ORIGINAL

IN THE SUPREME COURT OF OHIO

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

BRIEF OF *AMICUS CURIAE* OHIO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF APPELLEE, DEMETRIUS JONES

RUSSELL S. BENSING (0010602)
600 IMG Building
1360 East Ninth Street
Cleveland, OH 44114
(216) 241-6650

COUNSEL FOR APPELLEE DEMETRIUS JONES

SARAH M. SCHREGARDUS (0080932)
492 City Park Ave.
Columbus, Ohio 43215
(614) 628-0100
(614) 628-0103 (FAX)

COUNSEL FOR *AMICUS CURIAE* OHIO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

TIMOTHY J. McGINTY (0024626)
Cuyahoga County Prosecutor

DANIEL T. VAN (0084614)
BRETT HAMMOND (0091757)
Assistant Prosecuting Attorneys
1200 Ontario Street, 9th Floor
Cleveland, OH 44113
(216) 443-7800

COUNSEL FOR APPELLANT STATE OF OHIO

MICHAEL DeWINE (0009181)
Attorney General of Ohio

ERIC R. MURPHY (0083284)
SAMUEL C. PETERSON (0081432)
30 East Broad Street, 17th Floor
Columbus, OH 43215
(614) 466-8980

COUNSEL FOR *AMICUS CURIAE* OHIO ATTORNEY GENERAL MICHAEL DeWINE IN SUPPORT OF APPELLANT

FILED
MAR 29 2016
CLERK OF COURT
SUPREME COURT OF OHIO

GEORGIA E. YANCHAR (0071458)
ALEXANDER B. REICH (0084869)
1405 East Sixth Street
Cleveland, OH 44114
(216) 622-8200

KEVIN P. MARTIN
53 State Street
Boston, MA 02109
(617) 570-1000

ALEXANDRA D. VALENTI
BRIGID M. MORRIS
620 Eighth Avenue
New York, NY 10019

ATTORNEYS FOR *AMICI CURIAE* JOYFUL HEART FOUNDATION, AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN, RAPE ABUSE INCEST NATIONAL NETWORK, OHIO ALLIANCE TO END SEXUAL VIOLENCE, AND NATIONAL ALLIANCE TO END SEXUAL VIOLENCE, IN SUPPORT OF APPELLANT

JOSEPH T. DETERS (0012084)
Hamilton County Prosecutor

RACHEL LIPPMAN CURRAN (0078850)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, OH 45202

COUNSEL FOR *AMICUS CURIAE* OHIO PROSECUTING ATTORNEY ASSOCIATION AND HAMILTON COUNTY PROSECUTOR JOSEPH T. DETERS IN SUPPORT OF APPELLANT

TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES 1

STATEMENT OF INTEREST OF AMICUS CURIAE OHIO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS 2

STATEMENT OF THE CASE AND FACTS 2

ARGUMENT 3

A defendant has suffered actual prejudice under Article 1, Section 16 of the Ohio Constitution as a result of the unreasonable delay in the commencement of prosecution when information material to the determination of guilt or innocence is lost, such that the loss would undermine confidence in the outcome of a trial. Article 1, Section 16, Ohio Constitution; *State v. Luck*, 15 Ohio St.3d 150, 472 N.E.2d 1097 (1984). 3

CONCLUSION 5

CERTIFICATE OF SERVICE 6

TABLE OF AUHORITES

CASES:

Arnold v. City of Cleveland, 67 Ohio St.3d 35, 42, 616 N.E.2d 163 (1993). 3

State v. Blankenship, 2015-Ohio-4624, 2015 Ohio LEXIS 3102 4

State v. Brown, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175 3

State v. Brown, 143 Ohio St.3d 444, 450, 2015-Ohio-2438, 39 N.E.3d 496 (2015) 4

State v. Farris, 109 Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985 3-4

State v. Luck, 15 Ohio St.3d 150, 472 N.E.2d 1097 (1984) 4

CONSTITUTIONAL PROVISIONS:

Fifth Amendment, United States Constitution 2, 3

Fourteenth Amendment, United States Constitution 2, 3

Article I, Sec. 14, Ohio Constitution 3

Article I, Sec. 16, Ohio Constitution 2,3,4,5

OTHER:

Hon. Jeffrey Sutton, Forum on the Law: In Praise of State Constitutions at the Ohio Supreme Court (April 5, 2012) 4

Jeffrey S. Sutton, Brennan Lecture-Speech: Why Teach-and Why Study-State Constitutional Law, 34 Okla. City U.L. Rev. 165 (2009) 4

STATEMENT OF INTEREST OF AMICUS CURIAE OHIO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

The Ohio Association of Criminal Defense Lawyers (OACDL) is an organization of approximately 700 dues-paying attorney members. Its mission is to defend the rights secured by law of persons accused of the commission of a criminal offense; to foster, maintain and encourage the integrity, independence and expertise of criminal defense lawyers through presentation of accredited Continuing Legal Education programs; to educate the public as to the role of the criminal defense lawyer in the justice system, as it relates to the protection of the Bill of Rights and individual liberties; and to provide periodic meetings for the exchange of information and research regarding the administration of criminal justice.

The OACDL's interest in this case is to endorse the Appellee's overall position as well as provide support and specific insight for the analysis of pre-indictment delay under Article I, Section 16 of the Ohio Constitution which can offer greater protection than the Due Process Clause of the U.S. Constitution.

STATEMENT OF THE CASE AND FACTS

Amicus adopts by reference the statement of the case and facts set forth by Defendant-Appellee Demetrius Jones.

ARGUMENT

PROPOSITION OF LAW

> A defendant has suffered actual prejudice under Article 1, Section 16 of the Ohio Constitution as a result of the unreasonable delay in the commencement of prosecution when information material to the determination of guilt or innocence is lost, such that the loss would undermine confidence in the outcome of a trial. Article 1, Section 16, Ohio Constitution; *State v. Luck*, 15 Ohio St.3d 150, 472 N.E.2d 1097 (1984)

Many pages have been written in this case on the prejudicial impact of pre-indictment delay under the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S Constitution. However, less argument is focused specifically on the Due Process Clause of the Ohio Constitution, and the propriety of this Court's ability to decide this case under it.

This Court has recognized the independent force of the Ohio Constitution without hesitation:

> [W]e believe that the Ohio Constitution is a document of independent force. In the areas of individual rights and civil liberties, the United States Constitution, where applicable to the states, provides a floor below which state court decisions may not fall. As long as state courts provide at least as much protection as the United States Supreme Court has provided in its interpretation of the federal Bill of Rights, state courts are unrestricted in according greater civil liberties and protections to individuals and groups.

Arnold v. City of Cleveland, 67 Ohio St.3d 35, 42, 616 N.E.2d 163 (1993).

This Court has held on numerous occasions that the Ohio Constitution provides greater protections to individuals than the corresponding amendments to the United States Constitution. *State v. Brown*, 99 Ohio St.3d 323, 2003-Ohio-3931, 792 N.E.2d 175, ¶22 ("Section 14, Article I of the Ohio Constitution provides greater protection than the Fourth Amendment to the United States Constitution against warrantless arrests for minor misdemeanors"); *State v. Farris*, 109

Ohio St.3d 519, 2006-Ohio-3255, 849 N.E.2d 985, ¶48 ("Section 10, Article I of the Ohio Constitution provides greater protection to criminal defendants than the Fifth Amendment to the United States Constitution"); *State v. Brown*, 143 Ohio St.3d 444, 450, 2015-Ohio-2438, 39 N.E.3d 496, ¶23 ("Article I, Section 14 of the Ohio Constitution affords greater protection than the Fourth Amendment against searches and seizures conducted by members of law enforcement who lack authority to make an arrest"); *State v. Blankenship*, 2015-Ohio-4624, 2015 Ohio LEXIS 3102, ¶31 ("Article I, Section 9 of the Ohio Constitution provides protection independent of the protection provided by the Eighth Amendment").

The Honorable Jeffrey Sutton of the U.S. Sixth Circuit Court of Appeals, has often championed the use of the state constitutions. Hon. Jeffrey Sutton, Forum on the Law: In Praise of State Constitutions at the Ohio Supreme Court (April 5, 2012); see also, Jeffrey S. Sutton, Brennan Lecture-Speech: Why Teach-and Why Study-State Constitutional Law, 34 Okla. City U.L. Rev. 165 (2009). These authorities support the independent use of the Ohio Constitution to analyze the issue of pre-indictment delay as a violation of Due Process.

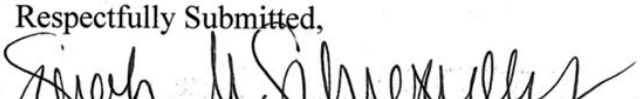
Under Ohio's Constitution, "all courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay." Oh. Const. Art. I, § 16. The test for whether a violation of Article I, Section 16 has occurred based on pre-indictment delay was explained in *State v. Luck*, 15 Ohio St.3d 150, 472 N.E.2d 1097 (1984): whether the delay in prosecution was justifiable and whether it resulted in actual prejudice to the defendant that would undermine the confidence in the outcome of the trial. Proof of actual prejudice has been sufficiently established when information materials to the determination of guilt or innocence is lost, and the loss undermines the confidence in the outcome of the trial as required by the Ohio Constitution. This

Court should adopt the Appellee's proposition and hold that under Article I, Section 16 of the Ohio Constitution, a defendant has suffered actual prejudice as a result of unreasonable delay in the commencement of prosecution when information material to the determination of guilt or innocence is lost, such that the loss would undermine the confidence in the outcome of a trial.

CONCLUSION

The Ohio Constitution provides the preferred analysis to determine a claim of pre-indictment delay. In this case, actual prejudice was demonstrated warranting the dismissal of the case against Demetrius Jones for the violation of his Due Process rights. Therefore, the Ohio Association of Criminal Defense Lawyers, as amicus curiae, urges this Court to affirm the judgment of the court below.

Respectfully Submitted,



SARAH M. SCHREGARDUS (0080932)
492 City Park Ave.
Columbus, Ohio 43215
PH: (614) 628-0100
FAX: (614) 628-0103

Counsel for Amicus Curiae Ohio Association of Criminal Defense Lawyers

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing BRIEF OF AMICUS CURIAE OHIO ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF APPELLEE DEMETRIUS JONES was sent by ordinary U.S. mail, postage prepaid, to Brett Hammond and Daniel Van, Attorneys for Appellant State of Ohio, 1200 Ontario Street, 9th Floor, Cleveland, OH 44113 this 29th day of March, 2016.

SARAH M. SCHREGARDUS (0080932)

Counsel for Amicus Curiae Ohio Association of Criminal Defense Lawyers