

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio

Case No. 2011-0818

Appellant,

v.

On Appeal from the Coshocton  
County Court of Appeals, Fifth  
Appellate District.

Sandra Griffin

Appellee

Appellate Case No. 09 CA 0021

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STATE'S RESPONSE TO APPELLEE'S MOTION TO DISMISS AS  
IMPROVIDENTLY ALLOWED OR, IN THE ALTERNATIVE TO SUMMARILY  
AFFIRM OR TO VACATE BRIEFING STAY AND RECEIVE BRIEFS

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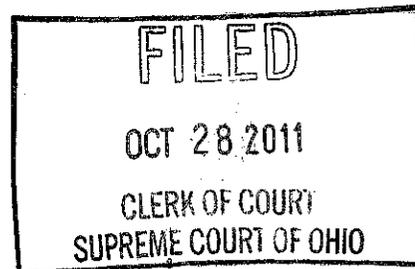
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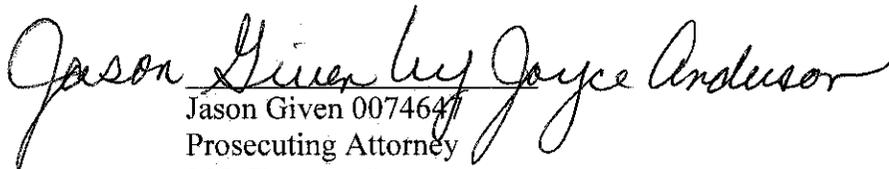
Sandra Griffin

Appellee

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Appellant respectfully requests that Appellee's motion be denied, for the reasons set forth below.

Respectfully Submitted,

  
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MEMORANDUM IN SUPPORT

Appellee's assertion in her conclusion that "the law is clear" that she should prevail is a red flag that the conclusion is anything but clear. The procedure, proposed by defense attorneys to assure that their clients could under no circumstances get the death penalty because a single judge was handling the case,

was not allowed under the death penalty statute. Once parties deviate from statutory procedures, nothing is "clear." Appellee is now trying to further obfuscate the case by trying to use the improper procedure she requested at trial to litigate what she has already litigated. If she is successful, every defendant who took advantage of this creative approach to avoid the death penalty will be entitled to a new trial.

Appellee is incorrect when she says the original two documents failed to constitute a final appealable order. This court in *State v. Lester*, Slip Opinion 2011-Ohio-5204 said that the crucial thing was not how a defendant was convicted but that a defendant was convicted.

For purposes of judgment entries, a "conviction" equals a guilty verdict or finding plus a sentence. *State v. Henderson* (1978), 58 Ohio St.2d 171. In the original entries, the trial court sitting as the trier of fact found the defendant guilty, and, in a sentencing opinion, sentenced her accordingly. Thus the documents, when combined under *State v. Ketterer* 126 Ohio St. 3d 448, state the "fact of conviction."

In her motion, appellee says this court remanded her case to the appellate court "for further consideration of **Ketterer**." On the contrary, what this court did was remand the case for "application of **Ketterer**." The appellate court decided the case as if this court had remanded for reconsideration.

Appellant hesitates to be so presumptuous as to tell this court what it "really meant." However, appellant respectfully submits that words matter. If this court had intended the appellate court to "reconsider," this court would have used the word "reconsideration," not the word "application."