

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO	*	CASE NO. 13-1394
PLAINTIFF-APPELLANT	*	On appeal from the
vs.	*	Tuscarawas County Court
DANIAL MCCOMAS	*	of Appeals, Fifth Appellate
DEFENDANT-APPELLEE	*	District
	*	Court of Appeals Case
	*	No. 2013 AP 03 0013
	*	

**MEMORANDUM IN OPPOSITON TO JURISDICTION
OF APPELLANT THE STATE OF OHIO**

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STATEMENT OF THE FACTS AND CASE

Eleven year old C.C. was raped by appellant seventeen year old appellant McComas, on June 27, 2011. C.C. was staying at appellant's home that evening. (TR II at 155). appellant's mother had served as C.C.'s babysitter on a number of occasions. On the evening of June 27, 2011, C.C. was seated in the living room watching television with appellant's sister. Appellant came in and sat down next to C.C. on the couch and (TR II at 162) began molesting her. (TR II at 163). He took her hand and placed it on his penis and forced her to masturbate him. (*Id.*). After doing this for some time, appellant had C.C. lay on the couch. (TR II at 165). Appellant proceeded to insert his penis between her buttocks. (TR II at 165-166).

Appellant, then walked C.C. into his bedroom and had her get onto the bed. (TR II at 167-169). He penetrated her vagina with his penis. (TR II at 171). This continued until appellant ejaculated inside of C.C.'s vagina. (*Id.*). After this, C.C. got redressed. She pulled her underwear and the sanitary pad attached to it back on. (TR II at 174). She went to the bathroom, she did not shower, and she did not change clothes. (TR II at 173).

The next morning, C.C. went home and immediately told her mother what happened. (TR II at 177). C.C.'s mother promptly took her to the Newcomerstown Police Station and made a report.

That same day, C.C. was taken to Akron Children's Hospital. (TR II at 222). She met with a social worker specially trained in child sexual abuse. (TR II at 236). C.C. was examined, diagnosed, and treated by a pediatrician. A rape kit was performed. (TR II at 237). C.C.'s underwear and sanitary pad were collected at this time. (*Id.*). This evidence, in addition to cotton swabs of C.C.'s anal and vaginal area, was sent to the Bureau of Criminal Investigation (hereafter, "BCI"). (TR at TR II at 238). An oral swab from appellant was also sent to BCI. (TR at 276)

C.C.'s underwear tested positively for semen. (TR II at 305). C.C.'s sanitary pad showed presumptive positives for semen. (TR II at 308). The DNA of the semen identified matched appellant's DNA. (TR II at 330). In addition, sperm was found on the swab of C.C.'s vagina.

On January 18, 2012, the State of Ohio filed a Complaint alleging Delinquency via a violation of one count Rape, R.C. §2907.02, a felony of the first degree, in the Tuscarawas County Court of Common Pleas Juvenile Division. The next day, the state filed a Motion to Transfer the case to the General Trial Division of the Common Pleas Court. On August 3, 2012, the Juvenile Court filed its judgment entry finding that statutory considerations dictated appellant's case be transferred to the General Trial Division pursuant to R.C. §2152.10, R.C. §2152.12, and Juvenile Rule 30. appellant was indicted on one count Rape with a specification that the victim was a child under the age of thirteen pursuant to R.C. §2907.02(A)(1)(b) on August 18, 2012.

A jury was impaneled and appellant's trial began on February 20, 2013. The state presented three witnesses before court was recessed for the day. The next morning, February 21, 2013, prior to resuming testimony in front of the jury, the state moved the court to grant a mistrial based on counsel for appellant's inquiries of the state's investigating officer regarding appellant's willingness to undergo a polygraph examination. The trial court declared a mistrial and the jury was excused.

On February 25, 2013, appellant filed a Motion *in Limine* regarding photographic images of evidence examined by scientists from the BCI. Appellant's Motion was denied and later that morning a new jury was seated and the case proceeded to trial. On February 28, 2013, the jury found appellant guilty of rape pursuant to R.C. §2907.02 and made the special findings that the victim was a child under the age of thirteen and that force had used in the commission of the

crime. appellant consented to sentencing immediately following the reading of the verdict and the court imposed a mandatory term of imprisonment of twenty-five years to life. appellant was classified as a Tier III Registered Sex Offender with community notification requirements upon his release.

Appellant's counsel requested appointment for the purposes of appeal during the sentencing hearing and a Notice of Appeal as of Right was filed on March 8, 2013, with all parties served. On July 17, 2013, the Fifth District Court of Appeals filed its Opinion, Affirming appellant's conviction and finding no alleged errors in the proceedings.

STATEMENT IN OPPOSITION OF JURISDICTION

Appellant's Memorandum in Support of Jurisdiction asserts no substantial constitutional question as he neither perfected his claim of Double Jeopardy Clause violation, nor actually suffered one. Further, his conviction was not a manifest miscarriage of justice nor was he convicted by inadmissible evidence introduced or hidden by the state. Appellant's arguments do not constitute a great public interest and, as argued below, there is no compelling reason why this Court should accept jurisdiction in this case.

ARGUMENT

RESPONSE TO ASSIGNMENT OF ERROR I

THE TRIAL COURT DID NOT ERR IN GRANTING THE STATE'S MOTION FOR MISTRIAL UPON APPELLANT'S INTRODUCTION OF TESTIMONY REGARDING HIS WILLINGNESS TO UNDERGO A POLYGRAPH EXAMINATION

A mistrial should not be granted in a criminal case unless the substantial rights of either the defendant or the prosecution are prejudicially affected. *Tingue v. State* (1914), 90 Ohio St. 368, 108 N.E. 222. When a mistrial is granted over the objection of the defendant, the prosecutor must demonstrate manifest necessity for the mistrial. *Arizona v. Washington* (1978),

434 U.S. 512, 98 S.Ct. 824. Such standard is not a mechanical one to be applied without attention to the specific problem faced by the trial judge. There must be a high degree of necessity for the mistrial before it is properly granted upon the prosecutor's motion. *Id.*

The decision to grant a mistrial is within the sound discretion of the trial court. *Illinois v. Somerville* (1973), 410 U.S. 458, 93 S.Ct. 1066. "We think, that in all cases of this nature, the law has invested the Courts of justice with the authority to discharge a jury from giving any verdict, whenever, in their opinion, taking all the circumstances into consideration, there is a manifest necessity for the act, or the ends of public justice would otherwise be defeated." *State v. Widner* (1981), 68 Ohio St.2d 188, 190, 429 N.E.2d 1065, quoting *United States v. Perez* (1824), 9 Wheat. 579, 6 L.Ed. 165. "They are to exercise a sound discretion on the subject." *Id.* "To be sure, the power ought to be used with the greatest of caution, under urgent circumstances, and for very plain and obvious causes." *Id.*

In the case at bar, appellant argues that the trial court abused its discretion in granting the state's Motion for Mistrial by ignoring or failing to consider three things: 1. That a limiting instruction would have cured the error committed by the defense; 2. That appellant's error did not result in prejudice to the state's case, and; 3. That the state's Motion for a Mistrial was calculated to provide a more favorable opportunity to convict appellant. In all three regards, appellant is wrong.

1. A limiting instruction would not have cured the error that prejudiced the state's case.

First, appellant argues that the trial court, instead of granting a mistrial, should have instructed the jury to disregard the questions and statements made by his counsel and Officer John Gray regarding appellant's willingness to undergo a polygraph examination. Appellant

also claims his counsel's error in questioning Officer Gray about the offered polygraph did not prejudice the state's case.

Appellant's arguments suffer from a fatal flaw at their very foundation. The argument assumes that mention of any completed or offered, non-stipulated polygraph examination is, in one form or another, admissible at trial. It is not.

Since 1987, the Fifth Appellate District, based on Ohio Supreme Court precedent, has consistently held that any mention of a polygraph examination or a willingness to undergo one is inadmissible. See *State v. Miller*, (April 20, 1987), Tuscarawas App. No. 86AP060038, and *State v. Everhart*, (July 23, 1990), Tuscarawas App. No. 89AP040036. In *Miller*, the appellate court stated:

The result of a polygraph examination is admissible at trial only under certain specific conditions. These conditions are clearly and definitively spelled out in the syllabus of *State v. Souel* (1978), 53 Ohio St.2d 123. Absent these conditions, neither party may introduce the result of such an examination. *Souel*, supra. [Citations omitted]. It follows that evidence of a professed willingness to submit to a polygraph examination is also inadmissible. See *State v. Hegel* (1964), 9 Ohio App.2d 12, 13 (admission of testimony of defendant's refusal to submit to a lie detector test constitutes prejudicial error); *State v. Smith* (1960), 113 Ohio App. 461 (admission of testimony relating to submission of accused to lie detector test, even though results thereof were not disclosed, constitutes prejudicial error); 25 O.Jur.3d 618, Criminal Law, § 342. *Id.* at 2.

The conditions referred to in *Miller* are outlined in this Court's syllabus of *Souel*,

Results of polygraphic examination are admissible in criminal trial for purposes of corroboration or impeachment, provided: that there has been stipulation between prosecuting attorney, defendant and his counsel for defendant's submission to test and for subsequent admission; that admission is subject to discretion of the trial court, which may refuse to accept such evidence if not convinced that examiner was qualified or that test was conducted under prior conditions; that opposing party shall have right to cross-examine the examiner on specified matters, and that the trial judge should instruct the jury that examiner's testimony does not tend to prove or disprove any element of the crime and that it is for jury to determine the weight and effect of such testimony. *Souel* at Syllabus.

Appellant makes no claims of a stipulation by the state to introduce appellant's willingness to submit to a polygraph examination because none existed. Therefore, under no legal precedent or circumstance would counsel for appellant's questions regarding appellant's willingness to submit to a polygraph have been admissible during this trial.

This error was prejudicial to the state. Counsel for appellant's sole purpose in asking Officer Gray if appellant had offered to take a polygraph test was to bolster his client's credibility. In *Miller*, the same situation occurred:

The purpose of the question in the case *sub judice* was clearly directed at bolstering the credibility of the State's witness in the minds of the jurors. The question, though unanswered, was a leading question which suggested but one answer: that the witness was willing to take a polygraph examination as to the particular statement he testified he made to the Dover Police, and that therefore he was telling the truth. *Miller* at 2.

One difference between the facts in *Miller* and the case at bar is that the defense sought to bolster appellant's credibility and not that of a witness. This is an important distinction. Appellant could not be made to testify on his own behalf and, therefore, the state had no opportunity to test appellant's credibility on cross-examination. Counsel for appellant's actions in seeking to bolster the credibility of appellant, who had no obligation to make himself available for cross-examination, prejudiced the state's case beyond the bounds of fundamental fairness.

Finally, a limiting instruction to the jury would not have cured the error that had been committed. See *Miller* at 2. By questioning Officer Gray regarding appellant's willingness to undergo a polygraph, the defense committed an error which was inherently prejudicial to the state. This prejudice created a manifest necessity for a mistrial and the trial court exercised sound discretion in excusing the first jury.

2. The state did not induce a mistrial and appellant has waived his Due Process argument for the purposes of appeal.

In his next argument, appellant claims that since the state did not object after the defense's first question containing the word "polygraph," but waited until the fourth question, that the state was attempting to induce a mistrial. Appellant claims that the state allowed appellant's counsel to commit prejudicial error in order to obtain a more favorable opportunity to convict appellant at a second trial. The law is very clear when a prosecutor actually does engage in this behavior.

The Double Jeopardy Clause does protect a defendant against governmental actions intended to provoke mistrial requests and thereby to subject defendants to the substantial burdens imposed by multiple prosecutions. It bars retrials where 'bad faith conduct by judge or prosecutor'...threatens the 'harassment of an accused by successive prosecutions or declaration of a mistrial so as to afford the prosecution a more favorable opportunity to convict' the defendant. *Arizona v. Washington* (1978), 434 U.S. 497, 507, 98 S.Ct. 824, 831-832.

As held in *Downum v. United States* (1963), 372 U.S. 734, 83 S.Ct. 1033, "harassment of an accused by successive prosecutions or declaration of a mistrial so as to afford the prosecution a more favorable opportunity to convict are examples of when jeopardy attaches." *Id.* at 736. Essentially, appellant's argument is that jeopardy attached to the first trial and since it did, the retrial violated due process. However, having failed to object to the retrial and having never claimed that jeopardy attached in the first trial, this argument was waived.

The second reason why this argument fails is that the defense caused the mistrial. The record is completely devoid of any attempts by the state to induce the introduction of testimony regarding the offer to submit to a polygraph. Appellant asserts that the minor lapse between the first time the word "polygraph" is mentioned and the time when the state objected was a calculated plan. The record does not bear this out. The state properly objected to the inadmissible line of questioning as it was happening. The state had no way of preparing for the defense's complete disregard for established precedent, or worse yet, complete ignorance of the law. To suggest the state invited this error for the purposes of moving for a mistrial is not only

utterly devoid of evidence in the record, but also preposterous. The Fifth Appellate District agreed in its decision affirming appellant's conviction on appeal as of right.

As appellant readily concedes, the trial court is in the best and most authoritative position to assess whether a mistrial is appropriate vis-à-vis a curative instruction. The testimony was clearly leading to the credibility of appellant by showing his willingness to take a polygraph and his immediate denial of the charge, without appellant taking the stand and testifying. The polygraph, to an unsophisticated jury, is an immediate imprimatur on appellant's credibility or innocence. Further, the testimony was totally orchestrated by defense counsel and was not introduced by the state. Upon review, we find no error in the trial court's ruling or any violation of the Double Jeopardy Clause. *State v. McComas* (July 17, 2013), Tuscarawas App. No. 2013AP030013 at ¶13-14.

For these reasons, this Court should not accept jurisdiction of this case as no legitimate constitutional question has been raised by appellant.

RESPONSE TO ASSIGNMENT OF ERROR II

THE FINDING OF GUILT WAS NOT AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE

The manifest weight of the evidence shows that appellant is guilty of rape pursuant to ORC 2907.02 (A)(1)(b). To determine if a conviction was erroneous, the Court "must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine whether, in resolving conflicts in the evidence, the trier of fact clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Otten* (1986), 33 Ohio App.3d, 339, 340. This rule should be raised only in "extraordinary circumstances when the evidence presented weighs heavily in favor of the defendant." *Id.* at 340.

Whether the evidence presented at trial is legally sufficient to support a conviction is a question of law. *State v. Thompkins* (1997), 78 Ohio St. 3d 380. To determine if the evidence is legally sufficient, the Court examines the evidence presented at trial to see if it would convince "the average mind of the defendant's guilt beyond a reasonable doubt." *State v. Jenks* (1991),

601 Ohio St. 3d 259. In regards to legal sufficiency, the Court must ask if “whether after reviewing the evidence in the light most favorable to the prosecution, any rational juror (or trier of fact) could have found the essential elements of the crime proved beyond a reasonable doubt.” *Id.*

The trier of fact, the jury, did not lose their way. The jury convicted appellant based on the evidence presented at trial. They made their decision based on the credible testimony of the victim, the testimony of fact and expert witnesses, and the DNA evidence that directly linked the appellant to the crime.

The victim was a credible witness. She was raped during the late hours of June 27, 2011, when she was eleven years old. She was spending the night at the residence of appellant’s mother, her babysitter. (*Id.* at 154-155). As soon as she was home, she made her mother aware of the rape. (*Id.* at 178). She wrote her mother a note, telling her that the appellant had made her have sexual intercourse with him. *Id.* She met with a police officer and told the officer about what had happened. (*Id.* at 180). She was later interviewed at the Akron Children’s Hospital about the penetration. (*Id.* at 182). Her story never changed. The jury was able to see a video recording of the interview from Akron Children’s Hospital, in addition to watching the victim at trial. (*Id.* at 258).

Even though nearly two years had elapsed between the crime and trial, victim’s story remained consistent. While appellant’s attorney did bring up inconsistencies during cross-examination, these inconsistencies were about irrelevant details, such as what color pants the victim was wearing at the time of the crime. The victim did not forget important details of the crime. At no point did victim stray from her recollection of the crime. She repeatedly asserted that on June 27, 2011, appellant had victim masturbate him before taking her into his bedroom and having sexual intercourse with her. (*Id.* at 163-171). In addition to the jury finding the

victim's recollection to be credible, the judge pointed out to appellant during his sentencing that she had found the victim's testimony during trial to be credible. (TR II at 471).

Medical experts from Akron Children's Hospital established that the victim had vaginal intercourse. (*Id.* at 240). While at Akron Children's Hospital, the victim was examined, diagnosed, and treated by a pediatrician. (*Id.* at 235). A rape kit was performed by medical staff trained in the procedure. Swabs were taken from the victim's vagina. (*Id.* at 237-238).

The victim did not shower or change clothes before the rape kit was performed. (*Id.* at 173). The victim's underwear and sanitary pad were collected at this time; the same underwear and sanitary pad that she was wearing at the time of her rape. (*Id.* at 182). This evidence, in addition to the swabs, was sent to the BCI and processed. (*Id.* at 300).

Two scientists qualified as experts in forensic science, provided testimony that further linked the appellant to this crime. The first, Peter Tassi, established that both the sanitary pad and the underwear tested presumptively positive for semen. (*Id.* at 306-307). There was also a sperm cell found on the swab of the victim's vagina. (*Id.* at 305). In addition, Mr. Tassi established that after further testing, he was able to confirm that the underwear tested positive for semen. (*Id.* at 307-308). The second scientist, Emily Draper, established that the DNA of the semen found on the victim's underwear was appellant's DNA. (*Id.* at 331). The fact that a sperm cell was found inside of the victim's vagina corroborated the fact that she had engaged in vaginal intercourse.

The state asserts that the jury did not lose its way in finding appellant guilty. The Fifth Appellate District agreed with the state and held,

As noted above, the believability of anyone's testimony lies with the trier of fact, in this case, the jury. We find C.C.'s consistent statements of the events, coupled with the presence of a sperm cell in her vagina and appellant's DNA on her underwear, regardless of ownership, was sufficient to substantiate the jury's guilty

finding. Upon review, we find no manifest miscarriage of justice. *McComas* at ¶29.

For these reasons, appellant's Second Assignment of Error does not provide sufficient basis for this Court to accept jurisdiction.

RESPONSE TO ASSIGNMENT OF ERROR III

THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION IN LIMINE

Appellant claims that in the short span between the first jury being discharged and the beginning of the retrial the state presented him with evidence previously unknown to him and hidden by the State. This assertion is patently false.

To begin, appellant failed to object to any of the testimony relating to the victim's underwear or photographs of same at trial. This failure to perfect the claimed error mandates this assignment be reviewed under a harmless error standard. *State v. Grubb* (1986), 28 Ohio St.3d 199, 202. Overcoming harmless error requires a showing of undue prejudice or a violation of a substantial right. See Crim. R. 52(A).

On September 12, 2012, the same day appellant was arraigned, appellant was sent a Response to Discovery. The discovery response included two laboratory reports from BCI. Appellant concedes he received these reports in discovery.

The first laboratory report summarized Forensic Scientist Peter Tassi's findings in regards to a pair of girls' underwear which had been collected by Akron Children's Hospital Personnel and submitted for analysis. The second report summarized Forensic Scientist Emily Draper's findings regarding DNA testing and analysis which she performed on cuttings taken from the girls' underwear Scientist Tassi had removed for that purpose. Both laboratory reports state, in clear typeset, "Examination, documentation, and any demonstrative data supporting

laboratory conclusions are maintained by BCI and will be made available for review upon request.”

During the first trial, the state presented three witnesses before a mistrial was granted. Those witnesses were the victim, Tyla Dudley, the Akron Children’s Hospital Social Worker, and Officer John Gray. During the victim’s testimony, the state introduced an envelope containing three pieces of a girls’ pair of underwear and asked the victim if they were hers. The victim affirmed the pieces were part of a pair of underwear she had owned. The state did not show the victim the cutting of the underwear containing the bloodstained crotch as the victim is still a child and there was no reason to introduce revolting evidence through a child victim if it was not necessary.

At this point in the first trial, the victim was not asked if this was a complete pair of underwear should the pieces be sewn back together because that was irrelevant. The only purpose of introducing the three non-blood soaked pieces of the underwear was for the victim to identify the pieces as belonging to a pair of her underwear. After the victim’s testimony, no other reference was made to the three pieces of underwear prior to the mistrial. If appellant assumed the three pieces of underwear represented a complete pair of underwear; that was his unfamiliarity with the evidence in the case and his mistake.

After the first trial ended, the state was given two photographs from Scientist Tassi which he intended to use during his planned testimony on the day the mistrial was granted. These photographs depicted the girls’ underwear with the blood stained crotch whole, prior to the time he cut them to pieces for analysis. The photos also depicted a blood soaked sanitary pad which had been attached to the girl’s underwear when they were logged into evidence at BCI. The state did not have copies of Scientist Tassi’s “examination documentation” prior to this time. The state, like appellant, had not requested the contents of Scientist Tassi’s analysis notes

prior to trial. The photographs and an explanation of where they originated were sent to appellant the same day as an update to discovery. Appellant moved *in Limine* to exclude the state's use of these photographs during the retrial and his motion was denied.

During the retrial, the victim once again identified the three pieces of unsoiled underwear as hers. (TR II at 182) Then, Scientist Tassi testified that:

Tassi: "The underwear, it's opened, once it's opened, document what's there. Take a photograph of the items that are there and then with that sample, with the underwear we use an alternate light source to examine it for staining, body fluid stains.

Prosecutor: Now do you deconstruct the underwear before you begin this testing?

Tassi: Yes in this case I did. (*Id.* at 304).

Mr. Tassi was shown exhibits by the state which he positively identified as the underwear. He stated that he packaged the underwear, that the underwear was still sealed at the time of trial, and then opened the package containing the victim's blood soaked underwear. (*Id.* at 305-306). Later, Emily Draper, the DNA analyst who analyzed the cuttings from victim's sanitary pad and underwear, explained the standard protocol for examining evidence, including the cuttings from victim's underwear. (*Id.* at 330). She described the testing procedure used to extract and identify sperm and DNA. (*Id.* at 334). She testified that standard protocol was followed, which included the evidence being resealed and returned to the Newcomerstown Police upon completion. (*Id.* at 334).

Appellant also contends that the state hid the pieces of underwear which had been analyzed by BCI. It did no such thing. Since September of 2012, via BCI laboratory reports, appellant was on notice that all evidence referred to in their report which BCI had processed and analyzed had been returned to Newcomerstown Police. Appellant was on notice that he could make arrangements to view that evidence, the sanitary pad and girls' underwear (all *four* pieces), at any time.

The state is not required to send defendants the bloody underwear of their victims anymore than it is required to send defendants confiscated heroin in drug prosecutions. All of these items of evidence were properly logged into evidence with Newcomerstown Police from September of 2012 when BCI sent the evidence back to them, until the first day of the first trial. Once the mistrial was granted, all items were logged back into evidence with the police until the start of the retrial. Officer Gray testified as did Chief Holland that at no time between September of 2012, and the start of the first trial did Counsel for appellant ever request to view the evidence in their possession. (TR II at 282).

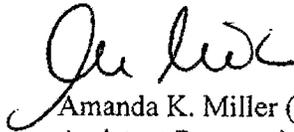
As to the evidence presented by BCI Scientists, including the photographs, these were the work product “notes” of Scientist Tassi. These photographs were available for inspection or copying by appellant at any time between September of 2012, and February 20, 2013. Appellant was put on notice that these photographs and other “examination documentation” and “demonstrative data” existed and were available to him upon request. The state fully complied with Crim. R. 16 when it put appellant on notice that he could receive copies of all “Examination documentation, and any demonstrative data supporting laboratory conclusions” from BCI simply by requesting such from BCI.

In conclusion, appellant suffered no undue prejudice or violation of a substantial right when the trial court denied his motion *in limine*. Appellant failed to make himself familiar with the evidence available in the case and, therefore, suffered from a lack of preparation at trial. All evidence presented during the victim’s testimony and that of the BCI Scientists was properly relevant and admissible at trial as the Fifth Appellate District properly noted in its Opinion at ¶36. For these reasons, appellant’s Third Assignment of Error does not provide sufficient basis for this Court to accept jurisdiction for appellate review.

CONCLUSION

Appellant has presented no substantial constitutional question for this Court to answer. In addition, this case is not relevant to a great public or general interest as his conviction was not a manifest miscarriage of justice nor was the admission of the state's exhibits at trial improper in any way. There is no compelling reason this Court should accept jurisdiction over this appeal.

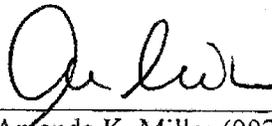
Respectfully submitted,



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PROOF OF SERVICE

I certify that a copy of the foregoing Memorandum in Opposition to Jurisdiction has been served upon Danail McComas, Inmate # 768167, Chillicothe Correctional Institution PO Box 5500, Chillicothe, Ohio, 45601, by placing a copy in the regular US Mail on this the 11th day of September, 2013.



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