

ORIGINAL

IN THE SUPREME COURT OF OHIO
Case No. 14-228

STATE OF OHIO	:	
Plaintiff-Appellee	:	On Appeal from the
vs	:	Cuyahoga County
MARLON CLEMONS	:	Court of Appeals,
Defendant-Appellant	:	Eighth District, Case
		No. 99754

APPELLANT'S MOTION FOR RECONSIDERATION

ROBERT L. TOBIK, ESQ.
 Cuyahoga County Public Defender
 BY: CULLEN SWEENEY, ESQ. (0077187) (COUNSEL OF RECORD)
 Assistant Public Defender, Suite 200
 310 Lakeside Avenue
 Cleveland, OH 44113
 (216) 443-7583
 (216) 443-6911 FAX
 COUNSEL FOR APPELLANT

TIMOTHY J. MCGINTY, ESQ.
 Cuyahoga County Prosecutor
 The Justice Center, Eighth Floor
 1200 Ontario Street
 Cleveland, OH 44113
 (216) 443-7800
 COUNSEL FOR APPELLEE STATE OF OHIO

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Now comes Appellant Marlon Clemons, by and through undersigned counsel, and files this motion for reconsideration pursuant to S.Ct. R. XI, Sec. 2, and requests that this Honorable Court reconsider its decision to decline jurisdiction. The reasons for reconsideration are set forth in the accompanying brief.

Respectfully Submitted,

ROBERT L. TOBIK, ESQ.
Cuyahoga County Public Defender



CULLEN SWEENEY, ESQ. (0077187)
Assistant Public Defender
Cuyahoga County, Ohio
310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113
Counsel for Appellant

BRIEF

On March 14, 2014, this Court, in a 4-3 decision, declined jurisdiction over the following proposition of law:

A criminal complaint constitutes a “formal” accusation for purposes of triggering a criminal defendant’s state and federal constitutional right to a speedy trial. (*State v. Selvage* (1997), 80 Ohio St. 3d 465 applied).

State v. Clemons, Ohio Sup. Ct. No. 2014-228 (O’Connor, C.J., and Kennedy and French, JJ., dissent). With this motion, Marlon Clemons respectfully requests that this Court reconsider its decision and accept the instant case. If this Court accepts Clemons’ view of the case, the Eighth District has established a constitutional rule in direct contravention of this Court’s decision in *State v. Selvage* (1997), 80 Ohio St. 3d 465. If this Court accepts the State’s view of the case, this Eighth District is the only court that realizes that this Court implicitly overruled *Selvage* with *State v. Azbell* (2006), 112 Ohio St. 3d 300. Either way, this is an important case and reconsideration is appropriate.

In Clemons’ view, the Eighth District, in a 2-1 decision, has established a constitutional rule that cannot be reconciled with this Court’s prior decision in *State v. Selvage* (1997), 80 Ohio St. 3d 465. In *Selvage*, this Court held that a defendant’s *constitutional* right to speedy trial was triggered by, among other things, a criminal complaint. The Eighth District, in the instant case, held that a criminal complaint was not sufficient and that Clemons’ *constitutional* speedy trial rights were not triggered until his indictment. Clemons was charged by criminal complaint on August 6, 2009, but was not indicted until March 2011. *Selvage* makes clear that *constitutional* speedy trial should be triggered by the August 6, 2009 complaint. The Eighth District held, however, that Clemons’ speedy trial rights were not implicated until his March 2011 indictment.

This State of Ohio, in its memorandum in response, obfuscated this conflict by simultaneously ignoring *Selvage*'s holding and misconstruing *State v. Azbell* (2006), 112 Ohio St. 3d 300. Relying on *Azbell*, the State claims that a criminal complaint is not, by itself, a triggering event "for a defendant's speedy trial rights." What the State fails to mention is that *Azbell* was a *statutory* speedy trial case and that it did not overrule the *constitutional* speedy trial analysis in *Selvage*. In *Azbell*, this Court held that "for purposes of calculating speedy-trial time pursuant to R.C. 2945.71, a charge is not pending until the accused has been formally charged by a criminal complaint or indictment, is held pending the filing of charges, or is released on bail or recognizance." *Id.* at syllabus. The State's conspicuous failure to mention that *Azbell*'s holding was predicated on a *statutory* speedy trial claim while *Selvage* involved a *constitutional* speedy trial claim improperly conflated two different issues and painted an inaccurate portrait of this Court's precedent.

In essence, the State appears to be arguing that this Court implicitly overruled *Selvage* with its decision in *Azbell* despite the fact that *Azbell*'s holding was limited to statutory speedy trial claims. If the State is correct about that, then this Court should expressly say so. If, as Clemons' maintains, the State is wrong, then the Eighth District's decision in this case needs to be corrected before other courts follow suit. Either way, the instant case raises a substantial constitutional issue that merits this Court's review.

In sum, appellant respectfully requests that this Court reconsider its 4-3 decision to deny jurisdiction and accept the instant appeal.

Respectfully Submitted,



Cullen Sweeney, Esq.
Assistant Public Defender

CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Reconsideration was served upon Timothy J. McGinty, Cuyahoga County Prosecutor, The Justice Center, 1200 Ontario Street, 9th Floor, Cleveland, Ohio 44113 on this 1st day of May 2014.

A handwritten signature in black ink, appearing to read 'Cullen Sweeney', written over a horizontal line.

Cullen Sweeney, Esq.
Assistant Public Defender