

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellee,

Case no. 2005-1656

v.

ROLAND T. DAVIS

[Death Penalty Case Appeal]

Defendant-Appellant.

*[On Direct Appeal From Licking County
Court of Common Pleas]*

APPELLEE'S NOTICE, PURSUANT TO S. CT. P. R. IX, § 8,
OF INTENT TO RELY UPON AUTHORITY NOT CITED IN MERIT BRIEF

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FILED

MAY 17 2007

MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

NOTICE

Now comes the State of Ohio, Plaintiff-Appellee herein, and hereby provides notice to both the Court and opposing counsel of it's intention to rely upon authorities not cited in its merit brief.

The supplemental authorities are as follows:

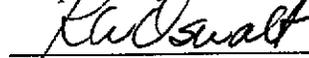
Boyde v. California (1990), 494 U.S. 370, 384-385, (rejecting a claim of prosecutorial misconduct in the argument phase of a capital case when the prosecutor's argument was merely addressed to arguing that the mitigating evidence "was minimal in relation to the aggravating circumstances".) [Relevant to the Proposition of Law No. 1, Section (E).]

Washington v. Recuenco (2006), ___ U.S. ___, 126 S.Ct. 2546, (noting that Blakely issue is subject to harmless error analysis.) [Relevant to Proposition of Law No. 18.]

State v. Elmore (2006), 111 Ohio St.3d 515, 536, (noting in a pre-Blakely sentencing *State v. Foster* (2006), 109 Ohio St.3d 1, requires re-sentencing on non-capital offenses, but does not discuss impact of Recuenco.) [Relevant to Proposition of Law No. 18.]

State v. Woogerd (10th Dist.), Slip Copy, 2007 WL 949500, and, *State v. Mansfield* (9th Dist.), Slip copy, 2007 WL 209986, (both noting that defendant who is sentenced post-Blakely, and fails to raise a Blakely claim, waives it.) [Relevant to Proposition of Law No. 18.]

Respectfully submitted,



Kenneth W. Oswalt, Reg. #0037208
Assistant Prosecutor

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been sent by regular U.S. Mail this 16 th day of May, 2007, to Counsel for the Defendant-Appellant, at the address noted on the cover page hereto.



Kenneth W. Oswalt, Reg. #0037208
Assistant Prosecutor