROPOSITION OF LAW No. XIII:

AN IMPARTIAL JURY by the United States Constitution.

[In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall be committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; UNITED STATES CONSTITUTION, AMENDMENT VI (1791)]

The Fourteenth Amendment to the United States Constitution precisely relegated the States to the resurrection of the Federal Constitution rights for the people. "The Appellant" has overwhelming maintained persistence in the pursuance of invoking his Constitutional rights. In the trial court forum, "The Appellant" filed a "*Motion for a Jury Trial*" which was "SUSTAINED" by the trial court.

PROPOSITION OF LAW No. XIV:

BLAKELY VIOLATION by the United States Supreme Court.

[In Blakely, Ralph Howard Blakely, Jr., pleaded guilty to kidnapping his estranged wife and brandishing a gun during the kidnapping. Washington law dictated a presumptive sentencing range of 49-53 months based upon Blakely plea. The Washington State Trial Court made a statutory finding that Blakely acted with "Deliberate Cruelty" and enhanced the sentence to 90 months. Evidentially, Blakely's appeal reached the United States Supreme Court which REVERSED based on a compound error by the trial court. First, the Blakely Court held that the trial court violated Blakely's Six Amendment Right to a jury trial by making the factual finding of "Deliberate Cruelty" "other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt." STATE V. ROWLES, 2005 OHIO 14 (OH 1/5/2005), 2005 Ohio 14 (Ohio 2005)]

"The Appellant" was convicted on his first felony in regards to this adversarial proceeding at the trial court forum. The State of Ohio has indicated that first time offenders should obtained the minimum sentence. The trial court imposed the maximum sentence upon

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

“The Appellant.” The trial court presided by Judge Montgomery erroneously committed atrocities directed at this “Pro Se” litigant Sixth Amendment Right to a jury trial by the commencement of its own factual finding to deployed a maximum sentenced upon “The Appellant.” On June 3, 2021, “The Appellant” filed an **“OBJECTION TO SENTENCE FOR BLAKELY VIOLATION”** prior to the sentencing hearing.

PROPOSITION OF LAW No. XV:

SENTENCING COURT FOR FIRST TIME FELONY by the “Mac Connell” court.

[There, we held that a sentencing court must impose the shortest prison term authorized for an offender when it is the defendant's first felony. However, this requirement does not apply where the record indicates "that the shortest prison term will demean the seriousness of the offender's conduct or will not adequately protect the public from future crime by the offender. STATE V. MAC CONNELL, 2007 OHIO 2107 (OHIO APP. 4/27/2007), 2007 OHIO 2107 (OHIO APP. 2007)]

The troubling judicial task at the trial court proceeding set into motion a problematic policy sought to foreclosed the passage of an inherent right of an impartial jury. As cited in “Blakely”, the jury had a Federal Six Amendment right to the determination to enhance a sentence if a record indicated that the shortest prison term will demean the seriousness of the offender’s conduct or will not adequately protect the public from future crime by the offender. The jury must prove beyond a reasonable doubt that an offender’s first felony conviction is entitled to the shortest sentence term of imprisonment.

PROPOSITION OF LAW No. XVI:

PERJURED TESTIMONY USED BY THE STATE-BRADY VIOLATION by the United States Supreme Court.

[Petitioner's papers are inexpertly drawn, but they do not set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him. These allegations sufficiently charge a deprivation of rights guaranteed by the Federal Constitution and, if proven, WOULD ENTITLE PETITIONER TO RELEASE FROM HIS PRESENT CUSTODY. BRADY V. STATE OF MARYLAND, 373 U.S. 83, 86, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)]

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

It will be practically a traumatic adversarial proceeding whereby the State corruptly has in its possession of favorable evidence to the defense in which it systematically suppressed that very evidence from the defense.

On the police report, “The Accuser” stated that “The Appellant” threw her on the bed and pulled her pants and panties off. Contrasting to the latter statement, “The Accuser” made another perjured statement to the Dayton Children’s Medical Center S.A.N.E. Nurse on June 7, 2019. She stated to the nurse that “She was sitting on the toilet and “The Appellant” pulled off all of her clothing and begin performing oral sex on her.

On **May 5, 2021**, “The Appellant” filed “***Motion For Discovery Under Brady-Guilt-Or-Punishment-Grand Jury Transcript***” (DOCKET ID: 35431983).

SEE: **EXHIBIT BRADY-1; BRADY-2; BRADY-3; BRADY-4; BRADY-5; BRADY-6;**
BRADY-7; BRADY-8; BRADY-9; BRADY-10; BRADY-11; BRADY-12;

“The Appellant” never obtained the Dayton Children’s Medical Center S.A.N.E. Nurse Report as part of the discovery. During trial, “The Appellant” objected while the State was cross-examining the Dayton Children’s Medical Center S.A.N.E. Nurse. “**The Appellant**” stated, “***I OBJECT! This was not within the DISCOVERY!***” Assistant Prosecuting Attorney, **Mr. Jonathan W. Sauline** stated, “***This is for counsel only!***”

This was perjured testimony presented by the State of Ohio at trial. This perjured testimony was knowingly used by Mr. Sauline. As a result, “The Appellant” imprisonment was fraudulently secured by this perjured testimony. After the **May 5, 2021** discovery motion, the Dayton Children’s Medical Center S.A.N.E. Nurse Report was deliberately suppressed from “The Appellant.”

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

20/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

PROPOSITION OF LAW No. XVII:

INTERTWINED IN THE DISCOVERY MOTION by "The Appellant."

[Defendant further requests, disclosure of any statements of any individuals which may be inconsistent, in whole or in part, with any other statement made by the same individual; and any statements made by any individuals, which are inconsistent in whole or in part with any statements made by other individuals who have given statement's relevant to the charges against the defendant. U.S. V. BREIT, 767 F.2d 1084, 1086 (4TH Cir. 1985)]

The above citation was included in "The Appellant" May 5, 2021 "***Motion For Discovery Under Brady-Guilt-Or-Punishment-Grand Jury Transcript.***"

The diabolical actions of the Montgomery County Prosecutor's Office were horrific and an intentional deprivation of "The Appellant" "***Due Process of the Law***" rights.

The prosecutor's office stated at trial that Stand-By Counsel has a copy of the Dayton Children's Medical Center S.A.N.E. Nurse Report. This "Pro Se" litigant has continuously advocated for himself in the duration of these judicious proceedings. The State of Ohio never filed a legal pleading and attach a "Certificate of Service" stipulating that "The Appellant" should be aware that Stand-By Counsel have in his possession the Dayton Children's Medical Center S.A.N.E. Nurse Report. Nor was there a hearing stipulating that the Stand-By Counsel will have the Dayton Children's Medical Center S.A.N.E. Nurse Report. The State's deliberately sought to barricade the defense momentum. The heinous manipulated action by the State of Ohio has substantiated enough evidence to prove a Brady Violation and a **REVERSAL OF CONVICTION**. The actual prejudice succumbed upon "The Appellant" was a denial of impeachment of the State's Star-Witness at trial. The outcome of trial would have profoundly had a different calculation that would have been favorable to "The Appellant." The inconsistent and/or perjured statements abolished "The Appellant" "***DUE PROCESS OF LAW***" rights.

PROPOSITION OF LAW No. XVIII:

DOUBLE JEOPARDY CLAUSE by the United States Constitution.

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

21/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

[Nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; UNITED STATES CONSTITUTION, AMENDMENT V (1791)]

The boundaries commanded by the “Double Jeopardy” clause normally safeguards the accused from multiple punishments. Inadvertently, the trial court gradually fashioned massive discrepancies upon “The Appellant” “Double Jeopardy” right with its contradiction platform.

PROPOSITION OF LAW No. XIX:

MULTIPLE PUNISHMENTS by the United States Supreme Court.

[It protects against a Second prosecution for the same offense after acquittal. It protects against a Second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense. NORTH CAROLINA V. PEARCE SIMPSON V. RICE, 395 U.S. 711, 717, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969)]

The allegiance to the Federal Double Jeopardy Clause can maneuvered to any State judicious forum by way of the “Supreme Law Of The Land” and “Equal Protection Of The Laws” clauses. The significant facts that needs to be reassess before these judicial officials shall be reinforce in this segment.

The State Star-Witness stated that “The Appellant” performed oral sex on her, she soon after performed oral sex on him, and right after they both commenced to vagina to penis sexual intercourse. The State of Ohio secured a three (3) count indictment based on these facts. This multiple punishment attached to this indictment is a double jeopardy violation. The sentencing has subjected “The Appellant” to multiple punishments.

PROPOSITION OF LAW No. XX:

CONTINUOUS OFFENSE by the United States Supreme Court as a “Snow” Violation.

[It is, inherently, a continuous offense, having duration; and not an offense consisting of an isolated act that it was intended in that sense in these indictments shown by the fact that in each the charge laid is that the defendant did on the day named and thereafter and continuously; for the time specified, ‘live and cohabit with more than one woman, to-wit with’ the seven women named, and during all the period aforesaid did UNLAWFULLY CLAIM, LIVE, AND COHABIT WITH ALL OF SAID WOMEN AS HIS WIVES. Thus, in each indictment, the offense is laid as a continuing one and a single one for all the time covered by the indictments together, there is charged a continuing offense for the entire time covered by

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

all three indictments. EX PARTE SNOW. 1, 120 U.S. 274, 281-282, 7 S.Ct. 556, 30 L.Ed. 658 (1887)]

As rooted in “*Ex Parte Snow*,” the indictment against “The Appellant” flagrantly engaged in a horrific deprivation of a “Double Jeopardy” right. The “Snow” indictments covered a duration of **over three years** and the United States Supreme Court rendered that it was a **continuous offense**. The State’s Star-Witness allegedly testify that the sexual relation with “The Appellant” was ten minutes. On June 8, 2021, “The Appellant” filed an **OBJECTION** in the trial court for the “**Snow**” **Violation**.

The overzealous prosecutor knew that the sexual encounter was a **continuous act** and not three isolated acts. The State of Ohio had gambled in the trial court proceedings by subjecting “The Appellant” to **multiple punishments at the sentencing stage**.

PROPOSITION OF LAW No. XXI:

“SNOW” VIOLATION AUTOMATIC REVERSAL by the United States Supreme Court.

[On the whole case we are unanimously of opinion that the order and judgment of the District Court for the Third Judicial District of Utah Territory must be REVERSED and the case be REMANDED to that court, with direction to GRANT the Writ Of Habeas Corpus prayed for, and to take such proceedings thereon as may be in conformity with law and not inconsistent with the opinion of this Court. EX PARTE SNOW. 1, 120 U.S. 274, 286-287, 7 S.Ct. 556, 30 L.Ed. 658 (1887)]

The United States Supreme Court in “*Snow*” indicated that an illegal restraint furnished upon a tainted background demonstrated an appropriate release from current imprisonment. The curriculum in “*Snow*” situated that charging multiple punishments on a **continuous offense** by suggesting that there was three (3) isolated incidents is an illegal sentence. In the trial court, “The Appellant” was charged with three (3) isolated acts in a three (3) count indictment. These acts can be proven **to be one continuous offense** and not three (3) isolated offenses. If a sentence based on multiple punishments is render illegal where the facts simultaneously gives the acknowledgment that there was a **continuous offense**, then, the Supreme Court of Ohio must

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

23/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

be "*Bound to the Supreme Law of the Land*" clause and ORDER the release of "The Appellant" from present confinement.

PROPOSITION OF LAW No. XXII:

COMPULSORY PROCESS concentrated in the United States Constitution.

[To have compulsory process for obtaining witness in his favor. UNITED STATES CONSTITUTION, AMENDMENT VI (1791)]

"The Appellant" had manifested his intentions to have Ms. Theresa Haire of the Montgomery County Public Defender's Office to be an expert witness at trial. The trial court prevented "The Appellant" from using Ms. Haire and therefore, the trial court committed a "Compulsory Process" violation.

PROPOSITION OF LAW No. XXIII:

COMPULSORY PROCESS by the United States Supreme Court.

[We hold that the Petitioner in this case was denied his right to have COMPULSORY PROCESS for obtaining witnesses in his favor because the State arbitrarily denied him the right to put on the stand a witness who was physically and mentally capable of testifying to events that he had personally observed, and whose testimony would have been relevant and material to the defense. The Framers of the Constitution did not intend to commit the futile act of giving to a defendant the right to secure the attendance of witnesses whose testimony he had no right to use. The judgment of CONVICTION must be REVERSED. It is so ORDERED. WASHINGTON V. TEXAS, 388 U.S. 14, 23, 87 S.Ct. 1920, 1925, 18 L.Ed.2d 1019, 1025 (1967)]

During trial, "The Appellant" had manifested his intentions to utilized Stand-By Counsel, Ms. Theresa Haire of the Montgomery County Public Defender's Office as an expert witness. The grandmother of "M.R.W" Miss Chery Mayes had testified while under oath that the accuser had inform her on June 7, 2019, that she married "The Appellant" after reciting their wedding vows and consummated the marriage in the basement. The State of Ohio stated that there is no such thing as a common-law marriage in the state of Ohio. Ms. Haire was to testified that there

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

is a thing called "*Federal Common-Law Marriage*." This would have been a defense for "The Appellant". As it stated in "*Roger*":

FEDERAL COMMON LAW MARRIAGE

[This Federal Common Law Marriage, so to speak, would make uniform the application of the Act and eliminate from its administration the adventitious element of whether the law of a particular State recognized the common law marriage. POWELL V. ROGER, 496 F.2d 1248, 1251 (9th Cir. 1974)]

The State Of Ohio kept making objections any time "The Appellant" stated "Federal Common Law Marriage" during the trial and the trial court continued to sustained that State of Ohio objections. Ms. Haire expert testimony would have undoubtedly been very relevant during the course of the trial. Therefore, the trial court committed a compulsory process violation against "The Appellant" during trial by denying Ms. Haire the ample opportunity of her testimony.

PROPOSITION OF LAW No. XXIV:

MISCARRIAGE OF JUSTICE by the United States Supreme Court

[We emphasized that the miscarriage of justice exception is concerned with actual innocence as compared to legal innocence, and acknowledged that actual innocence "does not translate easily into the context of an alleged error at the sentencing phase of a trial on a capital offense." SAWYER V. WHITLEY, 505 U.S. 339, 340, 112 S.Ct. 2514, 2519, 120 L.Ed.2d 269, 280 (1992)]

"M.R.W." maternal grandmother confirmed at trial that "M.R.W." and "The Appellant" recited their wedding vows, married each other, and committed to sexual relations on June 7, 2021. The miscarriage of justice element has been established in this judicial proceeding. The trial court along with the State of Ohio insisted that there is no such thing called a common law

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

marriage in Ohio. As cited in “Powel” there is a “Federal Common Law Marriage” which covers such marriage that take place within the United States.

PROPOSITION OF LAW No. XXV:

PEEFER OF OHIO MARRIED HER AT A COMMON LAW AGE

[The statutes of this State provide, that a female may enter into the marriage relation upon arriving at the age of sixteen years, but do not declare that a marriage by her under that age is void. Hence, where a female over the common law age of twelve years, though under the statutory age of sixteen years, enters into the marriage relation in this State, while such marriage would be voidable at the election of the infant, it is by no means void; And if she would continue to live and cohabit in such relation until after arriving at this statutory age, the marriage would become perfect and irrevocable without any further ceremony; If the female should die or not abandon such marriage before arriving at the statutory age, the marriage would become perfect and irrevocable without any further ceremony. PEEFER V. STATE, 42 OHIO APP. 276, 286-287, 182 N.E. 117 (1931 OHIO APP.)]

“M.R.W.” the State of Ohio star-witness confided to her maternal grandmother that she married “The Appellant”, they recited their wedding vows and consummated the marriage in the basement. Although there is no such thing as a common law marriage in the State of Ohio, there is however a Federal Common Law marriage.

PROPOSITION OF LAW No. XXVI:

EQUAL PROTECTION OF THE LAWS by the United States Constitution.

[Nor deny to any person within its jurisdiction the equal protection of the laws.

UNITED STATES CONSTITUTION, AMENDMENT FOURTEEN (1869)

“The Appellant” has a federal equal protection of the laws right to obtained the exact same rights as the “*Powell*” case in regards to a Federal Common Law Marriage and of the “*Peefer*” case in regards that at the State of Ohio did not make any marriage laws for females whom under the statutory age to marriage and by these circumstances, a marriage at the common law age is perfect.

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

PROPOSITION OF LAW No. XXVII:

MISCARRIAGE OF JUSTICE by the United States Supreme Court.

[This rule, or fundamental Miscarriage of Justice exception, is grounded in the 'equitable discretion' of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons. MacQuiggin V. Perkins, 569 U.S. 383, 392, 133 S.Ct. 1924, 185 L.Ed.2d 1019 (2013)]

“The Appellant” stated that he and the State Star-Witness married on June 7, 2019. The State Star-Witness confirmed the marriage before her maternal grandmother. The trial court prevented “The Appellant” from introducing evidence of the marriage by stating that there is no such thing as a common law marriage in Ohio. Meanwhile, “The Appellant” declared that the marriage between he and the State Star-Witness is a Federal Common Law Marriage as stated in the “Powell” case. Therefore, “The Appellant” is a victim in the trial court proceeding by having the status of a “Miscarriage of Justice.”

CONCLUSION

After examining this “*Merit Brief Of Appellant Mr. Derek Folley, Pro Se*”, “The Appellant” request that this Supreme Court Of Ohio **ORDERED** the following:

- (01) **DISMISS THE INDICTMENT** of case number “2019 CR 01878” in the Montgomery County Common Pleas Court;
- (02) **ORDER the RELEASE** of “The Appellant” from current confinement at the Ohio Department of Rehabilitation and Correction at:
GRAFTON CORRECTIONAL INSTITUTION
2500 SOUTH AVON BELDEN ROAD
GRAFTON, OHIO 44044;
- (03) **ORDER the RELEASE** of “The Appellant” **PROPERTY** from the:
DAYTON POLICE DEPARTMENT
MOTION FOR SUMMARY JUDGMENT OF APPELLANT

27/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

**335 WEST THIRD STREET
DAYTON, OHIO 45402;**

- (04) **REVERSED** the **FINAL JUDGMENT** of the Court Of Appeals Of Ohio Second Appellate District Court Of Montgomery County-**Case Number CA-29142 of June 11, 2021;**
- (05) **REVERSED** the **FINAL JUDGMENT** of the trial court in the Common Pleas Court Of Montgomery County (Ohio) –**Case Number “2019 CR 01878.”**
- (06) **VACATE** the **SENTENCE** of the trial court in the Common Pleas Court Of Montgomery County (Ohio) –**Case Number “2019 CR 01878.”**
- (07) **REVERSED** the **JUDGMENT** and **ENTRY** of the trial court **FINDING THE DEFENDANT GUILTY** on the **INDICTMENT** in the Common Pleas Court Of Montgomery County (Ohio) –**Case Number “2019 CR 01878.”**
- (08) **ORDER** the MONTGOMERY COUNTY PROSECUTOR’S OFFICE (OHIO) to **PAY** “The Appellant” for **LEGAL FEES** in the **AMOUNT OF \$43,000 work** committed to the prevailing in this adversarial proceeding.

RESPECTFULLY,



MR. DEREK FOLLEY, PRO SE #A-787-384
GRAFTON CORRECTIONAL INSTITUTION
LOCATION: B/6
2500 SOUTH AVON BELDEN ROAD
GRAFTON, OHIO 44044;
#2- C/O MS. LISA FOLLEY
POST OFFICE BOX 18174
FAIRFIELD, OHIO 45018;
#3-MAILING ADDRESS IN CALIFORNIA
6230 WILSHIRE BOULEVARD, SUITE 154
LOS ANGELES, CALIFORNIA 90048.

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

28/30

ARGUMENT FOR MOTION FOR SUMMARY JUDGMENT

PHONE: (937) 830-4796
EMAIL: DEREK FOLLEY@YAHOO.COM
INSTAGRAM: @DEREKBNINE
TWITTER: @DEREKBNINE

“PRO SE” LITIGANT FOR THE APPELLANT, MR. DEREK FOLLEY, PRO SE

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

29/30

CERTIFICATE OF SERVICE

A true and accurate copy of this "*Motion For Summary Judgment Of Appellant Mr. Derek Folley, Pro Se*" was sent to **MR. ANDREW THOMAS FRENCH, ESQ.** (0069384) of the Montgomery County Prosecutor's Office- Appellate Division by the Clerk of the Court of the Supreme Court on the date that this legal pleading was filed stamp by either **e-filing, United States Postal Mail** at the address of:

**MR. ANDREW THOMAS FRENCH, ESQ. (0069384)
MONTGOMERY COUNTY PROSECUTOR'S OFFICE
APPELLATE DIVISION
MONTGOMERY COUNTY COURT'S BUILDING
P.O. BOX 972
301 WEST THIRD STREET, 5TH FLOOR
DAYTON, OHIO 45422**
Or by **emailing** at: FrenchA@MCOhio.org.

RESPECTFULLY,

Mr. Derek Folley Pro Se

**MR. DEREK FOLLEY, PRO SE #A-787-384
GRAFTON CORRECTIONAL INSTITUTION
LOCATION: B/6/200
2500 SOUTH AVON BELDEN ROAD
GRAFTON, OHIO 44044;
#2- C/O MS. LISA FOLLEY
POST OFFICE BOX 18174
FAIRFIELD, OHIO 45018;
#3-MAILING ADDRESS IN CALIFORNIA
6230 WILSHIRE BOULEVARD, SUITE 154
LOS ANGELES, CALIFORNIA 90048.
PHONE; (937) 830-4796**

"PRO SE" LITIGANT FOR THE APPELLANT, MR. DEREK FOLLEY, PRO SE

MOTION FOR SUMMARY JUDGMENT OF APPELLANT

30/30