

In The Supreme Court Of Ohio

State Of Ohio, :  
Appellee, :  
-vs- : Case No.: 2007-1741  
Edward Lang, :  
Appellant. : **This Is A Capital Case.**

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On Appeal From The Court Of  
Common Pleas Of Stark County  
Case No. 2006CR1824A

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Appellant Lang's Motion For A Complete Copy Of The Prosecutor's File To Be Sealed And  
Filed For Appellate Review

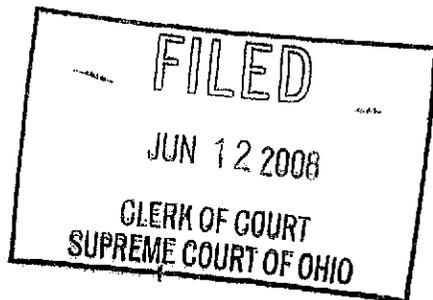
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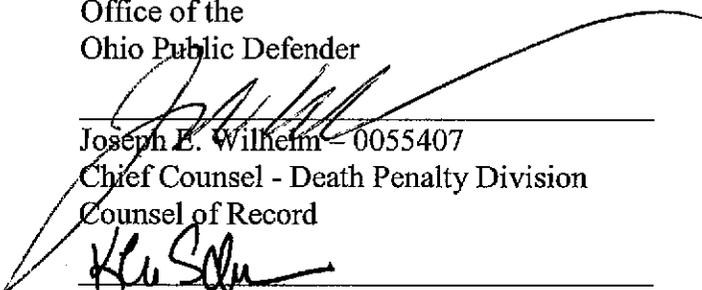
**Motion For A Complete Copy Of The Prosecutor's File  
To Be Sealed And Filed For Appellate Review**

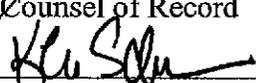
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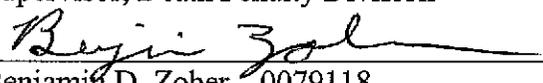
Appellant Edward Lang requests this Court order a complete copy of the Stark County Prosecutor's file be turned over to this Court and sealed for appellate review. This request is further explained in the attached Memorandum.

Respectfully submitted,

Office of the  
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## MEMORANDUM IN SUPPORT

Edward Lang was convicted of aggravated murder and sentenced to death. He is currently before this Court on an appeal as of right. Lang's Merit Brief was filed in this Court on June 9, 2008.

At trial, Lang filed a demand for discovery that expressly requested disclosure of any evidence favorable to the defense. (Dkt. 21.) Lang also filed a pre-trial Motion for disclosure of exculpatory evidence. (Dkt. 30.) The court granted this motion. (Dkt. 55.) Defense counsel also specifically requested the production of statements pursuant to Ohio R. Crim. P. 16(B). (Dkt. 250.) Defense counsel did not move to make a complete copy of the prosecutor's file to be sealed for appellate review. See Brady v. Maryland, 373 U.S. 83 (1963), and Ohio R. Crim. P. 16.

It is well-established law that the prosecuting attorney is required to disclose to the defendant evidence that, if suppressed, would deprive the defendant of a fair trial. This includes exculpatory as well as impeachment evidence. Brady, 373 U.S. at 87; United States v. Bagley, 473 U.S. 667, 675-76 (1985). It is the prosecution's "duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Kyles v. Whitley, 514 U.S. 419, 437 (1995). If the suppressed evidence is material, in that it undermines confidence in the outcome of the trial, constitutional error occurs and the conviction must be reversed. Bagley, 473 U.S. at 678. See also State v. Johnston, 39 Ohio St. 3d 48, 529 N.E.2d 898 (1988). Materiality is determined by considering the suppressed evidence collectively in light of all the other evidence; not by viewing each item of evidence in isolation. Kyles, 514 U.S. at 436. Thus, it is the prosecution's obligation to "disclose known, favorable evidence rising to a material level of importance." Id. at 438.

The United States Supreme Court made clear in Kyles that the prosecuting attorney's obligation to disclose Brady material includes all evidence in the prosecutor's file as well as that obtained by law enforcement. See Kyles, 514 U.S. at 437-38. As the prosecution is charged with the responsibility of turning over all evidence found in police investigation files that is favorable to the defendant, this Court should also review these files, and have them sealed and preserved for appellate review.

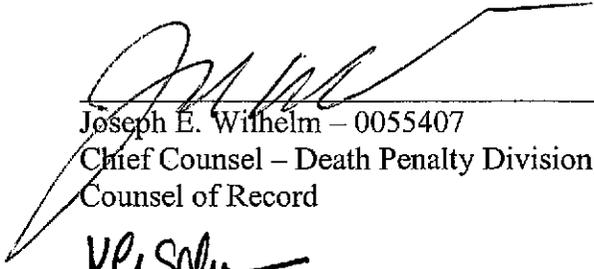
Defense counsel did not move to have the prosecutor's file sealed for appellate review. In State v. Brown, 115 Ohio St. 3d 55, 63-65, 873 N.E.2d 858, 866-68 (2007), this Court reversed and remanded for a new trial, in part, because of a violation of the prosecutor's duty to disclose evidence favorable to the defense. In Brown, the relevant Brady documents were identified on appeal after "the prosecutor's file [was] sealed and made part of the record for appellate review." Brown, 115 Ohio St. 3d at 63, 873 N.E.2d at 866. Counsel failed to preserve Lang's due process rights because they did not move to seal the prosecutor's file for appellate review.

### **CONCLUSION**

Lang requests that a complete copy of the Stark County Prosecutor's file be sealed and filed for appellate review. In reviewing the merits of this direct appeal, this Court must ensure that no Brady violations occurred. The possibility that such violations may have occurred cannot be rejected without review of the Prosecutor's entire file.

Respectfully submitted,

Office of the  
Ohio Public Defender



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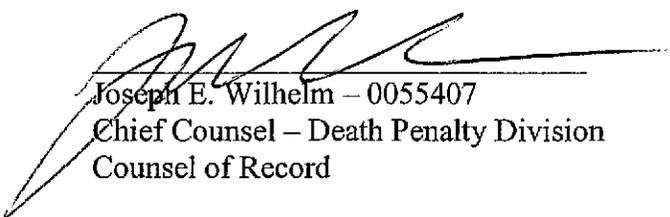
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Certificate of Service

I hereby certify that a true copy of the **Motion For A Complete Copy Of The Prosecutor's File To Be Sealed And Filed For Appellate Review** was forwarded by regular U.S. Mail to John D. Ferrero and Mark Caldwell, Stark County Prosecutor, 110 Central Plaza South, Suite 510, Canton, Ohio 44702-1413, this 12<sup>th</sup> day of June, 2008.



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