

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. 2015-0115
	:	
v.	:	On Appeal from the Jackson
County	:	Court of Appeals
	:	Fourth Appellate District
ANCIL CROSS,	:	Case No. 13-CA-3
	:	
Defendant-Appellant.	:	

Memorandum in Opposition to Jurisdiction of Appellee State of Ohio

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INTRODUCTION

Defendant was convicted by a jury of one count of intimidation. Defendant appealed his conviction on multiple grounds including the argument that the trial court abused its discretion in admitting other acts evidence¹. The Fourth District unanimously rejected Defendant's arguments and upheld the decision of the trial court to admit the other acts evidence. Defendant now raises this same issue in its Motion for Jurisdiction to the Ohio Supreme Court. Both the decision of the trial court to admit the other acts evidence and the Fourth District's decision upholding that decision represent garden-variety applications of this Court's precedent and do not warrant this Court's review.

STATEMENT OF THE CASE AND FACTS

Following a three day trial, a jury found Appellant Cross guilty of intimidation. *State v. Cross*, 4th Dist. Jackson No. 13CA3, 2014-Ohio-5605 at¶1. The defendant appealed, presenting two assignments of error: first, that the trial court erred in admitting "other acts" evidence; and second, that the evidence was insufficient to support a conviction and/or the verdict was against the manifest weight of the evidence. The Fourth District rejected Defendant's arguments and affirmed the trial court and this appeal followed. *Id.*

At trial, the state argued that defendant was the author of a letter sent to the victim, Virgil Hamilton (State's Exhibit #24). That letter provided:

"Mr. Hamilton, you need to listen to what people tell you and take your MC child and your fat bitch of a wife and leave the area. Piece of advice be careful crossing to the post office my brakes could fail. Good luck fool". *Id.* ¶6.

¹ Defendant's appeal to the Fourth District also included arguments as to the sufficiency and manifest weight of the evidence, but did not raise those issues in its Motion for Jurisdiction.

The jury was persuaded that this letter was an effort to attempt to intimidate the victim in his role as a public servant, to-wit: a member of the school board. *Id.*, ¶2.

The trial court permitted, over the objection of the defense, the admission of additional letters received not only by the victim and his wife, but other people affiliated with the school. *Id.*, at ¶6-13. These letters were similarly derogatory in tone, and were also hand-written and anonymous. The state also presented testimony from a handwriting expert, William Bennett, who opined that the defendant authored the letters. *Id.* ¶ 14-16.

The trial court ruled that the other mailings were admissible under Evidence Rule 404(B). The judge then went on to instruct the jury that they were *not* to consider the evidence “to show that Mr. Cross has an inclination or propensity to commit a crime or that he was a person of bad character and acted in conformity with that bad character”. *Id.* ¶20. The court went on to instruct that the other mailings were being admitted to demonstrate a possible scheme, plan or identity. *Id.* The judge then repeated this instruction to the jury prior to deliberation with the addition that the evidence might be used to determine motive. *Id.*

STATEMENT CONCERNING THE COURT’S DISCRETIONARY JURISDICTION

The Proposition of Law in Defendant’s appeal raises neither a substantial constitutional question nor a question of public or great general interest.

1. The defendant states no proposition of law that is at issue.

In framing his case for the Court, the Defendant put forth a proposition of law that is not at issue. Defendant’s proposition of law states “[a] trial court commits reversible error when it

permits the state to introduce other-acts evidence for the purpose of proving that the defendant acted in conformity therewith". (Brief, P. 2). This is not so much a proposition of law as it is simply a restatement of the first sentence of Criminal Rule 404(B). In any case, the Defendant's proposed proposition of law is not at issue in this case as neither the state, the trial court, nor the appellate court has suggested otherwise. Were the Court to embrace Defendant's proposition of law, it would be simply reiterating well-settled.

His proposition of law is not at issue. No one disputes that trial court commits reversible error when it would admit other acts evidence for purpose of proving the defendant acted in conformity therewith. That did not happen in this case.

2. The issue in this case is whether the trial court abused its discretion in admitting the other act evidence.

The admission of relevant evidence pursuant to Evid.R. 401 rests within the sound discretion of the trial court. *E.g.*, *State v. Sage* (1987), 31 Ohio St.3d 173, 31 OBR 375, 510 N.E.2d 343, paragraph two of the syllabus

Rigby v. Lake Cnty., 58 Ohio St. 3d 269, 271, 569 N.E.2d 1056, 1058 (1991). A trial court abuses its discretion when it acts in an unreasonable, arbitrary or unconscionable manner. A reviewing court should not substitute its judgment for that of the trial court. See *State v. Jenkins* 15 Ohio St. 3d 164, 222, 1984), *State v. Finnerty*, 45 Ohio St. 3d 104, 107-08, (1989). An abuse of discretion implies that the trial court's decision is arbitrary, unreasonable, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

The admissibility of other acts evidence is determined by a three part analysis. *Williams*, at 526. First, the court must make a determination on relevance under Evidence Rule 401. The second issue is whether the other acts evidence is permissible under the exceptions carved out in Evid. R. 404(B). The third and final issue is whether the probative value of the evidence is substantially outweighed by prejudice under Evid. R. 403.

The trial court found that the other letters were admissible to demonstrate a common plan and scheme, to identify the perpetrator and prove motive—and the appellate court agreed. *Cross*, ¶¶26-27. The court also found that the other letters supported the handwriting experts' identification of the Defendant as the author of the principle letter. *Id.* at ¶27. The appellate court also agreed with the trial court's finding that the danger of unfair prejudice to the defendant was reduced by the trial court's limiting instructions. *Id.* at ¶28

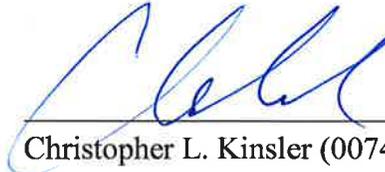
CONCLUSION

The trial court was clearly cognizant of the relevant law, and applied the appropriate tests to make its determination that the other letters were admissible. Furthermore, the trial court minimized the likelihood of any undue prejudice by issuing the appropriate instructions. This case represents a garden-variety application of Evid. R. 404(B). The trial court followed the relevant law in exercising its discretion. The Defendant does not present this Court with any novel legal issue to resolve; rather, he simply disagrees with the trial court's decision.

Therefore, his motion in support of jurisdiction is not well taken and should be denied.

Respectfully submitted,

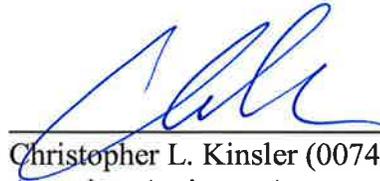
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered by e-mail and regular mail to Aaron M. McHenry, Attorney for Defendant-Appellee, at aaron@benson-law.com, 36 S. Paint St. Chillicothe, Ohio 45601 on February 20th, 2015.



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