

IN THE
SUPREME COURT OF OHIO

ORIGINAL
ON COMPUTER - JJ

STATE OF OHIO : NO. 2006-2139
 : 2006-2250
Plaintiff-Appellee :
vs. :
VINCENT COLON :
Defendant-Appellant :

**MOTION OF THE OHIO PROSECUTING ATTORNEYS ASSOCIATION
TO FILE AN AMICUS CURIAE MEMORANDUM IN SUPPORT OF
APPELLEE'S MOTION FOR RECONSIDERATION**

William Mason
Cuyahoga County Prosecuting Attorney

Jon W. Oebker (0064255)
Assistant Prosecuting Attorney

The Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7800

COUNSEL FOR PLAINTIFF-APPELLEE

Robert L. Tobik
Cuyahoga County Public Defender

Cullen Sweeney
Assistant Public Defender

310 Lakeside Avenue, #200
Cleveland, Ohio 44113

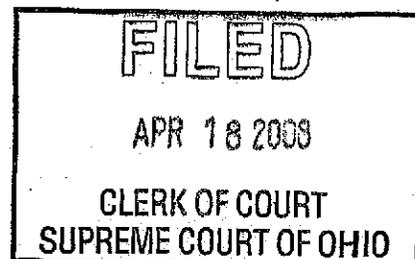
COUNSEL FOR DEFENDANT-
APPELLANT

Joseph T. Deters (0012084P)
Prosecuting Attorney, Hamilton County Ohio

Philip R. Cummings (0041497P)
Assistant Prosecuting Attorney

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3052; Fax No. (513) 946-3021

COUNSEL FOR AMICUS CURIAE, THE OHIO
PROSECUTING ATTORNEYS ASSOCIATION



IN THE
SUPREME COURT OF OHIO

STATE OF OHIO	:	NO. 2006-2139
	:	2006-2250
Plaintiff-Appellee	:	
vs.	:	
VINCENT COLON	:	
Defendant-Appellant	:	

Now comes The Ohio Prosecuting Attorneys Association (OPAA) and hereby moves this Court to accept for filing its amicus curiae memorandum in support of Appellee, State of Ohio's motion for reconsideration.

In its April 9, 2008 decision, this Court held that:

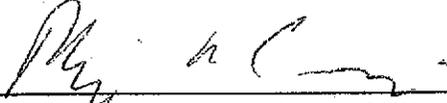
“[w]hen an indictment fails to charge a mens rea element of a crime and the defendant fails to raise that defect in the trial court, the defendant has not waived the defect in the indictment.”

This Court found that the defective indictment so permeated Colon's trial proceedings that it constituted “structural error” in Colon's case. The Court held Colon's indictment did not include all the elements of the offense charged and that Colon had no notice that the state had to prove that he had been reckless in order to convict him of robbery. In so holding, the Court stated that, despite the language of Crim. R. 7(D) which permits the amendment of defective indictments, Colon's indictment was constitutionally deficient.

The OPAA, fearing this language could be interpreted by some as flatly precluding a 7(D) amendment to ever effectively add a mens rea element to an indictment; and maintaining that Colon did have notice of the culpable mental state Appellee was required to prove, hereby requests this Court accept for filing its Memorandum in Support of Appellee's Motion for Reconsideration.

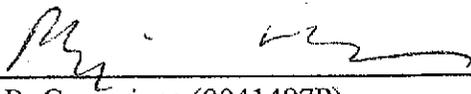
Respectfully,

Joseph T. Deters (0012084P)
Prosecuting Attorney, Hamilton County Ohio


by: Philip R. Cummings (0041497P)
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3052; Fax No. (513) 946-3021

CERTIFICATE OF SERVICE

I hereby certify that I have sent a copy of the foregoing Motion, by United States mail, addressed to all interested parties listed on the cover page, this 17 day of April, 2008.


Philip R. Cummings (0041497P)
Assistant Prosecuting Attorney