

ORIGINAL

In The Supreme Court of Ohio

State of Ohio, :
 Appellee, :
 -vs- : Case No. 12-1644
 Nathaniel Jackson, :
 Appellant. : This is a death penalty case

Nathaniel Jackson's Motion to Hold Proceedings in Abeyance

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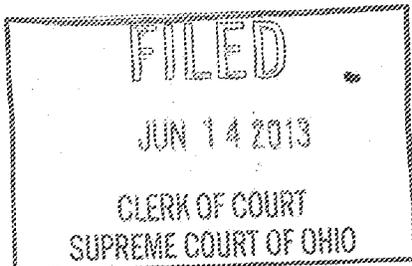
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Appellant Nathaniel Jackson moves this Court to hold this appeal in abeyance pending resolution of his appeal to the Trumbull County Court of Appeals. This Court recently remanded that appeal to the Court of Appeals for further consideration. *State v. Jackson*, __ Ohio St.3d __, 2013-Ohio-2285. Appellant has attached a memorandum in support of this motion.

Respectfully submitted,

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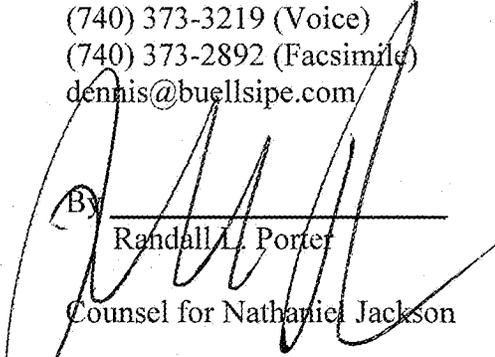
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Memorandum in Support

This appeal is from the trial court's resentencing of Appellant in which it again imposed a sentence of death. The Trumbull County Court of Appeals had previously vacated Appellant's death sentence because the prosecution had drafted the capital sentencing opinion for the trial judge. *State v. Jackson*, 190 Ohio App.3d 319, 2010-Ohio-5054, 941 N.E.2d 12211, ¶¶ 28-30. That decision was premised on this Court's decision in *State v. Roberts*, in which this Court had found that the same judge had improperly permitted the prosecution to draft his sentencing opinion. *State v. Roberts*, 110 Ohio St.3d 71, 2006-Ohio-3665, 850 N.E.2d 1168, ¶¶ 153-166.

On June 5, 2013, this Court remanded for consideration on the merits another appeal that Jackson had pending before this Court. *State v. Jackson*, ___ Ohio St.3d ___, 2013-Ohio-2285. That appeal involves an issue very similar to the issue on which the Trumbull County Court of Appeals had vacated Appellant's death sentence. However, the issue in that appeal challenges Jackson's conviction as opposed to his death sentence.

Prior to trial, Appellant filed a motion to suppress the recorded and oral statements that he made to the investigating officers at the time of his arrest. [T.d. 21. The critical fact at the motion to suppress was one of credibility: 1) whether the arresting officers advised Appellant of his constitutional rights and 2) whether Appellant requested counsel and that the interrogation cease. The trial court, in its findings of fact and conclusions of law, purportedly found the

testimony of the arresting officers credible and the testimony of Mr. Appellant incredible. [T.d. 205]. The trial court, based upon that finding, denied Appellant's motion to suppress.

Since this Court decided *Roberts*, it has come to light that the prosecution's ex parte drafting of opinions for the trial judge extended to findings of fact and conclusions of law for motions to suppress. [T.d. 361, Exhibit B, p. 108]. The Trumbull County Prosecutor's Office and Trumbull County Common Pleas Judges shared a computer drive. [*Id.* at p. 92]. The prosecutors, on their own office computers, would prepare pleadings for the judge and electronically transfer them to the judges' computers. [*Id.*]. The Assistant Prosecutor described this drafting process as an "everyday event." [*Id.* at p. 177]. The prosecutors believed this to be an exemplary system because they had to defend the judges' decisions on appeal and they would make the entries. [*Id.* at pp. 108-110, 128-29]. The Assistant Prosecutor explained, "we [the prosecutors] *represent the courts*. I don't think that any judge wants to have a case resentenced [sic] or remanded." [*Id.* at p. 110] (emphasis added).

If the Court of Appeals finds that the prosecution and trial judge employed this common Trumbull County practice in Appellant's case and vacates Appellant's conviction, it will moot this appeal. *State v. Were*, 94 Ohio St.3d 173, 177, 761 N.E.2d 591 (220) (this Court only addressed the issued that led to the vacation of the defendant's conviction); *State v. Dean*, 127 Ohio St.3d 140, 2010-Ohio-5070, 937 N.E.2d 97, ¶ 76 (" Because of our disposition of this case, the remaining issues raised in the appellant's brief are moot"). If the Court of Appeals does not vacate Appellant's conviction, then it could consolidate that appeal with the present appeal.

Appellant requests this Court grant this motion and order that these proceedings be held in abeyance pending the Trumbull County Court of Appeals' decision in Appellant's case that this Court ordered remanded for additional consideration.

Respectfully submitted,

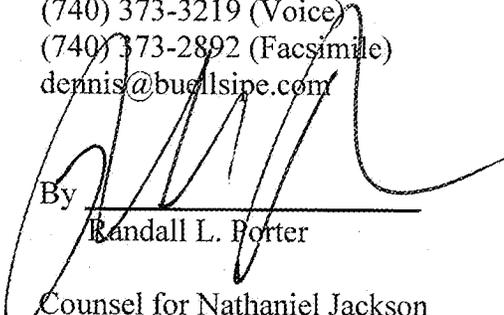
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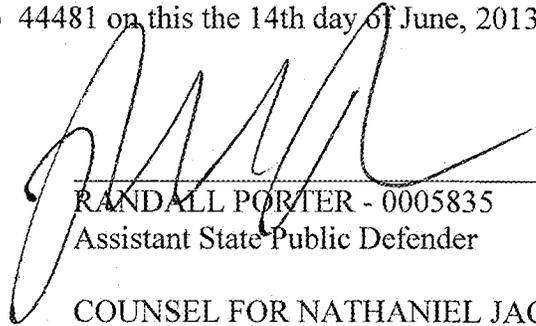
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By 
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Counsel for Nathaniel Jackson

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Nathaniel Jackson's Motion to Hold Proceedings in Abeyance* was forwarded by electronic and regular U.S. Mail to Luwayne Annos and Charles Morrow, Assistant Prosecuting Attorneys, 160 High Street, N.W., 4th Floor Administration Building, Warren, Ohio 44481 on this the 14th day of June, 2013.



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