

In the
Supreme Court of Ohio

| | | |
|------------------|---|---------------------------|
| STATE OF OHIO, | : | Case No. 2015-1427 |
| | : | |
| Appellant, | : | On Appeal from the |
| | : | Cuyahoga County |
| v. | : | Court of Appeals, |
| | : | Eighth Appellate District |
| DEMETRIUS JONES, | : | |
| | : | Court of Appeals |
| Appellee. | : | Case No. 101258 |
| | : | |

**MEMORANDUM IN SUPPORT OF JURISDICTION OF
AMICUS CURIAE OHIO ATTORNEY GENERAL MICHAEL DEWINE**

TIMOTHY J. MCGINTY (0024626)
Cuyahoga County Prosecutor

MICHAEL DEWINE (0009181)
Attorney General of Ohio

BRETT S. HAMMOND* (0091757)
**Counsel of Record*

ERIC E. MURPHY* (0083284)
State Solicitor

DANIEL T. VAN (0084614)
Assistant Prosecuting Attorneys
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
216-443-7800

**Counsel of Record*
SAMUEL C. PETERSON (0081432)
Deputy Solicitor
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980
614-466-5087 fax

Counsel for Appellant
State of Ohio

eric.murphy@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*
Ohio Attorney General Michael DeWine

RUSSELL S. BENSING (0010602)
1370 Ontario Street, Suite 1350
Cleveland, Ohio 4413
216-241-6650

Counsel for Appellee
Demetrius Jones

TABLE OF CONTENTS

| | Page |
|--|-------------|
| TABLE OF CONTENTS..... | i |
| INTRODUCTION | 1 |
| STATEMENT OF AMICUS INTEREST | 2 |
| STATEMENT OF THE CASE AND FACTS..... | 2 |
| A. The Ohio Attorney General spearheaded an initiative to collect and test sexual assault kits..... | 2 |
| B. Demetrius Jones was indicted for rape and kidnapping, but the trial court dismissed the indictment prior to trial on the basis of pre-indictment delay..... | 3 |
| C. The Eighth District affirmed and adopted a novel standard for demonstrating that pre-indictment delay resulted in actual prejudice. | 4 |
| THIS CASE IS OF GREAT PUBLIC AND GENERAL INTEREST | 5 |
| A. The Eighth District adopted a legal standard that conflicts with the well-settled standard applied by every other federal court and every other Ohio court..... | 5 |
| 1. The overwhelming weight of federal authority defines actual prejudice in terms of concrete, non-speculative evidence. | 5 |
| 2. Precedent from this Court and from every Ohio appellate court, other than the Eighth, supports the non-speculative standard..... | 7 |
| B. The Eighth District’s ruling undercuts efforts to use DNA testing to bring justice to rape victims..... | 8 |
| ARGUMENT..... | 9 |
| <u>Amicus Curiae Proposition of Law:</u> | |
| <i>To prevail under a theory that pre-indictment delay violated due process, a defendant must first show actual prejudice with specific, concrete allegations supported by the evidence; vague, speculative, or conclusory allegations do not suffice.</i> | 9 |
| A. A narrow definition of actual prejudice affords proper weight to the legislative assessment inherent in the statute of limitations..... | 9 |
| B. The proper actual prejudice standard—applied after trial—provides more accurate due process review..... | 10 |

C. The Eighth District’s novel standard undermines Ohio law10

CONCLUSION.....12

CERTIFICATE OF SERVICE

INTRODUCTION

The General Assembly has decided that some crimes are so heinous that they should be prosecuted even many years after their commission. Rape is one such crime. Partially in light of the backlog in untested rape and sexual assault kits that could contain DNA evidence to solve decades-old crimes, the General Assembly recently extended the statute of limitations from twenty to twenty-five years for alleged rape.

Such statutes of limitations are defendants' primary defense against possible prejudice stemming from the passage of time. The U.S. Supreme Court has recognized that almost any delay—no matter how short—has the potential to be prejudicial and it has held that an indictment brought within the statute of limitations period is presumed to be constitutional. That presumption can be overcome in rare cases under the Due Process Clause only if a defendant can demonstrate *both* of two things: (1) that the pre-indictment delay was *actually* prejudicial to the defense, and (2) that the prosecution had no adequate justification for the delay. *See United States v. Marion*, 404 U.S. 307 (1971); *United States v. Lovasco*, 431 U.S. 783 (1977). This case presented a single question to an en banc panel of the Eighth District: What is the standard for demonstrating actual prejudice? That question warrants this Court's review for several reasons.

First, instead of applying the standard adopted by the federal courts and every other jurisdiction in Ohio, the Eighth District imposed a novel and loose standard based on "conceptions of due process and fundamental justice." *State v. Jones*, 2015-Ohio-2853 ¶ 36 (8th Dist.) (en banc). This standard conflicts with the great weight of legal authority.

Second, the Eighth District's decision increases the likelihood that indictments will be dismissed on the basis of pre-indictment delays and jeopardizes statewide efforts to bring justice to rape victims through DNA testing of backlogged rape kits.

Third, the Eighth District’s standard introduces judicial subjectivism, incongruence, and speculation into Ohio law. The pre-indictment-delay exception to presumptively constitutional prosecutions within the statute of limitations should not be measured with such imprecise rulers.

Finally, this case is noteworthy for what it is not about. It is not about the reasons for delay in this case. It is not about whether Jones could show, *after* trial, that he was prejudiced by the delay. And it is not even about whether, had the Eighth District applied the correct standard, Jones could show actual and concrete prejudice *before* trial. It is *only* about the legal standard that should govern claims that pre-indictment delay resulted in a due process violation.

Because the Eighth District stands alone in rejecting a requirement that actual prejudice be shown through concrete and non-speculative evidence, the Court should exercise jurisdiction in this case and reverse.

STATEMENT OF AMICUS INTEREST

As Ohio’s chief law officer, the Attorney General is concerned with prosecuting sexual crimes and maintaining public safety. The Attorney General’s interest here is especially strong because he has led a major effort to combat rape and sexual assault through DNA testing backlogged sexual assault kits. *See* Press Release, Office of the Ohio Attorney Gen. Mike DeWine, *Attorney General’s Bureau of Criminal Investigation Exceeds Sexual Assault Kit Testing Goal* (Oct. 1, 2013) available at <http://perma.cc/LKV8-G764>. The Attorney General takes an interest in any legal development that will hinder the State’s ability to prosecute rapists.

STATEMENT OF THE CASE AND FACTS

A. The Ohio Attorney General spearheaded an initiative to collect and test sexual assault kits

At least 70,000 rape kits containing valuable DNA evidence across over 1,000 police agencies nationwide have yet to be tested—and this number is likely only a fraction of the total

untested rape kits in the United States. *See* Steve Reilly, *Tens of thousands of rape kits go untested across USA*, USA Today, July 16, 2015 available at <http://perma.cc/F86L-YHM3>. This is especially disheartening for rape survivors, given that the rape kit collection process is an invasive four to six-hour process that is endured largely because it offers the best evidence to help identify suspects, exonerate the wrongly accused, and aid in prosecuting cases. *Id.*

In response to this important national issue, the Ohio Attorney General launched an initiative in 2011 to combat sexual crimes through aggressive DNA testing of untested sexual assault kits. *See* Press Release, Office of the Ohio Attorney Gen. Mike DeWine, *Attorney General DeWine Wants Sexual Assault Kit Testing Commission to Create Ohio Guide* (June 14, 2011) available at <http://perma.cc/8N4W-XER8>. Since its inception, the initiative has resulted in at least 2,285 matches to rapists in the FBI's Combined DNA Index System. *See* Reilly, *Tens of thousands of rape kits go untested across USA*, USA Today. Forensic experts at the Ohio's Bureau of Criminal Investigation have received more than 10,000 previously untested rape kits from 194 law enforcement agencies statewide. *See* Rachel Dissell, *DNA identifies suspects in more than 37 percent of 8,000 tested Ohio rape kits*, The Cleveland Plain Dealer, August 10, 2015 available at <http://perma.cc/QA5J-S6YY>. In Cuyahoga County alone, the initiative has resulted in indictments in 350 cases, a third of which are believed to be serial rapists. *Id.* In the 132 completed cases, over 70 percent of defendants have taken a plea or been found guilty. *Id.*

B. Demetrius Jones was indicted for rape and kidnapping, but the trial court dismissed the indictment prior to trial on the basis of pre-indictment delay.

Demetrius Jones was charged with rape and kidnapping in a two-count indictment filed on August 30, 2013, one day before the applicable statute of limitations expired. *State v. Jones*, 2015-Ohio-2853 ¶ 3, 10 (8th Dist.) (“En Banc Op.”). Before trial, Jones moved to dismiss the indictment on the basis of pre-indictment delay. *Id.* At the hearing on his motion to dismiss, it

was established that the victim and her mother called the police on September 1, 1993 and reported that she had been raped. *Id.* ¶¶ 4-6. The victim was transported to a nearby hospital where a rape kit was administered. *Id.* Medical records and the police report showed that the victim at that time named Jones as her attacker. *Id.*

The victim’s 1993 rape kit was not tested until September 2011. *Id.* ¶¶ 8-10. After the results of the rape kit test were returned to the Cleveland Police Department they reopened the case on July 20, 2013—only 41 days before Jones was indicted. *Id.* The DNA sample from Jones to which the rape kit was matched was not obtained until 2005 or 2006, when it was gathered in connection with one of his 22 other felony cases in Cuyahoga County. *Id.*

Jones maintained that his encounter with the victim was consensual. *Id.* ¶ 11. At the hearing on the motion to dismiss, he argued that the delay prior to indictment prejudiced his case because the victim’s clothes and other evidence had been lost, and that his mother, who died in 2011, might have been able to testify that that she did not hear anything unusual at the home that night. *Id.* ¶ 12. The trial court granted the motion to dismiss and the state appealed. *Id.* ¶ 2.

C. The Eighth District affirmed and adopted a novel standard for demonstrating that pre-indictment delay resulted in actual prejudice.

The Eighth District affirmed the trial court’s decision dismissing the indictment against Jones. En Banc Op. ¶¶ 49-50. The panel determined that a conflict existed between its proposed decision and the decision in *State v. Mack*, 2014-Ohio-4817 (8th Dist.). *Id.* ¶ 1. It concluded that its proposed standard for demonstrating actual prejudice conflicted with the standard applied in prior cases and, rather than issue a panel opinion, called for immediate en banc review. *Id.* Sitting en banc, the Eighth District held that actual prejudice from a pre-indictment delay should be judged under a “conceptions of due process and fundamental justice standard.” En Banc Op. ¶ 36.

Four judges dissented. They disagreed with the majority’s adoption of “a less stringent standard for assessing actual prejudice in preindictment delay claims,” and noted that the “standard offered by the majority is in conflict with the long-standing actual or substantial prejudice standard that has been in play over the past three decades in Ohio.” En Banc Op. ¶ 51.

The Cuyahoga County Prosecutor’s office timely moved to certify a conflict between the en banc decision and decisions from each of Ohio’s eleven other appellate districts. That motion remains pending. *See State v. Jones*, No. 101258 (8th Dist.).

THIS CASE IS OF GREAT PUBLIC AND GENERAL INTEREST

The Eighth District’s decision, adopting a lesser standard for evaluating pre-indictment-delay claims, presents a question of public and great general interest for at least two reasons. *First*, the overwhelming weight of authority requires that defendants demonstrate through specific and concrete evidence that they were prejudiced by a delay. *Second*, the question of what standard applies is not merely an academic one. It has real-world consequences. Specifically, by weakening the standard, the Eighth District’s decision undermines efforts to prosecute rapists based on newly acquired DNA evidence.

A. The Eighth District adopted a legal standard that conflicts with the well-settled standard applied by every other federal court and every other Ohio court.

1. The overwhelming weight of federal authority defines actual prejudice in terms of concrete, non-speculative evidence.

All federal courts have employed a standard for actual prejudice that is derived from the one that the U.S. Supreme Court implicitly endorsed in *United States v. Marion*, the first pre-indictment delay case addressing due process. The Supreme Court in that case dismissed the defendant’s allegations of actual prejudice because they were “speculative and premature.” 404 U.S. 307, 326 (1971).

Following *Marion*, every federal circuit has considered the standard for demonstrating actual prejudice resulting from pre-indictment delay—the very same question the Eighth District addressed here. But no circuit has adopted the Eighth District’s lenient—and novel—standard for actual prejudice. Instead, each circuit has answered the question by concluding that claims of actual prejudice must be “specific, concrete and supported by the evidence” and that “vague, speculative or conclusory allegations will not suffice.” *United States v. Fuesting*, 845 F.2d 664, 669 (7th Cir. 1988). *See also United States v. Stokes*, 124 F.3d 39, 44 (1st Cir. 1997); *United States v. King*, 560 F.2d 122, 129 (2d Cir. 1977) (holding pre-indictment delay claims failed for lack of “measurable prejudice”); *United States v. Ismaili*, 828 F.2d 153, 168 (3d Cir. 1987); *Jones v. Angelone*, 94 F.3d 900, 907 (4th Cir. 1996); *United States v. Crouch*, 84 F.3d 1497, 1515 (5th Cir. 1996); *United States v. Rogers*, 118 F.3d 466, 477 n.10 (6th Cir. 1997); *United States v. Doerr*, 886 F.2d 944, 964 (7th Cir. 1989); *United States v. Jackson*, 446 F.3d 847, 851 (8th Cir. 2006); *United States v. Moran*, 759 F.2d 777, 782 (9th Cir. 1985); *United States v. Colonna*, 360 F.3d 1169, 1177 (10th Cir. 2004); *United States v. Radue*, 707 F.2d 493, 495 (11th Cir. 1983); *United States v. Mills*, 925 F.2d 455, 464 (D.C. Cir. 1991) *rev’d on other grounds*, *United States v. Mills*, 964 F.2d 1186 (1992).

The federal courts recognize that the ubiquitous legal standard for pre-indictment delay imposes a “heavy burden because it requires . . . that a defendant show actual prejudice, as opposed to mere speculative prejudice.” *Jones*, 94 F.3d at 907 (4th Cir. 1996). That burden is an especially high one where, as here, a defendant seeks to dismiss an indictment *prior* to trial. For example, defendants alleging actual prejudice from the death of a witness must show that the witness “would have testified, that his testimony would have withstood cross-examination, and that the jury would have found [him] a credible witness.” *United States v. Valona*, 834 F.2d

1334, 1339 (7th Cir. 1987). The difficulty of making such a showing before trial is one reason why federal courts have said that rather than grant a motion to dismiss because of pre-indictment delay prior to trial, courts “should carry it with the case, and make the determination of whether actual, substantial prejudice resulted from the improper delay in light of what actually transpired.” *Crouch*, 84 F.3d at 1516-17.

2. Precedent from this Court and from every Ohio appellate court, other than the Eighth, supports the non-speculative standard.

Like federal courts, Ohio courts also define actual prejudice in terms of specific, concrete harm to the defendant’s case. The last time this Court addressed the elements of a pre-indictment-delay claim, it held that the defendant failed to show actual prejudice because the claims were not specific and concrete. While it acknowledged that “some prejudice may have occurred from evidence lost over the years,” it nevertheless rejected his claims because they were “speculative at best.” *State v. Walls*, 96 Ohio St. 3d 437, 2002-Ohio-5059 ¶ 56.

Other than the Eighth District, every appellate district in Ohio has also required that “proof of actual prejudice must be specific, particularized and non-speculative.” *State v. Stricker*, 2004-Ohio-3557 ¶ 36 (10th Dist.); *see also State v. Mizell*, 2008-Ohio-4907 ¶ 40 (1st Dist.); *State v. Collins*, 118 Ohio App. 3d 73, 77 (2nd Dist. 1997); *State v. Mapp*, 2011-Ohio-4468 ¶ 42 (3rd Dist.); *State v. Cochenour*, No. 98CA2440, 1999 WL 152127, *1 (4th Dist.); *State v. Klusty*, 2015-Ohio-2843 ¶ 19 (5th Dist.); *State v. Zimbeck*, 195 Ohio App. 3d 729, 2011-Ohio-2171 ¶ 57 (6th Dist.); *State v. Davis*, 2007–Ohio–7216 ¶ 17 (7th Dist.); *State v. Tillman*, 66 Ohio App. 3d 464, 467 (9th Dist. 1990); *State v. Peoples*, 2003-Ohio-4680 ¶ 30 (10th Dist.); *State v. Drummond*, 2015-Ohio-939 ¶ 41 (11th Dist.); *State v. Heath*, No. CA 96-04-035, 1997 WL 44374, *2 (12th Dist. Feb. 3, 1997); *State v. Walls*, No. CA99-10-174, 2000 WL 1818567, *5 (12th Dist. Dec. 11, 2000) *aff’d* 96 Ohio St. 3d at 438.

And *the Eighth District itself* has previously dismissed claims because they were “vague and speculative” as to the value of the evidence in court and the harm suffered by the defendant’s case. *State v. Clemons*, 2013-Ohio-5131 ¶¶ 15, 17 (8th Dist.). Because of this difference, even counsel for the defendant recognizes that “[t]his case may very well merit review” by this Court. *See* Brief in Opposition to Motion to Certify at 10, *State v. Jones*, 2015-Ohio-2853 (No. 101258).

B. The Eighth District’s ruling undercuts efforts to use DNA testing to bring justice to rape victims.

The new standard adopted by the Eighth District lowers the bar for courts to dismiss indictments against defendants charged within the General Assembly’s prescribed statute of limitations, making it harder to rely on newly acquired DNA evidence to bring claims on behalf of rape victims. Lowering the bar for dismissal will invariably lead to fewer completed prosecutions and fewer convictions based on presently untested rape kits, and undermine the deterrence and incapacitation of heinous criminals that these prosecutions secure.

This is not only unacceptable because it denies justice to victims of rape and sexual assault, but it runs directly contrary to the express intent of the legislature. That intent is manifested by the enacted statute of limitations. “Such statutes represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice” and “the applicable statute of limitations . . . [is] the primary guarantee against bringing overly stale criminal charges.” *Marion*, 404 U.S. at 322. Mere months ago, the General Assembly passed and the Governor signed a bill extending the statute of limitations for rape from 20 to 25 years. *See Kasich signs bill extending statute of limitations on sex assault cases*, WKYC.com (July 16, 2015) available at <http://perma.cc/L4LR-LVZ2>. Because the Eighth District undermines this legislative assessment, this is a case of public and great general interest. The Court should exercise jurisdiction and reverse the Eighth District.

ARGUMENT

Amicus Curiae Proposition of Law:

To prevail under a theory that pre-indictment delay violated due process, a defendant must first show actual prejudice with specific, concrete allegations supported by the evidence; vague, speculative, or conclusory allegations do not suffice.

A. A narrow definition of actual prejudice affords proper weight to the legislative assessment inherent in the statute of limitations.

“The applicable statute of limitations is the mechanism established by law to guard against possible, as distinguished from actual, prejudice resulting from the passage of time between crime and the charge, protecting a defendant from overly stale criminal charges.” *Crouch*, 84 F.3d at 1515. Statutes of limitations “provide predictable, legislatively enacted limits on prosecutorial delay,” and the Due Process Clause has only “a limited role to play.” *Lovasco*, 431 U.S. at 789. Because the statute of limitations represents the General Assembly’s considered judgment about when delay is too long, “any period of delay in commencing prosecution that falls within the statute of limitations is not prejudicial in the absence of specific evidence to the contrary.” *State v. Flickinger*, No. 98 CA 09, 1999 WL 34854, at *6 (4th Dist. Jan. 19, 1999).

The Due Process Clause creates an exception to the rule that indictments brought within legislatively enacted time limits are not actually prejudicial. That exception is a narrow one. Any showing to the contrary requires a specific, non-speculative showing of actual prejudice due to the delay. By substituting a “conceptions of due process and fundamental justice standard” for the non-speculative standard, the Eighth District broadens the exception and erodes the value of enacted statutes of limitations.

B. The proper actual prejudice standard—applied after trial—provides more accurate due process review.

Because they are grounded in the Due Process Clause, pre-indictment delay claims are best evaluated under an “actual, rather than presumed or potential” prejudice standard—and that standard is best applied following trial. *See Crouch*, 85 F.3d 1516-17. The Due Process Clause prohibits the deprivation of “life, liberty, or property, without due process of law.” U.S. Const., Amend. XIV. But the deprivation of that right “will normally occur only by conviction, and not simply by trial itself.” *Crouch*, 84 F.3d at 1516. If a defendant is acquitted, then no deprivation ever occurred. But if not, the “denial of relief before trial in no way precludes the accused, if convicted, from successfully demonstrating that the undue and improper preindictment delay substantially and unfairly prejudiced his ability to avoid that result.” *Crouch*, 84 F.3d at 1516.

If anything, courts are better able to evaluate a defendant’s claims of actual prejudice resulting from pre-indictment delay after trial. Before trial, “an estimate of the degree to which delay has impaired an adequate defense tends to be speculative.” *United States v. MacDonald*, 435 U.S. 850, 858-59 (1978). It is difficult before trial, for example, to ascertain how a missing witness or document would affect a defendant’s case. And before trial, courts cannot compare a trial with missing evidence to a trial without missing evidence. As the U.S. Supreme Court concluded when it first recognized a due process claim arising from pre-indictment delay, “[e]vents of the trial may demonstrate actual prejudice, but [prior to trial] appellees’ due process claims are speculative and premature.” *Marion*, 404 U.S. at 326.

C. The Eighth District’s novel standard undermines Ohio law.

The Eighth District’s “basic concepts of due process and fundamental justice” standard also conflates the U.S. Supreme Court’s two-factors test for pre-indictment delay claims, will invite incongruous results, and will open the door to arguments based on mere speculation.

First, the Eighth District’s standard turns a two-part test into a single question about fairness. As *Lovasco* explains, there are two necessary elements to a pre-indictment delay claim. Those elements are (1) actual prejudice and (2) the reasons for the delay. “Proof of prejudice is generally a necessary but not sufficient element of a due process claim, and that the due process inquiry must consider the reasons for the delay as well as the prejudice to the accused.” 431 U.S. 783, 790 (1977); accord *State v. Luck*, 15 Ohio St. 3d 150, 157 (1984) (discussing the “two-part test required in cases of pre-indictment delay”). Adjudicating actual prejudice through “conceptions of due process and fundamental justice” renders the first inquiry indistinguishable from the second. It collapses the two factors into a single question: does the pre-indictment delay seem unfair and unjustified to a given judge?

Second, the Eighth District’s “conceptions of due process and fundamental justice standard” invites subjective judgments. Whether pre-indictment delay violates “conceptions of due process” cannot be measured without further specifying the criteria. The Eighth District’s standard is subjective. This subjectivism is exactly what the U.S. Supreme Court foreclosed when it held that “[j]udges are not free, in defining ‘due process,’ to impose on law enforcement officials our ‘personal and private notions’ of fairness and to ‘disregard the limits that bind judges in their judicial function.’” *Lovasco*, 431 U.S. at 790 (quoting *Rochin v. California*, 342 U.S. 165, 170 (1952)). Moreover, this standard could lead to inconsistent dismissals of indictments against similarly situated defendants. Indeed, the Eighth District’s decision invites incongruous results for defendants because it creates incongruous standards in Ohio’s intermediate courts. Jones and others in Cuyahoga County will walk free with their indictments dismissed, not because of non-speculative, actual prejudice from delay, but because a given

judge thought this delay violated “basic conceptions of due process”; others similarly situated across the State will be convicted and sentenced.

Third, unlike the non-speculative standard applied by every other court, the Eighth District’s standard would invite speculative claims about possible witness testimony, about what would have been remembered, or what missing documents might have proved absent the delay. As the U.S. Supreme Court has recognized, every delay can result in some measure of prejudice: “prejudice to the defense of a criminal case may result from the shortest and most necessary delay; and no one suggests that every delay-caused detriment to a defendant’s case should abort a criminal prosecution.” *Marion*, 404 U.S. at 324-25. But the Eighth District’s ambiguous standard suggests that very thing: every delay-caused detriment to a defendant’s case could invite a court to terminate a criminal prosecution prior to trial if it seems to that judge to violate “fundamental justice.”

CONCLUSION

For the foregoing reasons, the Court should accept jurisdiction over this case and reverse.

Respectfully submitted,

MICHAEL DEWINE (0009181)
Attorney General of Ohio

/s Eric E. Murphy

ERIC E. MURPHY* (0083284)
State Solicitor

**Counsel of Record*

SAMUEL C. PETERSON (0081432)
Deputy Solicitor

30 East Broad Street, 17th Floor
Columbus, Ohio 43215

614-466-8980

614-466-5087 fax

eric.murphy@ohioattorneygeneral.gov

Counsel for *Amicus Curiae*

Ohio Attorney General Michael DeWine

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction of *Amicus Curiae* Ohio Attorney General Michael DeWine was served on August 31, 2015, by U.S. mail on the following:

Timothy J. McGinty
Cuyahoga County Prosecutor
Brett S. Hammond
Daniel T. Van
Assistant Prosecuting Attorneys
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

Counsel for Appellant
State of Ohio

Russell S. Bensing
1370 Ontario Street, Suite 1350
Cleveland, Ohio 4413

Counsel for Appellee
Demetrius Jones

/s/ Eric E. Murphy
Eric E. Murphy
State Solicitor