

In The Supreme Court Of Ohio

State Of Ohio, :
Appellee, :
-vs- : Case No. 2007-1741
Edward Lang, :
Appellant. : **Death Penalty Case**

Appellant's Motion to Supplement the Record

John D. Ferrero - 0018590
Stark County Prosecutor

Mark Caldwell - 0030663
Assistant Prosecuting Attorney

Stark County Office Building
Stark County Prosecutor's Office
110 Central Plaza South, Suite 510
Canton , Ohio 44702-1413

Counsel For Appellee

Office of the
Ohio Public Defender

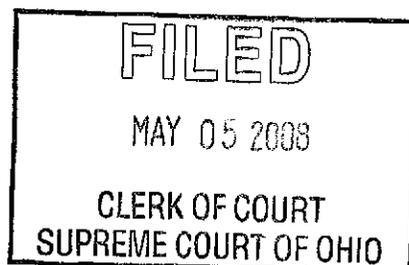
Joseph E. Wilhelm - 0055407
Chief Counsel,
Death Penalty Division
Counsel of Record

Kelly L. Culshaw -- 0066394
Supervisor, Death Penalty Division

Benjamin D. Zober -- 0079118
Assistant State Public Defender

Office of the Ohio Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215-2998
(614)466-5394
(614)644-0708 (FAX)

Counsel For Appellant



In The Supreme Court Of Ohio

State Of Ohio, :
Appellee, :
-vs- : Case No. 2007-1741
Edward Lang, :
Appellant. : **Death Penalty Case**

Appellant's Motion to Supplement the Record

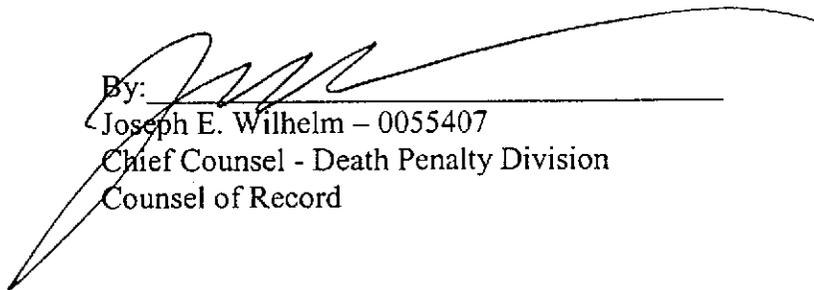
Appellant Edward Lang moves this Court to supplement the record with the "State's Response to Defendant's Motion to Prohibit the State's Use Of Peremptory Challenges To Exclude Venire Persons With Concerns About Imposing The Death Penalty."

Lang's counsel reviewed the record at the Clerk's office on April 25. Counsel was unable to find this document in File No. 2. The missing document appears on the trial docket as item No. 128, filed on February 9, 2007.

Lang's request to supplement the record is made under State ex rel. Spirko v. Court of Appeals, 27 Ohio St. 3d 13, 15-16, 501 N.E.2d 625, 627 (1986), which held that a capital defendant is entitled to a complete record on appeal. The missing document is attached to this motion as Exhibit A.

Respectfully submitted,

Office of the Ohio Public Defender

By: 

Joseph E. Wilhelm – 0055407
Chief Counsel - Death Penalty Division
Counsel of Record

By: Kelly L. Culshaw
Kelly L. Culshaw - 0066394
Supervisor, Death Penalty Division

By: Benjamin D. Zober
Benjamin D. Zober - 0079118
Assistant State Public Defender

Office of the Ohio Public Defender
8 East Long Street, 11th Floor
Columbus, Ohio 43215-2998
(614)466-5394
(614)644-0708 (FAX)
Counsel For Appellant

Certificate of Service

I hereby certify that a true copy of Appellant's Motion to Supplement the Record was forwarded by regular U.S. Mail to John D. Ferrero, Prosecutor and Mark Caldwell, Assistant Prosecutor, Stark County, 110 Central Plaza South, Suite 510, Canton, Ohio 44702, this 5TH day of May, 2008.

Joseph E. Wilhelm
Joseph E. Wilhelm - 0055407
Counsel for Appellant

277167

COPIES

FILED
JUL 11 2006
CLERK OF COURT
STARK COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

STATE OF OHIO,

CASE NO. 2006CR1824(A)

Plaintiff,

JUDGE V. LEE SINCLAIR

vs.

EDWARD LEE LANG,

STATE'S RESPONSE TO DEFENDANT'S
MOTION TO PROHIBIT THE STATE'S USE
OF PEREMPTORY CHALLENGES TO
EXCLUDE VENIRE PERSONS WITH
CONCERNS ABOUT IMPOSING THE
DEATH PENALTY.

Defendant.

[Motion No. 30]

Now comes the State of Ohio, by and through the undersigned counsel, and moves the Court for an order overruling Defendant's Motion to Prohibit the State's Use of Peremptory Challenges to Exclude Venire Persons with Concerns about Imposing the Death Penalty. Defendant's motion claims that such exclusion would violate his right to a fair and impartial jury as guaranteed by the Constitutions of the State of Ohio and the United States. The State of Ohio opposes Defendant's motion for the following reasons.

It is a fundamental principle of law that both sides in a criminal case have wide discretion in the use of peremptory challenges. Counsel is ordinarily entitled to exercise peremptory challenges "for any reason at all, as long as that reason is related to his view concerning the outcome of the

case to be tried.” Batson v. Kentucky (1986), 476 U.S. 79, 89, citing U.S. v. Robinson (D.Conn. 1976), 421 F.Supp. 467, 473. Exclusion of a juror because of his opposition to capital punishment is directly related to the outcome of the case to be tried, and is therefore valid according to the United States Supreme Court.

Defendant also argues that a jury automatically biased towards conviction when persons who are opposed to the death penalty are excluded from the venire. Following Defendant’s line of reasoning would lead to the argument that defense counsel, through the use of peremptory challenges, selects a jury biased towards acquittal. Realizing this inherent fallacy, the United States Supreme Court has expressly rejected Defendant’s argument:

We simply cannot conclude, either on the basis of the record now before us or as a matter of judicial notice, that the exclusion of jurors opposed to capital punishment results in an unrepresentative jury on the issue of guilt, or substantially increases the risk of conviction.

Witherspoon v. Illinois (1968), 391 U.S. 510, 518.

For the foregoing reasons, the State requests that Defendant’s motion be overruled.

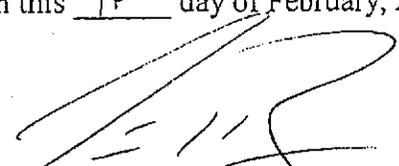
Respectfully submitted,



DENNIS E. BARR, # 0020126
CHIEF, CRIMINAL DIVISION
ASSISTANT PROSECUTING ATTORNEY

PROOF OF SERVICE

A copy of the foregoing Response to Defendant's Motion was served upon Anthony Koukoutas and Frank Beane, Attorneys for Defendant, by placement into respective counsel's designated box at the Stark County Clerk of Courts on this 9th day of February, 2007.



DENNIS E. BARR, # 0020126
CHIEF, CRIMINAL DIVISION
ASSISTANT PROSECUTING ATTORNEY