

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :

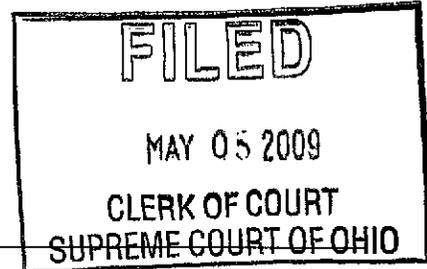
Appellee, :

-vs- :

Case No. 07-0475

PHILLIP E. ELMORE, :

Appellant. :



APPELLANT PHILLIP E. ELMORE'S
LIST OF ADDITIONAL AUTHORITIES

KENNETH W. OSWALT
(Counsel of Record)
Supreme Court No. 0037208
20 South Second Street, 4th Floor
Newark, Ohio 43055
Telephone: (740) 670-5255
Facsimile: (740) 670-5241

KEITH A. YEAZEL
(Counsel of Record)
Supreme Court No. 0041274
5354 North High Street
Columbus, Ohio 43214
Telephone: (614) 885-2900
Facsimile: (614) 885-1900

COUNSEL FOR APPELLEE

SETH GILBERT
(Counsel of Record)
Supreme Court No. 0072929
373 South High Street, 13th Floor
Columbus, Ohio 43215
Telephone: (614) 462-3555
Facsimile: (614) 462-6103

W. JOSEPH EDWARDS
Supreme Court No. 0030048
523 South Third Street
Columbus, Ohio 43215
Telephone: (614) 228-0523
Facsimile: (614) 228-0520

COUNSEL FOR APPELLANT

COUNSEL FOR AMICUS CURIAE OHIO
PROSECUTING ATTORNEYS ASSOCIATION

LIST OF ADDITIONAL AUTHORITIES

Appellant, pursuant to S.Ct.R IX, § 8, respectfully submits the following additional authorities he intends to rely on during oral argument:

Proposition of Law One

Application of the Foster remedies to a defendant who committed his offense(s) prior to the announcement of Foster violates a defendant's right to trial by jury.

Marlowe v. United States (2008), 555 U.S. ___, 129 S.Ct. 450 (Scalia, J. Dissenting from denial of certiorari)

Cunningham v. California (2007), 549 U.S. ___, 127 S.Ct. 856

Proposition of Law Two

The Foster remedies constitute judicial legislation and application of the Foster remedies to a defendant who committed his offense(s) prior to the announcement of Foster is violative of the ex post facto clause of the federal constitution.

Carmell v. Texas (2000), 539 U.S. 513, 532, n.21.

Proposition of Law Three

Application of the Foster remedies to a defendant who committed his offense(s) prior to the announcement of Foster is violative of the Due Process clause of the Fourteenth Amendment to the federal constitution under Rogers v. Tennessee (2001), 532 U.S. 451.

Carmell v. Texas (2000), 539 U.S. 513, 532, n.21.

Proposition of Law Four

A common pleas court lacks jurisdiction to impose consecutive sentences for the commission of multiple felonies.

Oregon v. Ice (2009), 555 U.S. ___, 129 S.Ct. 711.

State v. Bates, 118 Ohio St.3d 174, 2008-Ohio-1983

R.C. § 5145

Proposition of Law Five

The rule of lenity codified in R.C. § 2901.04(a) requires the imposition of minimum and concurrent sentences for those persons who committed their offenses prior to the announcement of the opinion in State v. Foster (2006), 109 Ohio St.3d 1, 2006-Ohio-856.

Oregon v. Ice (2009), 555 U.S. ___, 129 S.Ct. 711

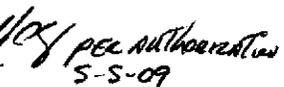
State v. Bates, 118 Ohio St.3d 174, 2008-Ohio-1983

R.C. § 5145

Respectfully submitted,



Keith A. Yeazel (0041274)
5354 North High Street
Columbus, Ohio 43214
(614) 885-2900
yeazel@netwalk.com

*W. Joseph Edwards BY  PER AUTHORIZATION
5-5-09*
W. Joseph Edwards (0030048)
523 South Third Street
Columbus, Ohio 43215
(614) 228-0523
edwardslaw@rrohio.com

Attorneys for Defendant

CERTIFICATE OF SERVICE

A copy of Appellant's List of Additional Authorities was served upon:

Kenneth W. Oswalt
Licking County Prosecutor
20 South Second Street, 4th Floor
Newark, Ohio 43055

Seth Gilbert
Assistant Franklin County Prosecutor
373 South High Street, 13th Floor
Columbus, Ohio 43215

by United States Mail, Postage Prepaid, this 5th day of May, 2009.



Keith A. Yeazel