

ORIGINAL

IN THE SUPREME COURT OF OHIO

11-2164

STATE OF OHIO,

Plaintiff-Appellee,

vs.

MELVIN BONNELL,

Defendant-Appellant.

Case No. _____

On Appeal from the Court of Appeals, Eighth Appellate District, Cuyahoga County

CA Case No. 96368

This is a death penalty case.

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT MELVIN BONNELL

William D. Mason
Cuyahoga County Prosecuting Attorney

Matthew E. Meyer (#0075253)
Assistant Prosecuting Attorney

Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7821
(216) 443-7602 – Fax
mmeyer@cuyahogacounty.us

COUNSEL FOR APPELLEE

Office of the
Ohio Public Defender

Kimberly S. Rigby (#0078245)
Assistant State Public Defender

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 644-0708 – Fax
Kim.Rigby@opd.ohio.gov

Laurence E. Komp (#0060142)
Attorney at Law
P.O. Box 1785
Manchester, MO 63011
(636) 207-7330
(636) 207-7351 (Fax)
lekomp@swbell.net

COUNSEL FOR APPELLANT

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**Why this case is of a public or great general interest
and involves a substantial constitutional question**

Although convicted and sentenced to death in 1988, Melvin Bonnell has yet to have his first appeal of right with proper jurisdiction. The reason: to this day, Bonnell does not have a Crim.R. 32 compliant judgment entry, from which he can take an appeal pursuant to R.C. §2505.02. The trial court failed to properly journalize the fact of conviction for Count One of Bonnell's indictment. And the prosecutor, as the victorious party at trial, failed to ensure the entry's proper journalization.

The Eighth District Court of Appeals below agreed that Bonnell never received a Crim.R. 32 compliant judgment entry, finding that the "fact of conviction" was indeed omitted from both the judgment entry¹ and the R.C. §2929.03(F) sentencing opinion. *State v. Bonnell*, No. 96368, 2011 Ohio 5837, ¶11 (Cuyahoga Ct. App. November 10, 2011), attached at A-1. However, that court then circumvented this Court's direct precedent in *State v. Lester* when it reversed and remanded with instructions that the trial court enter a nunc pro tunc entry that includes the fact of conviction on the aggravated burglary charge, from which a new appeal may not be taken. Compare *Bonnell*, No. 96368, 2011 Ohio 5837, ¶11 with *State v. Lester*, Nos. 2010-1007 and 2010-1372, 2011 Ohio 5204, ¶14 (October 13, 2011). This decision unconstitutionally circumvents this Court's syllabus law. This Court must accept jurisdiction to correct the egregious flouting of this Court's standing precedent.

Moreover, this case involves virtual identical issues as *State v. Griffin*, No. 2011-0818, which was just recently accepted for review by this Court. See 11/30/11 Case Announcements,

¹ There are actually 2 separate judgment entries in this case. Neither is compliant with Crim.R. 32(C) as neither contains the fact of conviction for Count One.

2011-Ohio-6124. This Court should accept jurisdiction and hold this case in abeyance, pending the outcome in *Griffin*.

Lastly, this case involves not one, but two judgment entries, neither of which is compliant with Crim.R. 32. This Court should accept jurisdiction in this case to finally determine whether all requirements of Crim.R. 32(c) must be found in *one* document (or two—including the R.C. 2929.03(F) sentencing opinion—in a capital case) or if multiple judgment entries can be read *in pari material*, with one another, to constitute one complete and final judgment entry. See *State v. Baker*, 119 Ohio St. 3d 197, 201 (2008).

Statement of the case and facts

On November 27, 1987, Robert Eugene Bunner (“Gene”), Shirley Hatch, and Ed Birmingham spent the day drinking in the apartment they shared at 57th and Bridge Avenue. The three began drinking around noon, and around 8:30 p.m., Birmingham went to bed. Bunner and Hatch continued drinking. Sometime around 3:00 a.m., there was a knock at the back door. Hatch walked to the door and looked through the peephole, but she was unable to identify the visitor. The visitor identified himself as “Charlie” and asked for Gene. Hatch asked Bunner to come to the door. Bunner opened the door. “Charlie” stepped inside and fired two shots at Bunner.

Hatch ran and got Birmingham, who went into the kitchen and discovered “Charlie” kneeling over Bunner and beating him in the head. Birmingham claims he was able to pull the attacker off of Bunner, run him through the back door, and then toss him down the backstairs, while Hatch claims she immediately called the police.

Bonnell never confessed and has steadfastly declared his innocence. The state’s case hinged upon the testimony of these two alleged eyewitnesses, Ed Birmingham and Shirley

Hatch. Birmingham was blind in one eye, had just awoken from a drunken slumber, and was enrolled in a methadone clinic in an attempt to handle his cocaine addiction. Hatch possessed a lengthy criminal record, was prone to violence, and had an outstanding warrant out for her arrest for violating her bond. The State suppressed a negative gun powder residue test on Appellant's jacket, numerous inconsistent statements by Hatch and Birmingham, including their false testimony regarding how intoxicated they were, potential consideration received by Hatch for her testimony, and an alternate suspect that assaulted the victim that same day, who Hatch and Birmingham denied was present that day.

One of the officers on scene jumped to the conclusion that Bonnell, who had been in a car accident earlier, was the killer. The officer reached this conclusion despite the fact that Bonnell did not match the description given by the witnesses and had an alibi for most of the evening. Without a meaningful investigation, Bonnell was charged with killing Bunner.

On March 3, 1988, a jury convicted Appellant Melvin Bonnell of two counts of aggravated murder, pursuant to Ohio Revised Code Ann. Sections 2903.01(A) and (B) and one count of aggravated burglary. On March 22, 1988, the sentencing phase of Bonnell's trial began, and two days later the jury recommended that Bonnell be sentenced to death. The trial court accepted the jury's recommendation, sentenced Bonnell to death for the aggravated murders, and imposed a sentence of ten to twenty-five years in prison for the aggravated burglary.

On May 27, 1988, the court journalized an entry, accepting the jury's recommendation and imposing a sentence of death upon Bonnell. *See* Entry, attached at A-14. Two days prior to filing this entry, the court filed its sentencing opinion, as required by R.C. § 2929.03(F). *See* Opinion, attached at A-15. After a remand from the Eighth District Court of Appeals, Bonnell

was resentenced on Count One, aggravated burglary, on October 30, 1989. *See* Entry, attached at A-19. This entry, however, still fails to adhere to the dictates of Crim. R. 32(C).

Following this Court's decision in *State v. Baker*, 119 Ohio St. 3d 197 (2008), Bonnell filed a Motion for Resentencing and/or to Issue a Final Appealable Order on May 21, 2010. The State then filed a Writ of Prohibition in the Supreme Court of Ohio against Judge McCormick directing that the Court prohibit the trial court from ruling on Bonnell's Motion. That Writ was filed on June 8, 2010. Honorable Judge Timothy McCormick then filed his Motion to Dismiss the State's Complaint, and on October 13, 2010, this Court granted that Motion to Dismiss. *See State ex rel. Mason v. McCormick*, 126 Ohio St. 3d 1596 (2010). Judge McCormick then denied Bonnell's Motion on January 3, 2011. *State v. Bonnell*, Case No. CR-87-223820-ZA, Journal Entry, Court of Common Pleas, Cuyahoga County, Ohio (January 4, 2011), attached at A-13.

Bonnell then filed a timely notice of appeal to the Eighth District Court of Appeals. That Court reversed and remanded Judge McCormick's decision, specifically finding that "neither the fact nor the manner of conviction was indicated on the [aggravated burglary] count. As a result, the trial court failed to [] comply with Crim.R. 32(C)." *Bonnell*, 2011 Ohio 5837 at ¶11, attached at A-1. However, in complete contravention of this Court's decision in *Lester*, 2011 Ohio 5204, the court of appeals found that the "proper remedy is for the trial court to issue a nunc pro tunc entry that includes the fact and manner of conviction on the aggravated burglary charge." *Id.* at ¶18. The court added that "the corrected judgment entry is not a new final order from which a new appeal may be taken." *Id.* The remedy crafted by the Eighth District is in conflict with and is contrary to this Court's recent decision in *Lester*, thus, this timely appeals follows.

Argument

Proposition of Law No. I

In a case where the death penalty was imposed, where the fact of conviction was omitted from both the judgment entry as well as the Ohio Revised Code §2929.03(F) Sentencing Opinion, the proper remedy according to this Court's recent decision in *State v. Lester*, Nos. 2010-1007 and 2010-1372, 2011 Ohio LEXIS 2685, 2011 Ohio 5204 (October 13, 2011) is to order that the trial court journalize a final order, from which a first appeal with proper jurisdiction may be taken.

I. Introduction

As the Eighth District Court of Appeals correctly concluded, “neither the fact nor the manner of conviction was indicated on the [aggravated burglary] count. As a result, the trial court failed to [] comply with Crim.R. 32(C).” *Bonnell*, 2011 Ohio 5837 at ¶11. Because the “fact of conviction” was omitted from both of the judgment entries as well as the R.C. §2929.03(F) sentencing opinion, the proper remedy is to remand this case to the trial court so that it can journalize a final order, from which a first appeal with proper jurisdiction may be taken. *Lester*, 2011 Ohio 5204 at ¶14. Thus, until the trial court files a Crim. R. 32(C) compliant judgment, this matter is neither final nor appealable.

II. Argument

A. **Bonnell's judgment of conviction is not a final appealable order.**

1. **Crim. R. 32(C) requires certain information be recorded in the entry.**

Crim. R. 32(C) states the following:

A judgment of conviction shall set forth the plea, the verdict, or findings, upon which each conviction is based, and the sentence. Multiple judgments of conviction may be addressed in one judgment entry. If the defendant is found not guilty or for any other reason is entitled to be discharged, the court shall render judgment accordingly. The judge shall sign the judgment and the clerk shall enter it on the journal. A judgment is effective only when entered on the journal by the clerk.

In *Lester*, this Court clarified its holding in *Baker*, 119 Ohio St. 3d at syllabus, in stating that “Crim.R. 32(C) clearly specifies the substantive requirements that must be included within a judgment entry of conviction to make it final for purposes of appeal and that the rule states that those requirements ‘shall’ be included in the judgment entry of conviction. These requirements are the *fact* of the conviction, the sentence, the judge's signature, and the entry on the journal by the clerk.” *Lester*, 2011 Ohio 5204 at ¶11. This Court then went on to write, “All of these requirements relate to the essence of the act of entering a judgment of conviction and are a matter of substance, and their inclusion in the judgment entry of conviction is therefore required. Without these substantive provisions, the judgment entry of conviction cannot be a final order subject to appeal under R.C. 2505.02.” *Id.*

2. Bonnell’s judgment entries fail to properly journalize Count One, the aggravated burglary.

Because of the procedural history of this case, there are two judgment entries. Despite this, neither entry complies with Crim.R. 32. As the Eighth District concluded, the fact of conviction of the aggravated burglary² is nowhere journalized in either judgment entry or in the R.C. §2929.03(F) sentencing opinion. *Bonnell*, 2011 Ohio 5837 at ¶11. Although the entries journalize the convictions on the other two counts, the aggravated burglary count was never properly journalized. *Id.*

Specifically, the May 27, 1988, entry sets forth that Bonnell was sentenced to a term of ten to twenty-five years on the aggravated burglary count, but it fails to journalize the fact of

² When a defendant is charged with multiple counts, Crim. R. 32(C) mandates that the entry specify the nature of each conviction. *See State v. Lupardus*, No. 07CA46, 2008 Ohio App. LEXIS 2234, ¶6 (Washington Ct. App. May 30, 2008).

conviction.³ *Id.* at ¶9-¶11. The second judgment entry was filed on October 30, 1989, after a remand by the Eighth District Court of Appeals. This entry too fails to journalize the fact of conviction for the aggravated burglary count, even though the purpose of the remand was to clarify the details of the aggravated burglary conviction. *Id.*

3. The R.C. 2929.03(F) sentencing opinion also fails to address the fact of conviction as to Count One, the aggravated burglary.

In addition, because this is a capital case, instead of requiring that specific formalities appear in a “single document[,]” *Ketterer* requires that the elements of a final appealable order be in either “the judgment entry of sentence or the R.C. 2929.03(F) opinion.” *State v. Ketterer*, 126 Ohio St. 3d 448, 452 (2010). Here, As the Eighth District Court of Appeals found, the sentencing opinion does not cure the defects found in the judgment entries because the fact of conviction regarding the aggravated burglary charge is also omitted from the sentencing opinion. *Bonnell*, 2011 Ohio 5837 at ¶11.

B. The proper remedy in this case to order that the trial court journalize a final order, from which a first appeal with proper jurisdiction may be taken.

According to this Court’s recent decision in *Lester*, because the fact of conviction is a “requirement[that] relate[s] to the essence of the act of entering a judgment of conviction and [is] a matter of substance” its “inclusion in the judgment entry of conviction is therefore

³ The body of the May 27, 1988, entry is also contradictory and lacking in specificity. This lack of specificity provides an alternate basis for finding the trial court’s entries non-compliant with Crim. R. 32(C). First, the entry refers to counts two and three, but it fails to identify those charges. At the top of the entry, there is a reference that Bonnell was indicted with aggravated murder, but that section neither refers to specific numbered counts nor does it indicate multiple aggravated murder charges. Moreover, this top section suggests that Bonnell was indicted with only three counts. However the body of the entry discusses four counts. This makes the entry not only vague, but contradictory. Searching the record to determine what those counts are is contrary to the single document rule enunciated in *Baker*. *Baker*, 119 Ohio St. 3d at 201. Because anyone reading this entry could not be certain what Bonnell did or why he was sentenced to death, the entry cannot be a final appealable order.

required. Without these substantive provisions, the judgment entry of conviction cannot be a final order subject to appeal under R.C. 2505.02.” *Lester*, Nos. 2010-1007 and 2010-1372, 2011 Ohio 5204, ¶11. Thus, because Bonnell’s judgment entries and the R.C. §2929.03(F) opinion are all void of the fact of conviction on the aggravated burglary charge, Bonnell’s conviction is not yet final and cannot yet be subject to appeal.

The Eighth District Court of Appeals erroneously crafted a remedy in contravention to the express holding of *Lester* when it remanded to the trial court for the issuance of a nunc pro tunc entry, from which an appeal may not be taken. *Bonnell*, No. 96368, 2011 Ohio 5837 at ¶12-¶18. In making this determination, the court of appeals failed to follow and give effect to the straightforward wording in this Court’s *Lester* decision. *Id.* That court wrongly relied on *Lester* when it wrote, “While in *Lester* the court found that the ‘fact of conviction’ must be included in the judgment entry of conviction, the court set forth this requirement with the understanding that ‘the purpose of Crim.R. 32(C) is to ensure that a defendant is on notice concerning when a final judgment has been entered and the time for filing an appeal has begun to run.’ *Lester*, at ¶ 20, citing *State v. Tripodo* (1977), 50 Ohio St.2d 124, 127, 363 N.E.2d 719; App.R. 4(A). Like the defendant in *Lester*, Bonnell had notice of his conviction, which was evident throughout the record. . . .” *Bonnell*, 2011 Ohio 5837 at ¶14.

The Eighth District utterly subverted this Court’s reasonable holding in *Lester* and the analysis supporting that holding. In *Lester*, this Court carefully distinguished between errors that are a matter of form and those that are a matter of substance. This Court specifically delineated that the “fact of conviction” is a matter of substance and “shall” be included in the judgment of conviction. *Lester*, 2011 Ohio 5204 at ¶11. This Court then announced that only errors in form, *not* substance, may be corrected by the issuance of a Crim.R. 32(C) fully compliant nunc pro

tunc entry. *Id.* at ¶20. This Court specifically found, “[i]n [*Lester*], the original resentencing order complied with the substantive requirements of Crim.R. 32(C). . . The trial court's addition indicating how appellant's conviction was effected affected only the form of the entry and made no substantive changes. Accordingly, we hold that a nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken.” *Id.*

The converse of this Court's holding is that when a substantive requirement, such as the fact of conviction, is not included in the judgment of conviction, as in this case, a nunc pro tunc entry is inappropriate. In that instance, regardless if the defendant in fact realized that he had been convicted, a first final judgment of conviction *must* be entered, from which a first appeal of right may then be taken.

III. Conclusion.

Because Bonnell's judgment of conviction (including both judgment entries and the sentencing opinion) does not comply with Crim.R. 32(c), and that non-compliance is a substantive requirement, which “shall” be included in the judgment of conviction, “the judgment entry of conviction cannot be a final order subject to appeal under R.C. 2505.02.” *Lester*, 2011 Ohio 5204 at ¶11. Thus, this Court must accept jurisdiction and reverse and remand to the trial court with instructions that it enter a first final appealable order, from which Bonnell may have a first appeal of right with proper jurisdiction.

Proposition of Law No. II

The court of appeals violates a capital defendant's constitutional right to Equal Protection and Due Process of the law when that court circumvents a direct mandate of this Court so that a capital defendant may not initiate a first appeal with proper jurisdiction. U.S. Const. Amends. V and XIV.

An Ohio court of appeals cannot circumvent the explicit syllabus law of this Court. However, in this case, the Eighth District did just that. The syllabus in this Court's decision in *Lester*, reads as follows:

1. A judgment of conviction is a final order subject to appeal under R.C. 2505.02 when it sets forth (1) **the fact of the conviction**, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk. (Crim.R. 32(C), explained; *State v. Baker*, 119 Ohio St.3d 197, 2008 Ohio 3330, 893 N.E.2d 163, modified.)

2. A nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) **to correct a clerical omission** in a final judgment entry is not a new final order from which a new appeal may be taken.

2011 Ohio 5204, at syllabus (emphasis added).

The Eighth District Court of Appeals sidestepped these direct mandates in ordering that, even though the fact of conviction is clearly omitted from the judgment of conviction in this case, the proper remedy is to reverse and remand for the issuance of a nunc pro tunc entry, from which a new appeal may not be taken. *Bonnell*, No. 96368, 2011 Ohio 5837 at ¶20.

In coming to this conclusion, the Eighth District even cited to *Lester* while simultaneously disregarding this Court's clear mandate in *Lester*. The court of appeals stated: "While in *Lester* the court found that the 'fact of conviction' must be included in the judgment entry of conviction, the court set forth this requirement with the understanding that 'the purpose of Crim.R. 32(C) is to ensure that a defendant is on notice concerning when a final judgment has been entered and the time for filing an appeal has begun to run.' *Lester*, at ¶ 20, citing *State v. Tripodo* (1977), 50 Ohio St.2d 124, 127, 363 N.E.2d 719; App.R. 4(A). Like the defendant in

Lester, Bonnell had notice of his conviction, which was evident throughout the record. . . .” *Bonnell*, 2011 Ohio 5837 at ¶14. In acknowledging that this Court found that the “fact of conviction *must* be included in the judgment entry of conviction”, the court of appeals plainly admitted that they were circumventing this Court’s unambiguous order in finding that the fact of conviction, in this case, was not mandated. *Id.* (emphasis added).

This Court must accept jurisdiction of this case to rectify this error, to maintain uniformity in decisions and uphold the rule of law. Simply, an inferior appellate court cannot presume to ignore this Court’s less than a month old clear syllabus authority.

The Eighth District Court of Appeals decision is a violation of Bonnell’s rights under the Fourteenth Amendment to the United States Constitution. Because Ohio created a right to have a final, appealable order under Crim. R. 32 and as stated in *Baker*, Bonnell had a liberty interest in this right as protected by the Due Process Clause of the Fourteenth Amendment. *Evitts v. Lucey*, 469 U.S. 387 (1985). Bonnell’s constitutional right to due process was violated when the court of appeals failed to order that the trial court enter a *Baker* compliant entry, from which a first appeal with proper jurisdiction could be taken. *See Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980) (“such an arbitrary disregard of the petitioner’s right [] is a denial of due process of law.”).

The Eighth District’s decision also violated Bonnell’s constitutional rights to equal protections of the law when it treated Bonnell differently than other defendants in the State. The right to a final, appealable order cannot “be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause.” *M.L.B. v. S.L.J.*, 519 U.S. 102, 114 (1996) (citing *Lindsey v. Normet*, 405 U.S. 56, 77 (1972)). As stated in *Woodson*

v. North Carolina, 428 U.S. 280 (1976) (plurality opinion), more process is due in death penalty cases, not less, because of the severity of the punishment involved.

In addition, any policy justifications that the State and/or the lower courts may employ are immaterial to the issue at hand. Bonnell is not using *Baker* to reenter the courthouse through the back door. Parsing through the rhetoric, this begs the question because as it stands, Bonnell has not been convicted and no subject matter jurisdiction existed for the previous appeals to proceed. Requiring subject matter jurisdiction is not a “backdoor.” Instead, it is the limestone foundation upon which the judicial branch sits. As this Court has acknowledged time and time again, jurisdiction is a condition precedent to the court’s authority to hear a case. See e.g. *Pratts v. Hurley*, 102 Ohio St. 3d 81 (2004).

Further, the State besought the lower court’s decision when it presumed a flood of similarly situated defendants would appeal and assumed that numerous state trial court judges failed to comply with Crim.R. 32 prior to *Baker*. However, because those same trial court judges took an oath to uphold and follow the law as they became judges, the presumption is that they did comply. This Court can take judicial notice that given the number of capital convictions that have arisen from Cuyahoga County, Bonnell’s case is the first that counsel is aware of to present this issue. Additionally while there are over 20,000 individuals incarcerated by Ohio, those relying on *Baker* is quite miniscule by comparison. Indeed, this Court’s decisions in *Ketterer* and *Lester* significantly reduced the number of capital defendants that may have been able to rely on *Baker*.

No matter the policy justifications behind their decision, the Eighth District Court of Appeals had a clear mandate handed down from this Court. This Court unambiguously declared in *Lester* that the fact of the conviction is a substantive requirement of the judgment of

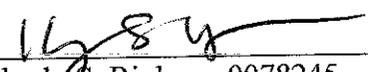
conviction. 2011 Ohio 5204, at syllabus. This Court then mandated that a nunc pro tunc entry is inappropriate to correct an error of substance. *Id.* The Eighth District disregarded that clear syllabus law in creating its own remedy. That was a clear violation of Bonnell's constitutional rights. This Court must accept jurisdiction in the case and reverse and remand to the trial court with instructions that it enter a first final appealable order, from which Bonnell may have a first appeal of right with proper jurisdiction.

Conclusion

This Court held in *Baker* that a judgment of conviction that is non-compliant with the formalities of Crim. R. 32(C) is non-final. *Baker*, 119 Ohio St. 3d at 198-99. This Court then clarified that the "fact of conviction" is a substantive requirement, which "shall" be included in the judgment of conviction, without which "the judgment entry of conviction cannot be a final order subject to appeal under R.C. 2505.02." *Lester*, 2011 Ohio 5204, ¶11. Because the fact of conviction on Count One, the aggravated burglary, was omitted from both of the judgment entries as well as the R.C. §2929.03(F) sentencing opinion in this case, the proper remedy is to remand this case to the trial court so that it can journalize a final order, from which a first appeal with proper jurisdiction may be taken. *Id.* at ¶14.

Therefore, this Court must accept jurisdiction and reverse and remand to the trial court with instructions that it enter a first final appealable order, from which Bonnell may have a first appeal of right with proper jurisdiction.

Respectfully submitted,

By: 

Kimberly S. Rigby – 0078245
Assistant State Public Defender
Counsel of Record

Office of the Ohio Public Defender
250 East Broad St., Suite 1400
Columbus, Ohio 43215
614-466-5394
614-644-0708 (Fax)

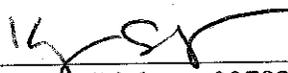
-and-

Laurence E. Komp (0060142)
Attorney at Law
P.O. BOX 1785
Manchester, MO 63011
(636) 207-7330
(636) 207-7351 (Fax)
lekomp@swbell.net

Counsel for Appellant

Certificate of Service

I hereby certify that a true copy of the foregoing MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT MELVIN BONNELL has been served by regular U.S. Mail upon Matthew Meyer, 8th Floor, Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113 on this 23rd day of December, 2011.

By: 

Kimberly S. Rigby – 0078245
Counsel for Appellant

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

MELVIN BONNELL,

Defendant-Appellant.

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Case No. _____

On Appeal from the Court of
Appeals, Eighth Appellate District,
Cuyahoga County

CA Case No. 96368

This is a death penalty case.

**APPENDIX TO:
MEMORANDUM IN SUPPORT OF JURISDICTION OF
APPELLANT MELVIN BONNELL**

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 96368

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

MELVIN BONNELL

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-223820

BEFORE: S. Gallagher, J., Stewart, P.J., and Rocco, J.

RELEASED AND JOURNALIZED: November 10, 2011

ATTORNEYS FOR APPELLANT

Timothy Young
Ohio Public Defender

BY: Kimberly S. Rigby
Andrew J. King
Assistant Ohio Public Defenders
250 East Broad Street, Suite 1400
Columbus, OH 43215

Laurence E. Komp
P.O. Box 1785
Manchester, MO 63011

FILED AND JOURNALIZED
PER APP.R. 22(C)

NOV 10 2011

GERALD E. FURST
CLERK OF THE COURT OF APPEALS
BY *[Signature]* DEP.

ATTORNEYS FOR APPELLEE

William D. Mason
Cuyahoga County Prosecutor

BY: Matthew E. Meyer
Assistant Prosecuting Attorney
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, OH 44113

SEAN C. GALLAGHER, J.:

Appellant Melvin Bonnell appeals the decision of the Cuyahoga County Court of Common Pleas that denied his motion for resentencing and to issue a final, appealable order. For the reasons stated herein, we reverse the decision and remand the matter to the trial court for the issuance of a nunc pro tunc entry consistent with this opinion.

In 1988, Bonnell was convicted by a jury on two counts of aggravated murder and one count of aggravated burglary. He was sentenced to death for the aggravated murders, and the court imposed a sentence of 10 to 25 years in prison for the aggravated burglary. Appellant pursued his appeal avenues in state and federal courts, largely to no avail. Of relevance to this matter, in *State v. Bonnell* (Oct. 5, 1989), Cuyahoga App. No. 55927, this court merged the two separate murder counts and found that because the sentence for aggravated burglary was imposed outside of Bonnell's presence, he was to be resentenced on said count. Bonnell was resentenced to the same prison term on the aggravated burglary count on October 25, 1989. On May 21, 2010, 22 years after his conviction and sentence were initially imposed, Bonnell filed a "motion for resentencing and to issue a final appealable order." The trial court denied the motion, and this appeal followed.

Bonnell's sole assignment of error is as follows: "The trial court erred by not granting Bonnell's motion to vacate because the purported judgment of conviction does not comply with Crim.R. 32(C) and *State v. Baker* [119 Ohio St.3d 197, 2008-Ohio-3330, 893 N.E.2d 163]."

Bonnell argues that the sentencing opinion and judgment entries fail to set forth the conviction on the aggravated burglary count. Therefore, he claims that there is no final, appealable order and that the matter should be remanded to the trial court for resentencing and the issuance of a judgment in compliance with Crim.R. 32(C).

Crim.R. 32(C) provides that a "judgment of conviction shall set forth the plea, the verdict, or findings upon which each conviction is based, and the sentence." In *Baker*, the Ohio Supreme Court expounded on the language of Crim.R. 32(C) and set forth the elements required for a judgment of conviction to constitute a final appealable order. *Id.* at ¶ 18. The court concluded that a judgment of conviction "must include the sentence and the means of conviction, whether by plea, verdict, or finding by the court, to be a final appealable order under R.C. 2505.02." *Id.* at ¶ 19. The Ohio Supreme Court's decision created confusion and spawned numerous appeals.

In *State v. Lester*, __ Ohio St.3d __, 2011-Ohio-5204, __ N.E.2d __, ¶ 9, the Ohio Supreme Court recognized that its decision in *Baker* "created confusion and

generated litigation regarding whether a trial court's inadvertent omission of a defendant's 'manner of conviction' affects the finality of a judgment entry of conviction." The court found that "the finality of a judgment entry of conviction is not affected by a trial court's failure to include a provision that indicates the manner by which the conviction was effected, because that language is required by Crim.R. 32(C) only as a matter of form, provided the entry includes all the substantive provisions of Crim.R. 32(C)." Id. at ¶ 12. Nevertheless, the court held that when the manner of conviction is not included, the defendant remains entitled to a correction to the judgment. Id. at ¶ 16.¹ As to the substantive requirements of Crim.R. 32(C), the court held as follows: "[A] judgment of conviction is a final order subject to appeal under R.C. 2505.02 when the judgment entry sets forth (1) the fact of the conviction, (2) the sentence, (3) the judge's signature, and (4) the time stamp indicating the entry upon the journal by the clerk." Id. at ¶ 14.²

¹ As recognized by Justice O'Donnell, the court has once again added confusing and unnecessary language and complicated the problem. Id. at ¶ 32, O'Donnell, J., concurring in part and dissenting in part. Nonetheless, we are bound to follow the decision.

² Insofar as the Ohio Supreme Court held in *Lester* that a defendant who has exhausted his appeals remains entitled to a correction of the judgment entry where Crim.R. 32(C) is not complied with, we reject the state's argument that Bonnell's motion amounts to an untimely petition for postconviction relief.

This was a death penalty case in which the trial court issued a separate sentencing opinion as required by R.C. 2929.03(F). In *State v. Ketterer*, the Ohio Supreme Court held that in cases in which the death penalty is imposed, the final, appealable order consists of both the sentencing opinion filed pursuant to R.C. 2929.03(F) and the judgment of conviction filed pursuant to Crim.R. 32(C). 126 Ohio St.3d 448, 2010-Ohio-3831, 935 N.E.2d 9. So long as the requisite elements are in those two orders, a final, appealable order is present.

The sentencing opinion filed May 27, 1988, states that Bonnell was indicted on December 30, 1987, with charges on "numerous felony counts and two counts of aggravated murder with specifications." The opinion proceeds to state as follows: "On March 3, 1988 the jury found the defendant guilty in the guilt phase of this capital murder case, and on March 22, 1988 the jury found proof beyond a reasonable doubt that the aggravating circumstances which defendant was found guilty of committing did outweigh the mitigating factors in the case. Subsequently the Court accepted and followed the recommendation of the jury in making a similar finding and sentenced the defendant to death in the electric chair." After setting forth various findings, the sentencing opinion pronounces "[o]n both counts of aggravated murder with specification, the defendant is sentenced to death in the electric chair."

In the nunc pro tunc sentencing entry filed May 27, 1988, the court indicated "[t]he court concurs with the jury finding of the death penalty." The court proceeded to order his execution. The court also sentenced Bonnell to a term of 10 to 25 years on Count 1, aggravated burglary. Subsequent to an appeal, the trial court issued a sentencing entry filed October 20, 1989, which resentenced Bonnell to the same term on the aggravated burglary count. The judge signed and the clerk of court certified each of the three documents.

Bonnell argues that the sentencing opinion and entries fail to properly journalize the aggravated burglary conviction and the related finding of guilt on that count. He states the sentencing opinion only addresses the conviction for aggravated murder and only references that he was indicted on "numerous felony counts," with no specification as to the nature of those charges. We agree.

Our review reflects that the fact of conviction was only discussed in relation to the aggravated murder counts. The aggravated burglary count is not specifically mentioned in the sentencing opinion, and neither the fact nor the manner of conviction was indicated on that count. As a result, the trial court failed to technically comply with Crim.R. 32(C).

However, we do not agree with the remedy requested by Bonnell. Bonnell claims he is entitled to have the trial court issue a final, appealable order, so as

to enable him to again invoke jurisdiction to appeal his judgment of conviction.

We are not persuaded by his argument.

The Ohio Supreme Court has found that the technical failure to conform to Crim.R. 32(C) does not render the judgment a nullity. *State ex rel. DeWine v. Burge*, 128 Ohio St.3d 236, 2011-Ohio-235, 943 N.E.2d 535, at ¶ 19. In *State ex rel. DeWine*, the court held that the remedy for correcting a sentencing entry that does not comply with Crim.R. 32(C) is to issue a corrected sentencing entry.

Id. at ¶ 23. As expressed by the court:

“Consistent with the treatment of Crim.R. 32(C) errors as clerical mistakes that can be remedied by a nunc pro tunc entry, we have expressly held that ‘the remedy for a failure to comply with Crim.R. 32(C) is a revised sentencing entry rather than a new hearing.’ *State ex rel. Alicea v. Krichbaum*, 126 Ohio St.3d 194, 2010-Ohio-3234, 931 N.E.2d 1079, ¶ 2; see also *State ex rel. Culgan v. Medina Cty. Court of Common Pleas*, 119 Ohio St.3d 535, 2008-Ohio-4609, 895 N.E.2d 805, ¶ 10–11 (a defendant is entitled to a sentencing entry that complies with Crim.R. 32(C)); *Dunn v. Smith*, 119 Ohio St.3d 364, 2008-Ohio-4565, 894 N.E.2d 312, ¶ 10 (when a trial court fails to comply with Crim.R. 32(C), ‘the appropriate remedy is correcting the journal entry’).

“This result is logical. The trial court and the parties all proceeded under the presumption that the sentencing entry for Smith constituted a final, appealable order. Any failure to comply with Crim.R. 32(C) was a mere oversight that vested the trial court with specific, limited jurisdiction to issue a new sentencing entry to reflect what the court had previously ruled and not to issue a new sentencing order reflecting what, in a successive judge’s opinion, the court should have ruled. These circumstances are thus distinguishable from egregious defects, such as an entry that

is not journalized, that permit a court to vacate its previous orders. Cf. *State ex rel. White v. Junkin* (1997), 80 Ohio St.3d 335, 337-338, 686 N.E.2d 267. Moreover, the technical failure to comply with Crim.R. 32(C) by not including the manner of conviction in Smith's sentence is not a violation of a statutorily mandated term, so it does not render the judgment a nullity. Cf. *State v. Bezak*, 114 Ohio St.3d 94, 2007-Ohio-3250, 868 N.E.2d 961, ¶ 10-12, quoting *Romito v. Maxwell* (1967), 10 Ohio St.2d 266, 267-268, 39 O.O.2d 414, 227 N.E.2d 223; see also *State v. Fischer*, 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332, ¶ 39 ("fact that the sentence was illegal does not deprive the appellate court of jurisdiction to consider and correct the error")."

Id. at ¶ 18-19.

Likewise, in *Lester*, the court determined that "a nunc pro tunc judgment entry issued for the sole purpose of complying with Crim.R. 32(C) to correct a clerical omission in a final judgment entry is not a new final order from which a new appeal may be taken." Id. at ¶ 20. While in *Lester* the court found that the "fact of conviction" must be included in the judgment entry of conviction, the court set forth this requirement with the understanding that "the purpose of Crim.R. 32(C) is to ensure that a defendant is on notice concerning when a final judgment has been entered and the time for filing an appeal has begun to run." *Lester*, at ¶ 20, citing *State v. Tripodo* (1977), 50 Ohio St.2d 124, 127, 363 N.E.2d 719; App.R. 4(A). Like the defendant in *Lester*, Bonnell had notice of his conviction, which was evident throughout the record, and was apparent to the defendant who had exhausted the appellate process. See id. at ¶13.

Similarly, in *State v. Fischer*, the Ohio Supreme Court rejected the notion that a defendant could raise any and all errors relating to his conviction when his original sentence was deemed void for the failure to include postrelease control and he had already appealed his conviction. 128 Ohio St.3d 92, 2010-Ohio-6238, 942 N.E.2d 332. Instead, the court limited the scope of relief to correcting only the illegal sentence and found res judicata still applied to other aspects of the merits of the conviction. *Id.* See, also, *State v. Wilson*, 129 Ohio St.3d 214, 2011-Ohio-2669, 951 N.E.2d 381 (applying law of the case and res judicata to convictions and unaffected sentences upon remand for an allied-offenses sentencing error).

Additionally, Ohio appellate courts have found that where a trial court issues a corrected judgment entry to comply with Crim.R. 32(C), a defendant who has already had the benefit of a direct appeal cannot raise any and all claims of error in successive appeals. *State v. Triplett*, Lucas App. No. L-10-1158, 2011-Ohio-1713; *State v. Avery*, Union App. No. 14-10-35, 2011-Ohio-4182, ¶ 14; *State v. Harris*, Richland App. No. 10-CA-49, 2011-Ohio-1626, ¶ 30. In such circumstances, res judicata remains applicable and the defendant is not entitled to a “second bite at the apple.” *Avery*, at ¶ 14. Aptly stated, “[n]either the Constitution nor common sense commands anything more.” *Fischer*, 128 Ohio St.3d 92, at ¶ 26. As argued by the state herein, to hold otherwise would

open the floodgates and "enable validly convicted and sentenced prisoners throughout the state to circumvent res judicata by arguing, after all direct and collateral appeals are exhausted, that their sentencing documents are improperly worded[.]"

In this case, all parties were aware that Bonnell was convicted by a jury on the aggravated burglary charge for which he was sentenced, as evidenced by his appeal of that charge. Further, the reviewing courts exercised jurisdiction over his appeals, and heard and decided his case. Thus, unlike the defendant in *Baker*, Bonnell was not deprived the opportunity to appeal his conviction. Rather, Bonnell was given full opportunity to litigate all of the issues relating to his conviction and sentence, and his substantive rights were not prejudiced in any way.

Accordingly, we conclude that the proper remedy is for the trial court to issue a nunc pro tunc entry that includes the fact and manner of conviction on the aggravated burglary charge. As no new or substantial right is affected under R.C. 2505.02(A)(1) by the correction, and appellant has already exhausted the appellate process, the corrected judgment entry is not a new final order from which a new appeal may be taken.

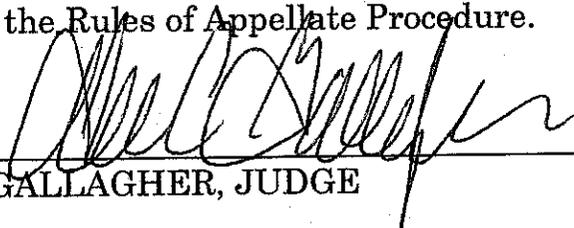
Judgment reversed; case remanded with instructions.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



SEAN C. GALLAGHER, JUDGE

MELODY J. STEWART, P.J., and
KENNETH A. ROCCO, J., CONCUR



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**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO
Plaintiff

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Case No: CR-87-223820-ZA

MELVIN BONNELL
Defendant

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

TIMOTHY MCCORMICK

INDICT: 2911.11 AGGRAVATED BURGLARY WITH SPECIFICATIONS
2903.01 AGGRAVATED MURDER WITH VIOLENCE SPECIFICATION
2903.01 AGGRAVATED MURDER WITH VIOLENCE SPECIFICATION
ADDITIONAL COUNTS...

JOURNAL ENTRY

DEFENDANT'S MOTION FOR RESENTENCING AND TO ISSUE A FINAL APPEALABLE ORDER IS DENIED.

CLERK ORDERED TO SEND A COPY OF THIS ORDER TO:
KIMBERLY S. RIGBY
ASSISTANT STATE PUBLIC DEFENDER;
OFFICE OF THE OHIO PUBLIC DEFENDER
250 EAST BROAD STREET, SUITE 1400
COLUMBUS OH 43215

LAWRENCE E. KOMP, ESQ.
P.O. BOX 1785
MANCHESTER MO 63011

MATTHEW MEYER
ASSISTANT PROSECUTING ATTORNEY
JUSTICE CENTER - 8TH FLOOR
1200 ONTARIO STREET
CLEVELAND OH 44113

01/03/2011
CPEFF 01/03/2011 11:57:36

Judge Signature

Date

*Kimberly Rigby, Ass't. State Public Defender
Lawrence Komp Esq.
Matthew Meyer, Ass't. Cuy. Co. Pros.
m1-4-11*

HEAR
01/03/2011

STATE OF OHIO, }
CUYAHOGA COUNTY } SS.

IN THE COURT OF COMMON PLEAS

TO-WIT: MAY 25 TERM, 19 92
NO. C-223323 19 92

STATE OF OHIO PLAINTIFF

VS.

INDICTMENT AGGR BURGLARY W/SPECS, AGGR MUR
W/SPECIFICATION, HAVE WEP UNDER
OIS W/SPECS

MELVIN BONNELL

DEFENDANT

RECEIVED FOR FILING *ck*
MAY 27 1988
GERALD E. FUERST, CLERK

JOURNAL ENTRY

NUNC PRO TUNC AS DE AND FOR MARCH 29, 1988:
DEFENDANT IN OPEN COURT, REPRESENTED BY COUNSEL FOR SENTENCING.
THE COURT CONCURS WITH JURY FINDING OF THE DEATH PENALTY.

DEFENDANT WAS INQUIRED OF IF HE HAD ANYTHING TO SAY WHY JUDGMENT SHOULD NOT BE PRONOUNCED AGAINST HIM AND HAVING NOTHING BUT WHAT HE HAD ALREADY SAID, IT IS THE ORDERED OF THIS COURT THAT DEFENDANT, MELVIN BONNELL IS SENTENCED TO THE CORRECTIONAL RECEPTION CENTER, ORIENT, OHIO, AND THEN DELIVERED TO THE WARDEN OF THE SOUTHERN OHIO CORRECTIONAL FACILITY, LUCASVILLE, OHIO. WHERE DEFENDANT SHALL BE EXECUTED BY ELECTRICITY TO CAUSE DEATH, ON THE 8TH OF AUGUST, 1988; THE WARDEN OR DEPUTY WARDEN SHALL BE THE EXECUTIONER, PER RC. 2903.01 (COUNTS TWO AND THREE.) DEFENDANT ALSO SENTENCED TO CORRECTIONAL RECEPTION CENTER, ORIENT, OHIO, FOR TERM OF TEN (10) TO TWENTY-FIVE (25) YEARS ON COUNT ONE, AGGRAVATED BURGLARY. PAY COURT COSTS.

ON RECOMMENDATION OF THE PROSECUTOR, FOR GOOD CAUSE SHOWN, COUNT FOUR HAVING WEAPON UNDER DISABILITY IS DISMISSED.
ALSO SEE OPINION OF THE TRIAL JUDGE IN A CAPITAL CASE, D.R.C. 2025.03(F).
G.S.J.

JUDGE
[Signature]
JAMES J. MCMONAGLE

793: 069

05/26/88 09:27

EXHIBIT

A

Cuyahoga County } THE COURT OF COMMON PLEAS,
WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY
TAKEN AND COPIED FROM THE ORIGINAL
Journal Entry
NOW ON FILE IN MY OFFICE
WITNESS MY HAND AND SEAL OF SAID COURT THIS 15
DAY OF June A.D. 1988
GERALD E. FUERST, Clerk
By *Ann McKenney* Deputy

RECEIVED FOR FILING

MAY 27 1988

CF

GERALD E. FUERST, CLERK
BY *[Signature]*

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

IN THE COURT OF COMMON PLEAS
CASE NO. CR 223820
JUDGE JAMES J. McMONAGLE

STATE OF OHIO)
)
) Plaintiff)
 vs.)
)
MELVIN BONNELL)
)
) Defendant)

OPINION OF THE TRIAL JUDGE
IN A CAPITAL CASE O.R.C. §2929.03(F)

This case was commenced with the filing of the indictment on December 30, 1987 against the defendant, Melvin Bonnell, charging him with numerous felony counts and two counts of aggravated murder with specifications.

On March 3, 1988 the jury found the defendant guilty in the guilty phase of this capital murder case, and on March 22, 1988 the jury found by proof beyond a reasonable doubt that the aggravating circumstances which the defendant was found guilty of committing did outweigh the mitigating factors in the case. Subsequently the Court accepted and followed the recommendation of the jury in making a similar finding and sentenced the defendant to death in the electric chair.

In deliberating upon the facts and the provisions contained in R. C. §2929.03(D)(3), the Court evaluated all of the relevant evidence raised at the trial, the testimony, other evidence, the unsworn statement of the defendant and the arguments of respective counsel before reaching its conclusion. The Court followed the applicable law of the State of Ohio and

THE STATE OF OHIO Cuyahoga County	I, GERALD E. FUERST, CLERK OF SS - THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL	
<i>Journal Entry</i>	
NOW ON FILE IN MY OFFICE	
WITNESS MY HAND AND SEAL OF SAID COURT THIS <u>16</u>	
DAY OF <u>June</u> A.D. 198 <u>8</u>	
GERALD E. FUERST, Clerk	
By <i>Ann M. [Signature]</i>	Deputy

792-760

A-2

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in strict accordance with its judicial oath considered only matters relevant to the issue before it.

The evidence demonstrated that on or about November 28, 1987, the defendant by deception trespassed into an occupied apartment and without provocation shot, beat and killed the victim Robert Bonner. The defendant was identified and placed at the scene of the crime by credible witnesses and was arrested during his flight immediately after killing Mr. Bonner. There was no evidence of any resistance or incitement to violence by the victim.

At the mitigation hearing the defendant's unsworn statement and other evidence was substantially a denial of guilt. No psychiatric testimony regarding any defective mental condition was offered, and the testimony taken as a whole, regardless of when and from whom it was produced indicated:

1. The victim did not induce or facilitate the offense;
2. It was not likely that the offense was committed because the offender was under duress, coercion or strong provocation;
3. At the time of the committing of the offense, the offender was not lacking a substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law;
4. The age of the defendant was not a factor;
5. The defendant does not have a lack of significant history of previous criminal convictions;
6. There was no evidence of any nature or kind that the defendant was anything but the principal offender;

THE STATE OF OHIO } Cuyahoga County }	SS	I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS, WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL		
<i>Journal Entry</i>		
NOW ON FILE IN MY OFFICE		
WITNESS MY HAND AND SEAL OF SAID COURT THIS <u>16</u>		
DAY OF <u>June</u> A.D. 198 <u>8</u>		
GERALD E. FUERST, Clerk		
By <u>Ann McKenya</u> Deputy		

792-787

A-3

7. Other factors relevant to the issue of whether or not defendant should be sentenced to death are discussed hereafter.

The Ohio death penalty statutes were significantly reworked following the United States Supreme Court decision in *Lockett v. Ohio* (1978), 438 U.S. 586. The statutory framework and the sentences imposed under it have been consistently upheld. Since 1981, at least 75 people have been sentenced to death row. None have been executed. This factor militates against the impositions of the penalty of death upon a defendant.

An overriding purpose of punishment is deterrence. However, the deterrence must be real to be effective. The case of *State v. Hogan* (1900), 63 Ohio St. 202, concerned the so-called "tramp law", whereby punishment is prescribed for threatening to do injury to the person of another by a tramp. The Court spoke about the punishment fitting the crime, as well as the deterrent nature of punishment.

The tramp cares nothing for a jail sentence; often he courts it. A workhouse sentence is less welcome, but there are but few workhouses in the state. A penitentiary sentence is a real punishment. There he has to work and cannot shirk. *Id.* at 218.

Today, if the defendant, in an aggravated murder case, knows the penalty will be delayed for years, and perhaps never imposed, he/she will take the risk of committing the crime. Moreover, in most instances (involving prior convictions; felony-murder; disregarding the status of the victim as peace officer, etc.), the accused are not individuals who flinch at the prospect of jail time. Without the reality of execution looming before the defendants, the minimum threshold of deterrence is not met.

3

792: 768

THE STATE OF OHIO Cuyahoga County	SS	I, GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS, WITHIN AND FOR SAID COUNTY
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL		
NOW ON FILE IN MY OFFICE		
WITNESS MY HAND AND SEAL OF SAID COURT THIS		
DAY OF June	A. D. 1988	16
GERALD E. FUERST, Clerk		
By <u>Ann M. Kenzel</u> Deputy		

As more and more people are convicted and placed on death row, it becomes less and less likely that executions will take place. In the near future, a large number of death row convicts will have exhausted their avenues of appeal. It is apparent that no state, including Ohio, will want to bear the image of being a mass executioner. Thus, the system is self-defeating.

The above-stated arguments, however, are not sufficient to outweigh the overwhelming evidence of guilt and aggravating circumstances. On both counts of aggravated murder with specification, the defendant is sentenced to death in the electric chair.

[Handwritten Signature]
 JUDGE JAMES J. McMOYGLE

Dated: 5/25/88

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MAY 27 1988

GERALD E. FUERST, CLERK
 BY *[Signature]*

792-789

THE STATE OF OHIO Cuyahoga County	} SS	GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS, WITHIN AND FOR SAID COUNTY
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL		
NOW ON FILE IN MY OFFICE		
WITNESS MY HAND AND SEAL OF SAID COURT THIS		16
DAY OF <u>June</u> A.D. 198 <u>8</u>		
GERALD E. FUERST, Clerk		
By <i>[Signature]</i> Deputy		

A-5

STATE OF OHIO,
CUYAHOGA COUNTY

SS.

IN THE COURT OF COMMON PLEAS

SEPTEMBER TERM, 19 89

STATE OF OHIO

PLAINTIFF

TO-WIT: OCTOBER 25

NO. CR-223820

VS.

MELVIN BONNELL

DEFENDANT

INDICTMENT AGGR BURGLARY W/SPECS, AGGR MURD
W/SPECIFICATION, HAVE WEP UNDR
DIS W/SPECS

JOURNAL ENTRY

DEFENDANT, MELVIN BONNELL'S SENTENCE ON COUNT ONE (1) OF INDICTMENT, AGGRAVATED BURGLARY FOR A TERM OF FROM TEN (10) YEARS TO TWENTY-FIVE (25) YEARS AT THE SOUTHERN OHIO CORRECTIONAL FACILITY, LUCASVILLE, OHIO, TO BE SERVED CONCURRENTLY WITH SENTENCE IN OTHER COUNTS PURSUANT TO THE MANDATE FROM THE COURT OF APPEAL EIGHTH DISTRICT.

DEFENDANT, MELVIN BONNELL IS ORDERED RETURNED TO THE SOUTHERN OHIO CORRECTIONAL FACILITY, LUCASVILLE, OHIO.

IT IS FURTHER ORDERED THAT THE CLERK OF COURT'S FORWARD CERTIFIED COPIES OF THIS ENTRY ALONG WITH A COPY OF THE COURT OF APPEALS JOURNAL ENTRY TO THE INSTITUTION THAT SAID DEFENDANT WAS SENTENCED TO.

RECEIVED FOR FILING

OCT 30 1989

GERALD E. FUERST, CLERK

BY *[Signature]* DEP.

JUDGE

[Signature]
JAMES J. MC MONAGLE

BC 10/25/89 15:36

VOL 892 PG 454

COPIES SENT TO:

Sheriff *[Signature]*

Defendant

Other JUDGE M-10-30-89

EXHIBIT

C