

CHAD A. MESSENGER,	:	SUPREME COURT CASE NO: _____
APPELLANT,	:	
v.	:	On Appeal from the Marion County
STATE OF OHIO Et, Al.,	:	Court of Appeals, Third Appellate
APPELLEES,	:	District,
	:	Court of Appeals
	:	Case No:9-19-062

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT-CHAD A. MESSENGER**

Chad A. Messenger, #612-867
P.O. Box 57 (M.C.I.)
Marion, Ohio 43301-0057
(Appellant, Pro-Se).

Marion County Prosecutor's Office of Raymond A. Grogan, Jr., #84002,
134 East Center Street, Marion, Ohio 43302
Phone-740-223-4290

(Counsel for the State of Ohio, Marion County Prosecutor's Office, &
Prosecutor-Brent W. Yager/Raymond A. Grogan, Jr.) Appellee's

Steven E. Chaffin, #009895,
233 West Center Street, Marion, Ohio 43302
Phone-740-223-1770

(Counsel for the Marion Municipal Court Law Director's Office, &
Law Director-Jason D. Warner) Appellee's

(Cover Page)...

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

This cause presents (3), Three critical issues of statute violations of the Ohio Revised Code, which are critical issues for the future of Public Employee's, Government Employee's, of the State of Ohio, or Political Subdivisions, on how they collect or how they are to keep personal property/evidence, safe and how they can release such personal property/evidence, in a Civil, Criminal Action, such as a Sexual Assault (rape), in the State of Ohio. (1). Ohio Revised Code, Chapter 2981 Forfeiture Law; (2). Ohio Revised Code §2981.03(A)(1)-Provisional title authories the State or Political Subdivision to seize and hold the property and to act to protect the property, under this section before any proceeding under this Chapter; (3). Ohio revised Code § 2981.04-Criminal Forfeiture Proceedings, (A)(1)(c): if the property is alleged to be an instrumentality; the alleged use or intended to use the property in the commission of facilitation of the offense. The Appellee's (Public Employee's), and the State of Ohio, used this personal property/evidence, currency, cash, monies, of \$3,536.00 on a Felony, and on an Affidavit in Support of Arrest Warrant, Factors for High Bond, and in Discoverys as well as an Exhibit in the Criminal Trial for the Jury to see.

In this case the Court of Appeals conclude that it was not error to dismiss Appellant's (Messenger), complaint. Thus even if the Judge had been biased, Appellant (Messenger), is still not able to demonstrate that this bias ultimately prejudiced him, but this is just based on Opinion of the Court of Appeals, none of the Appellee's (Public Employee's), were ordered to respond to the Appellant's (Messenger), Brief.

The decision of the Court of Appeals allows the Appellee's, or "Government Employees, Public Employees," entities of the State or Political Subdivisions in Marion County, Ohio or even ten of thousands of Public Employee's etc, in the State. To operate in profoundly by not holding personal property/evidence letting the Appellee's, or State Political subdivisions to seize personal property/evidence, as well as to unlawfully using it as well as unlawfully release it holding a evidentiary hearing or to conduct factfinding procedure or have any order by any Court, such a hearing would of sabotage the integrity of the Appellee's, and undermine the fundamental principl that the Statutes and Rules of Court, and the Laws of Ohio constrains Appellee's, "Public Employes, Groverment Employees," (Entitys), of the State or Political Subdivisions, as well as Citizens. Similarly, the Publics interest is affected if the plain meaning of a Statute (Brady Act), duly adopted and the General Assembly can be judicially altered to subvert the legislature's such as State or Political Subdivision's, Prosecutor's, even Law Director's and thier Office's of such units throughout the State of Ohio, to have better controll of certain uniform principles, such as to Defese, Discovery, property/evidence that can be released but still use it as a exhibit, bond factors, arrest warrants, complaints, and to show it to a jury before an indictment was filed.

Apart from these Prosecutor's and Law Director's, (Appellee's), governmental considerations, which makes this matter one of grant public interest, that the decision of the Court of Appeals has broad general significance. Thousands and thousands of citizens of the State of Ohio are Pubic Employees who perform the essential work of goverance.

The general assembly needs to recognize, how the unlawful use of evidence/personal property as well as the unlawful release of personal property/evidence, is being misused to convict men/women in this State of Ohio, and its terms and conditions of its Public Employee's, Government Employee's Entities of the State or Political Subdivisions, are unable to protect property/evidence of the Appellant's (Messenger), or of a public entity, it is clear orderly process to keep property/evidence safe and how to release it to its rightful owner, the Appellee's are entities of the Public, Government, and the State, as well as to political Subdivision's, the State of Ohio and its Citizens of the Public shall know the terms of the Chain of Custody of how personal property, evidence, can be release with out them knowing it. The process of logging it in to the evidence room of employers, or employees, mutually matter with rules to be used by them.

The decision of the Court of Appeals sets a precedent that would exclude an entire new subject issue(s), as Stated by the Common Pleas Court on Civil action Case No:2018-CV-0142, of the "Ruling of Renewal Motion to Dismiss Prosecutor-Brent W. Yeger, but as stated the person reasonable for the Prosecutor's Office, was now Raymond A. Grogan, Jr., but on September 11, 2019, of Honorable Judge:Jim Slagle's on Case No:-2013-CV-0473, conclusion of law of the Judgment Entry, of May 22, 2014, was incorrect, of the Chapter 2981.03(A)(1), and the correct party was the Marion Police Department, contituted to the common law tort of conversion of the Ohio Revise Code §2305.04(B), and also should be a violation of the Ohio Revise Code §2921.44-Dereliction of Duty, by the Appellee's stated herein, plus Honorable Judge Finnegan should had a (meeting of the minds), with the Honorable Judge:Slagle, before stating he was incorrect.

Not surprisingly, the conclusion of the Court of Appeals is contrary to the scheme of depriving the Appellant (Messenger), of his property/evidence, of \$3,536.00 that all legal authority's had misused etc, violating the rules of Court as well as the Statute's of the Ohio Codes, and of the Brady Act to do with Discovery.

The Judgment of the Court of Appeals has great significance also because it undermines one Honorable Judges Judgment Entry to the conclusion of law, to another Honorable Judge review to be able to come to a conclusion, plus stateing that there is a conversion claim even when it become to light, as well as to a reason, than states statute of limitations have run out. But time of knowing stated when the Honorable Judge: William R. Finnegan, state whom the person reasonable become to light which would be September 11, 2019. Permitting by law the Appellee's, had a duty to up hold and to protect evidence as well as presonal property of any such cash, monies, currency, and to keep it safe they had exclusive jurisdiction over such personal property/evidence, only if an indictment was filed, despite contrary provision, of the Brady Act, as well as to the rules of law, and how to keep property/-evidence safe, within the rules of Ohio Courts, and the Ohio Revise Codes, or any agreements of any Orders, with the Acts would of been severely be compromised to force and value of agreements or of any objectives.

State or Political subdivision's, Government Employees, Pubic Employees, or entities of Municipal Administrative Agencies, such as to Criminal/ Civil Actions, could negats at will of orders of the Courts, and agreements to the Brady Act, such a propest is contrary to law to correct case laws and Court to action on Orders on to releasing evidence/property or even how to keep it safe, as well as holding it.

Finally, this case involves a substitutional question the decision offends Ohio Constitutional scheme by elevation the Rules of Evidence due-process, the Brady Act, and to the Discovery, Indictment, rules power of municipalities granted by the Ohio Consttution, Section.14, Article I, Bill of Rights, O Const I:Search and Seizure, over the Constitutional power of the General Assembly to enact on the welfare of personal property, evidence, real property, and the person and things to be seized, pursuant to Section 16, O Const I, of the Ohio Consttution.

Such a Constitutional im balance in contrary to law, and of the Brady - Act, discovery and access to evidence property etc,groverments, Constitutional Disclosure Duties.

If allowed to stand, the decision of the Court of Appeals would ravage the Appellee's and state or Political Subdivisions entities, even Pubic Employee's, etc, use or even misuse evidence, property of Citizens of the Public. Under the decision, the process to keep evidence/property safe would allow the Appellee's or even other entities state herein to misuse and to release such evidence/property, well be chaotic and uncertain and would lack finality, Court Orders agreements, would be subject to more interference and rejections by the State or Political Subdivisions, or Government Agencies, vesting seizures, file actions by Prosecutor's whose actions would be under mine not only individual Plea agreements, but also the general frame work of the Public's real Property etc, to be kept safe. The entire process inseizen evidence, and real property is with in the rules of Court and the Statute's of laws to perfect the Public's rights and Due-Process Contrary to law.

The Rules of Court and under the Statutes of the Ohio Revised Codes, are to be designed to result in enforceable contractual relationships with defese and coherent to the Prosecution relations in Criminal, Civil cases it well be frustrating if the decision of the Court of Appeals are permitted to stand.

In sum, this case puts in issues to the essence of the Appellee's, collect evidence or personal propeety, etc, to be used how they see fit, and the fate of the Public/Citiezens, tax payers, real property, personal property, evidence, cash, monies, or U.S. currency should be kept safe upon any search or seizure, or even to be returned back to its rightful owner there by affecting every entity of the public, groverment, State or Political Subdivision, employee in the State of Ohio. But to promote the purposes and preserve the integrity of the stated parties being of Prosecutor's and Law Director's, being of Public Empeoyee's etc, will assure uniform applications to the Brady Act, as well as to the Rules of Court, and the Statutes of the Ohio Revised Codes, contrary to law well promote orderly and constructionnegotiations between employers, and employee's of such State or Political Subdivision's, etc, too keep evidence/property etc, safe and to hold it and to release with in the rules of Courts, to its rightful owners with the right orders of the Courts process this Court must grant jurisdiction to hear this case and to review the erroneous and dangerous decision of the Court of Appeals

STATEMENT OF THE CASE AND FACTS:

This case arises from the attempt of Appellant (Chad A. Messenger), to obtain his personal property/evidence, cash, U.S. currency of \$3,536.00 that was used for evidence by the Law Director, and the Municipal Court Law Director's Office, in a Arrest Warrant October 7,2010,

and the Prosecutor of Marion using the evidence as a exhibit, in trial for the jury to see and didn't have it to use, and the Marion County Prosecutor's Office releasing evidence to its wrongful owner and misusing something they didn't have, which were attorney's for the State of Ohio.

The State and the Marion County Prosecutor, and its Office, as well as the Law Director, and Law Director Office, (Appellee's), however refuse to honor the provisions of returning personal property/ evidence that was to be kept safe and hold it till all Appeals were done.

The Appellant (Messenger), filed a Complaint to the Marion Common Pleas Court on Statute Violations, of the Ohio Revise Codes, upon the Judgment Entry, Appellant (Messenger) filed an Appeal within the Third Appellate District of Ohio in Marion County, Ohio. The Court of Appeals affirmed with the Common Pleas Court. Therefore, Appellant (Messenger), is procedure Bared, Statute of Limitations to do any post convictions within his Criminal Case have run out to relitigate, so the errors of Statute and Constitutional issues can be attack at any time as well as to the Brady act being violated.

The Court of Appeals erred in ruling that the Prosecutor that is reasonable was stated by the lower courts said that Raymond A. Grogan, Jr, was named. The Court of Appeals erred in failing to recognize that Constitutional issues or even the violations of the rules of evidence as well as Bad Character evidence was used to show the jury and the Appellee's named herein was to keep evidence/property safe.

In support of its position on these issues, the Appellant (Messenger), presents the following argument.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No: I: Statute Violations of the Ohio Revised Code
Chapter 2981 Forfeiture of Law pursuant to
§2981.03(A)(1), & §2981.04

Dealing with due-process, it is undisputable that evidence of U.S. Currency, Monies, Cash, of \$3,536.00 was misused, and unlawfully used as well as unlawfully released to the wrong owner without a Court Order, or a Evidentiary Hearing, even if the Appellant was entitled to his property/evidence that was to be held and was to be kept safe.

The Statutory requirements of search and seizure in a Criminal Investigation and the confiscating any items found during the search or arrest that are relevant to the investigation are to be protected as well as to be kept safe, following factual dispute, such as Discovery, employment of experts or investigators expansion of the record, evidentiary hearing, or reference to a magistrate.

Matter dealing with subject to forfeiture to the State or Political Subdivision under either the Criminal or Delinquency process in section 2981.04 of the Ohio Revised Code or in the Civil process in section 2981.05 of the Ohio Revised Code. It is clear that the Appellee's violated their duties to act to protect seized property/evidence to hold it as stated in Chapter 2981.03-seizure of property; relief or even 2981.04(2)-if any property is not reasonable foreseen to be subject to forfeiture at the time of filing the indictment, information, or complaint, but in this case the scheme is clear on its face, of the record the unlawfully release happen way before any indictment was filed, and but just a few hours before Affidavit in support of arrest warrant of a hearing on

held October 7, 2010, used this same evidence/property as a tool to state that the Appellant was gone to flee town, and which upon Prosecutor's response to Discovery, and as the Prosecutor's Office which gave prompt notice of the fact it was safe and was to be used as evidence in the Appellant's trial, and which Appellant's Defense Counsel had stated he saw it a year later in the property room in evidence where the cell phone was kept of Mr. Messenger's, but it was used in the Criminal trial as an exhibit 21dd. The scheme is clear when the State of Ohio, Prosecutor, and Prosecutor's Office still used it know it was released October 7, 2010, and not needed for evidence but it was still shown to the jury as in (Photograph), as physical evidence to show the jury that Appellant (Messenger), was a bad guy.

The statutory exclusions from a Prosecutor, and Law Director, and their employer's are mandated are set out in Brady v. Maryland, 373 U.S. 83 (1963), Appellee's Constitution requires the government and State, employee's to hand over all exculpatory information on a timely basis to defendants facing Criminal prosecution. Even by O.R.C. §2933.42, and O.R.C. §2933.43, and Property recovered by Police Officer's, Police Dept, of O.R.C. §505.105, O.R.C. §737.29, and care of property in law enforcement custody O.R.C. §2981.11, these provisions of the statute's codifies a distinction widely accepted in traditional State of Political Subdivision of Public, Government Employee's sector to rules contrary to law: original hiring practices are left to the employer's discretion and by appropriate training, and orders of the Courts to contrast are proper subject to stating what could be evidence or not to be evidence, and what can be released or not plus how, and to whom. (see Marment Drug Task Force v. Paz, 2012-Ohio-4882 (2012), & (In re Forfeiture of Property of Louis, 187-

Ohio App. 3d 504, 2010-Ohio-1792), & (State v. Pollard, 11th Dist. No:99-A-0072 (Apr. 13, 2001), & (Hunt v. Charles J. Rogers Tran. Co., 164 St. 329, 333, (1955)), & (State v. Roberts, 102 App. 3d 514, 518-519, (9th Dist. 1995)), & State ex rel: Mason v. \$17,000 in Currency, 8 Dist. No:80941, 2003-Ohio-993), & (State v. Brownride, 2010-Ohio-104, App. 3d Case No:9-09-24, Jan 19, 2010), & (State v. Lillock, 70 Ohio St. 2d 23, 434, N.E. 2d 723, 1982 Lexis 634), & (State v. \$765.00 United States Currency, Case No:208-CA-00116, Feb 17, 2009), & (State v. Ali, 1997 Ohio App. Lexis 2115), & (State v. North, 2012-Ohio-S200).

This plain meaning of the narrow exclusion embodied in the Ohio Revised Code's, plus in Chapter 2981 Forfeiture Law, is supported by the language of the section that immediately follows it Ohio Revised Code §2981.03(A)(1), provides as follows:

(A)(1)-The State or Political Subdivision acquires provisional title to property subject to forfeiture under this chapter upon a person's commission of an offense giving rise to forfeiture, subject to third party claims and final adjudication under section 2981.04 or 2981.05 of the Revised Code. Provisional title authorizes the State or Political Subdivision to seize and hold the property, and to act to protect the property, under this section before any proceeding under this chapter. Title to the property vests with the State or Political Subdivision when the trier of fact renders a final forfeiture verdict or order under section 2981.04 or 2981.05 of the Ohio Revised Code, but that title is subject to third party claims adjudicated under those sections.& see (b).

This section expressly permit Appellee's, of the State or Political Subdivision to address the matters to protect property/evidence to trier of fact renders a final forfeiture verdict or Order with section O.R.C.§2981.04, and O.R.C.§2981.05.

The Court of Appeals ignored the evident meaning of Honorable Judge Jim Slagle's meaning of the O.R.C. §2981.03(A)(1), and improperly broadens the narrow exceptions enumerated in this chapter.

The Court of Appeals erroneously interpreted of statutory violations, plus establishment of eligibility of lack of jurisdiction before any indictment, Complaint was issued. Such a judicial expansion of a clear and carefully drafted statutory exclusion violates the rules of statutory construction established and applied by the Court. (see *Thompkins*, 78 Ohio St. 3d at 388), & (*State v. Lillocock*, Case No:81-817, (March 28, 1982) 70 Ohio St. 2d 233), & (*Marmet Drug Tack Force v. Paz*, 2010-Ohio-4882, 3d App. Case No:9-11-060, Oct 22, 2010), & (*Leland v. Lima*, 3d Dist Allen No:1-02-59, 2002-Ohio-6188).

Proposition of Law No: II: Sufficiency of the Evidence (Bad Character) In State v. Ford, 2019-Ohio-4539, *Lesko v. Owens*, 881 F. 2d 44, 51-52 (3rd Cir. 1989).

In reviewing a record for sufficiency "[t]he relevant inquiry is whether, after viewing the evidence, (Bad Character), in a light most favorable to the prosecution any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt". (see *State v. Jenks*, 61 Ohio St. 3d 259, 574 N.E. 2d 492 1991), paragraph two of the syllabus, following *Jackson v. Virginia*, 443, U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560 1979).

Allegations of ill-repute meant to emotionally charge one's thoughts are illegal tactics often employed by the Government. Use of bad character evidence implicates due-process. (see *U.S. v. Beverly*, 369, F. 3d 516, 543 6th Cir. 2004), & (*Lesko v. Owens*, 881, F. 2d 44, 51-52, 3rd Cir. 1989), is a claim falling under the umbrella of Prosecutor misconduct

otherwise the conduct of the prosecutor must be reviewed on violation of due-process. (see Darden v. Wainwright, 477, US 168, 181, 1986), & (US v. Beverly369,F. 3d 516, 543, 6th Cir. 2004), and

In: State v. Harry, 2008-Ohio-6380

"[*P46] HN15-Sufficiency of evidence is required before a case may be taken to jury therefore where a conviction is supported by manifest weight of evidence there is necessary a finding of sufficiency, Thompkins, 78 Ohio St. 3d at 338; State v. Wilson Warren App. No:CA2006-01-007, 2007 Ohio2298. Therefore, where [**24] a conviction is supported by manifest weight of evidence it is also dispositive as to claim of insufficiency evidence. State v. Lee, 158, Ohio App. 3d 129, 2004-Ohio-3946, P18, 314, N.E. 12; Wilson atP35."

Appellant (Messenger), submits that his Trial counsel stated that the \$3,536.00 was still in evidence, in the Marion Police Dept. property room almost a year later as well as the Appellee's was still using it in Discovery's, and a exhibit in trial but at no time did any of the Appellee's or the State of Ohio, said it was released back in 2010, but it was showned to the jury and used on Court documents stating that Appellant (Messenger) was a bad guy.

Proposition of Law No:III: Abuse of Discretion of the Court

In State v. Schain, 65 Ohio St. 3d 51, 59, 1992-Ohio-31, 600 N.E. 2d 661 (1992)), "Abuse of Discretion" has been defined [**42] as an attitude that is unreasonable, arbitrary or unconscionable. Huffman v. Hair Surgeon, Inc., 19 Ohio St. 3d 83, 87, 19 Ohio B. 123, 482 N.E. 2d 1248, citing State v. Adams, 62 Ohio St. 2d 151, 157, 404, N.E.2d 144 (1980)). " A decision is unreasonable if there is no sound reasoning process that would support that the decision." "AAA Ent's., Inc v. River Place Community Urban Redevelopment Corp., 50 Ohio St. 3d 157, 161 553, N.E. 2d 597 (1990). And State ex rel. DeWine v. Burge, 128, Ohio St. 3d 236.

Appellant (Messenger), submits that the Trial Court failed to review the record of the Honorable Judge "being" the same Judge on the criminal case of Appellant's, that had seen all of the discovery's exhibit's, and the misuse of US Currency.

The Trial Court failed to administer if Appellant had a right to a Evidentiary Hearing and as his rights to the Constitution's were also violated to the due-process, contrary to law, to where the statute of limitation of time would not apply.

Furthermore, for the above stated reason(s), Appellant (Messenger), respectfully request that this Court remand his property of the \$3,536.00 be returned back, with instructions to the Third Appellate District Court of Appeals to reverse this matter back to the trial Court to review the misuse of evidence, as well as stating false testimonies, and statement, perjury on Discovery's of Court document etc,. Plus Appellant would like it to be known he is Pro-Se, and not schooled or skilled as a real Attorney.

CONCLUSION:

For the reason(s) discussed above this case involves matter of Public and Great General Interest, and a Substantial Constitutional Question(s),. The Appellant Chad A. Messenger, request that this Honorable Court to accept Jurisdiction in this case so that the important issues presented will be reviewed on the merits.

RESPECTFULLY, SUBMITTED

/s/ Chad A. Messenger

CHAD A. MESSENGER, #612-867

P.O. BOX 57 (M.C.I.)

MARION, OHIO 43301-0057

(APPELLANT-Pro-Se)...

CERTIFICATE OF SERVICE:

I, the Appellant, Chad A. Messenger, hereby certify that true copies of this Memorandum In Support of Jurisdiction, was sent by ordinary U.S. mail, or from the M.C.I. Mail room to the Appellee's Counsel's Steven E. Chaffin, 233 West Center Street, Marion, Ohio 43302, and to the Marion County Prosecutor's Office, at 134 East Center Street, Marion, Ohio, 43302, and to the Ohio Supreme Court Clerk of Court to file, and to return a time stamp copy back to the Appellant, Clerk of Court for the Supreme Court of Ohio, Office, Sandra M. Grosko, 8th Floor, 65 South Front Street, Columbus, Ohio 43215-3431. on this the, 24, day of March, 2020.

RESPECTFULLY, SUBMITTED

/s/

Chad A. Messenger
CHAD A. MESSENGER, #612-867

P.O. BOX 57 (M.C.I.)

MARION, OHIO 43301-0057

(APPELLANT-Pro-Se)...

APPENDIX PAGE:

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY

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MARION COUNTY OHIO
JESSICA WALLACE, CLERK

CHAD A. MESSENGER,

CASE NO. 9-19-62

PLAINTIFF-APPELLANT,

v.

STATE OF OHIO, MARION COUNTY
PROSECUTOR'S OFFICE, PROSECUTOR-
BRENT W. YAGER, ET AL.,

JUDGMENT
ENTRY

DEFENDANTS-APPELLEES.

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. See App.R. 30.

I hereby certify this to be a true copy
of the original on file in this office
on:

3/10/2020
Jessica Wallace, Clerk of Courts
Marion County, Ohio
By *[Signature]* Deputy Clerk

DATED: MAR 09 2020

John B. Willamowski
JUDGE
[Signature]
JUDGE
[Signature]
JUDGE

FILED &
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2020 MAR -9 PM 3:20

MARION COUNTY OHIO
JESSICA WALLACE, CLERK

IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
MARION COUNTY

CHAD A. MESSENGER,
PLAINTIFF-APPELLANT,

CASE NO. 9-19-62

v.

STATE OF OHIO, MARION COUNTY
PROSECUTOR'S OFFICE, PROSECUTOR-
BRENT W. YAGER, ET AL.,

OPINION

DEFENDANTS-APPELLEES.

Appeal from Marion County Common Pleas Court
Trial Court No. 2018CV0142

Judgment Affirmed

Date of Decision: March 9, 2020

APPEARANCES:

Chad A. Messenger Appellant

I hereby certify this to be a true copy
of the original on file in this office
on:

3/10/2020

Jessica Wallace, Clerk of Courts
Marion County, Ohio
Deputy Clerk

WILLAMOWSKI, J.

{¶1} Plaintiff-appellant Chad A. Messenger (“Messenger”) appeals the final judgment and several interlocutory orders issued by the Marion County Court of Common Pleas. For the reasons set forth below, the judgment of the trial court is affirmed.

Facts and Procedural History

{¶2} On October 6, 2010, Messenger was arrested by the police. Doc. 1. At the time of his arrest, he had \$3,536.00 in cash on his person. Doc. 1. The police seized these funds and stored them at the police station. Doc. 1. On October 7, 2010, the police released these funds to Christie Harrah (“Harrah”), who was, at that time, Messenger’s wife and the victim of the offense for which Messenger had been arrested. Doc. 1. While in prison, Messenger sent his mother to obtain his funds from the police on January 24, 2012. Doc. 1. The police informed his mother that these funds had already been released to Harrah. Doc. 1. At this time, Messenger became aware that the police did not retain his \$3,536.00.

{¶3} In 2013, Messenger filed Case No. 2013-CV-0473 to obtain these funds. Doc. 1. According to a copy of the judgment entry that was attached to Messenger’s complaint, the trial court determined that the property officer at the Marion Police Department erred by releasing Messenger’s funds to Harrah. Doc. 1. However, the trial court determined that the property officer was immune from liability because she acted within the scope of her employment and without

Case No. 9-19-62

malicious purpose. Doc. 1. The trial court then entered a judgment against Harrah for \$3,563.00. Doc. 1.

{¶4} On March 6, 2018, Messenger filed a complaint *pro se* with the trial court that named, as defendants, the former Marion County Prosecutor, Brent Yager (“Yager”); the Marion County Prosecutor’s Office (“the Prosecutor’s Office”); the Office of the Law Director, City of Marion (“the Law Director’s Office”); and the Assistant Law Director, Jason D. Warner (“Warner”). Doc. 1. Messenger appears to have named Yager as a party because Yager had been involved in Messenger’s criminal prosecution. Doc. 1. However, Yager had passed away on October 3, 2017. Doc. 52, Ex. B. In his complaint, Messenger requested a declaratory judgment against his criminal conviction. Doc. 1. He also sought \$6,000.00 in punitive damages and \$3,536.00 in compensatory damages from the named defendants. Doc. 1.

{¶5} Both the Law Director’s Office and the Prosecutor’s Office filed motions to dismiss. Doc. 12, 17. On September 5, 2018, the trial court dismissed the claims against the Prosecutor’s Office and the Law Director’s Office. Doc. 20. However, the trial court found that Messenger raised claims against Warner and Yager individually. Doc. 20. The trial court did not dismiss the claims brought against Yager or Warner, finding that these issues and claims had not been litigated in Case No. 2013-CV-0473. Doc. 20.

{¶6} On June 19, 2019, Messenger filed a motion seeking recusal of the judge in this case. Doc. 58. Messenger argued that the judge should not preside over this case because this judge had previously presided over Messenger's criminal trial. Doc. 58. On July 19, 2018, the Chief Justice of the Supreme Court of Ohio denied Messenger's affidavits of disqualification. Doc. 65.

{¶7} On September 18, 2018, Warner filed a motion to dismiss. Doc. 21. The trial court granted Warner's motion to dismiss on December 27, 2018. Doc. 29. At this point, Yager was the only party remaining in this litigation. On March 1, 2019, the Prosecutor's Office filed a renewed motion to dismiss on behalf of Yager. Doc. 42. On September 11, 2019, the trial court found that Messenger's complaint, in fact, stated a claim for conversion; that the applicable statute of limitations for this alleged tort had run; and that this cause of action was, therefore, barred. Doc. 71. For this reason, the trial court granted the Prosecutor's Office's renewed motion to dismiss the claim against Yager. Doc. 70, 71.

{¶8} The appellant filed his notice of appeal on October 7, 2019. Doc. 73.

On appeal, Messenger raises the following assignments of error:

First Assignment of Error

State of Ohio, Marion County Prosecutor's Office, & the Prosecutor—Brent W. Yager, or Prosecutor—Raymond A. Grogan, Jr. & Marion County Law Director's Office, & Assistant Law Director—Jason D. Warner, abused discretion and lack of subject matter jurisdiction, & due process, & without an order, or the benefit of an evidentiary hearing, etc.

Second Assignment of Error

Court judge abused its discretion and erred to the prejudice, bias to preconceived opinion; erred in correcting an statute violation of another judge's conclusion of law, of judgment entry.

First Assignment of Error

{¶9} In his first assignment of error, Messenger appears to assert that the trial court erred in dismissing his complaint against the Marion County Prosecutor's Office, the Law Director's Office, Warner, and Yager. He also makes several arguments against his criminal conviction.

Legal Standard

{¶10} Civ.R. 3(A) governs the initiation of a cause of action and reads, in its relevant part, as follows:

[a] civil action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant, or upon an incorrectly named defendant whose name is later corrected pursuant to Civ.R. 15(C) * * *.

Civ.R. 3(A). Thus, if a plaintiff fails to obtain service within one year of filing a complaint, then no action is commenced pursuant to Civ.R. 3(A). *Maryhew v. Yova*, 11 Ohio St.3d 154, 159, 464 N.E.2d 538, 541 (1984).

{¶11} Service is an essential component of commencing an action under Civ.R. 3(A) because this is the process through which a court with venue and subject matter jurisdiction "asserts jurisdiction over the person of the party served." *During v. Quoico*, 2012-Ohio-2990, 973 N.E.2d 838, ¶ 25 (10th Dist.), quoting *Mississippi*

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Publishing Corp. v. Murphree, 326 U.S. 438, 444-45, 66 S.Ct. 242, 90 L.Ed. 185 (1946). Personal jurisdiction represents “[a] court’s power to bring a person into its adjudicative process * * *.” *Renacci v. Evans*, 9th Dist. Medina No. 09CA0004-M, 2009-Ohio-5154, ¶ 6, quoting Black’s Law Dictionary 870 (8th Ed.2004).

{¶12} Thus, “[a] trial court lacks jurisdiction to render a judgment against a defendant if effective service of process has not been made on the defendant and the defendant has not appeared in the case or waived service.” *Bowling v. Grange Mut. Cas. Co.*, 10th Dist. Franklin No. 05AP-51, 2005-Ohio-5924, ¶ 27. “Inaction upon the part of a defendant who is not served with process, even though he might be aware of the filing of the action, does not dispense with the necessity of service.” *Maryhew, supra*, at 157.

{¶13} A cause of “action may be dismissed when service of process has not been obtained after the passage of more than one year.” *Id.* at 157. In determining whether the trial court has personal jurisdiction over a defendant, matters outside of the complaint may be considered. *Price v. Wheeling Dollar Sav. & Trust Co.*, 9 Ohio App.3d 315, 460 N.E.2d 264, first paragraph of the syllabus (10th Dist.) (holding that a trial court may examine evidentiary materials outside of the complaint when determining whether to grant a motion to dismiss for lack of personal jurisdiction).

{¶14} “In ruling on a motion to dismiss, pursuant to Civ.R. 12(B), a trial court must determine whether the complaint alleges any cause of action cognizable

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in the forum * * *.” *State ex rel. Atty. Gen. v. Grand Tobacco*, 171 Ohio App.3d 551, 2007-Ohio-418, 871 N.E.2d 1255, ¶ 13 (10th Dist.). On appeal, “review of a trial court’s ruling on a motion to dismiss is de novo and, while we need not defer to the trial court’s findings, we must, like the trial court, construe the factual allegations in the complaint and all reasonable inferences therefrom in favor of the nonmovant.” *Shevin v. Pathi*, 3d Dist. Seneca No. 13-02-20, 2002-Ohio-4457, ¶ 6.

Legal Analysis

{¶15} In our analysis of this assignment of error, we will first consider the final judgment under which Yager was dismissed from this cause of action. We will then briefly consider the interlocutory orders under which Warner, the Prosecutor’s Office, and the Law Director’s Office were dismissed. This analysis will conclude with an examination of whether the trial court erred in dismissing the claims that Messenger raises against his criminal conviction on appeal.

{¶16} In this case, Yager was the only named party in this cause of action at the time that the trial court dismissed Messenger’s complaint. The record indicates that Messenger attempted and perfected service on the Prosecutor’s Office, the Law Director’s Office, and Warner. Doc. 14, 15. However, there is no evidence in the record that Messenger even attempted service on Yager within one year of filing his complaint. Further, since Yager was deceased at the time that Messenger filed his complaint, Yager could not have been served in the year following the filing of Messenger’s complaint, as is required to commence an action under Civ.R. 3(A).

{¶17} Given the impossibility of serving a deceased individual within one year of filing a complaint against him, no action could be successfully commenced against Yager personally pursuant to Civ.R. 3(A). *See Weathers v. Carter*, 2d Dist. Montgomery No. 18598, 2001 WL 395389, *2 (Apr. 20, 2001) (holding that an action cannot be commenced, as contemplated by Civ.R. 3(A), against a deceased defendant because a deceased defendant cannot be served). Further, since Yager was deceased, he could not have waived service of process or submit, by appearance, to the trial court's jurisdiction. Thus, as service of process was never attempted on Yager within one year of the filing of Messenger's complaint, the trial court should have dismissed this cause of action.

{¶18} Even if Messenger had attempted service on Yager, he still would not prevail because his complaint was filed after the statute of limitations had run. The fact that Yager was deceased at the time that Messenger filed his complaint does not, by itself, render this suit a nullity as to Yager. "[A] complaint filed against a deceased party is not a nullity, because the complaint may be amended to name the real party in interest." *CitiMortgage, Inc. v. Bumphus*, 197 Ohio App.3d 68, 2011-Ohio-4858, 966 N.E.2d 278 (6th Dist.). Thus, upon learning of Yager's death, Messenger could have sought to name an appropriate defendant in Yager's place. The Supreme Court of Ohio set forth the requirements for amending a complaint filed against a deceased defendant in *Baker v. McKnight*, 4 Ohio St.3d 125, 447 N.E.2d 104 (1983).

{¶19} In *Baker*, a plaintiff filed a suit but was unaware that the named defendant had already died. The Supreme Court found that this situation represented a “misnomer of party,” finding that the plaintiff “[e]ssentially * * * sued an entity * * * by the wrong name.” *Id.* at 129. The Supreme Court then held that

[w]here the requirements of Civ.R. 15(C) for relation back are met, an otherwise timely complaint in negligence which designates as a sole defendant one who dies after the cause of action accrued but before the complaint was filed *has met the requirements of the applicable statute of limitations* and commenced an action pursuant to Civ.R. 3(A), and such complaint may be amended to substitute an administrator of the deceased defendant’s estate for the original defendant after the limitations period has expired, when service on the administrator is obtained within the one-year, post-filing period provided for in Civ.R. 3(A).

(Emphasis added.) *Id.* at syllabus. However, for the rule in *Baker* to apply, the plaintiff must have filed a complaint after the named defendant has died¹ but *before* the statute of limitations for the relevant cause of action has run. *Id.*

{¶20} In the case before this Court, there is no indication that Messenger was aware of Yager’s death at the time that Messenger filed his complaint. However, for the rule in *Baker* to have given Messenger an opportunity to substitute Yager with an existing entity, he had to have filed his complaint within the relevant statute of limitations. *Baker* at 129. *See Sorrell v. Estate of Datko*, 147 Ohio App.3d 319,

¹ If the defendant dies after the action has been initiated, then Civ.R. 25 applies. *See Greenberg v. Heyman-Silbiger*, 2017-Ohio-515, 78 N.E.3d 912, ¶ 32 (10th Dist.) (finding that Civ.R. 25 operates to allow substitution where that the defendant was living at the time that the action was filed and died subsequently).

770 N.E.2d 608, ¶ 23-25 (7th Dist.) (addressing whether a plaintiff's demand for service is moot where the estate of the deceased defendant no longer exists).

{¶21} A motion to dismiss may be granted if the complaint, on its face, shows that the claim is barred by the statute of limitations. *Faber v. Seneca County Sheriff's Dept.*, 2018-Ohio-786, 108 N.E.3d 213, ¶ 7 (3d Dist.).

In determining which statute of limitations should be applied to a particular cause of action, [the Ohio Supreme Court] has held that “* * * courts must look to the actual nature or subject matter of the case, rather than to the form in which the action is pleaded. The grounds for bringing the action are the determinative factors[;] the form is immaterial.” *Hambleton v. R.G. Barry Corp.* * * *, 12 Ohio St.3d 179, 183, 12 OBR 246, 249, 465 N.E.2d 1298, 1302 [(1984)].

Lawyers Cooperative Publishing Co. v. Muething, 65 Ohio St.3d 273, 276, 603 N.E.2d 969, 973 (1992).

{¶22} In his complaint, Messenger alleged that Yager wrongfully took \$3,536.00 that belonged to him (Messenger). Doc. 1. After reviewing Messenger's filings, the trial court determined that this was, in essence, a conversion claim.² See *Joyce v. General Motors Corp.*, 49 Ohio St.3d 93, 96, 551 N.E.2d 172, 175 (1990) (holding “that conversion is the wrongful exercise of dominion over property to the

² Messenger asserted that Ohio's criminal forfeiture laws applied to the facts of this case. Doc. 1. However, there is no evidence in the record that these funds were seized pursuant to these forfeiture laws or even retained as evidence. See Doc. 1. These funds appear to have been in the possession of the police for safekeeping because the funds were on Messenger's person at the time that he was arrested. Doc. 1. Thus, the trial court determined that this action was for conversion and that these funds were not subject to Ohio's criminal forfeiture provisions. Doc. 71.

exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights.”).

{¶23} Under R.C. 2305.09(B), conversion claims are subject to a four-year statute of limitations. R.C. 2305.09(B). *See Smith v. Asbell*, 4th Dist. Scioto No. 03CA2897, 2005-Ohio-2310, ¶ 41. Since Messenger did not discover that the police released his funds until January 24, 2012, he had until January 24, 2016 to file a claim for conversion. However, he did not file this complaint until March 6, 2018. Doc. 1. Thus, the statute of limitations for Messenger’s claim had expired by the time that he filed his complaint, barring this action. For this reason, the rule in *Baker* still would not have afforded Messenger the opportunity to amend his complaint and substitute a real party in interest for Yager.

{¶24} Even if Messenger had filed his complaint before the statute of limitations had run, he would still not prevail because he did not, even after he had notice of Yager’s death, seek to substitute or obtain service on an existing entity in place of Yager within one year of filing his complaint. While Messenger’s initial complaint was not a nullity under *Baker*, his complaint still “did not suffice to commence the action under Civ.R. 3(A).” *Molette v. Portsmouth City Council*, 179 Ohio App.3d 455, 2008-Ohio-6342, 902 N.E.2d 515, ¶ 40 (4th Dist.). “[I]n order for the action to be deemed timely commenced,” Messenger still “had to serve the property party * * * within the one-year limitation period of Civ.R. 3(A) * * *.” *Id.*

{¶25} While the record does not indicate that Messenger was aware that Yager had passed away at the time that the complaint was filed, the Prosecutor's Office made at least two filings that stated Yager was deceased within one year of the filing of Messenger's complaint. Doc. 33, 42. However, Messenger never sought to amend his complaint to name an existing entity in place of Yager and never sought service of process on that existing entity within one year of filing his complaint. *See Lake Ski I-80, Inc. v. Habowski*, 2015-Ohio-5535, 57 N.E.3d 215, ¶ (11th Dist.) (holding that "a deceased individual cannot be a party to an action" "[b]ecause 'actual or legal' existence * * * [is a] condition[] precedent for being sued * * *"). For this reason, Messenger's action against Yager still would have failed even if his complaint had been filed within the applicable statute of limitations.

{¶26} In the caption of his first assignment of error, Messenger also mentions the Prosecutor's Office, the Law Director's Office, and Warner. However, in the text of his argument, he does not cite to any case law or make any arguments that suggest that the trial court erred in dismissing these parties from this action. Under App.R. 16(A), an appellant must include, in his or her brief, "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review" and "citations to the authorities, statutes, and parts of the records on which appellant relies." App.R. 16(A)(7). If an appellant does not comply with the requirements of App.R. 16(A)(7), a court of appeals may disregard

the assignment of error. *Mousa v. Saad*, 2017-Ohio-7116, 95 N.E.3d 941, ¶ 46 (3d Dist.), citing *Home S. & L. Co. of Youngstown v. Avery Place, L.L.C.*, 10th Dist. Franklin Nos. 11AP-1152, 11AP-1153, 2012-Ohio-6255, ¶ 12.

{¶27} Nonetheless, we have considered the facts surrounding the trial court's dismissal of these parties. The trial court granted Warner's motion to dismiss on the grounds that the claims against Warner were barred by the applicable statute of limitations. Doc. 29. Similarly, the trial court determined that the Prosecutor's Office and the Law Director's Office were correct in asserting that the claims against them had previously been litigated in Case No. 2013-CV-473 and that sovereign immunity barred these claims. Doc. 12, 17, 20. After reviewing the evidence in the record, we do not find any indication that the trial court erred in its ultimate disposition of these issues.

{¶28} In his brief, Messenger also makes a number of arguments that challenge his criminal conviction. Messenger, however, has already challenged his conviction on direct appeal following his trial. *See State v. Messenger*, 3d Dist. Marion No. 9-11-40, 2012-Ohio-2692, ¶ 1. Some of these arguments were not raised in his 2018 filing before the trial court. Doc. 1. "It is well settled that a litigant's failure to raise an issue before the trial court waives the litigant's right to raise that issue on appeal." *Gentile v. Ristas*, 160 Ohio App.3d 765, 2005-Ohio-2197, 828 N.E.2d 1021, ¶ 74 (10th Dist.). We will not consider these arguments for the first time on appeal. Further, even if he had raised these arguments before the

trial court in his 2018 filing, all of these arguments could have been raised or should have been raised during his prior direct appeal from his criminal conviction. *State v. Williams*, 3d Dist. Crawford No. 3-17-05, 2017-Ohio-8022, ¶ 16. Thus, these arguments are barred by the doctrine of res judicata. *Id.*

{¶29} We turn now to the arguments that Messenger raised against his conviction before the trial court in his 2018 filing. In his complaint, Messenger requested a declaratory judgment against his criminal conviction. Doc. 1. The trial court determined that Messenger should have brought a challenge to his criminal conviction through a petition for postconviction relief or by direct appeal. Doc. 20. *See Stamper v. State*, 3d Dist. Wyandot No. 16-01-12, 2001 WL 1545488, *2 (Dec. 5, 2001). Thus, the trial court found that the declaratory judgment that he sought in this civil action was not the proper method to challenge his criminal conviction. Doc. 20. The trial court then dismissed the claims against his prior conviction. Doc. 20. After reviewing the evidence in the record, we do not find any indication that the trial court erred in making this determination. Further, as the trial court noted, these arguments could have been raised or should have been raised during his prior direct appeal from his criminal conviction. *Williams, supra*, at ¶ 16. Thus, these arguments are also barred by the doctrine of res judicata. *Id.*

{¶30} For these reasons set forth in this analysis, we conclude that the trial court did not err in dismissing Messenger's complaint. Thus, Messenger's first assignment of error is overruled.

Second Assignment of Error

{¶31} Messenger asserts that the judge in his case had a preconceived bias against him. He also argues that the trial court erred in concluding that his complaint presents a conversion claim against Yager and not a claim under Chapter 2981 of the Ohio Revised Code.

Legal Standard

{¶32} “Authority to pass upon the disqualification of a judge of the Court of Common Pleas is vested in the Chief Justice under Section 5(C) of Article IV of the Ohio Constitution * * *.” *Beer v. Griffith*, 54 Ohio St.2d 775, 377 N.E.2d 775 (1978). For this reason, a court of appeals does not have the “authority to pass upon disqualification or to void the judgment of the trial court upon that basis.” *Id.* “[A] court of appeals lacks jurisdiction to review [recusal] decisions.” *State ex rel. Hough v. Saffold*, 131 Ohio St.3d 54, 2012-Ohio-28, 960 N.E.2d 451, ¶ 2.

Legal Analysis

{¶33} In this case, Messenger filed a motion that sought recusal or disqualification of the trial judge. Doc. 58. The Chief Justice of the Supreme Court of Ohio denied Messenger’s affidavits of disqualification. Doc. 65. Messenger has already gone through the proper channels to argue for the recusal or disqualification of the trial judge assigned to his case. As a court of appeals, we do not have jurisdiction to review this decision. As such, the portion of his assignment of error

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that alleges a claim of judicial bias is dismissed from this appeal. *Brown v. Schmidt*, 4th Dist. Ross No. 15CA3523, 2016-Ohio-2864, ¶ 18.

{¶34} Further, appellate review required that we conduct a de novo review of the trial court's decision to dismiss Messenger's complaint. Thus, this Court was not bound to give deference to the determination of the trial judge. Nonetheless, our independent review led us to conclude that it was not error to dismiss Messenger's complaint. Thus, even if the trial judge had been biased, Messenger is still not able to demonstrate that this bias ultimately prejudiced him. Finally, the arguments that Messenger raises regarding the applicability of Chapter 2981 of the Ohio Revised Code are moot because we have already affirmed the decision of the trial court to dismiss his complaint under his first assignment of error. For these reasons, his second assignment of error is overruled.

Conclusion

{¶35} Having found no error prejudicial to the appellant in the particulars assigned and argued, the judgment of the Marion County Court of Common Pleas is affirmed.

Judgment Affirmed

SHAW, P.J. and PRESTON, J., concur.

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