

IN THE SUPREME COURT OF OHIO  
2009

STATE OF OHIO,

Case No. 08-1012

Plaintiff-Appellee,

-vs-

On Appeal from the  
Franklin County Court  
of Appeals, Tenth  
Appellate District

DAVID B. CLINKSCALE,

Court of Appeals  
Case No. 06AP-1109

Defendant-Appellant

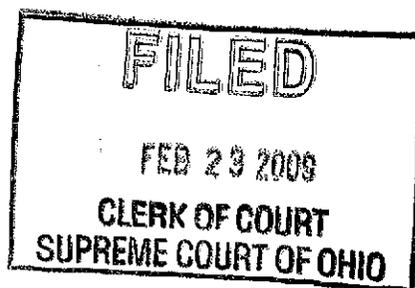
**MOTION TO SUPPLEMENT RECORD ON APPEAL**

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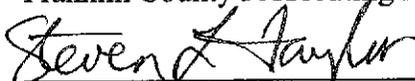


## MOTION TO SUPPLEMENT RECORD ON APPEAL

For the reasons stated in the attached memorandum in support, plaintiff-appellee State of Ohio respectfully moves for the supplementation of the record with the jury instructions and written jury questions and answers.

Respectfully submitted,

RON O'BRIEN 0017245  
Franklin County Prosecuting Attorney



STEVEN L. TAYLOR 0043876

(Counsel of Record)

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Counsel for Plaintiff-Appellee

### MEMORANDUM IN SUPPORT

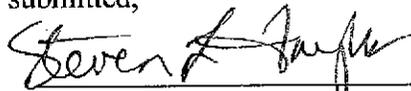
At the conclusion of defendant's appeal in the Court of Appeals, the paper and photographic trial exhibits were returned to the prosecutor's office for safekeeping, as is the usual practice in Franklin County. But mixed in with these trial exhibits were copies of the trial court's jury instructions and the original written jury questions and answers from the 2006 trial, which is now under review here. These documents should have been retained by the Court of Appeals Clerk's Office.

The issues now pending before this Court involve issues related to the trial court's meeting with a juror after deliberations had begun, the court's excusal of that juror, and the court's substituting of an alternate. Inasmuch as the course of deliberations bear relevance to these issues, this Court should have the jury's questions and the court's answers. And since the copies of the court's instructions include a copy of the instruction that the court

gave to the jury during deliberations, this Court should have those documents in the record as well. Accordingly, the State moves for the supplementation of record with the copies of the court's instructions and the jury questions and answers.

The State currently retains the paper and photographic trial exhibits. Inasmuch as these items do not appear to be pertinent to the legal issues presented in the present appeal regarding the meeting with, excusal of, and substitution for the juror, it appears unnecessary to supplement such trial exhibits into the record at the present time. But, of course, if the Court or the defense desires the supplementation of the record with these trial exhibits, the State stands ready to assist with the supplementation of these exhibits as well.

Respectfully submitted,



STEVEN L. TAYLOR 0043876

Assistant Prosecuting Attorney

Counsel for Plaintiff-Appellee

#### CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent by regular U.S. Mail on this 23<sup>rd</sup> day of Feb., 2009, to William S. Lazarow, 400 South Fifth Street, Suite 301, Columbus, Ohio 43215, counsel for defendant.



STEVEN L. TAYLOR 0043876

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