

In The Supreme Court of Ohio

State of Ohio, :  
 Appellee, : Case No. 11-0857  
 -vs- : Appeal taken from Cuyahoga County  
 Court of Common Pleas  
 Denny Obermiller, : Case No. CR 10-542119-A  
 Appellant. : **Capital Case**

MOTION TO SUPPLEMENT THE RECORD

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 CLERK OF COURT  
 SUPREME COURT OF OHIO

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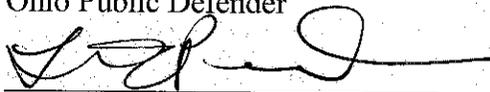
Appellant Denny Obermiller, through counsel and pursuant to Sup. Ct. R. Prac. 19.4 (D) moves this Honorable Court to order that the record be supplemented with the docket from the original indictment, Case No. CR 10-541010-A.

Obermiller pled guilty and was sentenced to death on two counts of Aggravated Murder. Ohio Rev. Code Ann. § 2929.05 mandates appellate review of the entire record in his direct appeal. Supplementation of the record is therefore necessary in order to comply with this statutory mandate.

The reasons for this request are set forth in the attached memorandum.

Respectfully submitted,

Office of the  
Ohio Public Defender



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COUNSEL FOR APPELLANT

MEMORANDUM IN SUPPORT

Denny Obermiller pled guilty and was sentenced to death on two counts of Aggravated Murder. He is currently before this Court on an appeal as of right. The record on appeal in Obermiller's capital case is incomplete. The case was originally indicted as Case No. CR 10-541010-A and later reindicted as Case No. CR 10-542119-A. There are numerous filings under the first case number. See Ex. 1. The State requested that all motions filed under the original case number be applied to Case No. 10-542119, and the trial court granted their oral request. Tr. Vol. 1, p. 9. However, those filings were never actually re-filed under the new case number, although they were treated as having been filed in that case. For example, the motions filed by Mr. Obermiller under the first case number were ruled on by the trial court under the subsequent case number. Because these filings were not made part of Case No. CR 10-542119-A, they have not been transmitted to this Court. These filings need to be added in order for the record to be complete.

Under § 16, Article I of the Ohio Constitution, Obermiller is entitled to a "complete, full, and unabridged transcript of all proceedings against him so that he may prosecute an effective appeal." State ex. rel. Spirko v. Court of Appeals, Third Appellate Dist., 27 Ohio St. 3d 13, 18, 501 N.E.2d 625, 629 (1986). In order for appellate counsel to completely present, and for this Court to accurately determine any errors, these filings must be added to the record. Without a complete record for review, counsel cannot provide effective representation to Obermiller on his

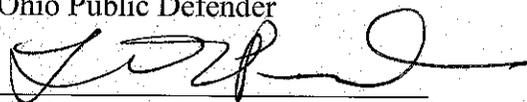
first appeal as of right. See State v. Buell, 70 Ohio St. 3d 1211, 639 N.E.2d 110 (1994); Evitts v. Lucey, 469 U.S. 387 (1985).

Sup. Ct. R. Prac. 19.4 (D) authorizes this Court to direct supplementation of material items omitted from the record by error or accident. Further, O.R.C. § 2929.05 mandates that this Court review the entire record in a capital case.

WHEREFORE, Obermiller requests that this Court order that the docket from the original indictment, Case No. CR 10-541010-A, be supplemented into the record before this Court.

Respectfully submitted,

Office of the  
Ohio Public Defender



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Shawn P. Welch – 0085399  
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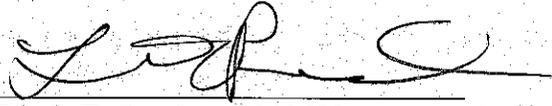
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COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the MOTION TO SUPPLEMENT THE RECORD was forwarded by regular U.S. Mail to Saleh Awadallah, Mary H. McGrath, and Margaret A. Troia,

Assistant Prosecutors, Cuyahoga County, The Justice Center, 9<sup>th</sup> Floor, 1200 Ontario St.,  
Cleveland, Ohio 44113 on this 12th day of March, 2012.

A handwritten signature in black ink, appearing to read 'L. Prucha', written over a horizontal line.

Linda E. Prucha - 0040689  
Counsel for Appellant