

IN THE SUPREME COURT OF OHIO

STATE, *ex rel.* THE CINCINNATI  
ENQUIRER, a Division of Gannett  
Satellite Information Network, Inc.  
312 Elm Street  
Cincinnati, OH 45202

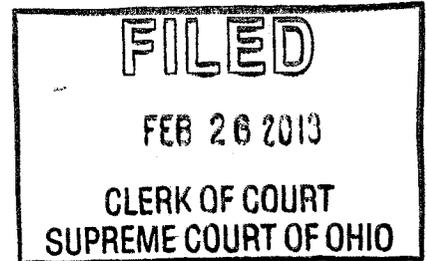
Petitioner,

v.

HONORABLE ROBERT H. LYONS  
Butler County  
Area I Court  
118 High St.  
Oxford, OH 45056

Respondent,

Case No. 12-1924

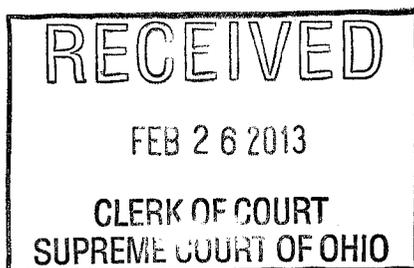


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**SUPPLEMENTAL EVIDENCE SUBMITTED BY RESPONDENT HON. JUDGE  
ROBERT H. LYONS**

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Comes now the Respondent in the above captioned case, by and through his attorney of record, Assistant Prosecuting Attorney, Dan Ferguson and files this supplement to evidence previously submitted. Items submitted include a true and correct transcript of two hearings conducted by Respondent, Judge Robert H. Lyons in the Butler County Area I Court and a supporting affidavit setting forth the authenticity of the transcript as well as the underlying facts which led to the hearings. This filing is presented in response to order of this court dated February 6, 2013.



Michael T. Gmoser  
Prosecuting Attorney of Butler County, Ohio

\_\_\_\_\_  
Danny Lee Ferguson, 0036957

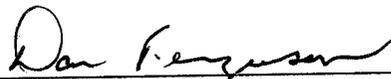
Assistant Prosecuting Attorney  
315 High St., 11<sup>th</sup> floor  
P.O. Box 515  
Hamilton, OH 45012  
Telephone: (513) 887-3943  
Facsimile: (513) 887-3748  
E-mail: [fergusondl@butlercountyohio.org](mailto:fergusondl@butlercountyohio.org)  
*Attorney for Respondent,  
Honorable Robert H. Lyons*

### CERTIFICATE OF SERVICE

This is to certify that on February 25, 2013, a copy of the foregoing was served by Regular U.S. Mail upon the following:

John C. Greiner, Attorney at Law, Graydon, Head & Ritchey LLP, 1900 Fifth Third Center,  
511 Walnut St., Cincinnati, OH 45202-3157

Michael T. Gmoser  
Prosecuting Attorney of Butler County, Ohio

By   
Dan L. Ferguson, 0038957  
Assistant Prosecuting Attorney  
315 High St., 11<sup>th</sup> floor  
Hamilton, OH 45011  
Telephone: (513) 887-3943  
Facsimile: (513) 887-3748  
E-mail: [fergusondl@butlercountyohio.org](mailto:fergusondl@butlercountyohio.org)  
*Attorney for Respondent,  
Honorable Robert H. Lyons*

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118 High St.  
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Respondent,

AFFIDAVIT OF RESPONDENT, JUDGE ROBERT H. LYONS

Affiant, after being duly cautioned and sworn, states as follows:

1. The attached document is a true and correct transcription of two hearings conducted in my court while I was sitting as presiding judge, on or about December 13, 2012. One of the hearings allowed the defendant in the underlying "rape flier" case to withdraw his plea, based upon my understanding that sealing of the record had been part of the original plea agreement. I concluded that unsealing the defendant's record would probably violate the terms of that agreement and would thus constitute a manifest injustice. The second hearing was conducted after notice to the prosecuting attorney and was conducted in full accord with all procedural matters and necessary findings as set forth in O.R.C. 2953.52.

FURTHER AFFIANT SAYETH NAUGHT





1 Afternoon Session, December 13th, 2012

2  
3 THE COURT: This is Case Number  
4 CRB1201405. Mr. Schuett with the law firm  
5 of Haughey & Deters is present. Mr.  
6 Schuett, you and Mr. Deters are aware  
7 that this matter had been sealed, and  
8 there was a petition for a writ of  
9 mandamus filed against me with the  
10 Supreme Court of Ohio pointing out there  
11 there may have been some problems with  
12 the sealing of the record.

13 With that information, as you are  
14 aware, Mr. Schuett, the record was  
15 officially unsealed this morning. When I  
16 was doing it, Mr. Deters was here, heard  
17 that, Ms. Rodkey was here when it was  
18 unsealed. I believe both parties would  
19 represent to me that sealing of the  
20 record was part of the plea arrangement.

21 Now that it's being unsealed, I  
22 believe it's only appropriate that I  
23 address the defendant's motion to --  
24 motion to withdraw the plea, which has  
25 been -- which was filed and --

1 MS. RODKEY: Yes, Your Honor, and I  
2 was provided a copy as well.

3 THE COURT: All right. And if I  
4 may take a moment to look at the motion.  
5 It states now comes to the defendant by  
6 and through undersigned counsel and  
7 respectfully moves this Court for an  
8 order to allow him to withdraw his  
9 previously entered plea of guilty in the  
10 above-captioned case pursuant to Criminal  
11 Rule 32.1.

12 Criminal Rule 32.1 permits the  
13 court to -- permits a court, A, there's a  
14 typo here, to allow defendant to withdraw  
15 a guilty plea after sentence has been  
16 imposed in order to correct manifest  
17 injustice.

18 Criminal 32.1 adequately will  
19 remedy for a withdrawal of a guilty plea  
20 post-disposition with the cite of State  
21 versus Reynolds, a Third District case,  
22 2002-Ohio-2823.

23 Defendant submits that manifest  
24 injustice has occurred in this case. In  
25 support the defendant asserts in part the

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following: defendant had been informed by the Court that the matter has been unsealed by court order. That is accurate.

Defendant upon information believes the facts surrounding the case had been changed, that being the unsealing of the record.

Number three, concern exists physical and mental well-being of the defendant based upon prior guilty plea. And relief cannot be adequately granted through direct appeal or relies on 2953.21, wherefore the defendant respectfully requests this Court to issue an order granting a motion to withdraw his guilty plea entered on November 7th, 2012 and shows certificate of service here.

And, Ms. Rodkey, on behalf of the State of Ohio, being assistant prosecutor with the Butler County Prosecutor's Office, you have received this motion and been served with this. And would you like to reply to the motion?

1 MS. RODKEY: No Your Honor, we are  
2 fine upon (inaudible)

3 THE COURT: All right. With that  
4 being said, Mr. Schuett, anything further  
5 that you would like the Court to know  
6 before I rule on your motion to withdraw  
7 the guilty plea?

8 MR. SCHUETT: No, sir (inaudible).

9 THE COURT: Okay. It will be  
10 noted. The defendant is present. And I  
11 guess this will be -- we are in the  
12 process of conducting the hearing on your  
13 motion to withdraw the plea. There being  
14 no objection by the State, and you stated  
15 certainly with specificity grounds to  
16 allow me to withdraw the plea.

17 And, Mr. Schuett, you have prepared  
18 an entry that I have in my hand at this  
19 point. Ms. Rodkey, have you seen the  
20 entry? Has it been provided to you?

21 MS. RODKEY: I have not seen the  
22 entry. I am reviewing it now.

23 THE COURT: All right. Let the  
24 record reflect that Ms. Rodkey, the  
25 Assistant Butler County Prosecutor, has

1 the proposed entry in her hand, and is  
2 reviewing it.

3 MS. RODKEY: We don't have any  
4 objection to that entry, your Honor.

5 THE COURT: Okay. It has been  
6 prepared by the defendant's counsel and  
7 it reads as follows: upon motion of the  
8 defendant for good cause shown, the Court  
9 hereby grants defendant's motion to  
10 withdraw guilty plea pursuant to Ohio  
11 Criminal Rule Procedure 32.1 in order to  
12 correct manifest injustice.

13 It is hereby ordered that the  
14 defendant's previous conviction day  
15 (inaudible) be set aside. Defendant is  
16 permitted to withdraw his previously  
17 entered guilty plea.

18 State has acknowledged reviewing  
19 the entry. State have anything that you  
20 would like added, modified or deleted  
21 from the proposed entry?

22 MS. RODKEY: I do not believe  
23 (Inaudible).

24 THE COURT: All right. The Court  
25 is then going to execute the entry and

1 direct it to be file stamped and entered  
2 into the record. And with that there has  
3 --

4 MS. RODKEY: (Inaudible).

5 THE COURT: There has also been  
6 filed --

7 MS. RODKEY: Your Honor, at this  
8 point (Inaudible).

9 THE COURT: That is correct.

10 MS. RODKEY: The motion had been  
11 granted to withdraw his guilty plea  
12 (inaudible)-- at this time the State  
13 would ask to nolle that charge. We do  
14 not wish to proceed at this time.

15 THE COURT: Okay. The State wishes  
16 to -- nolle by State. I take it, Mr.  
17 Schuett, on behalf of the defendant,  
18 there is no objection to the State  
19 nollying the charge and the -- no  
20 objection?

21 MR. SCHUETT: There is no objection  
22 (inaudible.)

23 THE COURT: My understanding the  
24 matter is to be dismissed with prejudice,  
25 is that accurate?

1 MS. RODKEY: Yes, that's my  
2 understanding.

3 THE COURT: All right. So  
4 Ms. Rodkey has indicated that the matter  
5 will be dismissed with prejudice. Nolloed  
6 by the State. And the matter is now  
7 dismissed with prejudice. There is --  
8 okay.

9 Now, there has been filed, and if  
10 Mr. Schuett would wish to proceed with a  
11 motion for application to seal the record  
12 of dismissal and a hearing requested.

13 MR. SCHUETT: Yes.

14 THE COURT: Ms. Rodkey, State has  
15 reviewed this motion?

16 MS. RODKEY: Yes, Your Honor, we  
17 have had an opportunity to review it and  
18 we are aware that (inaudible due to  
19 coughing) we are not requesting a  
20 continuance (inaudible) more notice of  
21 this case. We are not requesting  
22 (inaudible] on any notice requirement.

23 THE COURT: Okay. State again is  
24 satisfied with the -- or State is ready  
25 to proceed on defendant's application to

1 seal the record, official record of  
2 dismissal.

3 MS. RODKEY: Correct.

4 THE COURT: Mr. Schuett, are you  
5 ready to proceed?

6 MR. SCHUETT: Yes, sir.

7 THE COURT: Again, the defendant is  
8 present. All right. Mr. Schuett, your  
9 application indicates that defendant by  
10 and alongside with counsel respectfully  
11 requests the Court for a hearing pursuant  
12 to 2953.52(B) and order sealing his  
13 official record of dismissal of the  
14 above-captioned case and the Court is  
15 proceeding with that hearing at this  
16 point.

17 And further that 2953.53 permits  
18 the defendant to petition the Court to  
19 seal his official record of the  
20 dismissal. In support, the defendant  
21 asserts in part the following: the  
22 complaint in the above-captioned case was  
23 dismissed.

24 There are no criminal charges  
25 pending against the above-named

1 defendant. The defendant has no  
2 objection by the State to granting the  
3 sealing of the record.

4 Does anybody with interest of  
5 justice or better serve sealing  
6 defendant's records given the concerns  
7 for principle or mental well-being of the  
8 above-named defendant, and there is no  
9 statutory-imposed waiting period to seal  
10 the official records of dismissal.

11 Wherefore, the defendant  
12 respectfully requests this Court to grant  
13 his petition for a hearing and to be  
14 heard on sealing his official record and  
15 subsequent granting his application for  
16 sealing of the official record by issuing  
17 an entry sealing official record of  
18 dismissal of not guilty signed by Dennis  
19 Deters of the firm of Haughey & Deters,  
20 Mr. Schuett's firm.

21 The State has no reason to believe  
22 that -- first of all, does the defendant  
23 have any prior convictions or any pending  
24 matters or anything that would at all  
25 prejudice the State, again, these are the

1 two interested parties here, that would  
2 prejudice the State, the sealing of this  
3 record (inaudible)?

4 MS. RODKEY: (Inaudible).

5 THE COURT: And, Mr. Schuett, if  
6 you -- you had mentioned in here the  
7 physical and mental well-being that the  
8 defendant. If you would please elaborate  
9 on that before I take this matter under  
10 consideration?

11 MR. SCHUETT: (Inaudible).

12 THE COURT: Okay. All right. And  
13 the defendant here in this matter has had  
14 some history of mental and physical  
15 issues, let's say, leading up to this  
16 that would certainly could, if not  
17 definitely would cause problems with the?  
18 defendant. Okay. Does the State have  
19 any reason to believe that those  
20 representations are not true?

21 MS. RODKEY: No, Your Honor. There  
22 is no reason to doubt the veracity of  
23 what you have just said regarding the  
24 defendant (inaudible).

25 THE COURT: The Court will order

1 that those fines -- I believe the \$50  
2 fine will be applied to this application,  
3 and with the fines and costs in this case  
4 to be paid by the firm of Haughey &  
5 Deters or Mr. Deters. I would -- but  
6 since it has been nulled, I would order  
7 the clerk to refund the payment of the  
8 fine and cost and the fine and costs that  
9 had been collected on this. Refund that  
10 to the firm of Haughey & Deters and/or  
11 Mr. Deters, so that will be done.

12 I have here proposed entry that was  
13 prepared by the law firm of Haughey &  
14 Deters. I will share that with  
15 Ms. Rodkey. Ms. Rodkey, if you would  
16 take a moment and review that form.

17 And you certainly are present for  
18 this and have been notified of this  
19 hearing and have been present throughout  
20 the hearing.

21 MS. RODKEY: Yes, Your Honor. I  
22 have reviewed that entry.

23 THE COURT: And this matter having  
24 come before the Court upon application as  
25 it's titled again Case No. CRB1201405

1 titled entry sealing official records of  
2 dismissal or not guilty, obviously this  
3 case was dismissed with prejudice. This  
4 matter for -- I found cause for the  
5 reasons stated in defendant's application  
6 to seal the official record of dismissal  
7 and stated in the hearing, and defendant  
8 being present throughout the hearing with  
9 defense counsel, and the assistant  
10 prosecuting attorney.

11 This matter having come before the  
12 Court upon reading the body of the entry,  
13 this matter having come before the Court  
14 upon the application of the above-named  
15 defendant to seal the official records  
16 herein, the Court finds that the charges  
17 against the above-named defendants were  
18 dismissed and filed by the Court on  
19 today's date, the prosecuting attorney  
20 who notified the defendant of said  
21 application and has waived notice of  
22 hearing on application and has filed no  
23 objection to the granting of said  
24 application that was stated on the  
25 record.

1           There are no criminal charges  
2 pending against the above-named defendant  
3 and that the interest of the defendant  
4 outweighs the legitimate needs for the  
5 government to maintain any recording  
6 pertaining to this case.

7           Certainly -- I'm not reading this,  
8 I'm just commenting on the content.  
9 Certainly the defendant's issue regarding  
10 mental and physical issues, I find,  
11 certainly outweighs the needs of the  
12 government to maintain any records  
13 pertaining to this case especially in  
14 light of the State dismissing the charges  
15 with prejudice, and with no desire to  
16 proceed on this matter.

17           And the defendant having no pending  
18 actions and no prior history of contact  
19 or contact with the court, I certainly  
20 find that his interest outweighs any  
21 legitimate needs of the government to  
22 maintain any record pertaining to this  
23 case. And that the only way that his --  
24 this defendant's interest can be  
25 protected here, the least intrusive way

1 is to seal the record so that it is not  
2 available for public use so that he is  
3 not subject to the potential problems  
4 that that may present. There is no other  
5 way to accomplish this other than sealing  
6 the record of dismissal.

7 So, therefore, it is ordered by  
8 decree that all official records of the  
9 charges noted below are hereby sealed,  
10 and all reference deleted as provided by  
11 Ohio Revised Code 2953.52.

12 And the clerk is ordered to send a  
13 copy of this entry to any public office  
14 or agency that has a record of this case  
15 and subject to this order as provided by  
16 the Ohio Revised Code Section 2953.53.

17 Ms. Rodkey has said that she's been  
18 notified. The information below  
19 references personal identification and  
20 information of the defendant, which will  
21 be redacted as will the information on  
22 the court's docket regarding this matter  
23 will be redacted. That will be the order  
24 of this Court.

25 Anything further from the State

1 regarding this matter?

2 MS. RODKEY: No, Your Honor.

3 THE COURT: Mr. Schuett, anything  
4 further regarding the defendant on this  
5 matter?

6 MR. SCHUETT: (Inaudible)

7 THE COURT: I'm sorry.

8 MR. SCHUETT: (Inaudible).

9 THE COURT: This record, I don't  
10 know of a way of redacting it. I don't  
11 know. As a matter of fact, I believe  
12 that this states here the proceedings.  
13 So I'm not inclined to redact it. With  
14 that, I'm signing the entry sealing  
15 official record of defendant of dismissal  
16 of the case. And these will be filed and  
17 entered -- we can go at this point, go  
18 off record.

19 MS. RODKEY: Thank you, Your Honor.

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21 PROCEEDINGS CONCLUDED

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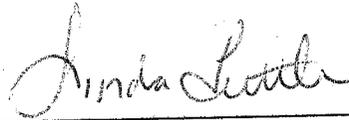
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25

## CERTIFICATE

I, Linda Tuttle, the undersigned, an Official Court Reporter, do hereby certify that at the same time and place stated herein, I recorded in stenotype and thereafter transcribed the within 16 pages, and that the foregoing Transcript of Proceedings is a true, complete, and accurate transcript of my said stenotype notes.

IN WITNESS WHEREOF, I hereunto set my hand this 25th day of February, 2013.



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LINDA TUTTLE, RPR, RMR, CRR  
Official Court Reporter  
Hamilton County, Ohio