

NO. 2011-1514

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IN THE SUPREME COURT OF OHIO

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APPEAL FROM THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO

NO. 93068

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**STATE OF OHIO,**  
Plaintiff-Appellant

-vs-

**WESLEY WRIGHT,**  
Defendant-Appellee

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**MEMORANDUM OPPOSING JURISDICTION**

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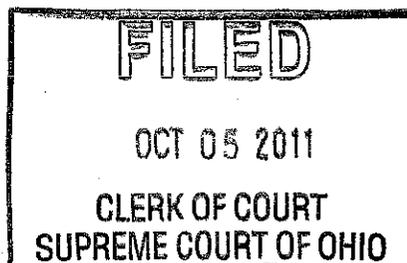
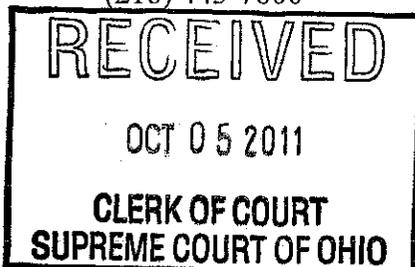
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EXPLANATION OF WHY THIS IS NOT A CASE OF PUBLIC OR  
GREAT GENERAL INTEREST AND DOES NOT INVOLVE A  
SUBSTANTIAL CONSTITUTIONAL QUESTION

This case involves the applicability of Evid.R. 404(B) to a rape prosecution under R.C. 2907.02(A)(1)(b). Defendant-Appellee is defending his liberty against the charge of sexual conduct with a minor under the age of eighteen. The issue before this Court is a straightforward one: When a trial court admits “other acts,” in violation of Evid. R. 404(B), and (1) the facts present no basis for an any exception under that rule, and (2) no jury instruction was given to limit the use of the “other acts” evidence, did the trial court commit prejudicial error? *State v. Wright*, 2011-Ohio-3475, Cuyahoga App. No. 93068.

The disputed “other acts” testimony involved events that occurred months to years after the alleged crime and outside the state of Ohio. The State argues that this evidence was admissible for limited purposes under Evid.R. 404(B). However, the court failed to give the required “limited purpose” instruction to the jury. Eighth District found plain error, reversing the rape conviction of Defendant-Appellee, Mr. Wesley Wright.

The State now seeks to appeal that ruling to this Honorable Court, urging that the case is a matter of public or great general interest or constitutional significance. Plaintiff-Appellant’s Memorandum in Support of Jurisdiction at pp. 1-2. However, the case involves an elementary issue of evidence that was already decided by this Court in *State v. Thompson*, (1981), 66 Ohio St.3d 496, 422 N.E.2d 855 (per curiam). The facts of *Thompson* were nearly identical to those in the case at bar. In fact, the Eighth District regarded *Thompson* as “squarely on point” and followed it as precedent. *Wright*, 2011-Ohio-3475 at ¶23-26.

In *Thompson*, defendant was charged with gross sexual imposition against his daughter prior to her thirteenth birthday. As in Wright’s case, the State introduced evidence

of Thompson's sexual offenses against the victim *after* her thirteenth birthday. This Court found that the later acts were "chronologically and factually separate occurrences," not "inextricably related" to the charged offense, and not material to the case. *Thompson*, 66 Ohio St.3d 496 at 498. Acknowledging the need to give the jury "a complete picture," this Court found that acts occurring ten days to two years after the indicted offense were separate events. *Id.* This Court rejected the argument that the acts were admissible to show the defendant's identity, noting that identity was not in dispute. *Thompson*, 66 Ohio St.3d 496 at 499.

Applying *Thompson* to the case at bar, Eighth District held that the trial court's admission of "other acts" evidence to be plain error. *Wright*, 2011-Ohio-3475 at ¶50-55. Following *Thompson*, the appellate court found that "other acts" evidence was not admissible for the limited purpose of showing the defendant's identity or his scheme or plan. *Id.* at ¶47-52. (Note: *Thompson* is discussed in more detail in the Argument below.)

The State presents no compelling argument for overruling *Thompson* or for modifying or reinterpreting Evid.R. 404(B). The crux of the State's argument seems to be that restrictions on "other acts" evidence should be relaxed in certain difficult child rape cases: "When sexual conduct is committed against a minor child over a period of years and across State lines, the defendant's subsequent "other acts" of sexual conduct or contact against that same child victim must be found relevant and admissible at trial under Ohio's Evidence Rule 404(B)." Plaintiff-Appellant's Memorandum in Support of Jurisdiction at p. 1. Yet no reasons are offered to explain why a well-settled rule of evidence should be relaxed for this particular class of victims. Nor does the State explain

how this class of victims should be defined, or what alternative standards of evidence should apply. Without that analysis, the State's argument has limited value.

With regard to error at issue in this appeal, the law is well settled. Unless this Honorable Court seeks overrule its decision in *Thompson*, further analysis would be redundant.

#### STATEMENT OF THE CASE AND FACTS

Defendant-Appellee, Wesley Wright, was indicted on July 9, 2007, in CR-498291. Count 1 charged Mr. Wright with rape in violation of R.C. 2907.02(A)(1)(b), a felony of the first degree. Counts 2 through 5 charged Mr. Wright with unlawful sexual conduct with a minor, in violation of R.C. 2907.04(A), a felony of the third degree. The case was heard in the Cuyahoga County Court of Common Pleas. Mr. Wright pled not guilty to all counts. On February 13, 2009, a jury found Mr. Wright guilty on all counts.

On March 6, 2009, the trial court sentenced Mr. Wright to twenty-five (25) years at Lorain Correctional Institute. Mr. Wright will serve ten years on Count 1, and five years on each of Counts 2-5. All terms will run consecutive except for Count 5, which will run concurrent to terms on the other counts, with five years of post-conviction release. (Tr.633, 630-31). He was classified as a Tier III sex and child victim offender under R.C. 2950.01. (Tr. 617-20).

On November 23, 2009, Mr. Wright filed an appeal in the Court of Appeals for the Eighth District of Ohio. In a judgment journalized on July 21, 2011, the Eighth District vacated Wright's conviction for unlawful sexual conduct with a minor and reversed the rape conviction, remanding it for a new trial.

At trial, the State presented eight witnesses. The defense presented no witnesses, and Mr. Wright did not testify. The following facts emerged from the testimony:

**The alleged victim, S.P., testified for the State.**

Sexual Conduct in Cleveland, Ohio. She stated that she was born on May 29, 1989, (Tr. 263). She is the eldest of four children born to Cynthia Jackson, who has three other children. (Tr. 264). S.P. was nineteen years old at the time of trial. (Tr. 263).

S.P. first stated that she was eleven or twelve years old when her mother, Cynthia Jackson, first began dating Mr. Wright. (Tr. 266, 268, 321, 317). At that time, S.P., her mother and sister were living with the Carters (Cynthia's foster parents) at a house on E. 133<sup>rd</sup> in East Cleveland. (Tr. 269, 315-18). At first S.P. regarded Mr. Wright as a friend, but after knowing him about a year, she fell in love with him when she "twelve going on thirteen." (Tr. 268-70). S.P. chronicled various places in Cleveland where she stayed with her mother and sister: They first stayed with a family friend, "Laroy," a family friend. (Tr. 277, 323-24). After about five or six months, they moved in with Cynthia's friend, Miranda Graham. (Tr. 277, 271-73, 324, 327-30, 360).

Sexual Conduct in Cleveland (Counts 2 – 5). S.P. testified that she had sexual intercourse during the time when she was living at Graham's apartment. (Tr. 269-71). She could not remember the date, but recalled that it was mid-April or early May, about a month before a party held near the time of her thirteenth birthday. (Tr. 270-71, 343-34, 359).

On that day, she and her sister were in Mr. Wright's care while Cynthia was working. (Tr. 271-72). Mr. Wright drove S.P. and her sister to the apartment of his friend, Elizabeth Burkhalter, in order to use her computer. (Tr. 271-73, 342-43). Elizabeth was not at home. (Tr. 273).

At the apartment, the girls were watching television while Mr. Wright was in the bedroom working at the computer. (Tr. 272-73). S.P. went into the bedroom to lie down. (Tr. 272, 342-43). Her sister stayed in the living room. (Tr. 273, 343). Wright left the room, came back, and then began to touch her and remove her clothes. (Tr. 272). S.P. and Wright engaged in vaginal intercourse. (Tr. 272). This event “just happened” spontaneously. (Tr. 270). Cynthia had no knowledge of the sexual encounter; she was at work. (Tr. 345). S.P. did not discuss the incident with her sister or girlfriends. (Tr. 346).

S.P. insisted that this first encounter occurred before her thirteenth birthday, even though Cynthia told her that Mr. Wright was married and living in Columbus in 2002. (Tr. 365). Cynthia also told S.P. that Cynthia did not even meet Mr. Wright until long after 2002. (Tr. 365). Nevertheless, S.P. trusted her own recollection of the date because she remembered the party. (Tr. 270, 359-60). That party was given by a friend to jointly celebrate the birthdays of S.P. and another friend. (Tr. 270, 359-60, 326, 340-41). S.P. did not keep a diary and was not able to give a date. (Tr. 318-19).

After their first sexual encounter, S.P. and Mr. Wright had intercourse in other locations as her family moved from place to place in Cleveland. (Tr. 272, 274-77, 281-83, 276-81). It occurred a few times at Liz Burkhalter’s apartment. (Tr. 274, 296). It occurred frequently at Miranda Graham’s west side apartment, where S.P. lived with her mother and sister for a few months. (Tr. 269, 271, 274, 277, 297, 352, 360). It occurred twice at the home of Mr. Wright’s sister’s house on Dove Avenue. (Tr. 274-75, 279, 280, 296-97). It occurred a few times at the family’s townhouse on Whitney St. (Tr. 272, 274, 283-87, 341-42). Mr. Wright stayed with the family all of these locations. (Tr. 341-42). Meanwhile

Wright still had a relationship with Cynthia, so S.P. did not tell anyone about her sexual relationship with him. (Tr. 288, 345).

Cynthia moved frequently with her daughters; they stayed for four or five months at Miranda's apartment, then moved to a shelter where S.P. (Tr. 352). They next moved to a shelter on the west side of Cleveland, where S.P. had her fourteenth birthday. (Tr. 278, 341). They stayed at the home of "Aunt Cap" for less than two months before moving into a townhouse on Whitney St. on Cleveland's east side. (Tr. 282, 341). She was living there during the era when she first had intercourse with Wright. (Tr. 283-84).

Events in Charleston, West Virginia. (Other Acts Evidence). When S.P. was fifteen years old, Cynthia and the girls relocated to Charleston, West Virginia, to live with relatives. (Tr. 284-85, 299, 333). Mr. Wright moved in with them about a month later. (Tr. 283-84, 333, 336-37). S.P. and Wright had intercourse only one time at that location before moving into an apartment complex with her mother, Wright and the girls. (Tr. 285, 346). There S.P. and Wright continued having intercourse without Cynthia's knowledge. (Tr. 284-85, 289, 339-40, 360-61). Their last sexual encounter was a few days before S.P.'s sixteenth birthday while at this apartment complex. (Tr. 284-85, 287).

Events in Beckley, West Virginia in 2005. (Other Acts Evidence). At some point, S.P. moved to Beckley, West Virginia, where she lived with her father for a few months, until September 2005. (Tr. 286-89). Cynthia stayed in Charleston, and Mr. Wright moved back to Cleveland at some point. (Tr. 346-47). While in Beckley, S.P. discovered that she was pregnant. (Tr. 287, 347). She informed Cynthia that she was pregnant, but lied to everyone about the identity of the father. (T. 210, 347-48, 357-58). Events in Tennessee in

2005-2007. (Other Acts Evidence). In September of 2005, S.P. moved to the home of her maternal uncle Martin and his wife in Tennessee. (Tr. 289, 290). Her baby, J.P., was born on September 11, 2005. (Tr. 289, 293). She communicated once with Mr. Wright by email, and she told him about J.P. (Tr. 298.) After an incident in which the baby was burned, S.P. spoke with Detective Ginger Fitting at the child advocacy center in Tennessee. (Tr. 291). In a videotaped interview that was supposed to be confidential, S.P. revealed her belief that Wright was J.P.'s father. (Tr. 291, 296). Det. Fitting shared the information with S.P.'s aunt. (Tr. 291). DNA samples of S.P. and J.P. (Tr. 292). In February of 2006, S.P. visited Cynthia and Cynthia's new baby (D.W.). (Tr. 293). She saw Wright during that visit, but they did not have intercourse. (Tr. 294). She then returned to Tennessee. (Tr. 293).

Return to Cleveland in 2007. In September of 2007, S.P. left Tennessee and moved into Cynthia's apartment on 2418 East 55<sup>th</sup> St. in Cleveland. (Tr. 293, 303-05). At that time, S.P. was eighteen years old and J.P. was one year old. (Tr. 303-05). At the time of trial, she had been living in Cleveland for the two years prior to trial. (Tr. 303-05).

**Ms. Cynthia Pinder Jackson**, the mother of S.P., testified for the State. She confirmed that S.P. was born on May 29, 1989. (Tr. 409). S.P. is the eldest of Cynthia's four children. (Tr. 409-410). Mr. Wright is the father of Cynthia's son D.W., who was two years old at the time of trial. (Tr. 410-412).

In 2002, Cynthia was living with her foster parents, the Carters, on E. 133th St. (Tr. 450, 460). She did not know Mr. Wright in October of 2002, nor did her children know him (Tr. 460). Cynthia met Mr. Wright at a bar in late February or March of 2003. (Tr. 415, 424, 453-544, 453, 472). (Tr. 416, 453, 472). Wright did not tell Cynthia to testify that they met in 2003, nor did she speak with his attorney before testifying. (Tr. 455).

When Cynthia met Mr. Wright, she and the girls were still living at the Carter home on E. 133<sup>rd</sup> St. in East Cleveland. (Tr. 415, 424). They relocated in April of 2003. (Tr. 461). At that time, S.P. and her sister were attended Marcus Garvey Academy. (Tr. 414). S.P. had to repeat seventh grade. (Tr. 469). Cynthia does not recall S.P.'s age when Cynthia met Mr. Wright. (Tr. 455). It was before S.P.'s fourteenth birthday. (Tr. 455).

Cynthia and her daughters moved in with Laroy, a friend of the family. (Tr. 413). Mr. Wright was in jail at that point. (Tr. 418). Later Cynthia and the girls moved to Miranda Graham's apartment. (Tr. 420). Cynthia was working, and sometimes Wright would baby-sit the girls. (T. 420-22). After moving out of Miranda's household, Cynthia may have moved into a friend's house before moving into a shelter. (T. 422).

When Cynthia began dating Mr. Wright, she did not know Elizabeth Burkhalter. (T. 417). She thought that Elizabeth was Mr. Wright's sister until she spoke to Elizabeth on the phone. (Tr. 417). Mr. Wright thinks that Elizabeth and Wright were just friend, although she heard that they used to date. (T. 418, 422).

Relocation to West Virginia in 2004. Cynthia and the girls moved to West Virginia in July of 2004. (Tr. 424, 474). They stayed with Cynthia's biological mother and step-father in their one-bedroom apartment. (Tr. 425-26). Mr. Wright moved in after a short time. (Tr. 424-26, 467). Later Cynthia, her daughters, and Mr. Wright moved to their own two-bedroom apartment. (Tr. 426). Except for some arguments, Cynthia thought her relationship with Mr. Wright was fine. (Tr. 426). During this period she did was unaware of S.P.'s sexual relationship with Wright. (Tr. 426, 467). She first learned of S.P.'s pregnancy from S.P.'s father in June of 2004 or 2005. (Tr. 427). When Cynthia asked about S.P. about the father her child, S.P. said that it was someone in Atlanta. (Tr. 428, 469).

Cynthia did not suspect otherwise. (Tr. 429). She realized the truth after a phone conversation with S.P. in 2007. (Tr. 432-33).

Before S.P. moved to Tennessee, she visited Cynthia in West Virginia. (Tr. 429). Cynthia was preparing to move back to Cleveland, and she told S.P. that she would send for her eventually. (Tr. 429).

Relocation to Cleveland. Cynthia had her baby (D.W.) on January 11, 2006. (Tr. 429). S.P. visited Cleveland just after D.W. was born. (Tr. 429). S.P. returned to Tennessee, but later moved back to Cleveland in 2007 or 2008. (Tr. 430-31, 438). Cynthia heard from “people on the street” that S.P. had talked to Montgomery Child Services. (Tr. 430). When she learned that Mr. Wright had fathered S.P.s child, confronted Wright, but he denied it. (Tr. 436). She told him that he had to move out of her home before S.P. moved in. (Tr. 434, 438).

Telephone conversations with Mr. Wright, March 25 – July 14, 2008. Cynthia was questioned about a number of collect telephone calls between her and Mr. Wright from March 25, 2008 to July 14, 2008. (Tr. 438-39; 450). She and Wright discussed their son D.W. and their next meeting. (Tr. 429). Mr. Wright asked her what year they met. (Tr. 440, 474). She said they met about a week after Valentine’s Day in February of 2003. (Tr. 474). Over defense counsel’s objection, an audio recording was played containing excerpts of the phone conversations between Mr. Wright and Cynthia. (Tr. 441). Cynthia identified her voice and Wright’s voice. (Tr. 443-44). She recalled a couple of conversations about the case. (Tr. 444). There discussed the possibility of S.P. making a statement or telling the judge that she did not want Wright to go to jail. (Tr. 444-46; 451). Cynthia did not think that S.P. requested that the charges against Wright be dropped, or make a statement that she

did not want Wright to go to jail. (Tr. 450, 473-75). On the tape, Mr. Wright spoke of marrying Cynthia. (Tr. 448). There may have been a three-way conversation with Mr. Wright and Elizabeth Burkhalter. (Tr. 449). She had no phone conversations with Wright after July of 2008. (Tr. 450).

**Ms. Elizabeth (“Liz”) Burkhalter** testified for the State. She stated that she met Mr. Wright in April of 2002 and they started dating soon thereafter. (Tr. 502, 516). They were either friends or “more than friends” off and on for six years. (Tr. 502). She lived on E. 55<sup>th</sup> in Cleveland for about three years, dating sporadically for that time. (Tr. 503).

When she met Mr. Wright in 2002, he was dating someone else. (Tr. 516). He dated Patty exclusively in 2002. (Tr. 516-17). Elizabeth first became aware of Cynthia Jackson about a year after meeting Mr. Wright, but she does not know how long Wright he dated Cynthia. (Tr. 503-05, 517). On two occasions, Elizabeth came home to find Mr. Wright and S.P. in her apartment. (Tr. 506, 511, 510, 519). They were dressed. (Tr. 511). On the second occasion, they were in the living room. (Tr. 511). Mr. Wright said that he was baby-sitting. (Tr. 506). Elizabeth’s eight-year-old daughter was friendly with S.P.; she told Elizabeth that S.P. was fourteen. (Tr. 417, 505, 518-19). Elizabeth had a three-way telephone conversation with Mr. Wright in 2008. (Tr. 511). They discussed the date when they met and the date when he met Cynthia. (Tr. 512). Wright told Elizabeth that he was the father of S.P.’s baby and denied touching S.P. (Tr. 514, 515).

**Ms. Eula Mae Horon** testified for the State. She is Cynthia Jackson’s sister and S.P.’s aunt. (Tr. 370). She described the early history of Cynthia and her daughters as they moved from one address to another, as well as S.P.’s grade school history. (Tr. 384-86, 395, 402). She said that S.P.’s told her that that S.P. is “kind of disabled.” (Tr. 392). When

she spoke with S.P. on the phone, S.P. said that Mr. Wright was her baby's father. (Tr. 400). Eula was not sure how old S.P. was when Eula learned about her pregnancy; she estimated that S.P. was fourteen years old. (Tr. 399-400).

**Detective Ginger Fitting** testified for the State. (Tr. 477). She works for the Clarksville Police Department in Clarksville, Tennessee, on sex abuse cases. (Tr. 477-78). In February of 2007, Det. Fitting observed as S.P. spoke with a forensic interviewer on closed circuit television. (Tr. 479-80). She took mouth swabs from S.P. and J.P.; these were sent to Tennessee Bureau of Investigation by certified mail. (Tr. 483-89, Ex. 2, 3, 4).

**Detective Daniel Ross** testified for the State. (Tr. 490). Det. Ross is a Cleveland police officer. (Tr. 490-91). His notes indicate that on February 8, 2006, S.P.'s mother reported that her daughter had been sexually assaulted. (Tr. 492-93). He detailed the processing of DNA samples received from Montgomery Child Advocacy Center by certified mail. (Tr. 494-96, 498-99, Ex. 5, 6). He obtained the buccal swabs from Mr. Wright, and they were submitted to the lab for analysis. (Tr. 497-498, Ex. 7).

**Ms. Melissa Zielaskiewicz** testified for the state. (Tr. 520). She is a forensic scientist who has worked for Ohio Bureau of Criminal Identification and Investigation (BCI) for over eight years. (Tr. 520-41). She is trained in forensic biology and DNA. (Tr. 521). She was assigned to this case on May 20, 2008. (Tr. 522). She explained the analysis used to determine whether Mr. Wright was the father of J.P. (Tr. 522-28). Her findings indicate that Mr. Wright had a 99.9999 percent probability of being J.P.'s biological father. (Tr. 525-26).

**Officer Richard Sanders** testified for the state. (Tr. 529). On February 6, 2006, he took an assault report from Cynthia Jackson and her daughter. (Tr. 532, 535). The mother

stated that her daughter had been raped by Wesley Wright. (Tr. 533). Officer Sanders took a narrative report from both women. (Tr. 533, 535). It indicates Cynthia Jackson dated Mr. Wright from February of 2002 to 2005. (Tr. 533). The sex crimes unit was notified, as well as 696-KIDS and possibly Children and Witness Violence. (Tr. 535). The police report and narrative were forwarded to those agencies. (Tr. 535-36).

## ARGUMENT

### PROPOSITION OF LAW:

When a trial court admits extensive “other acts” evidence with no limiting instruction, and the record reflects no basis for any exception under Evid.R. 404(B) or R.C. 2945.57, the defendant’s conviction was properly reversed.

The crux of this case concerns the policy embodied in Evid.R. 404(B). That rule explicitly prohibits the use of “other acts” evidence to show that a defendant is guilty of the indicted offense: “Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith.” Evidence of the defendant’s “other acts” may be admissible “for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” Evid.R. 404(B). R.C. 2945.59 provides that evidence of a defendant’s “scheme, plan or system” may be admissible in certain situations. However, the use of these exceptions is governed by precise standards that were not met in the instant case.

Moreover, no “limited purpose” instruction was given to the jury as required by controlling Ohio case law. When “other acts” evidence is admitted for a limited purpose, the trial court must caution the jury that “such evidence must not be considered by them as any proof whatsoever that the accused did any act alleged in the indictment.” *State v. Flonnory*

(1972), 51 Ohio St.2d 124, 129, 285 N.E.2d 726, two of the syllabus, cited in *State v. Wright*, 2011-Ohio-3475 at ¶57. Cuyahoga App. No. 93068,

The effect of the trial court's error was to allow the jury to assume that Mr. Wright's actions *after* S.P.'s thirteenth birthday were evidence of his actions *before* S.P.'s thirteenth birthday. This prejudicial evidence included the following: (1) S.P.'s testimony regarding to various sexual encounters with Wright in Charleston, West Virginia, where S.P. had moved at age fifteen. (Tr. 284-85, 287, 289, 299, 333, 339, 340, 360-61). (2) S.P.'s testimony that she learned she was pregnant with J.P. while she was living in Beckley, WV, when she discovered that she was pregnant with J.P. (Tr. 287, 347). (3) Evidence that J.P. was born in September 11, 2005, in Tennessee. (Tr. 289, 293). (4) Testimony regarding a telephone conversation in 2007 when Cynthia learned the identity of J.P.'s father. (Tr. 432-33). (5) Testimony regarding a conversation in which Cynthia confronted Wright about J.P.'s paternity. (Tr. 436). (6) Testimony regarding May 2008 paternity investigation and results of DNA testing. (Tr. 520-36)

The Eighth District properly ruled that the improper admission of the "other acts" testimony could not be considered harmless beyond a reasonable doubt. *Id.* at ¶55, citing *Chapman v. California* (1967), 386 U.S. 18, 24, 876 S.Ct. 824, 17 L.Ed.2d 705. Finding plain error, the Eighth District reversed the rape conviction and ordered a new trial. *Wright*, 2011-Ohio-3475 at ¶58. This ruling is consonant with the warning in *State v. Lowe*, 1994-Ohio-345, 69 Ohio St.3d 527, 530, 634 N.E.2d 616 (dictum): A trial court must take care that a jury does not convict the defendant for being the "type" of person who would commit the crime charged.

The Eighth District ruling followed this Court's decision in *State v. Thompson*, a case "squarely on point." *Wright*, 2011-Ohio-3465 at ¶53, citing *Thompson*, (1981), 66 Ohio St.3d 496, 422 N.E.2d 855 (per curiam). As explained in the foregoing jurisdictional memorandum, the two cases are remarkably similar. In *Thompson*, the defendant was charged with committing gross sexual imposition against his daughter prior to her thirteenth birthday. The trial court admitted evidence of later sexual encounters between defendant and alleged victim. These later encounters occurred *after* her the victim's thirteenth birthday. Although the State argued that the evidence was permissible to show "scheme, plan or system," and to show identity of the perpetrator, this Court disagreed. *Thompson*, 66 Ohio St.3d at 498. This Court found that the later encounters were "chronologically and factually separate occurrences," not "inextricably related" to the charged offense; nor was identity in dispute. *Thompson*, 66 Ohio St.3d at 498, discussed in *Wright*, 2011-Ohio-3475 at ¶54.

The precedent in *Thompson* should be applied to *Wright*, where the "other acts" evidence was even more remote in time from the charged offense, i.e., several months to several years later. (See discussion of evidence above at p. 13.)

In this case, defense counsel filed pre-trial motions in an effort to exclude the improper evidence. Defense counsel renewed objections to the court's decision during the trial. Nevertheless, the trial court allowed abundant evidence of similar acts that occurred in other jurisdictions and other time periods. (Tr. 283-294).

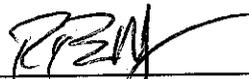
An error of this magnitude clearly meets the "abuse of discretion" standard required for reversing a trial court ruling on the admission of evidence. *State v. Sage* (1987), 31 Ohio St.3d 173, 180, 510 N.E.2d 343, paragraph two of the syllabus

In summary, Mr. Wright's trial was tainted by the admission of extensive harmful, irrelevant evidence. The Eighth District correctly found plain error, reversed the conviction and ordered a new trial. This Honorable Court should not grant leave to appeal.

### CONCLUSION

For all of the foregoing reasons, Defendant-Appellee Wesley Wright respectfully requests that this Honorable Court deny jurisdiction and deny leave to appeal of this matter.

Respectfully submitted,



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### SERVICE

A true and accurate copy of the foregoing memorandum was served via ordinary U.S. Mail, postage prepaid, on this 3<sup>rd</sup> day of <sup>October</sup> ~~September~~ 2011 to the following:

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