

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	)	CASE NO. 2016-0490
	)	
Appellee,	)	COURT OF APPEALS NO.: 15-102809
	)	
	)	On Appeal from Cuyahoga County
	)	Court of Appeals Eighth Appellate
v.	)	District
	)	
MAURICE GALES,	)	
	)	
Appellant.	)	
	)	

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MEMORANDUM IN SUPPORT OF JURISDICTION OF  
APPELLANT MAURICE GALES CROSS-APPEAL AND WAIVER OF  
MEMORANDUM IN RESPONSE

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**EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC  
OR GREAT GENERAL INTEREST AND INVOLVES A  
SUBSTANTIAL CONSTITUTIONAL QUESTION**

The decision in the Eighth District Court of Appeals Case of State of Ohio v. Maurice Gales, 8<sup>th</sup> Dist., Case No. 15-102809 raises a significant question as to whether the Appellate Courts uniformly apply the appropriate legal standard of actual prejudice. Here, in this case, it was shown on the Record through witnesses, police reports, and testimony, that Gales had established prejudice, however, it was not recognized as such despite the presentation of these facts. Given the proclivity of the Courts below to deem missing evidence as “speculative” the impact on the defendant is too easily relied on as a legal basis to reject the legitimate claims of prejudice by the accused.

In this case, this Court’s intervention is needed to set further instruction as to the application of this adopted legal standard in cases involving pre-indictment delay.

## STATEMENT OF THE CASE AND FACTS

Maurice Gales, was convicted after a jury trial of One Count of Rape and One Count of Kidnapping in violation of **R.C. §§2907.01 & 2905.01**, respectively. The trial court imposed a prison sentence of ten (10) years. Maurice Gales, filed his appeal of the Eighth District Court of Appeals decision which was affirmed. Now Gales is appealing his case to the Ohio Supreme Court.

This case arose from a rape complaint made by N.O. on August 13, 1994, which is now more than 20 years ago. N.O., at that time, was living on West 140<sup>th</sup> Street and Lorain at West Terrace Apartments participating in an independent living program for teenage mothers, **Tr., p. 67.**

She left home at the age of 15 and entered into the West Harvey Program, which is formally called the Toledo Pregnant Teen Program, **Tr., p. 69.** After being there for eight or nine months, she returned to Cleveland to live at the West Terrace Apartments, **Tr., p. 69-70.**

During August of 1994, her relationship with her daughter's father, Zebedee Thomas, was strained, **Tr., p. 71.** Also, on some occasions, he would show up to her apartment unannounced and late at night, **Tr., p. 72.** However, she insisted that they were not in a romantic relationship and he was involved with someone else, **Tr. pp. 72-73.** Prior to the date of August 13, 1994, N.O. does not remember how she met Gales, nor how long they knew each other before their date on August 12<sup>th</sup>, **Tr., p. 75.**

Moreover, N.O. was foggy on the details on how the date was set up, **Tr., p. 76.** She testified that three (3) individuals went to the Flats with her, including Gales, Tasha, and another male, and she could not remember if he was Tasha's or Gales' friend, **Tr., p. 81.** After Tasha and the male friend left, she assumed that she invited Gales to her apartment, **Tr., p. 82.** After watching television and talking, they began kissing. Shortly thereafter the rape occurred while on the floor

of her apartment unit, **Tr., p. 84**. She admitted changing from her regular clothes into her nightgown before she started kissing Gales, **Tr., p. 85**.

She also testified after the assault Gales just stared at her and left the premises, but she could not remember if he stared at her when he left the first time or the second time when he returned and entered into her apartment unit, **Tr., p. 94**. Afterwards, her daughter's father, Thomas, and his cousin, Robert, arrived at her apartment, **Tr., 98**. The police arrived and began to question Thomas, **Tr., p. 99**. N.O. was later taken to the hospital, and a rape kit examination was conducted on her, **Tr., pp. 103-104**. A few days later, she was called down to the police station to look at some photographs but could not recognize anyone, **Tr., p. 138**.

#### **PROPOSITION OF LAW NO. I:**

**AN ACCUSED SHOULD BE GRANTED A DISMISSAL OF AN INDICTMENT WHEN THERE IS AN UNREASONABLE PRE-INDICTMENT DELAY THAT RESULTS IN A DUE PROCESS VIOLATION UNDER THE FIFTH AND SIXTH AMENDMENTS.**

Gales filed a Motion to Dismiss the Indictment which was largely based on the State's unreasonably delay in the prosecution of this case. Gales was formally indicted in the summer of 2014, which was only one (1) month before the expiration of the Statute of Limitations in this case under favor of **R.C. §2901.13(A)(3)**. The trial court's reasoning in denying the Motion to Dismiss was primarily based on the fact that Gales was not prejudiced by the nearly 20-year delay in the prosecution of this crime. The trial court, however, failed to acknowledge that there was actual prejudice suffered by Gales since there were no longer 911 calls or radio broadcast tapes available to the defense. Also, the State's two (2) key witnesses, in earlier statements made in police and investigative reports, claimed that their past recollections had deteriorated to such an extent that the details were hazy and unclear.

Moreover, in the motion hearing, Gales testified that he was interviewed by the police in 1994, and told them that he had sexual intercourse with the victim and it was consensual. He never heard from the police again. **Tr., p. 18.** The trial court erroneously disregarded this testimony, and should not have been reasonably able to have done so, since the State was unable to challenge this evidence in any meaningful way. The original detective was not available and was no longer employed with the Police Department. Also, it is our contention that the State could not prove that the Detective never generated a report or passed on investigative information in this case upon which the police could follow-up, and/or rely on. The erroneous conclusion made by the trial court that this Detective never completed a follow-up report (a fact that cannot be confirmed) was a conclusion which should not have been made in light of Gales' testimony. A more reasonable inference from the evidence would be that the victim failed to cooperate with the police after the initial report was made to the reporting officers.

Further, in Gales' testimony, he returned a page from the police and spoke with them regarding the sexual assault allegation made by the victim. The State cannot contest the fact that the Gales' pager number was included in the police report, and he confirmed that this was the correct pager number back in 1994, **Tr., pp. 18, 30.**

Gales also contends that the police had obtained his DNA sample in 1996 in connection with a rape accusation where he was excluded as a suspect. During the hearing on the Motion to Dismiss, the State argued that it did not have *in its possession* Gales' DNA until his 2009 incarceration. However, it was revealed in trial testimony from Tina Stewart from the forensic laboratory that the State was testing DNA evidence before 2001, and back as early as 1998, which means that the State had Gales' DNA during that time frame. Given this fact, the State cannot

justify the “unreasonably delay” in the testing of the DNA standard of Gales with the rape kit samples collected from the victim in 1994.

The Sixth Amendment to the United States Constitution guarantees the right to a speedy trial, where it states: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . .” **U.S. Const, Amend. VI**. A similar provision is found in **Article I, Section 10** of the **Ohio Constitution**. “The availability of a speedy trial to a person accused of a crime is a fundamental right made obligatory on the states by the Fourteenth Amendment to the United States Constitution.” See *Klopper v. North Carolina*, 386 U.S. 213, 222-23 (1967). The Sixth Amendment’s guarantee of a speedy trial “is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation, and to limit the possibilities that the long delay will impair the ability of an accused to defend himself.” See *U.S. v. Ewell*, 383 U.S. 116, 120 (1966) and *U.S. v. Marion*, 404 U.S. 307, 320-21 (1971).

In *Barker*, the United States Supreme Court identified four factors which courts should assess in determining whether the right to speedy trial has been violated: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his/her right; and (4) prejudice to the defendant. *Barker v. Wingo*, 407 U.S. 514, 530 (1972). Although the Court stated that no one factor is controlling, it noted that the length of the delay is a particularly important factor. *Id.*, at 533.

The Due Process Clause of the Fifth Amendment to the U.S. Constitution through the Fourteenth Amendment provides that “no person shall . . . be deprived of life, liberty, or property without due process to law.

In *State v. Selvage*, 80 Ohio St. 465 (1997), the alleged transactions which led to the defendant's indictment, occurred in March of 1994, a criminal complaint was filed in June of 1994, three (3) months later. Nevertheless, *Selvage* was not indicted until April of 1995, thirteen (13) months after the date of the alleged occurrences, **Id., at p. 434**. The court in that case held that the State of Ohio did not act with reasonable diligence in commencing prosecution. The court later dismissed the indictment against the defendant. **Id.**

As pointed out by *Selvage, supra*, the defendant is in a difficult position in demonstrating whether exculpatory evidence has been destroyed. Based on the current predicament of Gales, it is impossible to even show testimony and exculpatory evidence existed. Additionally, Gales' ability to interview and memorialize witness testimony at the time of the crime, has been substantially impaired.

Accordingly, as outlined above, the actual prejudice to Gales in this matter is apparent. This then takes us into the second inquiry under *State v. Luck*, 15 Ohio St.3d 150 (1984), which holds that the State's delay must be weighed against the prejudice arising to the defendant.

Counsel is unaware of any legitimate reason for the State's delay in bringing this case to the Grand Jury for Indictment, and the subsequent prosecution of Gales. However, unless the State can support some compelling reason for the delay, which outweighs the prejudice suffered by Gales herein, this case should have been dismissed. As was stated in *State v. Doksa*, 113 Ohio App. 3d 277 (8<sup>th</sup> Dist., 1996):

Conversely, the delay may be found unjustifiable where the state's reason for the delay is to intentionally gain a tactical advantage or when the state "effectively ceases the active investigation of a case, but later decides to commence prosecution upon the same evidence that was available to it at the time that its active investigation was ceased." *Luck, supra*, 15 Ohio St.3d at 158, 15 OBR at 304, 473 N.E.2d at 1105. Moreover, length of delay is normally the key factor in determining whether a delay is justifiable.

The *Doksa*, case supra, involved an indictment issued five years after the alleged criminal conduct. The trial court in *Doksa* held a hearing wherein the State's witness testified he would not have expected the defendant to be able to recall his activities on the dates of the alleged offenses. **Id., at 281.** The same question remains here. Additionally, the defendant is precluded from refreshing his memory with either a calendar or any schedule or log, to determine witness accounts and whereabouts on the dates and times in question. This prejudice to the defense could have been avoided if the State would have brought the charges in August 1994, or sometime reasonably thereafter, consistent with the police report. Gales would have had the ability to interview witnesses, review potential work records, gather witnesses, and essentially prepare a defense for the crimes charged. Now, based on the actions of the State, this was all lost.

As the Court stated in *State v. Glazer*, (1996) 111 Ohio App.3d 769, 772:

The Supreme Court held that a delay in the commencement of prosecution is unjustifiable when the state's reason for the delay is to intentionally gain a tactical advantage over the defendant or when the state through negligence or other error ceases to investigate the case but later, and without new evidence, decides to prosecute. The Supreme Court noted that the length of the delay would be a key factor in determining whether the delay was justifiable.

Gales does not allege that the State intentionally delayed the commencement of prosecution for a tactical advantage. However, that is the end result. Gales does allege that in 1994 and beyond, the State neglected to bring the case to a Grand Jury, ceased the investigation, and then brought the case before a subsequent Grand Jury one (1) month just shy of twenty (20) years later. The length of the delay in this matter is not justified when balanced with the prejudice that was suffered by Gales in going forward with a trial.

In *State v. Whiting*, (1998), 84 Ohio St.3d 215, the Ohio Supreme Court considered a fourteen (14) year pre-indictment delay, which substantially prejudiced the defense, and determined that there was no justifiable reason for the delay. The court held:

We confirm today our earlier pronouncement in *State v. Luck*, (1984), 15 Ohio St.3d 150, 15 OBR 296, 472 N.E.2d 1097, that where a defendant moves to dismiss an indictment and presents evidence establishing substantial prejudice resulting from preindictment delay, the state bears the burden of producing evidence of a justifiable reason for the delay. According to the Luck burden-shifting analysis, the trial court here erred when it denied defendant's motion to dismiss. Because the evidence presented at the hearing on the motion entitled the defendant to a dismissal of the indictment, the later proceedings in this case do not support a reversal and remand to allow the state another opportunity to submit evidence to the court of a justifiable reason for the fourteen-year delay.

In Luck, the court used the test set forth in *United States v. Marion*, (1971), 404 U.S. 307, 92 S.Ct. 455, 30 L.Ed.2d 468, and *United States v. Lovasco*, (1977), 431 U.S. 783, 97 S.Ct. 2044, 52 L.Ed.2d 752, to determine when an indictment should be dismissed due to an unreasonable preindictment delay. Luck, 15 Ohio St.3d at 153- 154, 157-158, 15 OBR at 299, 302-303, 472 N.E.2d at 1102, 1104-1105. The Lovasco court burdened the defendant with establishing actual prejudice from the delay and charged the government with the burden of producing evidence of a justifiable reason for the delay. Accordingly, Luck requires first that the defendant produce evidence demonstrating that the delay has caused actual prejudice to his defense. Luck, 15 Ohio St.3d at 157-158, 15 OBR at 302-303, 472 N.E.2d at 1104- 1105. Then, after the defendant has established actual prejudice, the state must produce evidence of a justifiable reason for the delay. Id. at 158, 15 OBR at 303, 472 N.E.2d at 1105. "[T]he prejudice suffered by the defendant must be viewed in light of the state's reason for the delay." Id. at 154, 15 OBR at 299, 472 N.E.2d at 1102, citing Lovasco, 431 U.S. at 789-790, 97 S.Ct. at 2048-2049, 52 L.Ed.2d at 758-759. This court has not disturbed the test utilized in Luck, and it is well-settled law in Ohio courts.

**Id., p. 217.**

The State cannot provide a justifiable reason for the delay. The State cannot show that the victim was cooperative with the police follow-up in the investigation of the alleged crimes. The

possibility certainly exists since the victim failed to cooperate nearly eighteen (18) years later. Cleveland detectives and investigative officers attempted to interview her on several occasions in 2013, without success until nearly a year later.

Even if this is not all, the police had Gales' DNA sample in 1996 which was tested in another criminal sexual assault investigation. Given the forensic expert's testimony in trial that the DNA samples were being tested as early as 1998, there is not justifiable reason for the delay in this regard, since the State cannot reasonably argue that it did not have a sample of Gales' DNA until his incarceration in 2009, when he served a three (3) year prison sentence.

#### **PROPOSITION OF LAW NO. II:**

**A PROSECUTOR WHO FAILS TO DISCLOSE TO THE DEFENSE, PRIOR TO TRIAL, THAT A STATE WITNESS HAD INFORMED HER THAT HE COULD MAKE AN IDENTIFICATION OF GALES IS A DUE PROCESS VIOLATION AND SUCH A VIOLATION DENIES HIM A FAIR TRIAL.**

The trial court allowed the State to avoid the consequences of a willful violation of **Rule 16, Ohio Rules of Criminal Procedure**. State witness Karl Von Busse made an in court identification of Gales. During his cross-examination, he said he met the prosecutor a couple weeks prior to trial, and told her that he could make an identification of Gales almost 20 years later, **Tr., p. 395**. Gales was entitled to the summary of her interview with him prior to trial. Moreover, it was further apparent that the prosecutor knew this fact since the prosecutor had asked the witness if he could make an identification of the assailant who was banging on the patio door, and later fled, by going through a hole in a fence by the parking lot, **Tr., p. 387**. The prosecutor acknowledged to the Court that she had a discussion with the witness, and the witness told her that he could make an identification, **Tr., p. 400**. With this being so, the defense motion for mistrial should have been granted for the State's willful failure to provide this evidence.

**PROPOSITION OF LAW NO. III:**

**A STATE WITNESS CANNOT BE ALLOWED TO TESTIFY THAT THE VICTIM PREVIOUSLY TOLD HIM THAT SHE WAS RAPED BY A MALE WHICH IS INADMISSIBLE HEARSAY UNDER RULES 801 & 803, AND THIS ERROR VIOLATED HIS SIXTH AMENDMENT RIGHT OF CONFRONTATION.**

Gales hereby challenges the admission of these hearsay statements under favor of **Rules 801(D)(1) & 803, Ohio Rules of Evidence. Rule 801(D)(1)** states in relevant in part that “. . . the statement consistent with declarant’s testimony and is offered to rebut an expressed or implied charge of recent fabrication or improper influence or motive.” The application of these evidentiary Rules to the facts were misapplied by the trial court. This statement was not an excited utterance under **Rule 803** nor was it an admissible prior consistent statement under **Rule 801**.

The purported prior statement made by the victim to her daughter’s father came through the response from prosecutor’s questions. Given the inquiry made by Thomas, the statements made to him lost their spontaneity to fall under the purview of **Rule 803** excited utterance hearsay exception.

It is our further contention that the State failed to provide the necessary background to establish an excited utterance exception. Moreover, it was not shown factually how much time had elapsed from the time Thomas arrived at the apartment, and the 911 call was made, if it had been made at all by the victim. Thomas testified he had only seen the victim had been crying, but was unable to provide any additional descriptive testimony to support the finding that her responses were a product of a startling event. The State acquiesced to our position and agreed that this statement was not an excited utterance but an admissible prior consistent statement, **Tr. p. 223**.

Also, this statement was not admissible under **Rule 801**. As counsel aptly pointed out the admission of the prior consistent statement was not offered to rebut an expressed or implied charge

of a recent fabrication, or improper influence or motive, **Tr., p. 232**. The purported statement was made to the person with whom the motivation to fabricate was based, not before he arrived to the crime scene.

In *Tome v. United States*, 513 U.S. 150 (1995), the Court held out that “the introduction of a declarant’s consistent out of court statement to rebut a charge of recent fabrication or improper influence or motive [are admissible] only when those statements were made before the charged recent fabrication or improper influence or motive.” **Id.** The trial court in its reasoning actually supports our argument against the inadmissibility of this statement because it was made after she called the police but not before the arrival of Thomas. Here is the following segment of the Court’s reasoning:

THE COURT: With due respect, with regards to the time frame, Mr. Watson, the Court respectfully disagrees with that because from the Court's recollection of the testimony, N.O. actually had made the 911 call, draws the police to her apartment for the actual complaint of a rape. So we know that she reported the rape prior to Zebedee Thomas arriving and we know that because the police were dispatched to that location on a call for a rape. So while we don't have the 911 call that has been unavailable and we've discussed this issue previously, we know that the police were called for a rape. We know that that was the call that they got because we have the reports that indicate the call and why they were dispatched to that location. So within those seconds, she called the police, called 911, they were dispatched.

**Tr., p. 273.**

A close reading of the *Tome* case tells us that the admission of prior consistent statements which improperly bolster the testimony of the victim should not be admitted. This trial court misapplied the Rule because the 911 call whenever it was made, is not at issue here. The defense’s argument was that the victim claimed that she was raped because her daughter’s father, Thomas, came to the apartment, and found out that she was unfaithful with another man. The point here

being made is the fact that the prior consistent statement is being made to the person claimed to be the reason why the fabrication occurred in the first place. The prior 911 call, if it was ever made, was not even produced, so we do not know if “she” was the one who made the call.

**PROPOSITION OF LAW NO. IV:**

**A TRIAL COURT CANNOT IMPROPERLY RESTRICT THE DEFENDANT’S RIGHT TO CROSS EXAMINE WITNESSES REGARDING THE DETAILS OF CONVICTION WHEN THE WITNESS DENIED HIS GUILT AND THIS RULING DENIED GALES’ SIXTH AMENDMENT RIGHT OF CONFRONTATION.**

The Defendant’s counsel questioned the State’s witness Thomas about his conviction, and he had denied guilt to this conviction, **Tr., pp. 277-278**. The State’s witness opened the door to inquiry as to the details of his conviction when he expressly denied his guilt. Under **Rule 611(B), Ohio Rules of Evidence** counsel is empowered to cross-examine witnesses concerning any relevant matters which affects their credibility. Given the spirit of this Rule, the trial court opined that the details of the conviction was attorney-client privilege, **Tr., p. 319-20**. Counsel attempted inquiry as to the details of the conviction was to challenge the witness’ statement that he had “infrequent” contact with his co-defendant Marvin Beavers, who was on the same case with him. Secondly, the defense specifically challenged the credibility of his response that he was not guilty of that conviction, and challenged him on the facts supporting that conviction. The Courts in Ohio have endorsed the proposition that a witness can “open the door” to factual circumstances of their convictions when they have specifically denied guilt. See *State v. Williams*, **38 Ohio St. 3d 346 (Ohio 1988)** and *State v Gonzales*, **2014 Ohio 545 (Ohio App. 2014)**.

**PROPOSITION OF LAW NO. V:**

**THE STATE CANNOT INTRODUCE HEARSAY STATEMENTS IN VIOLATION OF RULE 801 OF THE OHIO RULES OF EVIDENCE, AND SUCH ERROR WAS A DUE PROCESS VIOLATION.**

During the examination of Tasha Giles, the State was allowed to smuggle hearsay statements into evidence that the victim had told her that she was raped by Gales in violation of **Rule 801, Tr., pp. 369-371**. Although the State did not directly ask for the hearsay statements, the intent of the questions was to bolster the fact that the victim had reported to Giles that she was raped by Gales. This is the obvious thrust of the State's examination when it also sought Giles' thoughts and feelings as to "what happened" to the victim to further prejudice the jury against Gales. This evidence was not sought for any legitimate purpose under **Evidence Rule 401**, and if it was remotely relevant, then it certainly could not pass a thorough **Evidence Rule 403** prejudicial effect analysis. This testimony was further presented to improperly suggest that she believed the victim's accusation that she was raped by Gales.

**PROPOSITION OF LAW NO. VI:**

**THE STATE COMMITS PROSECUTORIAL MISCONDUCT BY IMPROPERLY INSINUATING THAT AN INVESTIGATOR WAS UNLICENSED, IS A DUE PROCESS VIOLATION.**

The prosecutor, through examination of its witness, Karl Von Busse, improperly inquired as to the qualifications and credentials of the defense's investigator. After the objection was lodged by the defense, the Court denied counsel's Motion for a Mistrial. **Tr., p. 410**.

Under **R.C. §4749.03**, it lists and outlines the requirements for licensure for private investigators and security. However, attorneys are permitted to hire non-licensed investigators to consult and interview, as well as, find information in connection with litigation. This fact was known by the prosecutor, but discarded to gain an unfair tactical advantage.

**PROPOSITION OF LAW NO. VII:**

**AN ACCUSED CANNOT BE PREVENTED FROM PRESENTING A DEFENSE WITNESS TO TESTIFY CONCERNING RELEVANT ISSUES, AND SUCH ACTION AMOUNTED TO A DUE PROCESS VIOLATION.**

The defense presented Pearl Owen who is the maternal grandmother of the victim. This witness was provided to the State via witness list, and a taped interview as well. The State of Ohio lodged an objection to the victim's grandmother testifying arguing that the witness would not provide any relevant testimony in this case. We contend that the defense, through this witness, was going to present evidence that the victim had been less than truthful regarding her family circumstances as well as her relationship with her daughter's father, as well. Also, the defense wanted to show that N.O. had been less than truthful about the circumstances under which she left home, which led to her living at the West Terrace Apartments in their teen mother's program. The trial court found that this purported testimony was not relevant, and the defense could not present this evidence to the jury.

The Courts have doggedly maintained that the defense has an absolute right to present any evidence that may be relevant to the factual determinations made by a jury when the trial court should not have precluded the defense witness from testifying without even hearing any of the testimony. See cases, *Holmes v. South Carolina*, 547 U.S. 319 (2006) and *Crane v. Kentucky*, 476 U.S. 683 (1986).

**PROPOSITION OF LAW NO. VIII:**

**A FLIGHT INSTRUCTION SHOULD NOT HAVE BEEN GIVEN BY THE COURT WITHOUT A SUFFICIENT FACTUAL BASIS, IS A DUE PROCESS VIOLATION.**

The State was given a flight instruction. There was insufficient evidence presented to give this flight instruction. It is our contention that the consciousness of guilt instruction was

unwarranted since there were other reasons why Gales left the premises. Notwithstanding, the fact there is some deference given to the Court, however the trial court cannot act unreasonably, arbitrarily, or unconscionably. See *State v. Nagle*, 11<sup>th</sup> Dist. No. 99-L-089 (2000) and *Blakemore v. Blakemore*, 5 Ohio St. 3d 217 (2000).

Here, in this case the victim testified that Gales left her apartment, returned, and left again. There was no testimony given by her indicating that he ran away from the police, or was attempting to avoid apprehension from law enforcement.

### CONCLUSION

There have been a large number of old cases that have been prosecuted after a lengthy delay and this case is one of them, being indicted nearly twenty (20) years after the crime was reported. The State's purported interest in supporting rape victims whose cases were not pursued due to the lack of DNA evidence, lackluster police work, or suspect(s) were not known to the victim at the time of the incident, has nothing to do with this case.

Given the reality of prosecuting these cases, the persons accused are placed at a distinct disadvantage, as here, where the defense was unable to secure radio broadcast tapes and 911 calls, and use other witnesses who were unable to remember the details of what occurred on the date in question.

Here, in this case, Gales was unable to secure "vital" evidence and fully defend these charges. It is our hope in light of factual circumstances of this case that this Court will reverse the unjust conviction and sentence.

Respectfully submitted,

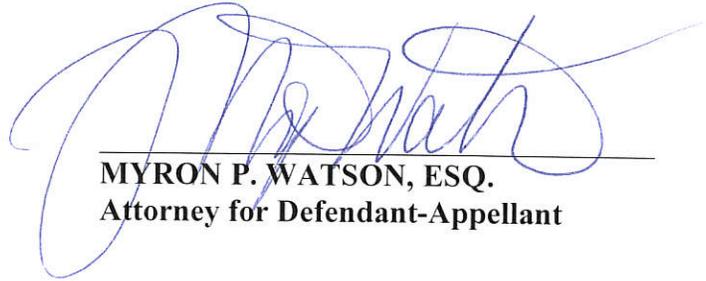
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**MYRON P. WATSON, ESQ. (0058583)**  
**Attorney for Defendant-Appellant**



**CERTIFICATE OF SERVICE**

I hereby that a copy of the foregoing *Memorandum in Support of Jurisdiction of Cross-Appeal* and *Notice of Waiver of Memorandum in Response* was forwarded to the office of Timothy McGinty, Esq., Cuyahoga County Prosecutor, 1200 Ontario Street, Ninth Floor, Cleveland, OH 44113, this 13<sup>TH</sup> day of **April, 2016.**



**MYRON P. WATSON, ESQ.**  
**Attorney for Defendant-Appellant**