

**IN THE SUPREME COURT OF OHIO**

**STATE OF OHIO**

**CASE NO. 07-1842**

Plaintiff-Appellee,  
Cross-Appellant,

vs.

**ON APPEAL FROM THE  
MONTGOMERY COUNTY COURT  
OF APPEALS, SECOND  
APPELLATE DISTRICT**

**DAVON WINN**

Defendant-Appellant.  
Cross-Appellee.

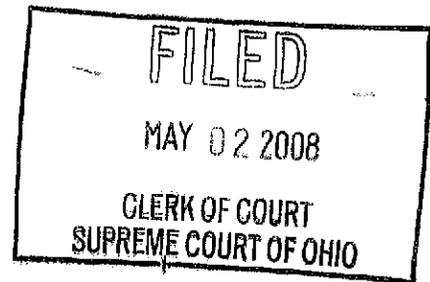
**COURT OF APPEALS  
CASE NO: 21710**

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**MEMORANDUM IN RESPONSE**

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**MATHIAS H. HECK, JR.**  
PROSECUTING ATTORNEY  
By JILL R. SINK (COUNSEL OF RECORD)  
REG. NO. 0076955  
Assistant Prosecuting Attorney  
Montgomery County Prosecutor's Office  
Appellate Division  
Montgomery County Courts Building  
P.O. Box 972  
301 W. Third Street - Suite 500  
Dayton, Ohio 45422  
(937) 225-4117



**COUNSEL FOR APPELLEE/CROSS APPELLANT, STATE OF OHIO**

**JEREMY MASTERS**  
Ohio Public Defender Commission  
8 East Long Street - 11<sup>th</sup> Floor  
Columbus, Ohio 43215-2998

**APPELLANT FOR APPELLANT/CROSS-APPELLEE**

## MEMORANDUM

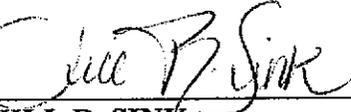
This Court should overrule Davon Winn's motion to dismiss this appeal and allow the case to proceed on the merits to its ultimate conclusion. The questions of public or great general interest addressed in the State's two propositions of law remain even after this Court's opinion in *State v. Cabrales*, Slip Opinion No. 2008-Ohio-1625. In fact, the question of the proper application of *State v. Rance*, 85 Ohio St.3d 632, 1999-Ohio-291, 710 N.E.2d 99, and now *Cabrales*, especially to the offenses of aggravated robbery and kidnapping, has never been more a question of public or great general interest than now. Therefore, this appeal has not been improvidently allowed, and this Court should overrule Winn's motion to dismiss.

Winn's argument that *Cabrales* resolved the issues put forth by the State in its merit brief reveals exactly why his argument fails. This Court's decisions in *Cabrales* and *State v. Fears*, 86 Ohio St.3d 329, 1999-Ohio-111, 715 N.E.2d 136, that "affirmed" the proposition that aggravated robbery and kidnapping are allied offenses of similar import relied on a portion of dicta from its opinion in *State v. Logan* (1979), 60 Ohio St.2d 126, 130, 397 N.E.2d 1345 that found implicit in every robbery is a kidnapping. However, *Fears* and *Cabrales* both simply quoted *Logan's* dicta without ever considering whether its conclusion regarding robbery and kidnapping remained sound after *Rance*. Thus, the State respectfully submits that this Court has never actually applied the *Rance* test to the offenses of robbery or aggravated robbery and kidnapping. It must do so now in order to create a precedent that truly employs the test to determine whether those specific offenses are in fact similar or dissimilar.

Therefore, the State asks that this Court deny Winn's motion to dismiss so that it can, once and for all, properly apply *Rance's* allied offenses test to the offenses of aggravated robbery and kidnapping and also provide the courts of this state a second example of *Rance's* application as clarified by *Cabrales*.

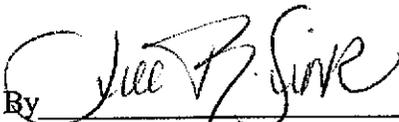
Respectfully submitted,

**MATHIAS H. HECK, JR.**  
PROSECUTING ATTORNEY

BY:   
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**JILL R. SINK**  
REG. NO. 0076955  
Assistant Prosecuting Attorney  
Appellate Division

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum in Response was sent by first class mail on May 1<sup>st</sup>, 2008 to: Jeremy Masters, Ohio Public Defender Commission, 8 East Long Street – 11<sup>th</sup> Floor, Columbus, Ohio 43215-2998.

By   
\_\_\_\_\_  
**JILL R. SINK**  
REG. NO. 0076955  
Assistant Prosecuting Attorney  
APPELLATE DIVISION