

IN THE SUPREME COURT OF OHIO

JAMES C. BOGAN  
PRO-SE-APPELLANT,

SV

RICHARD HALL  
WARDEN,

) CASE NO. 08-2331  
) FOR THE SUPREME COURT OF OHIO  
) OHIO FIFTH APPELLATE DISTRICT  
)  
)  
) CASE NO. 08-CA-94  
)  
)  
)  
)

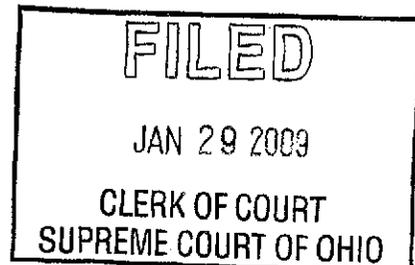
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MERIT BRIEF OF APPELLANT JAMES C. BOGAN

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JAMES C. BOGAN  
RiCI # 451-645  
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MANSFIELD, OHIO 44901

REPRESENTED  
NANCY ROGERS,  
THE COUNSEL OF RECORD  
RICHARD HALL



Affidavit of Indigency

In the Supreme Court of Ohio

**Affidavit of Indigency**

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

- 1) I am currently incarcerated at the Richland Correctional Institution and I am Appellant in this action;
- 2) I am unable to secure funds without substantial hardship to my family or me;
- 3) I have no assets whatever, either in property or bank account from which to obtain the monies to pay the cost of this case;
- 4) I earn \$20.00 per month in "State Pay" for prison work since the court began collecting monies for costs in this case and I have no other, therefore the current collection places an undue hardship on me to purchase the necessary toiletries that are not provided by this institution;
- 5) I hereby request the Court to stay further collection of costs until such time as I am released;
- 6) I understand that I must inform the Court of my financial situation should it change before the deposition of the case for which waiver of payment is being provided; and
- 7) I understand that if it is determined by the Court that waiver of costs or fine should not have been provided, I may be required to reimburse the county for cost of this action as provided.

Further The Affiant Sayeth Naught.

James C. Bogan  
James C. Bogan, Affiant

On this 13 day of January, 2009, before me the undersigned Notary Public personally appeared James C. Bogan, known to me or satisfactorily proven to be the person whose name was subscribed to the above Affidavit of Indigency in my presence, and who has acknowledged that he executed the same for the purposes expressed therein.

Rebecca Williams  
Notary Public for the State of Ohio

Seal:

**Rebecca Williams**  
Notary Public  
State Of Ohio  
My Commission Expires  
4 Mar 2013

**TABLE OF CONTENTS**

	Page
AFFIDAVIT OF INDIGENCY.....	i
SUBSTANTIAL CONSTITUTIONAL QUESTIONS.....	ii
TABLE OF AUTHORITIES.....	iii
STATEMENT OF FACTS.....	1
AGREEMENT IN SUPPORT OF PROPOSITION OF LAW.....	2,3,4,5,6,7,8,9,10,11,16
EXPLANATION OF WHY THIS CASE IS OF GREAT PUBLIC INTEREST AND INVOLVES FIVE PROPOSITION OF LAW NO. 1.....	3,8,9
WHERE TRIAL COURT USED A DATABASE OF RECORD AS INFORMATION OF A JURISDICTION THAT WAS CONTROLLED BY THE ADULT PAROLE AUTHORITY AS INFORMATION BARE FROM THAT DATABASE OF RECORD TITLED "INFORMATION OR INDICTMENT" UNDER CRIMINAL RULE 7, DOUBLE JEOPARDY OF THE U.S. CONSTITUTION V AND OHIO CONSTITUTION 1 AND 10 AND CRIMINAL RULES 2937.06 AND 2937.08.	
PROPOSITION OF LAW NO. 2.....	4,5,7,11
WHERE THE TRIAL COURT PRODUCED <del>AN</del> AFFIRMATION OF OATH AFFIDAVIT OF COMPLAINT TO VIA DIRECT INDICTMENT THAT WAS ATTACHED TO COURT RECORD WITH THE CLERK OF COMMON PLEAS, DENIED DUE PROCESS OF LAW, U.S. CONSTITUTION AMENDMENT V AND OHIO CONSTITUTION 1 AND 10.	
PROPOSITION OF LAW NO. 3.....	6,7
WHERE TRIAL COURT NEVER PRODUCED ON MATERIAL ELEMENTS OF PROOF OF ANY INJURED PARTY EVIDENCE DURING TRIAL. NO AFFIRMATION OF OATH AFFIDAVIT SHOWN ON RECORD, ACCORDING TO CRIMINAL RULE 2907.42. NO MEDICAL EVIDENCE ON REPORT, NO SHOWN OATH OF THE VICTIM'S MOTHER UNDER OATH OF LAW ON RECORD OF CLERK, "PROBABLE CAUSE" VIOLATION OF U.S. CONSTITUTION AMENDMENT IV AND OHIO. CONSTITUTION 1 AND 14.	
PROPOSITION OF LAW NO. 4.....	6,7
WHERE TRIAL COURT NEVER PRODUCED OATH AFFIDAVIT OF "COMPLAINT" AFFIRMATION OATH OF JURISDICTION UNDER LAW OF THE STATE WITH CLERK, NO AFFIDAVIT OF OATH OF NOTARY UNDER THE STATE LAW SHOWS ON RECORD WITH THE CLERK OF COURT OF COMMON PLEAS, NO RECORDING TO CIVIL RULES 11, 12(B), 1,2,3,4,5 AND 6.	
PROPOSITION OF LAW NO. 5.....	1,10
PLAIN ERROR 52(B) WHERE COUNSEL FAILED TO DO A REASONABLE INVESTIGATION AROUND BARE FALSE ALLEGATION IN REPORT OF FACTS SURROUNDING STATE CASE WHICH IS A VIOLATION OF APPELLANT'S SIXTH AMENDMENT RIGHT OF THE U.S. CONSTITUTION.	
CONCLUSION.....	16
PROOF OF SERVICE.....	17
APPENDIX.....	18
NOTICE OF WRIT OF HABEAS CORPUS NO. 08-2331.....	19
RICHLAND COUNTY FIFTH APPELLATE COURT JOURNAL ENTRY, NOV. 5, 2008.....	20
CUYAHOGA COUNTY COURT JOURNAL ENTRY, JULY 24, 2003 .....	21

## TABLE OF AUTHORITIES

	Page
STATE V. ATWOOD, 573, N.E. 2d 739.....	5, 13
STATE V. BERRY, 457 N.E. 2d 371 Syllabus.....	11
STATE V. BLATNIK, 475 N.E. 2d 371.....	10
STATE V. BROCK, 673 N.E. 2d 18.....	5, 11, 13
PEOPLE V. DAY, 2 Cal. Rpt. 2d 916.....	13
DELUES V. LORD, 578 2d (1996).....	14
STATE V. GREEN, N.E. 2d 354.....	5
STATE V. GOWDY, (Ohio 2001) St 387, 727 N.E. 2d 589.....	14
STATE V. GRIDER, Ohio CL. (8 <sup>TH</sup> Dist. App. 3d 323).....	5
STATE V. GRIGELL, 368, 455 N.E. 2d 1066.....	11
STATE V. HOLLIS, (Cuy. 1993) 19 Ohio App. 3d 371, 582, 3d 323.....	11
STATE V. HOOSE, 193 N.E. 2d 842.....	11
STATE V. HUNTER, Ohio 1d (2001) 144 3d 116.....	11
STATE V. MANN, 482 N.E. 2d 592.....	11
LEGREE V. STATE, (1998) 61 Ohio App. 3d 569-572.....	2, 11
MIDLAND V. SELLERS, (1989) 101B.A. 921.....	10
STATE V. MOORE, 78 N.E. 2d 365.....	2, 8, 10, 11, 13
STATE V. SMITH, Ohio St. 2d Citation Omitted.....	2, 4, 8
ROGERS V. STATE, 101 N.E. 2d 143.....	11
STATE V. SELLARDS, 478 N.E. 2d 781 at 5.....	11
STATE V. SMITH, 617 N.E. 2d 1106.....	10, 11, 13
STEWART V. STATE, 181 N.E. 2d 111.....	4
STATE V. WOOD, 357 N.E. 2d 1160.....	5

### STATE STATUTES:

C.R. 3,4,5,6.....	6, 13
C.R. 2967.01(M).....	1, 3, 4, 5, 7, 9
C.R. 2967.13.....	3, 4, 5, 7, 13
C.R. 2967.16.....	3, 5, 13
C.R. 2937.06.....	3, 6, 7
C.R. 2937.08.....	3, 13, 15
C.R. 2907.42.....	3, 6, 13
C.R. 2913.42.....	5
C.R. 2921.52.....	8, 9, 13
C.R. 2942.05.....	13
C.R. 103 A,2,3.....	6, 8, 13, 18
C.R. 52.....	1, 10, 15
C.R. 32.1.....	8, 10, 11, 12
C.R. 33 A,2,3.....	2, 6, 7, 10, 12, 14

### CIVIL RULES

C. 11.....	6, 7, 14
C. 12(B), 1,2,3,4,5,6.....	4, 6, 7, 12
C. 56(E), (F), (G).....	6, 7, 14

### FEDERAL AUTHORITIES

BAYLOR V. ESTELLE, 94 F 3d 1321 (9 <sup>TH</sup> Cir. 1996).....	14
NORRIS V. RISISY, 878 F 2d 1178 (9 <sup>TH</sup> Cir. 1989).....	13, 14
BLANTNIK V SUPRA V. STRICKLAND 466 U.S. 668.....	14

## STATEMENT OF THE CASE

This is an appeal by Appellant Bogan on a criminal case from a judgment of conviction upon a plea of guilty. Following the denial of defendant's motion to suppress evidence obtained in violation of his constitutional rights.

Appellant Bogan's case was instituted as a direct indictment via information ascertained by the Cleveland Police Department in its investigation.

Information of database of record that was under the control of the Adult Parole Authority in its jurisdiction over case and person from August 23, 1984. Until the Adult Parole Authority closed that database of record and jurisdiction over case and person for punishment of sentence or prison term by a Criminal Rule 2967.01(M) "Administrative Release" administrative convenience. Means of jurisdiction over a particular sentence or prison term by the Adult Parole Authority for administrative convenience. On August 29, 1991 the Adult Parole Authority closed that database of record forever; which was controlled by the State of Ohio.

The investigating officer bare introduced that closed database of record of that jurisdiction that was closed by the Adult Parole Authority to the Cuyahoga County Grand Jury and the fourteen count via direct indictment of that database of record of information against Appellant was filed with the Clerk of Courts of common Pleas on September 20, 2000.

Appellant was arrested and arraigned on January 8, 2003. He pleaded guilty on June 23, 2003. Plea Agreement with counsel; Richard Drucker, his attorney promised Bogan that if he accepted this plea agreement, he would receive five (5) years of probation on the Case No. CR-396492-ZA. Attorney Drucker informed Bogan to say nothing was promised to the defendant when asked by the judge.

Ms. Annie L. Thomas called the office of Attorney Drucker, and was informed by the secretary that Bogan would be out of jail by July 22, 2003. Plain error under C.R. 32.1, Amendment Six proof of inefficient counsel in this case.

An affidavit is attached in this memorandum in support as Exhibit (C), when no other party submitted any affidavit of Ms. Thomas' knowledge.

Enclosed in the Habeas Corpus, Appellant Bogan produced sixteen Exhibits of proof of Courts' documents of record documenting proof of conflict and defect in this case. All where the State of Ohio used a closed database of record to bring the case against Appellant.

Furthermore, counsel failed to a complex of professional duties into investigation in State evidence that the case called in this, which was the via direct indictment, bill of particulars, and Criminal Rule 404(B), counsel failed to investigate into the facts and material evidence in the State's

case. Including; (1) having failed to interview potential witnesses; (2) failed to follow up on potentially exculpatory evidence; (3) failed to conduct a reasonable investigation into the facts surrounding the case, and; (4) failed to present any mitigating evidence at the sentencing hearing which would establish either a "prima facia case for inefficient assistance" or either "the existence of a manifest injustice" (see: State v Smith, Ohio ST 2d Citation Omitted); and Criminal Rule 32.1

Also see: Legree v State (1998) 61 Ohio App. 3d 568, 572. Must be supported by sufficient, credible, or probative evidence. The Habeas Corpus shows two documents in Case No. CR-396492-ZA which is the via direct indictment stating the crime was committed on March 2, 1994 through March 1, 1997. And which the police report shows the dates June 1, 1994 until June, 1996.

The Exhibits (2) and (6) do not meet on date and charges, the via direct indictment are completely from explanation under Paragraph 2 of Exhibit (5) of the Habeas Corpus filing, which is a legal brief page of the Brief in Opposition written by Assistant Prosecutor Kristen of Cuyahoga County.

Therefore Appellant Bogan filed his Habeas Corpus to the Fifth District Court. Which he overwhelmingly demonstrated that he has been deprived due process of law where the three judges abused their discretion by basing their decision to deny Appellant Bogan habeas corpus upon the Appellant Bogan's failure to attach exhibit of Commitment paper(s) to his petition pursuant to App. R. 26(A), and the Fifth and Fourteenth Amendments of the U.S. Constitution, and Articles 1, 10, and 16 of the Ohio Constitution.

The Via Direct Indictment, Bill of Particulars, Criminal Rule 404(B) are the only documents the State used as evidence in this case. The via direct indictment and bill of particulars derive from the same database of record that was jurisdiction controlled by the Adult Parole Authority. The C.R. 404(B) reads the statutes and statutory language of the Ohio revised Code.

The Police Report No. D1441 is not signed properly; there is no affidavit attached; there are no witnesses; there is no victim impact statement; there is no sworn oath of the mother; nor any signature under oath of law attached.

These are the Exhibits in the Habeas Corpus; (2), (3), (4), (7), (8), (10) and (11). All of these are documents of Court Documents of Record. Which all refer back to a database of record that was once under jurisdiction of the Adult Parole Authority, which is still controlled by the State of Ohio.

Appellant Bogan prays this Honorable Court views these documents on the conflict and defect in this criminal case on merit of fraudulent documents and all Constitutional issues and law of due process.

## PROPOSITION OF LAW

### Exhibit (1)

A printout of a database of record which was controlled by the Adult Parole Authority which had jurisdiction over Case no. CR-~~896492~~92-ZA and the person from August 23, 1984. The Adult Parole Authority closed the database of record by terminating the jurisdiction over that case and person finally on August 29, 1991 by administrative convenience by removing that database of record from that jurisdiction of the obligation in punishment of sentence finished complete forever on August 29, 1991 under Criminal rule 2967.01(M), 2967.13 and 2967.16 in that one case.

Appearance docket in Case No. CR-188682-ZA does not show when Adult Parole Authority took control over that database of record in jurisdiction in that case. But the State of Ohio shows a violation of that database of record of that closed jurisdiction when the State transferred that closed database of record back into appearance docket that was part of closed database of record as a posted date of other cases at the bottom of page 1 of that appearance docket that only had closed case.

### PROPOSITION OF LAW NO. 1

Appellant Bogan was violated by "Double Jeopardy", U.S. Constitution Amendment V, and Ohio constitution 1 and 10 and Criminal Rules 2937.06 and 2937.08 which Exhibit (1) already explained the correct dates that the database of record was closed and terminated by the Adult Parole Authority. Which the Appearance Docket does not show the information of the former jurisdiction of the database of record that was under control by the Adult Parole Authority. But the Appearance Docket has an original posted date of other cases, which the Adult Parole Authority only had the one case.

### Exhibit (2)

A legal Appearance Docket does not show when the Adult Parole Authority closed that database of record on Case No. CR-188682-ZA. There is conflict and defect in the date Appellant Bogan entered prison and the appeal to the release from prison. Exhibit (1) shows the correct dates. Therefore. The error and conflict and defect are where appeal stated Affirmed on August 10, 1985. There is no shown date appeal was filed and no appeal number. Therefore, Exhibit (2) does not show date when Adult parole Authority took control over database of record over jurisdiction in that case.



## PROPOSITION OF LAW NO. 2

Appellant Bogan was denied "Due Process of Law" U.S. Constitution Amendments V and XIV, and Ohio Constitution 1 and 16. Exhibit (1) Already correct dates. Exhibit (2) Shows an original posted date of other cases in appearance docket that the database of record was under jurisdiction of the Adult Parole Authority. That database of record of the Adult Parole Authority only had one case in their jurisdiction over the person and the case in 1984.

### Exhibit (3)

A legal Appearance Docket from Case No. CR-188682-ZA shows a terminated jurisdiction database of record by the Adult Parole Authority on August 29, 1991. Therefore, the State of Ohio transferred a closed database of record that was a terminated jurisdiction case back into the appearance docket as an original posted date of other cases on the new case; CR-396492-ZA. Since Exhibit (1) already shows that jurisdiction and database of record by a Criminal Rule 2967.01(M) explains that. Therefore, the error and conflict and defect are where the appeal stated a date that appeal was affirmed on August 10, 1985. But it doesn't show a date that appeal was filed nor an appeal number. Exhibit (2) does show another jurisdiction as Civil Rule 12(B) (1), (2), (3), (4), (5) and (6) shows the date when Adult Parole Authority took control over that database of record jurisdiction of Case no. CR-188682-ZA and does not show the database of record date of terminated jurisdiction by the Adult Parole Authority that was controlled by them in the 1984 case, which was completely terminated.

Furthermore, the appearance docket shows a terminated jurisdiction by the Adult Parole Authority at the bottom of page (1) as originally post dated to the case. The State of Ohio used a closed database of record terminated jurisdiction that was controlled by the Adult Parole Authority in both appearance dockets as original posted date of other cases. Since Exhibit (1) and Criminal Rule 2967.01(M) already explain that the Adult Parole Authority has that database of record closed, and terminated that jurisdiction forever in 1991.

Therefore, Exhibit (3) Appearance Docket in Case No. CR-396492-ZA does not meet the requirement of Criminal Rule 3 Complaint governing complaint, which was held to constitute the basic charging instrument in all criminal proceedings in the State of Ohio. And with the absence of "such filing" of sufficient complaint there can be no trial, conviction, or punishment for a crime without a formal accusation. The court acquired no jurisdiction. See: Stewart v State, 101 N.E. 143.

Therefore, the State of Ohio used that database of record that was closed and jurisdiction that was terminated by the Adult Parole Authority. Furthermore, it is shown that an original posted date of other cases that was expired closed jurisdiction and terminated is the reading in the via direct indictment. Only reading a closed database of record and expired jurisdiction that was terminated by the Adult Parole authority in 1991 forever. The via direct indictment only read the case number and sentencing date of an expired case and statutes and statutory language of the Ohio Revised Code, which shows that the State of Ohio was in violation of Criminal rule 2967.01(M), 2967.13 and 2967.16, a jurisdiction that was controlled and terminated by the Adult Parole Authority for Case No. CR-188682-ZA

#### PROPOSITION OF LAW NO. 2

Appellant Bogan was denied "Due Process of Law", U.S. Constitution Amendments V and XIV and Ohio constitution 1 and 10 where the State of Ohio entered Criminal Case no. CR-396492-ZA. At the arraignment under criminal Rule 7, "Information of Indictment" using information of a database of record of a closed jurisdiction that was controlled by the Adult Parole Authority over case and person and jurisdiction from August 23, 1984. And the Adult Parole Authority closed that jurisdiction database of record under administrative convenience on August 29, 1991. Exhibit (2) shows an original posted date of other cases which were transferred into Exhibit (3), which shows conflict and defect in the whole proceeding.

#### Exhibit (4)

The via direct indictment used Criminal rule 7, as complaint, information or indictment. Therefore the via direct indictment only reads a date set for sentencing and Case No. CR-188682-ZA controlled by database of record by Adult Parole Authority from August 23, 1984. The Adult parole Authority finished and closed that database of record and terminated jurisdiction over a particular sentence of prison term forever on August 29, 1991. Exhibits (1), (2) and (3) already prove that the State of Ohio has violated Criminal Rules 3 through 6. Therefore the via direct indictment is proof that Case no. CR-396492-ZA has no evidence that a crime was committed. The via direct indictment is a violation of Criminal rule 2913.42(A), as well as Criminal Rule 7, even though the court assumes it was acting on behalf of Appellant Bogan. See: State v Brock, N.E. 2d 18; State v Wood, 573 N.E. 2d 1106; State v Green, 548 N.E. 2d 354; State v Atwood, 573 N.E. 2d 739; State v Grider, Ohio App. CT 8<sup>th</sup> Dist. (2001) and Ohio App. 3d 323, 760 N.E. 2d 40.

Furthermore, rules of criminal procedure chronological designation are to be strictly applied in a step by step procedure and are to follow Criminal Rule 3 in filing of an initial charging instrument to bring forth formal charges. According to Criminal Rule 4 for an arrest warrant or summons to be brought there has to appear from the complaint that there is probable cause that an offense has been committed and that the defendant committed it. And in Criminal Rule 4 at the initial appearance, the defendant shall be permitted to read the complaint or a copy thereof to be informed on the nature and cause charged against him. And according to Criminal Rule 6 with the summoning of a Grand Jury, an indictment may be found with the concurrence of seven or more jurors. According the Exhibit (1), the Adult Parole Authority had closed that database of record and terminated the jurisdiction in Case No. CR-188682-ZA on August 29, 1991 by means of administrative convenience forever. Exhibits (2) and (3) show that the Adult Parole Authority had closed that database of record and terminated the jurisdiction in Case No. CR-188682-ZA on August 29, 1991 by means of administrative convenience forever in both appearance dockets as original posted date of other cases. Which reads totally different from Criminal Rule 3.

#### PROPOSITION OF LAW NO. 4

Appellant Bogan was denied "Probable Cause" where no affirmation of oath shows on record. As requirements to Civil Rule 11, and Criminal Rules 2907.42, 56(E), (F), (G), 33(A),(2),(3) and violated U.S. Constitution Amendment IV and Ohio Constitution 1 and 14.

Exhibit (5)

Kristen L. Sobeiski, Bar No. 1523 states in his 'Brief of Opposition' to dismiss Appellant Bogan's motion to withdraw his guilty plea. There was newly discovered evidence with the police report. Since Assistant Prosecutor Sobrieski states that Case No. CR-396492-ZA arises from the police report in his brief which was page 3, paragraph 2 of a legal page of paper deriving from the prosecutor's office of Cuyahoga County.

#### PROPOSITION OF LAW NO. 4

Police Report No. D1441, written by Detective Laura Parker, Badge No. 1819, which is the charging instrument in Case No. CR-396492-ZA. Police report shows violation of Criminal Rules 33(A), (2), (3) and Civil Rules 11, 12(B), (1), (2), (3), (4), (5), (6) and 56(E), (F), (G) and U.S. Constitution Amendment IV and Ohio Constitution 1 and 10.

Exhibit (6)

Police Report No. D1441, written by Detective Laura Parker, Badge No. 1819, which is the charging instrument in Case No. CR-396492-ZA. Police report shows violation of Criminal Rules 33(A), (2), (3) and Civil Rules 11, 12(B), (1), (2), (3), (4), (5), (6) and 56(E), (F), (G), dated July 10, 2000. The report is not signed by the preparer; which meets the requirements per Criminal Rule 2921.52, 4(b), 111(C), (B), and 4, thereby making this claim invalid. Furthermore, there is no signature; no notary; no affidavit attached; no victim impact statement attached; no witness; no medical report; no psychological report; no expert to claim at trial and no evidence surrounding the false allegation in the report. Therefore, Exhibit (4), the via direct indictment is proof that it does not derive from the Police Report No. D1441. The starting instrument shows a totally different date of March 2, 1994 through March 1, 1997. Also Exhibits (2), (3), and (10) show just what the via direct indictment lists as a date set for sentencing for Case No. CR-188682-ZA in 1984. Therefore, the Adult Parole Authority had closed that database of record and terminated the jurisdiction in Case No. CR-188682-ZA on August 29, 1991 by means of administrative convenience forever under Criminal Rules 2967.01(M), 2967.13, and 2967.16. Therefore Exhibits (2), (3), (7), (10), and (11) are all proof that the via direct indictment only reads the Adult Parole Authority had closed that database of record and terminated the jurisdiction in Case No. CR-188682-ZA on August 29, 1991 by means of administrative convenience forever.

PROPOSITION OF LAW NO. 3

Appellant Bogan was denied "due Process of Law", U.S. Constitution Amendments V and XIV and Ohio constitution 1 and 16, where the Appeal No. 84468 appealing Case no. CR-396492-ZA which returned by the Eighth District Appellate Court on a nunc pro tunc phrase, which means now for then. And that nunc pro tunc Journal Entry No. 374773 on June 30, 2005 referred from the Adult Parole Authority had closed that database of record and terminated the jurisdiction in Case No. CR-188682-ZA on August 29, 1991 by means of administrative convenience forever. Exhibit (2) shows original posted date of other case which was transferred to this case. And Exhibit (3) which shows conflict and defect in the whole proceeding.

Exhibit (7)

The nunc pro tunc Journal Entry No. 374773 on June 30, 2005 proves the State of Ohio used a closed database terminated jurisdiction formerly controlled by the Adult Parole Authority. So that Appeal referred to a terminated case that has nothing to do with this one.

#### PROPOSITION OF LAW NO. 1

Appellant Bogan was denied by "Double Jeopardy", U.S. Constitution Amendment V and Ohio Constitution 1 and 10, where the Eighth District Appellate Court's decision in that appeal shows a nunc pro tunc phrase showing conflict and defect in their decision which recommended New Journal Entry No. 3533430 on August 30, 2005 which is the same as a fraudulent document, which meets the same requirements as Criminal Rule 2921.52, a sham legal process.

#### Exhibit (8)

The Eighth District Court recommended a New Journal Entry No. 5333430 on August 30, 2005 which proves that the State of Ohio never could have had jurisdiction over Case No. CR-396492-ZA. This shows conflict and defect in Appeal No. 84468. This is a sham legal process using fraudulent documents.

#### PROPOSITION OF LAW NO. 1

A document which the jurors returned with their verdict in Case No. CR-188682-ZA that was signed by Thomas Matia on May 15, 1984. This is the first document that arises in Case No. CR-188682-ZA which does not show the date when the lower Court of Common Pleas transferred those records to the Adult Parole Authority database of record. Exhibit (1) shows the correct dates that the Adult Parole Authority took over that database of record and jurisdiction over case and person.

#### Exhibit (9)

Journal Entry No. Vol. 585, 289, jurors verdict from Case No. CR-188682-ZA in 1984 signed by Thomas Matia on May 15, 1984. Of which does not show the date the Adult Parole Authority took control over jurisdiction of case and person in Case No. CR-188682-ZA.

#### PROPOSITION OF LAW NO. 1

Appellant Bogan's sentencing was set for the date of Journal Entry No. Vol. 569, p.c. 486 which is the second document that arises from Case No. CR-188682-ZA signed by Thomas Matia on May 15, 1984, which shows no further proceeding in that Journal Entry No. Vol. 585, p.c. 289. This had the same information as Exhibit (4) and the via direct indictment as information. Exhibit (2) does not show when the record was transferred from the Court of Common Pleas to the Adult Parole Authority which shows conflict and defect in the criminal process, which Exhibit (1) has already explained. So Exhibits (2), (3), (9), and (10) do not have the correct date that Appellant Bogan entered prison.

Exhibit (10)

In the Sentencing Entry Vol. 569, p.c. 485, the sentencing date was set for August 10, 1984 and recorded and signed by Thomas Matia on May 15, 1984. This is a record according to Criminal Rule 22, however, Exhibit <sup>(10)</sup> also shows in Case No. CR-188682-ZA actually like Exhibit (4), which reads proof of jurisdiction that was a closed database of record and terminated by the Adult Parole Authority. So as in Criminal Rule 2967.01(M), Administrative Convenience Release means a termination over a particular sentence or person term by the Adult Parole Authority.

PROPOSITION OF LAW NO. 1

Appellant Bogan was violated by "Double Jeopardy" in Images Docket Sheet No. CMEQ617 dated December 6, 2007, time 13:30, shows conflict and defect in an I.D. number that was signed by the database of the Jurisdiction of the Adult Parole Authority in Case No. CR-188682-ZA. The database of record information formerly controlled by the Adult Parole Authority over the jurisdiction over case and person at the time when they had control over the jurisdiction of that by the Adult Parole Authority.

Exhibit (11)

A legal clerk Image Docket Sheet No. CMEQ617, dated December 6, 2007, time 13:30, has Case No. CR-396492-ZA also using an I.D. number that was with a closed database of record and terminated by the Adult Parole Authority according to Criminal Rule 2967.01(M) which was terminated forever on August 29, 1991. The number in the Images Document shows conflict and defect when using the digits 754-43 in Case No. CR-396492-ZA. This is the same as fraudulent documents.

Exhibit (12)

A burglary Report Case No. 1999.000.35388 made by Ms. Carolyn Graham to the Cleveland Police Department on June 6, 1999 with Investigator Earl Brown. Appellant Bogan was accused as a suspect in the burglary at the same address. The false allegations did not work in the burglary because Ms. Graham and Bogan were having problems with a sexually transmitted disease. Ms. Graham was examined and was carrying the disease.

Exhibit (13)

Affidavit attached where Appellant Bogan was given a clean bill of health. Bogan broke off his relationship with Ms. Graham on October 31, 1997. If a crime had been committed, Ms. Graham would have brought it up before the year 2000.

## PROPOSITION OF LAW NO. 5

Appellant Bogan was denied his 6<sup>th</sup> Amendment Right, plain error under Criminal Rule 52(B), which Exhibits (2),(3), (4), (7), (8), (10), and (11) prove that the State of Ohio violated Criminal Rules 3,4,5, and 6. Appellant offered his new counsel these Exhibits in his Memorandum in Support, she sated that if they were not produced at trial they could not be entered in appeal, which proves inefficient assistance of counsel in this case. See: State v Moore, 78 N.E. 2d 365, proper rule in which prohibits using a person's character to prove conduct is based on reliance that damages; State v Smith, 618 N.E. 2d 1160. Furthermore, counsel failed to a complex of professional duties in investigating; Exhibits (4) (A), (B), for facts and merit of evidence in State's case. Which including (1) having failed to interview potential witnesses; (2) failed to follow-up on potentially inculpatory evidence; (3) failed to conduct a reasonable investigation into the facts surrounding the case; (4) failed to present any established mitigating evidence at the sentencing hearing, which would establish either (1) a prima facie for inefficient assistance of counsel, or (2) the existence of a manifest injustice, see: State v Smith ST, 2d Citation Omitted and Criminal Rule 32.1

New appeal counsel, Sharon L. McDell filed appeal in Case No. CR-396492-ZA without any Exhibits applying to the case. Counsel only used Criminal Rule 32.1 and manifest injustice. The appeal was denied on August 30, 2006. Appellate Court's decision was lack of jurisdiction. Therefore, Appellant Bogan filed a motion to withdraw guilty plea on November 26, 2007 to the which the lower court denied on December 14, 2007. Appellant Bogan filed motion no. 40758 to the Eighth District Appellate court on April 4, 2008. Appeal No. 91170 to motion no. 40758 to the Eighth District Appellate Court on April 4, 2008, Appeal No. 91170 to appeal journal entry. That appeal was dismissed on April 9, 2008 under [app] Rule 4(A). Appellant Bogan filed a Notice of Appeal to the Supreme Court of Ohio on Appeal No. 91170 to journal entry motion no. 40745 with these exhibits of fraudulent document and violating his substantial constitutional question and rights on April 9, 2008.

### Exhibit (14)

Letter of Dismissal from Deputy Clerk Joella. Appellant Bogan filed that same information back to the Supreme Court of Ohio.

### Exhibit (15)

Letter of Dismissal from Deputy Clerk Thomas. Appellant Bogan filed a Delayed Appeal to the Supreme Court of Ohio.

Exhibit (16)

Letter to the Supreme Court of Ohio

Appellant Bogan tried all proceedings according to Criminal Law that exists as law in remedy to try to get a court to look at these fraudulent documents in this criminal case. It is shown that he has been denied his due process of law, double jeopardy and violation of his constitutional rights. See: Re, Van Hoose, 103 N.E. 2d 42, the effect of jurisdiction to the subject in criminal case will stay proceeding in whatever stage of the proceeding it is discovered and jurisdiction is essential to a valid judgment. See: Rogers v State, 101 N.E. 2d 143, and if entered without jurisdiction it is void. See: State v Brock, 675 N.E. 2d 18; State v Grigell, 368, 455 N. E. 2d 1066; State v Sellards, 478 N.E. 2d 781; State v Berry, 457 N.E. 2d 371 syllabus; State v Hunter, 1d Ohio (2001) 144 Ohio app. 3d 116, 759 N.E. 2d 809; State v Mann, 482 N.E. 2d 592; State v Moore, 78 N.E. 2d 365; State v Smith, 617 N.E. 2d 1160 and State v Hollis, (Cuy. 1983) 91 Ohio app. 3d 371, 352 N.E. 2d 935.

Therefore Appellant Bogan contends that a complaint must be filed as a safeguard of one's constitutional right. But on the contrary, the prosecutor chose bare to use a closed database of record that was terminated by the Adult Parole Authority from August 29, 1991 from Case No. CR-188682-ZA.

### PROPOSITION OF LAW NO. 3

Appellant Bogan was denied "Due Process of Law", U.S. Constitution Amendments V and XIV and Ohio Constitution 1 and 16. Appellant Bogan tried all proceedings according to Criminal Law that exists as law in remedy to try to get a court to look at these fraudulent documents in this criminal case. Appellant Bogan has overwhelmingly demonstrated that he has been deprived due process of law. Appellant Bogan has also demonstrated that these fraudulent documents are documents of Court Records in four sections as they arise in this case.

Section 1:

The starting instrument in Case No. CR-396492-ZA was the Via Direct Indictment as Exhibit (4) and a Bill of Particulars as Exhibit (A) and Criminal Rule 404(B) as Exhibit (B). The via direct indictment bare reads a date that was set for sentencing and a Case No. CR-188682-ZA as the State's essential evidence in this case, which all three documents bare run parallel to the date in the via direct indictment, which bare referred back to a closed dated record that was under control by the Adult Parole Authority which is controlled by the State. Date of crime March 2, 1994 through March 1, 1997.

## Section 2:

The police report bare shows totally different from the via direct indictment which shows different date and time. The date of the police report is June 1, 1994 until June 1, 1996. Police Report No. D1441, written by Det. Laura Parker, Badge No. 1819 dated July 10, 2000 bare no affirmation of oath of affidavit, complaint shows on record, which also shows a violation of Civil Rule 11; is not signed properly; does not meet the requirements of Civil Rules 12(B), 1, 2, 3, 4, 5, or 6; no affidavit of victim impact statement attached; no sworn signature of the mother of the victim under oath by law of Ohio attached; and Criminal Rules 33(A), (2), and (3); no oath of complaint on record with the Clerk of Courts of Common Pleas Court. All of which proves Appellant was denied probable cause, U.S. Constitution Amendment IV and Ohio Constitution 1 and 14 where no affirmation of oath shows on record.

## Section 3:

Did the State of Ohio used these documents of record as documentation in this trial of Case No. CR-396492-ZA which are Exhibits (2), (4), (7), (8), (9) and (10)? All of these documents refer back bare to a closed database of record to a jurisdiction that was controlled by the Adult Parole Authority and was terminated over the case in appearance docket in Exhibit (2) in the case of 1984. The Adult Parole Authority closed that database of record over the person and case by administrative convenience in 1991 forever. Appearance Docket, Exhibit (2) shows where the State of Ohio bare chose to use an original posted date of other cases at page 1. The bottom of the page also places Case no. CR-396492-ZA with that closed database of record controlled by the Adult Parole Authority with a terminated jurisdiction from 1991 forever.

## Section 4:

Appellant Bogan has also overwhelmingly demonstrated these fraudulent documents as documentation of Court Record in the Richland County Appellate District Court. Appellant Bogan has tried every available remedy in this criminal proceeding for this Case No. CR-396492-ZA to find justice. Appellant Bogan prays this honorable Court view each Court Docket the State used as their evidence, which is these Exhibits (2), (3), (4), (7), (8), and (10). All of these documents refer back bare to a closed database of record to a jurisdiction that was controlled by the Adult Parole Authority and was terminated over the case and person forever in 1991. Appellant Bogan was denied Due Process of Law, U.S. Constitution Amendments V and XIV and Ohio Constitution 1 and 16. And also shows a violation by Double Jeopardy, U.S. Constitution Amendment V and Ohio Constitution 1 and 10.

Appellant Bogan has tried every available remedy in this criminal proceeding for this Case No. CR-396492-ZA to find justice. Appellant Bogan prays this honorable Court view these legal documents of record of the Courts on the law merits of constitutional issues, and errors of the law of Due Process of Law. Also on the bare evidence in these documents of record that the three judges states were bare allegations on his application in his Habeas Corpus. Which shows the three judges abused their discretion by basing their decision to Appellant Bogan's Habeas Corpus because of failure to attach exhibit of the commitment paper, which is not the issue in this case. It is bare on the merit of law arising on the issues in articles or accessory court documents of record which refer back bare to a closed database of record to a jurisdiction that was controlled by the Adult Parole Authority and was terminated over the case and person forever in 1991. Appellant Bogan was denied Due Process of Law, U.S. Constitution Amendments V and XIV and Ohio Constitution 1 and 16. And also shows a violation by Double Jeopardy, U.S. Constitution Amendment V and Ohio Constitution 1 and 10.

Furthermore, Appellant Bogan has overwhelmingly demonstrated that he has been deprived due process of law and his right to a fair trial by the said investigating officer filing the charging instrument of complaint. Hence, the conviction and sentence of Appellant Bogan must be adjudicated. See: State v Brook, 675 N.E. 2d 18 and State v Atwood, 573 N.E. 2d 739. Therefore in Criminal Rule chronological designation they must adhere strictly to a step by step procedure. And as Criminal rule 3, appearance docket, Exhibits (2) and (3) already prove that the State of Ohio used a case (CR-188682-ZA0 that the Adult Parole Authority had control over that database of record and jurisdiction from August 23, 1984 through August 29, 1991 when at that time was closed and jurisdiction was terminated forever.

Therefore, Exhibits (2), (3), (4), (7), (8), (9), and (10) prove that the State of Ohio violated Criminal Rules 3, 4, 5, 6, 2937.06, 2937.08, 2967.01(M), 2967.13, 2967.16, 2921.52, 2942.05, and 2943.06. All of these rules refer back to a bare database of record that was closed forever in 1991.

Therefore, the State of Ohio had no essential evidence in Case No. CR-396492-ZA, nor complaint to support or claim of injured party evidence. See: State v Moore, 78 N.E. 2d, the proper rule which prohibits using a person's character to prove conduct is based on reliance upon danger of prejudice, See: State v Smith, 617 N.E. 2d 1160; People v Day, (2 Cal. Rptr. 2d 916); Norris v Risley, 878 F. 2d 1178 (9<sup>th</sup> Cir. 1989)

Accordingly, the State has failed to produce any evidence of an injured party or that the Appellant has committed the offense in question, nor probable cause that the State of Ohio had sufficient claim. See: Blatnik supra of Strickland, 466 U. 668; Baylor v Estelle, 94 F. 3d 1321 (9<sup>th</sup> Cir. 1996). In a rape case because the attorney did not understand the obvious exculpatory potential of semen evidence. See also: Delues v Lord, 578 2<sup>nd</sup> Cir.(1996) and State v Gowdy, Cuy. 2001 Ohio St. 3d 387, 727 N.E. 2d. Attorney did fully understand the defense of extreme emotional disturbance. Therefore Appellant Bogan has been denied due process of law through the entire criminal proceeding which is guaranteed by the U.S. Constitution Amendments V and XIV and Ohio Constitution 1 and 16. Therefore, these Exhibits as documentations will prove for the record that the State of Ohio used as original posted date of other cases and that the database of record was terminated of its jurisdiction over person and case under Criminal Rule 2967.01(M) Administrative Release terminated forever by the Adult Parole Authority forever in 1991.

Furthermore, these Exhibits show conflict and defect to what Exhibit (6) reads. Exhibit (6) was supported to be the starting instrument in Case No. CR-396492-ZA but it has no signature, no notary, no affidavit, no evidence and no witness which does not meet the requirements of Criminal Rules 3, 33(A), 2, 3 and Civil Rules 11, 12(B), 1, 2, 3, 4, 5, 6, and 56(E), (F), and (G). There is a genuine interest as to the amount of damage in such a criminal proceeding in this criminal action as unjust.

Exhibits (2), (3), and (10) all show a closed database of record jurisdiction that was controlled by the Adult Parole Authority. That database of record was closed and the jurisdiction over case and person for punishment in Case No. CR-188682-ZA was terminated forever on August 29, 1991.

Therefore, the State of Ohio violated the criminal proceedings in this case, and Criminal Rules supercede all statutes and ordinances in the Ohio Revised Code. Therefore, Appellant Bogan has produced all Exhibits and Court Record Documentation showing conflict and defect in this case. According to Civil Rules 11, 12(B), 1, 2, 3, 4, 5, 6 and 56(E), (F) and (G) with all fraudulent documentation from the court, therefore, Appellant Bogan requests relief for the foregoing reason(s).

All documentation in this case bare refers to a closed database of record that was the jurisdiction that was terminated by the Adult Parole Authority as a terminated case in 1991.

Appellant Bogan requests that he be relieved immediately and discharged from such fraudulent documentation, and incompetent and illegal confinement.

Ohio Revised Code Section 2921-52 defines “Using a sham legal process” as used in this section:

- (1) “Lawfully issued” means adopted, issued or rendered in accordance with the United States Constitution, the constitution of a State, and the applicable statutes, rules, regulations, and ordinances of the United States, a state, and the subdivisions of a state.
- (2) “State” means a state of the United States, including without limitation, the state legislature, the highest court of the state that has statewide jurisdiction, the offices of all elected state officials, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state.
- (3) “Sham legal process” means an instrument that meets all of the following conditions:
  - (a) It is not lawfully issued;
  - (b) It purports to do any of the following:
    - (i) To be a summons, subpoena, judgment, or order of a court, a law enforcement officer, or a legislative or administrative body;
    - (ii) To assert jurisdiction over or determine the legal or equitable status, rights, duties, powers or privileges of any person or property;
    - (iii) To require or authorize the search, seizure, indictment, arrest, trial, or sentencing of any person or property;
  - (c) It is designed to make another person believe that it is lawfully issued.

The statute further provides that no person shall knowing the sham legal process to be sham legal, do any of the following:

- (1) Knowing issue, display, deliver, distribute, or otherwise use sham legal process;
- (2) Knowing use sham legal process to arrest, detain, search, or seize any person or the property of another person;
- (3) Knowing commit or facilitate the commission of an offense by sham legal process;
- (4) Knowing commit a felony by using sham legal process.

## CONCLUSION

For all the foregoing reasons, Appellant Bogan prays that this Honorable Court will reverse the Fifth District Appellate Court's decision of judgment in its decision on merit constitutional issues and constitutional law, and conflict, errors and defect among the fraudulent documents of Court Record in the proceedings of this criminal case.

Appellant Bogan prays this Honorable Court view the documents of Court Record as they are listed in this Case No. CR-396492-ZA where it arises from the beginning with the Via Direct Indictment as Exhibit (4), and the Bill of Particulars as Exhibit (A) and Criminal Rule 404(B) as Exhibit (B), of which these last two documents were not attached to the Habeas Corpus. But these documents are the only evidence that was at trial in the State's case as essential evidence in this case, which reads the date of the via direct indictment and statutes and statutory language of the Ohio Revised Code.

Of which, referred back to a prior arrest and conviction from a database of record that was under control and jurisdiction of the Adult Parole Authority from August 23, 1984 and then closed by administrative convenience over the case and person and punishment of sentence of particular sentence or prison term on August 29, 1991 forever.

Which the State of Ohio chose to use that database of record information that was terminated by the Adult Parole Authority. They transferred the information into the appearance docket at page 1 of Case No. CR-~~396492~~-ZA. Which the via direct indictment lists the same database of record as the reading in sentencing date of Case No. CR-188682-ZA, which is proof the terminated database was used in its reading stating the crime was committed March 2, 1994 through March 1, 1997.

Appellant Bogan has overwhelmingly demonstrated these fraudulent documents as documentation of Court Record in the Richland County Appellate District Court. Appellant Bogan has tried every available remedy in the criminal proceedings of this Case No. CR-396492-ZA to find justice. Appellant Bogan prays this Honorable Court view each Court Docket the State used as their evidence, which is these Exhibits (2), (3), (4), (7), (8), and (10). All of these documents refer back to a closed database of record of a jurisdiction that was controlled by the Adult Parole Authority and was terminated over the case and person forever in 1991. Appellant Bogan was denied Due Process of Law, U.S. Constitution Amendments V and XIV and Ohio Constitution 1 and 16. And also shows the violation of Double Jeopardy, U.S. Constitution Amendment V and Ohio Constitution 1 and 10.

**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the foregoing appeal to the Supreme Court of Ohio was mailed to William D. Mason, Cuyahoga County Prosecutor at the Justice Center, 9<sup>th</sup> Floor, 1200 Ontario Street, Cleveland, Ohio 44113, via regular U.S. Mail service postage prepaid on this #13 day of January 2009.

James C Bogan  
James C. Bogan  
RiCI #451-645  
P.O. Box 8107  
Mansfield, Ohio 44901

"I certify under penalty of perjury under the law of the United States of America that the foregoing is true, correct and complete, executed this 13 day of January, 2009 at Mansfield, Richland County, Ohio State." James C Bogan

Subscribed and sworn to before me this 13 day of January, 2009 Mansfield, Richland County, Ohio State

Rebecca J Williams Seal:  
Notary Public

**Rebecca Williams**  
Notary Public  
State Of Ohio  
My Commission Expires  
4 Mar 2013

APPENDIX

Page

SUBSTANTIAL CONSTITUTIONAL QUESTIONS.....ii

STATEMENT OF FACTS.....1

AGREEMENT IN SUPPORT OF PROPOSITION OF LAW.....2,3,4,5,6,7,8,9,10,11,16

EXPLANATION OF WHY THIS CASE IS OF GREAT PUBLIC INTEREST AND INVOLVES FIVE

PROPOSITION OF LAW NO. 1.....3,8,9

WHERE TRIAL COURT USED A DATABASE OF RECORD AS INFORMATION OF A JURISDICTION THAT WAS CONTROLLED BY THE ADULT PAROLE AUTHORITY AS INFORMATION BARE FROM THAT DATABASE OF RECORD TITLED "INFORMATION OR INDICTMENT" UNDER CRIMINAL RULE 7, DOUBLE JEOPARDY OF THE U.S. CONSTITUTION V AND OHIO CONSTITUTION 1 AND 10 AND CRIMINAL RULES 2937.06 AND 2937.08.

PROPOSITION OF LAW NO. 2.....4,5,7,11

WHERE THE TRIAL COURT PRODUCED ~~NO~~ AFFIRMATION OF OATH AFFIDAVIT OF COMPLAINT TO VIA DIRECT INDICTMENT THAT WAS ATTACHED TO COURT RECORD WITH THE CLERK OF COMMON PLEAS, DENIED DUE PROCESS OF LAW, U.S. CONSTITUTION AMENDMENT V AND OHIO CONSTITUTION 1 AND 10.

PROPOSITION OF LAW NO. 3.....6,7

WHERE TRIAL COURT NEVER PRODUCED ON MATERIAL ELEMENTS OF PROOF OF ANY INJURED PARTY EVIDENCE DURING TRIAL. NO AFFIRMATION OF OATH AFFIDAVIT SHOWN ON RECORD, ACCORDING TO CRIMINAL RULE 2907.42. NO MEDICAL EVIDENCE ON REPORT, NO SHOWN OATH OF THE VICTIM'S MOTHER UNDER OATH OF LAW ON RECORD OF CLERK, "PROBABLE CAUSE" VIOLATION OF U.S. CONSTITUTION AMENDMENT IV AND OHIO. CONSTITUTION 1 AND 14.

PROPOSITION OF LAW NO. 4.....6,7

WHERE TRIAL COURT NEVER PRODUCED OATH AFFIDAVIT OF "COMPLAINT" AFFIRMATION OATH OF JURISDICTION UNDER LAW OF THE STATE WITH CLERK, NO AFFIDAVIT OF OATH OF NOTARY UNDER THE STATE LAW SHOWS ON RECORD WITH THE CLERK OF COURT OF COMMON PLEAS, NO RECORDING TO CIVIL RULES 11, 12(B), 1,2,3,4,5 AND 6.

PROPOSITION OF LAW NO. 5..... 1,10

PLAIN ERROR 52(B) WHERE COUNSEL FAILED TO DO A REASONABLE INVESTIGATION AROUND BARE FALSE ALLEGATION IN REPORT OF FACTS SURROUNDING STATE CASE WHICH IS A VIOLATION OF APPELLANT'S SIXTH AMENDMENT RIGHT OF THE U.S. CONSTITUTION.

CONCLUSION.....16

NOTICE OF WRIT OF HABEAS CORPUS NO. 08-2331.....19

RICHLAND COUNTY FIFTH APPELLATE COURT JOURNAL ENTRY, NOV. 5, 2008.....20

CUYAHOGA COUNTY COURT JOURNAL ENTRY, JULY 24, 2003 .....21

EXHIBIT (A).....2

EXHIBIT (B).....2

EXHIBIT (C) .....1

IN THE SUPREME COURT OF OHIO

JAMES C. BOGAN, <i>pro se</i>	)	CASE NO. <u>08-2331</u>
	)	ON APPEAL FROM THE
<i>Petitioner</i>	)	COURT OF APPEAL
	)	RICHLAND COUNTY OHIO
VS	)	
	)	OHIO FIFTH APPELLATE
RICHARD HALL	)	DISTRICT
	)	CASE NO. <u>08-CA-94</u>
<i>Respondent</i>	)	DATE: November 5, 2008

NOTICE OF WRIT OF HABEAS CORPUS  
FOR JAMES C. BOGAN

I, James C. Bogan being first duly sworn and cautioned, state the foregoing hereafter is true and accurate to the best of my knowledge, on this 2, day of Dec., 2008.

James C Bogan  
Pro se, Affiant

Sworn to and subscribed in my presence, a notary public in and for the State of Ohio, on this 2 day of December, 2008.

Rebecca G. Williams Seal:  
Notary Public

**Rebecca Williams**  
Notary Public  
State Of Ohio  
My Commission Expires  
4 Mar 2013

FILED
DEC 05 2008
CLERK OF COURT SUPREME COURT OF OHIO

**NOTICE OF APPEAL OF WRIT OF HABEAS CORPUS  
FOR JAMES C. BOGAN**

Petitioner, James C. Bogan hereby gives Notice of Appeal to the Supreme Court of Ohio from the judgment of the Fifth Appellate District of Richland County, Court of Appeals, Fifth Appellate District, entered in Case No. 08-CA-94

This case is one of a Writ of Habeas Corpus Appeal and raises a substantial constitutional question, involves a felony, and is one of public or great general interest.

- (1) Petitioner, James C. Bogan was denied **"Due Process of Law"**, U.S. Constitution, Amendments V and XIV, and Ohio Constitution 1 and 16.
- (2) Petitioner, James C. Bogan was violated by **"Double Jeopardy"**, U.S. Constitution, Amendment V, and Ohio Constitution 1 and 10.
- (3) Petitioner, James C. Bogan was denied **'Probable Cause'** where no affirmation of oath shows on record; a violation of U.S. Constitution, Amendment IV, and Ohio Constitution 1 and 14.
- (4) Petitioner, James C. Bogan's rights were violated by **"Jurisdiction of Complaint"**, where the State of Ohio did not show the requirements of Civil Rules 11, 12B, (1), (2), (3), (4), (5) and (6).

Respectfully Submitted,

  
James C. Bogan, pro se  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, Ohio 44901

**CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the foregoing Writ of Habeas Corpus was mailed to William D. Mason, Cuyahoga County Prosecutor at the Justice Center, 9<sup>th</sup> Floor, 1200 Ontario Street, Cleveland, Ohio 44113, via regular U.S. Mail service postage prepaid on this 2 day of December, 2008.

James C. Bogan  
James C. Bogan, pro se  
RiCI - 451-645  
P.O. Box 8107  
Mansfield, Ohio 44901

"I certify under penalty of perjury under the law of the United States of America that the foregoing is true, correct and complete, executed this 2 day of December, 2008 at Mansfield, Richland County, Ohio State."

James C. Bogan  
James C. Bogan

Subscribed and Sworn to before me this 2 day of December, 2008, Mansfield, Richland County, Ohio State.

Rebecca A. Williams Seal:  
Notary Public

**Rebecca Williams**  
Notary Public  
State Of Ohio  
My Commission Expires  
4 Mar 2013

COURT OF APPEALS  
RICHLAND COUNTY OHIO  
FILED

2008 NOV -5 AM 9:53

LINDA L. FRARY  
CLERK

COURT OF APPEALS  
RICHLAND COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

JAMES C. BOGAN

Petitioner

-vs-

RICHARD HALL, WARDEN

Respondent

JUDGES:

Hon. W. Scott Gwin, P.J.  
Hon. Julie A. Edwards, J.  
Hon. Patricia A. Delaney, J.

CASE NO. 08-CA-94

OPINION

CHARACTER OF PROCEEDING:

"Re-Writ of Petition for Habeas Corpus"

JUDGMENT:

WRIT DENIED

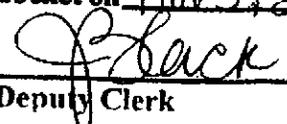
DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Petitioner – pro se:

JAMES C. BOGAN - #451-645  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, OH 44901

Journalized on the court's  
docket on NOV 5, 2008

  
Deputy Clerk

*Gwin, P.J.,*

{¶1} This matter came before the Court upon review of the "Re-Writ of Petition for Habeas Corpus" filed by James C. Bogan.

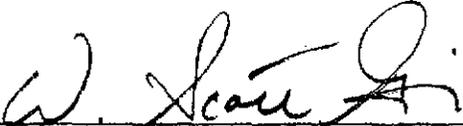
{¶2} A review of the petition reveals Petitioner has failed to attach the necessary commitment papers in compliance with R.C. 2725.04(D). The Supreme Court has held failure to comply with this requirement is a fatal defect which cannot be cured, "[C]ommitment papers are necessary for a complete understanding of the petition. Without them, the petition is fatally defective. When a petition is presented to a court that does not comply with R.C. 2725.04(D), there is no showing of how the commitment was procured and there is nothing before the court on which to make a determined judgment except, of course, the bare allegations of petitioner's application." *Bloss v. Rogers*, 65 Ohio St.3d 145, 602 N.E.2d 602. See also, *Boyd v. Money*, 82 Ohio St.3d 388 wherein the Supreme Court held, "Habeas corpus petitioner's failure to attach pertinent commitment papers to his petition rendered petition fatally defective, and petitioner's subsequent attachment of commitment papers to his post-judgment motion did not cure the defect. R.C. § 2725.04(D)."

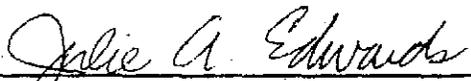
{¶3} For this reason, Petitioners' request for "Re-writ of Habeas Corpus is denied.

{¶4} WRIT DENIED.

{95} COSTS TO PETITIONER.

By: Gwin, P.J.  
Edwards, J. and  
Delaney, J. concur

  
HON. W. SCOTT GWIN

  
HON. JULIE A. EDWARDS

  
HON. PATRICIA A. DELANEY



STATE OF OHIO,  
CUYAHOGA COUNTY

SS. IN THE COURT OF COMMON PLEAS

MAY TERM, 2003  
22 2003

STATE OF OHIO  
VS.

PLAINTIFF

TO-WIT: JULY  
NO. CR 396492

DEFENDANT

INDICTMENT RAPE W/RVDS/NPC/SVPS, GROSS  
SEXUAL IMPOS W/SVPS

JAMES C BOGAN  
4347 E 143ST  
CLEVELAND, OH 44105  
06/06/50  
ITN:

JOURNAL ENTRY

DEFENDANT IN COURT WITH COUNSEL RICHARD DRUCKER. ON A FORMER DAY OF COURT  
DEFENDANT PLEAD GUILTY TO GROSS SEXUAL IMPOSITION ORC 2907.05 F-3'S SB-2 AS  
AMENDED IN COUNT 8 THRU 11.

DEFENDANT AND VICTIM/REPRESENTATIVE ADDRESS THE COURT.

THE COURT CONSIDERED ALL OF THE REQUIRED FACTORS OF THE LAW.

THE COURT FINDS THAT PRISON IS CONSISTENT WITH THE PURPOSE OF R. C.  
2929.11.

THE COURT IMPOSES A PRISON TERM AT LORAIN CORRECTIONAL INSTITUTION OF 4  
YEARS ON EACH OF COUNTS 8 THRU 11, COUNTS 8 THRU 10 TO RUN CONSECUTIVE TO EACH  
OTHER. COUNT 11 TO RUN CONCURRENT TO ALL THE OTHER COUNTS.

DEFENDANT TO RECEIVE 197 DAYS JAIL TIME CREDIT, TO DATE.

POST RELEASE CONTROL IS A PART OF THIS PRISON SENTENCE FOR THE MAXIMUM  
PERIOD ALLOWED FOR THE ABOVE FELONY (S) UNDER R. C. 2967.28.

DEFENDANT IS TO PAY COURT COSTS AND A FINE OF \$10,000.00.  
SHERIFF TO TRANSPORT. BLACK/MALE DOB: 6-6-50.

RECEIVED FOR FILING

JUL 24 2003

GERALD E. FUERST, CLERK  
By: \_\_\_\_\_



07-22-2003  
SENT CAL 07/23/03 07:35

JUDGE David T. Matia Jr.  
DAVID T. MATIA JR.

COPIES SENT TO:

Sheriff \_\_\_\_\_  
 Defendant \_\_\_\_\_

Other LORCI - cat



I CERTIFY the above to be a true copy of the said  
Judgment and Sentence. Given under my hand and seal  
of said Court this 24 day of July, 2003

GERALD E. FUERST, Clerk, By: [Signature]  
Deputy

Pursuant to the within order and sentence of the Court, I did convey the  
within named \_\_\_\_\_, to \_\_\_\_\_ on \_\_\_\_\_, 2003

GERALD T. MCFAUL, Sheriff, By \_\_\_\_\_ Deputy Sheriff

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO  
CRIMINAL DIVISION

STATE OF OHIO

CASE NO. CR 396492

Plaintiff,

JUDGE MATIA

-vs-

BILL OF PARTICULARS

JAMES C. BOGAN,

Defendant.

Responding to the request of the Defendant, James C. Bogan, for a Bill of Particulars, the Prosecuting Attorney says that the State of Ohio will prove on the trial of the above-entitled case, the following:

That on or about the the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March 1997, and at the location of 4063 East 147<sup>th</sup> Street, in the City of Cleveland, Ohio, the Defendant, James C. Bogan unlawfully engaged in sexual conduct with Jane Doe, not his spouse, by purposely compelling her to submit by the use of force or threat of force, Jane Doe being under the age of 13 years, to-wit: date of birth, March 2, 1985.

*Keep  
w/ force  
under 13*

NOTICE OF PRIOR CONVICTION (2929.13) (F)(6)

The Grand Jurors further find and specify that the offender has been previously found guilty of or pleaded guilty to Rape, to-wit: the said James C. Bogan, with counsel, on or about the 10th day of August, 1984, in the Court of Common Pleas, Cuyahoga County, Ohio, Case No. CR 188682, having been convicted of the crime of Rape, in violation of Revised Code Section 2907.02 of the State of Ohio.

REPEAT VIOLENT OFFENDER SPECIFICATION R.C. 2929.01

WWD  
The Grand Jurors further find and specify that the offender was convicted or plead guilty to, and served time for committing a felony of the first or second degree or any substantially equivalent offense, which resulted in death to a person or physical harm to a person, to-wit: the said James C. Bogan, with counsel, on or about the 10th day of August, 1984, in the Court of Common Pleas, Cuyahoga County, Ohio, Case No. CR 188682, having been convicted of the crime of Rape, in violation of Revised Code Section 2907.02 of the State of Ohio.

SEXUALLY VIOLENT PREDATOR SPECIFICATION R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

2. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully engaged in sexual conduct with Jane Doe, not his spouse, by purposely compelling her to submit by the use of force or threat of force, Jane Doe being under the age of 13 years, to-wit: date of birth, March 2, 1985.

NOTICE OF PRIOR CONVICTION (2929.13)(F)(6)

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REPEAT VIOLENT OFFENDER SPECIFICATION R.C. 2929.01

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Common Pleas, Cuyahoga County, Ohio, Case No. CR 188682, having been convicted of the crime of Rape, in violation of Revised Code Section 2907.02 of the State of Ohio.

**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I) ✓

The Grand Jurors further find and specify that the offender is a sexually violent predator.

3. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully engaged in sexual conduct with Jane Doe, not his spouse, by purposely compelling her to submit by the use of force or threat of force, Jane Doe being under the age of 13 years, to-wit: date of birth, March 2, 1985.

**NOTICE OF PRIOR CONVICTION** (2929.13) (F)(6)

The Grand Jurors further find and specify that the offender has been previously found guilty of or pleaded guilty to Rape, to-wit: the said James C. Bogan, with counsel, on or about the 10th day of August, 1984, in the Court of Common Pleas, Cuyahoga County, Ohio, Case No. CR 188632, having been convicted of the crime of Rape, in violation of Revised Code Section 2907.02 of the State of Ohio.

**REPEAT VIOLENT OFFENDER SPECIFICATION** R.C. 2929.01

The Grand Jurors further find and specify that the offender was convicted or plead guilty to, and served time for committing a felony of the first or second degree or any substantially equivalent offense, which resulted in death to a person or physical harm to a person, to-wit: the said James C. Bogan, with counsel, on or about the 10th day of August, 1984, in the Court of Common Pleas, Cuyahoga County, Ohio, Case No. CR 188682, having been convicted of the crime of Rape, in violation of Revised Code Section 2907.02 of the State of Ohio.

**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

4. 3. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully engaged in sexual conduct with Jane Doe, not his spouse, by purposely compelling her to submit by the use of force or threat of force, Jane Doe being under the age of 13 years, to-wit: date of birth, March 2, 1985.

**NOTICE OF PRIOR CONVICTION** (2929.13) (F)(6)

The Grand Jurors further find and specify that the offender has been previously found guilty of or pleaded guilty to Rape, to-wit: the said James C. Bogan, with counsel, on or about the 10th day of August, 1984, in the Court of Common Pleas, Cuyahoga County, Ohio, Case No. CR 188682, having been convicted of the crime of Rape, in violation of Revised Code Section 2907.02 of the State of Ohio.

**REPEAT VIOLENT OFFENDER SPECIFICATION** R.C. 2929.01

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**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

5. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully engaged in sexual conduct

with Jane Doe, not his spouse, by purposely compelling her to submit by the use of force or threat of force, Jane Doe being under the age of 13 years, to-wit: date of birth, March 2, 1985.

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**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

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**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

7. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully engaged in sexual conduct with Jane Doe, not his spouse, by purposely compelling her to submit by the use of force or threat of force, Jane Doe being under the age of 13 years, to-wit: date of birth, March 2, 1985.

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**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

8. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully had sexual conduct with Jane Doe, not his spouse, whose age at the time of the said sexual contact was under 13 years of age, to-wit: date of birth, March 2, 1985.

**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

9. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully had sexual conduct with Jane Doe, not his spouse, whose age at the time of the said sexual contact was under 13 years of age, to-wit: date of birth, March 2, 1985.

**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

10. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully had sexual conduct with Jane Doe, not his spouse, whose age at the time of the said sexual contact was under 13 years of age, to-wit: date of birth, March 2, 1985.

**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

11. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully had sexual conduct with Jane Doe, not his spouse, whose age at the time of the said sexual contact was under 13 years of age, to-wit: date of birth, March 2, 1985.

**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

12. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully had sexual conduct with Jane Doe, not his spouse, whose age at the time of the said sexual contact was under 13 years of age, to-wit: date of birth, March 2, 1985.

**SEXUALLY VIOLENT PREDATOR SPECIFICATION** R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

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SEXUALLY VIOLENT PREDATOR SPECIFICATION

R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator.

14. FURTHERMORE, on or about the 2<sup>nd</sup> day of March, 1994 to the 1<sup>st</sup> day of March, 1997, and at the same location, the Defendant, James C. Bogan, unlawfully had sexual conduct with Jane Doe, not his spouse, whose age at the time of the said sexual contact was under 13 years of age, to-wit: date of birth, March 2, 1985.

SEXUALLY VIOLENT PREDATOR SPECIFICATION

R.C. 2971.01(I)

The Grand Jurors further find and specify that the offender is a sexually violent predator, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio.

See Response to request for discovery for further information.

The Prosecuting Attorney says further that under the laws governing Indictments and Bills of Particulars, the Prosecuting Attorney is not required to disclose through a Bill of Particulars, the other evidentiary matters requested in the Defendant's Motion for a Bill of Particulars.

WILLIAM D. MASON  
CUYAHOGA COUNTY PROSECUTOR

By: Michelle Earley  
MICHELLE EARLEY #0071455  
Assistant County Prosecutor  
Justice Center, Courts Tower  
1200 Ontario Street, 9<sup>th</sup> Floor  
Cleveland, Ohio 44113  
(216) 443-7964

FILED IN THE COURT OF COMMON PLEAS  
CRIMINAL DIVISION CUYAHOGA COUNTY, OHIO  
CRIMINAL DIVISION

2003 JUN -2 A 9:28

GERALD E. FUERST  
STATE OF OHIO  
PLAINTIFF  
CUYAHOGA COUNTY

Plaintiff,

-vs-

JAMES BOGAN

Defendant.

CASE NO. CR 396492

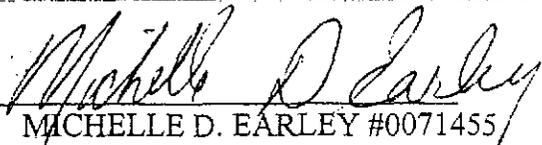
JUDGE DAVID MATIA

NOTICE OF INTENT TO USE  
404 B EVIDENCE OF PRIOR ACTS

Now comes William D. Mason, Prosecuting Attorney for Cuyahoga County, Ohio and respectfully notifies this Honorable Court and the defendant of the State of Ohio's intent to use evidence of other acts under Evid. R 404 (B) for the reasons set forth in the Brief attached hereto and made a part hereof.

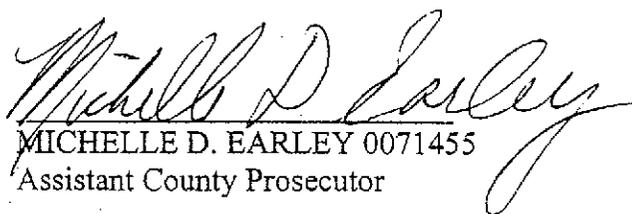
WILLIAM D. MASON  
CUYAHOGA COUNTY PROSECUTOR

By:

  
MICHELLE D. EARLEY #0071455  
Assistant County Prosecutor  
The Justice Center - 9th Floor  
1200 Ontario Street  
Cleveland, Ohio  
443-7964

S E R V I C E

A copy of the foregoing Notice of Intent to use 404 (B) Evidence of Prior Acts and attached Brief has been filed on this 2<sup>nd</sup> day of June, 2003, and hand delivered to Richard Drucker, 13224 Shaker Square, Suite 205, Cleveland, Ohio 441120, Attorney for the defendant.

  
MICHELLE D. EARLEY 0071455  
Assistant County Prosecutor

## BRIEF

The defendant, in the present case, is charged with numerous counts of Rape alleging that he engaged in sexual conduct with Jane Doe, not his spouse, by purposely compelling her to submit by the use of force, Jane Doe being under the age of thirteen and numerous counts of Gross Sexual Imposition alleging the defendant had sexual contact with Jane Doe, not his spouse, whose age at the time of the said sexual contact was under thirteen years old. To establish the defendant's intent, motive, knowledge, opportunity, plan, absence of mistake or accident and identity the State of Ohio intends to present evidence of the defendant's prior arrest, charge and conviction of Rape and Corruption of a Minor CR 188682 of a thirteen year old girl around the same age of the victim at the time of this indictment. Additionally, the victim was the child of his significant other as is the victim in this case.

Evid. R. 404 (B) allows the admission of prior criminal acts under specific limited circumstances:

(B) Other crimes, wrongs or acts

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. it may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

The Supreme Court of Ohio has consistently upheld the State's right to present relevant evidence of a defendant's prior bad acts if it meets the criteria of 404 (B). State v Broom (1988), 40 Ohio St. 3d 277, State v Davis (1991), 62 Ohio St. 3d 326.

The legislature has also enacted a similar provision under 2945.59 which provides:

R.C. 2945.59 Proof of defendant's motive

In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme or plan, or system of doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme plan or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto notwithstanding that such proof may show or tend to show the commission of another crime by the defendant.

The standard for the admission of the other acts evidence is whether the other acts tend to show one of the enumerated categories identified in Evid. R. 404(B) or R.C. 2945.59.

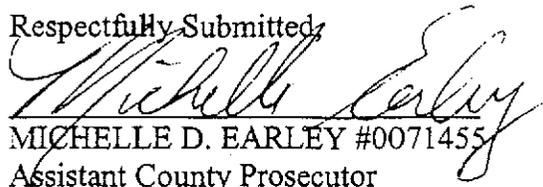
"Much confusion about R.C. 2945.59 might be avoided if it were observed that nowhere therein do the words 'like' or 'similar' appear. The statute permits the showing of 'other acts' when such other acts 'tend to show' any of those things that are admissible notwithstanding they may not be 'like' or 'similar' to the crime charged.

Likewise, in State v. Jamison (1990) 49 Ohio St. 3d 182, 552 N.E. 2d 180, this court held in the syllabus:

"Other acts forming a unique, identifiable plan of criminal activity are admissible to establish identity under Evid. R. 404(B). To be admissible these other acts must tend to show by substantial proof 'identity' or other enumerated purposes under Evid. R. 404(B). Although the standard for admissibility is strict, the other acts need not be the same as or similar to the crime charged." State v. Hill 64 Ohio St. 3d 313 at 322-323

In the present case evidence of the defendant's prior arrest, charge and conviction of Rape and Corruption of a Minor of the juvenile daughter of his significant other are evidence of the defendant's proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident at the time of the sexual assault.

Respectfully Submitted,

  
MICHELLE D. EARLEY #0071455  
Assistant County Prosecutor

IN THE COURT OF APPEALS  
EIGHTH JUDICIAL DISTRICT  
CUYAHOGA COUNTY, OHIO

ANNIE L. THOMAS  
14809 HARVARD ave.  
Cleveland, Ohio 44128  
Phone no. (216) 921-5773

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)  
)  
SS )

SWORN AFFIDAVIT OF STATEMENT

SWORN AFFIDAVIT OF STATEMENT

I, ANNIE L. THOMAS, swear this statement to be true, accurate, complete and not misleading, and further swear this statement to be the truth of fact(s) upon personal knowledge, as sworn hereto under Ohio law.

This is a sworn affidavit of true fact(s) of event(s) that arose in the pre-trial proceeding of James C. Bogan, in case no. CR396492, in the court of Common Pleas for Cuyahoga County, Ohio.

"[Sic]" On or about July 15, 2003, said attorney Richard Druker, attorney for defendant James C. Bogan, 13224 Shaker Square, #205, Cleveland, Ohio 44120, did knowingly, intelligently and voluntarily contact Annie L. Thomas, by phone, and clearly state and reiterate orally, that defendant, James C. Bogan, would be released on probation for the pending charge for which he was being represented by said Richard Druker, if defendant, James C. Bogan, would plead guilty in case no. CR396492, thereafter, on July 22, 2003 defendant did in fact plead guilty in case no. CR396492 with the expectance and trustworthly of attorney client effective representation and ethical integrity, to effect the promis, legal judgement and professional opinion that were guaranteed and reiterated, orally, from attorney Richard Druker, to Annie L. Thomas.

This is the truth in statement(s) of the fact(s) that transpired and accured by Richard Druker and Annie L. Thomas on or about the 15 day of July 2003.

*Annie L. Thomas*  
Affiant/Witness

Annie L. Thomas  
14809 Harvard ave.  
Cleveland, Ohio 44128

JONATHAN L. MALONE  
Notary Public, State of Ohio, Cuy. Co.  
My commission expires Jan. 21, 2005

*Jonathan L. Malone*  
Notary Public

Sworn to and before me this <sup>15</sup> day of <sup>July</sup> 2004.