

IN THE SUPREME COURT OF OHIO

STATE OF OHIO)	SUPREME COURT CASE
)	NO. 2015-0017
Plaintiff-Appellee,)	
)	
vs.)	ON APPEAL FROM THE
)	COURT OF APPEALS,
SOMNATH ROY,)	NINTH APPELLATE
)	DISTRICT
Defendant-Appellant.)	
)	CASE NO. 13CA010404
)	

**MEMORANDUM OF APPELLEE IN
OPPOSITION TO JURISDICTION**

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

This Honorable Court should decline to accept jurisdiction for the reasons set forth herein. The decision of the Ninth District Court of Appeals properly affirmed Roy's convictions for Gross Sexual Imposition.

Roy asserts that the Ninth District Court of Appeals found the evidence of force sufficient based solely upon the Roy's doctor-patient relationship to the victims. Roy claims that the Ninth District expanded the element of force in R.C. 2907.05(A)(1) to include a ruse that allows a defendant-doctor to obtain consent of a patient-victim under the guise of a medical examination. On the contrary, the Ninth District Court of Appeals specifically noted that it could not expand the definition of force beyond what the legislature intended. *State v. Roy*, 9th Dist. Lorain 13CA010404, 2014-Ohio-5186 ¶¶ 43-45. In fact, the Ninth District Court of appeals stated that it was constrained to apply R.C. 2907.05(A)(1), as enacted.

The Ninth District did note the disparity between R.C. 2907.05 and R.C. 2907.03. The Ninth District correctly stated that in the absence of force, a defendant, who engages in sexual contact when there is a doctor-patient relationship between the defendant and the victim, could only be convicted of misdemeanor Sexual Imposition. However, if the defendant engages in sexual conduct under the same doctor-patient relationship, the defendant can be convicted of felony Sexual Battery. The Ninth District Court of Appeals acknowledged that it was required to apply the law, as written, but implored the legislature to reexamine the law to correct this disparity. *Roy* at ¶ 45.

The Ninth District Court of Appeals properly analyzed the facts and found that there was sufficient evidence of force pursuant to R.C. 2901.01(A) and existing case law, to support Roy's

convictions for Gross Sexual Imposition. The court correctly stated that all the facts and circumstances, including the relationship between the defendant and the victim, could be considered in determining the existence of force. *Roy* at ¶ 35. The Ninth District Court of Appeals appropriately analyzed the facts of this case in a light most favorable to the State and determined that there was sufficient evidence of force. *Roy* at ¶¶ 35, 39.

As the Ninth District Court of Appeals properly applied the law, as written, and correctly held that there was sufficient evidence of force to sustain Roy's convictions for Gross Sexual Imposition, no issue or substantial constitutional question exists in Roy's appeal to this Honorable Court. The attempted appeal further presents no viable question of general public interest that warrants the exercise of this Court's jurisdiction. Therefore, the State of Ohio respectfully requests that this Honorable Court decline jurisdiction of Roy's attempted appeal.

STATEMENT OF THE CASE AND FACTS

Somnath Roy was indicted by the Lorain County Grand Jury and charged with the following: Abduction in violation of R.C. §2907.05(A)(1), a felony of the third degree; six counts of Gross Sexual Imposition in violation of R.C. §2907.05(A)(1), felonies of the fourth degree; and seven counts of Sexual Imposition in violation of R.C. §2907.06(A)(1), misdemeanors of the third degree. Roy pled not guilty and the case proceeded through the pre-trial process.

The trial court granted the State's pre-trial request to use other acts evidence. The trial court also granted the State's motion *in limine* to prohibit cross-examination of the lead detective regarding his expunged misdemeanor conviction. At trial, Roy's counsel did no attempt to cross-examine the lead detective about the expunged conviction and did not make an offer of proof regarding the pre-trial ruling on the State's motion *in limine*. Roy waived his right to a jury trial

and was tried to the bench before the Honorable Judge Mark Betleski, a Judge of the Lorain County Court of Common Pleas.

Roy was an internal medicine physician who practiced in Elyria, Ohio. Jocelyn B.H., a licensed practical nurse, applied for a job with Roy in March of 2007, when she was only nineteen years old. Roy interviewed Jocelyn at 7:00 p.m. in his medical office, after his medical office had closed for the day. Roy told Jocelyn to call his cell phone when she got to his office because the door would be locked. After Jocelyn entered the building, she called Roy's cell phone. When Roy let Jocelyn into his office, there was nobody else in the office. Roy began asking increasingly personal questions about Jocelyn's sex life. Jocelyn answered Roy, as she was afraid because she did not know what Roy was like or what he would do.

Roy asked Jocelyn to take his blood pressure to test her skills. Roy made Jocelyn leave her purse and cell phone in his office, and he took her into an exam room. After Jocelyn took Roy's blood pressure, Roy had her sit on the exam table so he could take her blood pressure. Roy straddled Jocelyn's legs and rubbed his erect penis against the inside of her leg. Jocelyn said she could see Roy's erection through his clothing. Jocelyn did not say or do anything because she was too afraid. Roy said Jocelyn's blood pressure was high and that she needed to have a physical. Roy had Jocelyn lie down on the table and he lifted up Jocelyn's shirt and began rubbing her stomach. Roy offered to remove a mole on her stomach but Jocelyn declined. Roy then started groping Jocelyn's breasts, and as he listened to her lungs, he unsnapped her bra. Roy did not tell Jocelyn he was going to do any of this and Jocelyn was too afraid of Roy to say anything. As Jocelyn lay on the table, Roy leaned over her and positioned himself between Jocelyn and the door. Roy used both hands and grabbed, and squeezed Jocelyn's breasts. Roy told her how beautiful her breasts were.

Roy asked Jocelyn to take down her pants so he could check her for moles. Although Jocelyn was scared and desperately wanted to leave, she complied and pulled her pants down to her knees. Roy stood in front of Jocelyn and began rubbing the inside of her legs. Roy told Jocelyn to remove her pants but instead she pulled them up and told Roy she really had to leave. Roy insisted the physical was not over and that she needed an eye exam. As Jocelyn read the lines on the eye chart, Roy stood next to her with his arms around her, kissing her neck. Jocelyn kept telling Roy she had to leave and Roy finally said the interview was over and she was to start on Monday at 9:00 a.m. Roy walked Jocelyn to his office, she got her purse, he walked her to the door of his office, unlocked it, and she left. Jocelyn reported the incident to police. Det. VanKerkhove had Jocelyn call Roy and Roy admitted to unsnapping Jocelyn's bra and kissing her neck.

Annette A., a certified medical assistant, answered Roy's ad for a medical office assistant. Roy interviewed Annette and said he wanted her to observe and learn his office procedures. Roy never mentioned that Annette would need a physical to work at his office. Toward the end of Annette's first day, Roy told her she could return on Saturday at 9:00 a.m. On Saturday, Annette worked with another girl until Roy sent the other girl home.

After Annette and Roy were alone, he mentioned, for the first time, that she would need a physical. Roy had Annette sit on the exam table and he listened to her heart and lungs. Roy had Annette lift her shirt up and he took her bra down and to the side and fondled both of her breasts. Roy commented that her breasts were small. Annette said the way Roy squeezed her breasts was not a normal breast exam. Roy noticed a mole on Annette's chest and mentioned having it surgically removed. Annette told Roy she was not concerned about it but he had her lay down and he began to feel her stomach. Roy had Annette turn onto her stomach so he could look for

other moles. Annette was very uncomfortable so she sat up. Roy said he needed to do an eye exam. During the eye exam Roy stood next to Annette, wrapped his arm around her and began tapping and rubbing her arm. Annette felt very uncomfortable so she stepped away from Roy a little bit. After the exam, Annette tried to walk away quickly, but Roy walked her to the door and acted as if he expected a hug. Roy was standing with his arms extended, so Annette reluctantly gave him a quick hug.

On Annette's next scheduled work day, Roy called her into his office and said she needed to start wearing a padded bra to work to make her breasts appear bigger. Annette went to the police station that evening to report Roy for fondling her during the physical. Det. VanKerkhove had Annette make a confrontation call to Roy. During the call, Roy claimed his comment about Annette wearing a padded bra was a "slip of the tongue."

L.S. was hospitalized by Roy for mononucleosis when she was fifteen years old. Roy performed a physical exam and ordered blood work. Roy checked L.S.'s vital signs and then, without saying anything, Roy reached under L.S.'s t-shirt and hoodie and groped her breasts. At the time, L.S. did not know what a proper breast exam should feel like. Roy's breast exam was painful and L.S. knew something was wrong. L.S. did not say anything because Roy had just told her she might have leukemia and she was scared. Roy reached inside L.S.'s shirt without exposing her breasts and groped her breasts. L.S. was thinking the breast exam was painful and she was wondering what was really going on. In subsequent breast exams, her other doctors would use two fingers and move around, feeling for lumps. L.S. said Roy's breast exam felt more angry and hostile, and very different from breast exams she later had by different doctors. Roy did not tell L.S. or her mother the results of the breast exam.

Roy also came to visit L.S. about a week later while she was in the hospital. L.S. was alone in her room when Roy came in and reached in the sleeve of L.S.'s hospital gown, leaving her breasts unexposed, and groped her breasts in a hostile, unpleasant manner. L.S. described the touching as a scrunching motion, almost like a teenage boy who doesn't know what he is doing. L.S. said that Roy used the center of his palm and his whole fingers in a squeezing motion. L.S. did not say anything after the hospital visit because she thought that since she was only fifteen and her adult sister gave rave reviews of Roy, nobody would believe her. L.S. believed Roy was a "miracle worker" who was going to cure her and she did not want to lose that. L.S. said the breast exam in her hospital room lasted thirty to forty minutes. During L.S.'s follow-up visit in Roy's office, Roy performed a breast exam on L.S.'s mother, which appeared to L.S. very different from the exams Roy had performed on L.S. L.S. said she couldn't talk to her mom about the groping because her mom was very frustrated and upset at the time, due to L.S.'s illness. L.S. didn't report the incidents at the time, but she stopped seeing Roy.

Michelle Perkins worked for Roy as a medical receptionist. Michelle worked at the front desk and showed patients to exam rooms. Roy provided medical care to Michelle twice, although she had her own family doctor and OB/GYN. Michelle developed a spot on her nipple that was seeping so she made an appointment with her own doctor, but Roy would not allow her to leave to go to the appointment. Roy insisted on treating her himself. Michelle was very uncomfortable with that and wanted to see her own doctor. After Roy finished seeing patients and the other employees had gone home, Roy had Michelle go into an exam room. Roy had Michelle undo her bra and he pulled up her shirt. Roy used his whole hands to squeeze both of her breasts. Roy did not explain why he touched both breasts, he just gave her samples of an antibiotic and a cream. Michelle used the samples and the spot cleared up.

Roy insisted on performing a follow-up check. Roy was in the chart room and Michelle was in the hallway. Roy insisted until Michelle finally lifted her shirt and bra, said, "See", and pulled her shirt back down. Michelle complained to Roy's wife who was the office manager, but his wife did not seem too concerned and nothing happened. Michelle confided to another employee who just cracked jokes and made light of the incident. Michelle took the incident very seriously and if she had to work late by herself with Roy she was very concerned and uncomfortable. On March 22, 2007, Michelle resigned. Michelle recalled that a woman named Annette showed up for training as her replacement. Annette told Michelle that Roy had told her to wear a bigger bra to make her breasts look larger.

Det. VanKerkhove testified that he investigated the complaints against Roy. Det. VanKerkhove had Jocelyn and Annette place confrontation calls to Roy to try to get him to admit his actions. Det. VanKerkhove and Det. Lisa Dietsche interviewed Roy at the police station. During the interview, Det. VanKerkhove noticed how Roy never made eye contact with the female detective and very obviously focused his gaze on her breasts throughout the interview. Roy admitted that a normal breast exam requires palpation of the breast and that the breast exams he performed were not palpating.

The trial court found Roy guilty of four counts of Gross Sexual Imposition and two counts of Sexual Imposition. Roy was acquitted on the remaining charges. Roy appealed his convictions to the Ninth District Court of Appeals. The Ninth District Court of Appeals affirmed three of Roy's four convictions for Gross Sexual Imposition in violation of R.C. 2907.05(A)(1). See *State v. Roy*, 9th Dist. Lorain 13CA010404, 2014-Ohio-5186.

LAW & ARGUMENT

RESPONSE TO APPELLANT'S FIRST PROPOSITION OF LAW

- I. The mere movement of clothing to facilitate an improper touching of the breast is not force as envisioned by R.C. § 2907.05(A)(1) where the victim acquiesces because she believes the touching is part of a medical examination.**

Roy argues that there was insufficient evidence that he compelled the victims to submit by force or threat of force to sustain his convictions for Gross Sexual Imposition.

Force or threat of force is defined in R.C. 2901.01(A)(1) as follows: “(1) "Force" means any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.” R.C. 2907.05(D) provides that the victim is not required to prove physically resistance for a conviction of Gross Sexual Imposition.

In *State v. Drayer*, 159 Ohio App.3d 189, 2004-Ohio-6120, 823 N.E.2d 492, ¶ 6, (10th Dist. Franklin), the Tenth District Court of Appeals held that in determining whether there is sufficient evidence of force for conviction of Gross Sexual Imposition the trier of fact may consider all of the surrounding facts and circumstances. *Drayer* citing *State v. Schaim*, 65 Ohio St.3d 51, 55, 600 N.E.2d 661, (1992). In *Drayer*, the defendant refused to allow the victim to leave after he placed his hands inside her clothes, and he isolated the victim by telling others to go away. The Tenth District held that this evidence was sufficient to prove the element of force. *Id.* ¶ 6.

In *State v. Martin*, 9th Dist. Lorain 94CA005909, 1995 Ohio App. LEXIS 2078, (May 17, 1995), the Ninth District held that:

A defendant purposely compels his victim to submit by force or threat of force when he uses physical force against the victim, or creates the belief that physical force will be used if the victim does not submit. *State v. Schaim* (1992), 65 Ohio St.3d 51, 55, 600 N.E.2d 661. The element of force can be inferred from the circumstances surrounding the sexual conduct and is established if it is shown that the victim's will was overcome by fear or duress. *Id.*; *State v. Smelcer* (1993), 89 Ohio App.3d 115, 126, 623

N.E.2d 1219. The requisite force need not be overt and physically brutal, but can be subtle and psychological. *State v. Eskridge* (1988), 38 Ohio St.3d 56, 58-59, 526 N.E.2d 304; *State v. Fowler* (1985), 27 Ohio App.3d 149, 154, 500 N.E.2d 390. Additionally, the degree of force necessary to commit rape depends on the age, size, and strength of the parties, and their relation to each other. *State v. Stokes* (1991) 72 Ohio App.3d 735, 738, 596 N.E.2d 480.

Id.

The court in *Roy*, properly found that the State was not required to prove that the victims physically resisted Roy. *Roy* at ¶ 32, citing R.C. 2907.05(D). The Ninth District further held that the trier of fact may consider the surrounding facts and circumstances, including the doctor-patient relationship between the defendant and the victim, in determining whether there is sufficient evidence of force. *Roy* at ¶¶ 37-39.

In the present case, the Ninth District Court of Appeals properly found that Roy isolated both Annette A. and Jocelyn B.H. in his medical office when no one else was present so that he could touch them. *Roy* at ¶ 34. As the Ninth District noted, Roy sent the only other employee home before touching Annette A., and Roy locked Jocelyn B.H. in his office with him during a late night job interview. *Id.* The Ninth District also noted that Roy had Annette and Jocelyn “sit on the exam table, where he positioned himself between them and the door.” *Id.* The court further noted that Roy made the women lie down on the exam table, he stood over them, and he placed his body up against the legs of both women. *Id.* The court found from the evidence that Roy told Jocelyn to stay ever after she said she had to leave, and he put his arm around Jocelyn and kissed her while she kept telling him she had to go. *Id.* The court also found that Annette tried to step away from Roy when he put his arm round her, and he blocked the door when she tried to leave, until she gave him a hug. *Roy* at ¶ 34. Based on existing case law, the Ninth District Court of Appeals correctly held that there was sufficient evidence that Roy compelled Annette A. and Jocelyn B.H. to submit by using compulsion or constraint.

The Ninth District Court of Appeals also properly found that there was sufficient evidence that Roy used force to compel L.S. to submit to sexual contact by force. *Id.* 36. The Ninth District correctly held that although the child victim was not a child of tender years, because Roy was in a unique position of authority over L.S., and Roy groped L.S.'s breasts while she was alone in her hospital bed receiving intravenous medication, caused pain while groping her, told L.S. things about her condition that caused her fear, and L.S. was afraid to challenge Roy because she believed he was a "miracle worker" who could cure her, there was sufficient evidence that Roy compelled L.S. to submit by force. *Roy* at ¶ 38.

Roy asserts that the Ninth District Court of Appeals improperly sustained his Gross Sexual Imposition convictions, based upon his position of authority as a doctor over his victims. Contrary to Roy's argument, the Ninth District Court of Appeals did not affirm his convictions on the basis that he was a physician, and was in a position of authority over his victims.

In fact, the Ninth District Court of Appeals specifically noted that:

While this Court is bound to uphold the law as written, we are compelled to note the disparity that currently exists in the law when the relationship between an offender and a victim is one of doctor-patient. If an offender engages in sexual conduct with a victim, rather than sexual contact, he or she may be charged with sexual battery. See R.C. 2907.03(A). The sexual battery statute governs "a variety of situations where the offender takes unconscionable advantage of the victim." R.C. 2907.03, Legislative Service Commission Note (1973). One such situation is when the victim "is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person." R.C. 2907.03(A)(6). Yet, several districts have interpreted the foregoing language as applicable to custodial-type settings, not as applicable to a typical doctor-patient relationship. See, e.g., *State v. Arega*, 10th Dist. Franklin No. 12AP-263, 2012-Ohio-5774, ¶ 17, 983 N.E.2d 863; *State v. Bajaj*, 7th Dist. Columbiana No. 03 CO 16, 2005-Ohio-2931, ¶ 41. While the statute contains a provision specific to mental health professionals who misrepresent that sexual conduct "is necessary for mental health treatment purposes," R.C. 2907.03(A)(10), no such provision exists for general physicians.

If an offender engages in sexual contact with a victim, rather than sexual conduct, he or she may be charged with gross sexual imposition. See R.C. 2907.05. That statute, however, does not criminalize sexual contact based on any special position of trust that

the offender may occupy. There must be evidence that the offender used force, created or took advantage of an impairment caused by an intoxicant, or victimized someone under the age of 13. See *id.* Absent such evidence, the sexual contact likely constitutes sexual imposition, a misdemeanor offense that governs all offensive sexual contact, regardless of any special position the offender may hold. See R.C. 2907.06.

*** * * Consequently, while this Court applies the law as it is written, we urge the legislature to reexamine the law in this area.**

Roy at ¶¶ 43-44. [Emphasis added.]

The Ninth District correctly held that although it could not sustain Roy's convictions based solely on the doctor-patient relationship, the State presented sufficient other evidence to support Roy's Gross Sexual Imposition convictions with respect to Annette A., Jocelyn B.H., and L.S. *Roy* at ¶¶ 45-46.

In Roy's stated proposition of law, he intimates that the only evidence of force was that Roy moved the clothing of his victims. As argued above, Roy used force, not just the mere movement of clothes to compel his victims to submit. Roy's suggestion otherwise is contradicted by the record.

The Ninth District Court of Appeals properly affirmed Roy's convictions for Gross Sexual Imposition against Annette A., Jocelyn B.H., and L.S. based on existing case law. Therefore, Roy's first proposition of law is without merit and this Honorable Court should decline to accept jurisdiction of this case.

RESPONSE TO APPELLANT'S SECOND PROPOSITION OF LAW

- II. Evidence Rule 404(B) must be strictly construed against the state. Where the evidence in questions [sic] tends to urge the trier of fact to find that the defendant it [sic] the type of person who would commit the offense in question, or that the defendant was acting in conformity with past actions, the evidence is inadmissible.**

Roy argues that the Ninth District Court of Appeals erred in affirming the decision of the trial court to admit other acts evidence. Roy asserts that the relevance of this testimony was

outweighed by the danger of unfair prejudice. Roy states in a conclusory manner that the fact that the trial court admitted the testimony is evidence that the trial judge considered it in reaching his verdicts. The Ninth District Court of Appeals correctly determined that this argument was without merit.

The Ninth District Court of Appeals properly held that in a trial to the bench, a trial judge is presumed to know the law and to consider only relevant, competent evidence. *Roy* at ¶ 63. The Ninth District noted that Roy did not point to any evidence in the record showing that the trial court improperly considered this testimony. *Id.* at ¶ 63.

The Ninth District also properly held that Evid. R. 404(B) contains a non-exhaustive list of exceptions for admission of other acts evidence. *State v. Roy*, 9th Dist. Lorain No. 13CA010404, 2014-Ohio-5186, ¶ 54. The Ninth District correctly rejected Roy's argument that the trial court improperly allowed Michelle P. to testify about a breast exam Roy performed on her when she worked for Roy. The Ninth District correctly relied upon this Court's decision in *State v. Williams*, 134 Ohio St.3d 521, 2012-Ohio-5695, at ¶ 2, allowing other acts testimony where identity was not at issue because the other acts evidence tended to show such things as motive, preparation and plan. *Roy supra*, at ¶¶ 61-62. The Ninth District held that the trial court did not abuse its discretion because Michelle P.'s testimony was admissible to prove motive, intent, and/or plan. *Roy* at ¶¶ 62-63.

Further, the Ninth District Court of Appeals properly found that Roy forfeited any argument that the trial court abused its discretion in admitting Det. VanKerkhove's testimony about Roy focusing on a female detective's breasts because Roy did not object to this testimony at trial. *Id.* at ¶ 65. In his Memorandum in Support of Jurisdiction, Roy does not even address the

Ninth District's ruling that Roy forfeited any argument about this testimony because he failed to raise it under plain error analysis. *Roy* at ¶ 65.

As this Court noted in *State v. Quarterman*, a reviewing court:

* * * is not obligated to search the record or formulate legal arguments on behalf of the parties, because ““appellate courts do not sit as self-directed boards of legal inquiry and research but [preside] essentially as arbiters of legal questions presented and argued by the parties before them.””

State v. Quarterman, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 19, quoting *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, 933 N.E.2d 753, ¶ 78 (O'Donnell, J., concurring in part and dissenting in part), quoting *Carducci v. Regan*, 714 F.2d 171, 177, 230 U.S. App. D.C. 80 (D.C. Cir. 1983).

In *Quarterman*, the juvenile defendant failed to object at trial, failed to argue plain error in the court of appeals, and then failed to address applicable plain-error analysis in his merit brief to this Honorable Court. *Id.* at ¶ 18. As a result, this Court declined to address the defendant's proposition of law, or even whether the claimed error rose to the level of plain error. *Id.* at ¶ 20.

As Roy does not address the Ninth District Court of Appeals refusal to consider his assigned error because he did not raise it under plain-error analysis, this Court, as in *Quarterman*, should decline to address Roy's argument.

Roy's second proposition of law is without merit and this Honorable Court should decline to accept jurisdiction of this case.

RESPONSE TO THIRD PROPOSITION OF LAW

III. The trial court unduly restricted the appellant's right to confrontation by limiting questioning of the lead detective as to improper conduct occurring subsequent to the present charges.

Roy argues that the trial court erred by unduly restricting his ability to question the investigating officer, Det. VanKerkhove, about the officer's own misdemeanor conviction. Roy

does not address the Ninth District Court of Appeals ruling that Roy failed to preserve the issue for appellate review, or to raise the error under plain-error analysis.

Under *Quarterman*, a reviewing court has no duty to construct plain error arguments on behalf of a party who has failed to preserve an issue for appellate review and fails to address the alleged error under plain error analysis. *Quarterman*, 2014-Ohio-4034, at ¶¶ 18-20.

As Roy makes no effort to address the Ninth District Court of Appeals basis for its decision, and he continues to ignore applicable plain error analysis, this Court should decline to accept jurisdiction of Roy's third proposition of law.

CONCLUSION

Roy's attempted appeal presents no viable substantial constitutional question or question of general public interest that warrants the exercise of this Court's jurisdiction. Therefore, the State of Ohio respectfully requests that this Honorable Court decline to accept jurisdiction of this case.

Respectfully submitted,

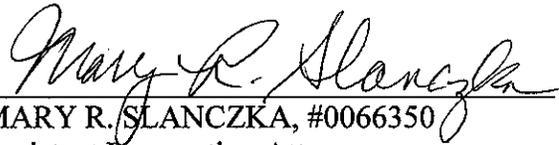
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CERTIFICATE OF SERVICE

This is to certify that a true and accurate copy of the foregoing Memorandum in Opposition to Jurisdiction was served upon David L. Doughten, Attorney for Appellant, 4403 St. Clair Avenue, Cleveland, Ohio, 44103, by ordinary U.S. Mail, all this 30th day of January, 2015.


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