

In The Supreme Court of Ohio

State of Ohio, :

Appellee, : Case No. 11-0857

-vs- : Appeal taken from Cuyahoga County

Denny Obermiller, : Court of Common Pleas

Appellant. : Case No. CR 10-542119-A

: **Capital Case**

REVISED MOTION TO SUPPLEMENT THE RECORD

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 Cuyahoga County

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Office of the  
Ohio Public Defender

Linda E. Prucha – 0040689  
Supervisor, Death Penalty Division

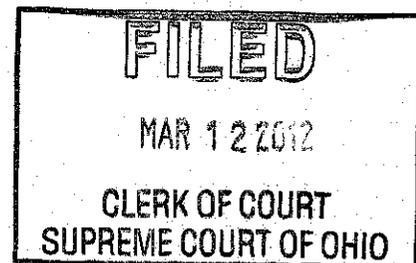
Jennifer A. Prillo – 0073744  
Assistant State Public Defender

Shawn P. Welch – 0085399  
Assistant State Public Defender

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 250 E. Broad St., Suite 1400  
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Counsel For Appellee

Counsel For Appellant



In The Supreme Court of Ohio

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: Case No. CR 10-542119-A  
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MOTION TO SUPPLEMENT THE RECORD

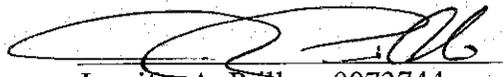
Appellant Denny Obermiller, through counsel and pursuant to Sup. Ct. R. Prac. 19.4 (D) moves this Honorable Court to order that the record be supplemented with the docket from the original indictment, Case No. CR 10-541010-A.

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



Jennifer A. Prillo – 0073744  
Assistant State Public Defender

Linda E. Prucha - 0040689  
Supervisor, Death Penalty Division

Shawn P. Welch – 0085399  
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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

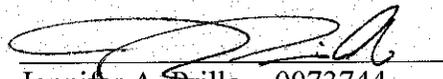
first appeal as of right. See State v. Buell, 70 Ohio St. 3d 1211, 639 N.E.2d 110 (1994); Evitts v. Lucey, 469 U.S. 387 (1985).

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



Jennifer A. Prillo – 0073744  
Assistant State Public Defender

Linda E. Prucha - 0040689  
Supervisor, Death Penalty Division

Shawn P. Welch – 0085399  
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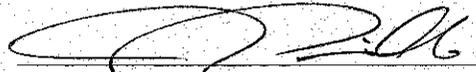
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COUNSEL FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the REVISED 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 'J. Prillo', written over a horizontal line.

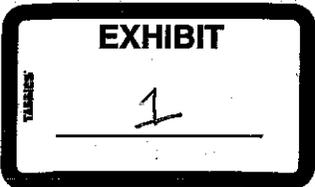
Jennifer A. Prillo - 0073744  
Counsel for Appellant



### DOCKET INFORMATION

**Case Number**                      **Case Title**                      **Image Viewer**  
 CR-10-541010-A THE STATE OF OHIO vs. DENNY OBERMILLER [AlternaTIFF](#)

Proceeding Date	Filing Date	Side	Type	Description	Image
03/15/2011	03/23/2011	N/A	JE	IT IS HEREBY ORDERED THAT JAMES J. MCDONNELL, ESQ., HERETOFORE ASSIGNED AS COUNSEL FOR THE DEFENDANT IN THIS CAUSE, BE ALLOWED \$11,725.00 FOR SERVICES SO RENDERED. IT IS ORDERED THAT THE COURT CERTIFY SAID AMOUNT TO THE FISCAL OFFICER AND THE COUNTY EXECUTIVE FOR ALLOWANCE AND PAYMENT. AC 1102379 03/15/2011 CPMKE 03/15/2011 09:38:38	
03/15/2011	03/23/2011	N/A	JE	IT IS HEREBY ORDERED THAT KEVIN M. SPELLACY, ESQ., HERETOFORE ASSIGNED AS COUNSEL FOR THE DEFENDANT IN THIS CAUSE, BE ALLOWED \$10,405.00 FOR SERVICES SO RENDERED. IT IS ORDERED THAT THE COURT CERTIFY SAID AMOUNT TO THE FISCAL OFFICER AND THE COUNTY EXECUTIVE FOR ALLOWANCE AND PAYMENT. AC 1102378 03/15/2011 CPMKE 03/15/2011 09:36:31	
01/06/2011	01/11/2011	N/A	JE	ON THIS DAY A SUPERVISOR FROM THE CUYAHOGA COUNTY CLERK'S OFFICE SWORE IN LAWRENCE WALLACE BAILIFF, KAROLINE MACIAK ESQ., AND CUYAHOGA COUNTY DEPUTY SHERIFFS PHILICIA CAMPBELL AND STACEY JARRELL TO HANDLE THE JURY IN THIS CAPITAL MURDER CASE. 01/06/2011 CPEDB 01/07/2011 09:00:07	
12/15/2010	12/21/2010	N/A	JE	PRETRIAL SET FOR 01/05/2011. AT THE REQUEST OF DEFENDANT. REASON FOR CONTINUANCE: ADDITIONAL DISCOVERY AND TRIAL PREPARATION. 12/15/2010 CPEDB 12/17/2010 10:22:59	
10/21/2010	10/21/2010	N/A	SB	SHERIFF SERVICE FEES FOR SUBPOENA NUMBER 717918, IN THE AMOUNT OF \$8.50.	
10/21/2010	10/21/2010	N/A	SB	SHERIFF SERVICE FEES FOR SUBPOENA NUMBER 717917, IN THE AMOUNT OF \$7.00.	
10/19/2010	10/19/2010	N/A	SB	SUBPOENA CLERK'S FEE	
10/19/2010	10/19/2010	N/A	SB	SUBPOENA CLERK'S FEE	
10/19/2010	10/26/2010	N/A	JE	MOTION HEARING SET FOR 12/8/2010 AT 9:00 A.M. AT THE REQUEST OF DEFENDANT. FINAL PRETRIAL SET FOR 12/15/2010 AT 09:00 AM . AT THE REQUEST OF DEFENDANT. TRIAL SET FOR 01/10/2011 AT 09:00 AM. AT THE REQUEST OF DEFENDANT. 10/19/2010 CPEDB 10/22/2010 12:29:19	
10/19/2010	10/19/2010	N/A	JE	JOURNAL ENTRY: MOTION FOR RELEASE OF RECORDS	



SIGNED, ATTACHED AND ORDERED FILED. OSJ.  
10/19/2010 CPEDB 10/19/2010 12:28:51

10/19/2010 10/19/2010 N/A JE JOURNAL ENTRY: MOTION FOR RELEASE OF RECORDS  
SIGNED, ATTACHED AND ORDERED FILED. OSJ.  
10/19/2010 CPEDB 10/19/2010 12:28:38

10/19/2010 10/19/2010 N/A JE JOURNAL ENTRY: MOTION FOR RELEASE OF RECORDS  
SIGNED, ATTACHED AND ORDERED FILED. OSJ.  
10/19/2010 CPEDB 10/19/2010 12:28:27

10/19/2010 10/19/2010 N/A JE JOURNAL ENTRY: MOTION FOR RELEASE OF RECORDS  
SIGNED, ATTACHED AND ORDERED FILED. OSJ.  
10/19/2010 CPEDB 10/19/2010 12:28:11

10/19/2010 10/26/2010 N/A JE DEFENDANT IN COURT WITH COUNSEL. PROSECUTOR  
(S) PRESENT. COURT REPORTER PRESENT. ALL  
PARTIES AGREE REASONABLE TIME TO TOLL BASED  
ON DISCOVERY MOTIONS. A MOTION IS GRANTED  
THAT MOTIONS FILED UNDER CR 541010 TO APPLY TO  
CR 542119. 10/19/2010 CPCLF 10/22/2010 11:31:01

10/19/2010 10/19/2010 N/A CS COURT REPORTER FEE

10/18/2010 10/18/2010 N/A SB SHERIFF SERVICE FEES FOR SUBPOENA NUMBER  
706902, IN THE AMOUNT OF \$7.50.

10/06/2010 10/06/2010 N/A CS COURT REPORTER FEE

09/28/2010 10/05/2010 N/A JE PRETRIAL SET FOR 10/05/2010 AT 11:00 AM. AT THE  
REQUEST OF DEFENDANT. REASON FOR  
CONTINUANCE: DISCOVERY TRIAL SET FOR 10/20/2010.  
AT THE REQUEST OF DEFENDANT. 09/28/2010 CPEDB  
10/01/2010 12:29:32

09/28/2010 09/28/2010 N/A SB SHERIFF SERVICE FEES FOR SUBPOENA NUMBER  
710575, IN THE AMOUNT OF \$8.50.

09/27/2010 09/27/2010 P MO MOTION FOR AN IN CAMERA INSPECTION OF  
RECORDS AND NOTICE OF PROVIDING CONFIDENTIAL  
RECORDS FOR IN CAMERA INSPECTION, FILED.

09/17/2010 09/17/2010 N/A SB SUBPOENA CLERK'S FEE

09/17/2010 09/17/2010 N/A SB SHERIFF SERVICE FEES FOR SUBPOENA NUMBER  
710873, IN THE AMOUNT OF \$6.00.

09/16/2010 09/16/2010 D1 SH FRANKLIN COUNTY SHERIFF DEPT SERVICE FEE \$13.44

09/16/2010 09/16/2010 N/A SB SUBPOENA CLERK'S FEE

09/15/2010 09/21/2010 N/A JE DEFENDANT'S MOTION FOR FUNDS FOR DEFENSE  
MITIGATION EXPERT IS GRANTED WITHIN GUIDELINES  
SET BY COURT. 09/15/2010 CPEDB 09/17/2010 10:20:02

09/15/2010 09/21/2010 N/A JE DEFENDANT'S MOTION FOR FUNDS FOR DEFENSE  
INVESTIGATOR IS GRANTED WITHIN GUIDELINES  
ESTABLISHED BY COURT. 09/15/2010 CPEDB 09/17/2010  
10:19:06

09/14/2010 10/07/2010 N/A JE PRETRIAL CONTINUED TO 09/28/2010 AT THE REQUEST OF DEFENDANT. REASON FOR CONTINUANCE: DISCOVERY 09/14/2010 CPEDB 10/05/2010 14:15:56

09/14/2010 09/21/2010 N/A JE PRETRIAL CONTINUED TO 09/28/2010 AT THE REQUEST OF DEFENDANT. REASON FOR CONTINUANCE: DISCOVERY. 09/14/2010 CPCLF 09/15/2010 09:24:08

09/10/2010 09/10/2010 D1 MO DEFENDANT'S MOTION FOR APPROPRIATION OF FUNDS FOR A DEFENSE MITIGATION EXPERT, FILED.

09/10/2010 09/10/2010 D1 MO DEFENDANT'S MOTION FOR APPROPRIATION OF FUNDS FOR A DEFENSE INVESTIGATOR, FILED.

09/10/2010 09/10/2010 N/A SB SHERIFF SERVICE FEES FOR SUBPOENA NUMBER 706901, IN THE AMOUNT OF \$8.50.

09/08/2010 09/08/2010 D1 MO DEFENDANT'S MOTION FOR DISCLOSURE OF IMPEACHING INFORMATION, FILED.

09/08/2010 09/08/2010 N/A SB SHERIFF SERVICE FEES FOR SUBPOENA NUMBER 706074, IN THE AMOUNT OF \$8.50.

09/07/2010 09/16/2010 N/A JE PRETRIAL SET FOR 09/14/2010. AT THE REQUEST OF DEFENDANT. 09/07/2010 CPEDB 09/08/2010 10:16:47

09/03/2010 09/03/2010 D1 MO DEFENDANT'S MOTION TO DISCLOSE NAMES OF GRAND JURY WITNESSES, FILED.

09/03/2010 09/03/2010 D1 MO DEFENDANT'S MOTION TO COMPEL DISCLOSURE OF AGGRAVATING FACTORS AND INFORMATION RELATING TO MITIGATING FACTORS, FILED.

09/03/2010 09/03/2010 D1 MO DEFENDANT'S MOTION FOR DISCLOSURE OF THE JUVENILE RECORDS OF PLAINTIFF'S WITNESSES, FILED.

09/03/2010 09/03/2010 D1 MO DEFENDANT'S MOTION FOR DISCLOSURE OF REBUTTAL WITNESSES, FILED.

09/03/2010 09/03/2010 D1 MO DEFENDANT'S MOTION FOR DISCLOSURE OF EXCULPATORY EVIDENCE, FILED.

09/03/2010 09/03/2010 D1 MO DEFENDANT'S REQUEST FOR NOTICE OF STATE EVIDENCE, FILED.

09/03/2010 09/03/2010 D1 MO DEFENDANT'S MOTION FOR PRE-TRIAL COPY OF THE TRANSCRIPT OF THE GRAND JURY PROCEEDINGS, FILED.

09/03/2010 09/03/2010 D1 MO DEFENDANT'S MOTION TO MAKE THE STATE'S PHYSICAL EVIDENCE AVAILABLE TO DEFENDANT FOR INSPECTION AND SCIENTIFIC TESTING BY DEFENDANT'S EXPERTS, FILED.

09/03/2010 09/03/2010 D1 MO DEFENDANT'S MOTION TO PROPERLY PRESERVE AND CATALOG ALL PHYSICAL EVIDENCE, FILED.

09/03/2010 09/03/2010 D1 MO DEFENDANT'S MOTION FOR AN ORDER DIRECTING THAT A COMPLETE COPY OF THE PROSECUTOR'S FILE

BE MADE AND TURNED OVER TO THE COURT FOR REVIEW TO BE SEALED FOR APPELLATE REVIEW, IF NECESSARY, FILED.

09/03/2010	09/03/2010	D1	MO	DEFENDANT'S MOTION FOR PRE-TRIAL DISCLOSURE OF OHIO R. CRIM. P. 16(B)(1) (G) STATEMENTS, FILED.
09/03/2010	09/03/2010	D1	MO	DEFENDANT'S DEMAND FOR DISCOVERY BY THE DEFENSE, FILED.
09/03/2010	09/03/2010	D1	MO	DEFENDANT'S MOTION FOR BILL OF PARTICULARS, FILED.
09/03/2010	09/03/2010	D1	MO	DEFENDANT'S MOTION TO COMPEL LAW ENFORCEMENT OFFICIALS TO TURN OVER AND ADVISE THE PROSECUTING ATTORNEY OF ALL INFORMATION ACQUIRED DURING THE COURSE OF INVESTIGATION, FILED.
09/03/2010	09/03/2010	D1	MO	DEFENDANT'S MOTION TO TRANSCRIBE THE GRAND JURY PROCEEDINGS PRIOR TO TRIAL, FILED.
09/03/2010	09/03/2010	D1	MO	DEFENDANT'S MOTION TO DISMISS CAPITAL COMPONENTS OF THIS CASE DUE TO CONSTITUTIONAL AND INTERNATIONAL LAW VIOLATIONS, FILED.
09/02/2010	09/02/2010	N/A	SB	SHERIFF SERVICE FEES FOR SUBPOENA NUMBER 706899, IN THE AMOUNT OF \$6.00.
09/01/2010	09/01/2010	N/A	SB	SUBPOENA CLERK'S FEE
09/01/2010	09/01/2010	N/A	SB	SUBPOENA CLERK'S FEE
09/01/2010	09/01/2010	N/A	SB	SUBPOENA CLERK'S FEE
08/31/2010	08/31/2010	D1	MO	MOTION FOR BILL OF PARTICULARS, FILED.
08/31/2010	08/31/2010	D1	MO	DEMAND FOR DISCOVERY, FILED.
08/30/2010	08/30/2010	D1	MO	DEMAND FOR DISCOVERY BY THE DEFENSE, FILED.
08/30/2010	08/30/2010	D1	MO	MOTION FOR BILL OF PARTICULARS, FILED.
08/30/2010	09/02/2010	N/A	JE	THIS DEFENDANT HAS AN APA HOLD. 08/30/2010 CPEDB 08/31/2010 09:11:07
08/30/2010	08/30/2010	N/A	SB	SUBPOENA CLERK'S FEE
08/27/2010	08/27/2010	D1	CL	INDICTMENT FORM SENT TO THE SUPREME COURT OF OHIO.
08/27/2010	08/27/2010	N/A	CS	PRISONER IN COURT
08/27/2010	08/27/2010	N/A	JE	DEFENDANT DECLARED INDIGENT. COURT ASSIGNED SPELLACY, KEVIN M AND MCDONNELL, JAMES J AS COUNSEL. READING OF INDICTMENT WAIVED. TWENTY-FOUR HOUR SERVICE WAIVED. DEFENDANT PLEAD NOT GUILTY TO INDICTMENT. REMANDED WITHOUT BOND. JUDGE SAFFOLD, SHIRLEY

STRICKLAND (318) ASSIGNED (RANDOM DC). FIRST PRETRIAL SET FOR 09/07/2010 AT 09:00 AM IN COURT ROOM JC21B JUDGE SAFFOLD, SHIRLEY STRICKLAND. GARFIELD PILOT PROJECT.

08/26/2010 08/26/2010 N/A SC PRELIMINARY HEARING SCHEDULED FOR 08/26/2010 AT 12:30 PM IS CANCELLED. JUDGE: ARRAIGNMENT ROOM (ARRAIGN) REASON: CASE HAS BEEN INDICTED.

08/24/2010 08/25/2010 N/A SH SHERIFF SERVICE OF INDICTMENT

08/24/2010 08/25/2010 N/A GP ARRAIGNMENT SCHEDULED FOR 08/27/2010.

08/24/2010 08/24/2010 N/A CR INDICTED ORIGINAL ON 08/24/2010

08/24/2010 08/25/2010 N/A SF LEGAL RESEARCH

08/24/2010 08/25/2010 N/A SF CRIME STOPPERS

08/24/2010 08/25/2010 N/A SF COMPUTER FEE

08/24/2010 08/25/2010 N/A SF CLERK FEE

08/20/2010 08/20/2010 N/A JE INITIAL APPEARANCE HELD 08/20/2010. DEFENDANT IN COURT FOR INITIAL APPEARANCE. REMANDED WITHOUT BOND. PRELIMINARY HEARING SET FOR 08/26/2010.

08/19/2010 08/19/2010 N/A SC INITIAL APPEARANCE SET FOR 08/20/2010 AT 10:00AM.

08/19/2010 08/19/2010 P CR ORIGINAL ACTION RECEIVED FROM CUYAHOGA COUNTY PROSECUTORS OFFICE AND FILED.

08/19/2010 08/19/2010 N/A CR CIF ENTERED

08/16/2010 08/19/2010 N/A CR ARRESTED 08/16/2010

08/11/2010 08/19/2010 N/A CR DATE OF OFFENSE 08/11/2010

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