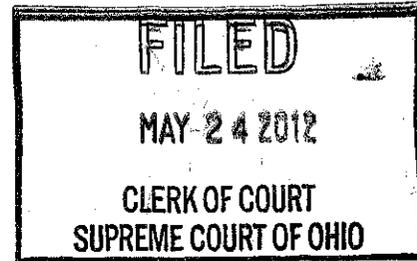


ORIGINAL



IN THE SUPREME COURT OF OHIO

State of Ohio, :
 :
 Plaintiff-Appellee, : Case No. 2011-212
 :
 v. :
 : On Appeal from the Holmes County
 : Court of Appeals, Fifth Appellate
 Wesley Lloyd, : District, Case No. 09CA12
 :
 Defendant-Appellant. :

**Response of Appellant Wesley Lloyd to
the Appellee's Motion for Reconsideration**

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**Response of Appellant Wesley Lloyd to
the Appellee's Motion for Reconsideration**

The State's motion suggests that this Court is "squeamish" because it found the evidence insufficient to prove a duty to register. Motion at 9. But the motion presents little more than a request that the six-member majority adopt the dissenting opinion. *State v. Lloyd*, Slip. Op. No. 2012-Ohio-2015, ¶62-3 (O'Donnell, J., dissenting). The majority already considered and rejected those arguments. *Id.* at ¶51 ("Rather than acknowledge these obvious ambiguities as we are required to do, the dissent would employ clairvoyance to supplement the record"); and *Id.* at ¶52 ("The courts cannot make inference upon inference").

The State does raise one argument not specifically adopted by the dissent. The State asserts that establishing a duty to register in a prior state is not an element of a registration offense. Motion at 4-5. The State's argument is novel, entirely unsupported, and extraordinarily bad policy. It is novel because it was not raised by the State in the court of appeals. *State v. Martello*, 97 Ohio St. 3d 398, 409 (2002) (declining to address "an argument not raised below"). The argument is entirely unsupported because the State has not cited to any court anywhere that has even addressed the argument, let alone ruled that the State's position is correct. And the argument is extraordinarily bad policy because taking this question from the factfinder would implicate *Blakely v. Washington*, 542 U.S. 296 (2004), and that is a Pandora's Box best left closed.

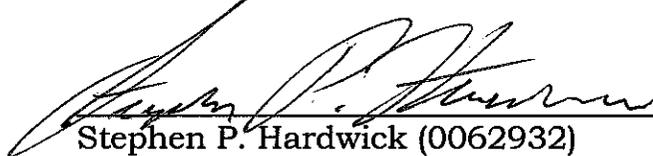
The State also demonstrates no prejudice justifying reconsideration. The State's motion does not even assert that it could say anything in supplemental briefing or at a second oral argument that it has not said in its reconsideration motion. So this Court's reconsideration procedure has provided the State its "opportunity to address issues that are raised." Motion at 3. Further, at oral argument, the State explained its sufficiency reasoning to the Court, even citing to the same transcript page numbers cited in the motion for reconsideration. Oral Argument at 25:00 to 26:20.

Conclusion

The State has made its sufficiency argument to this Court. The lone dissenting opinion adopted the State's position. But the six-member majority considered and rejected it. Accordingly, this Court should deny the State's motion for reconsideration.

Respectfully submitted,

Office of the Ohio Public Defender



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Assistant Public Defender

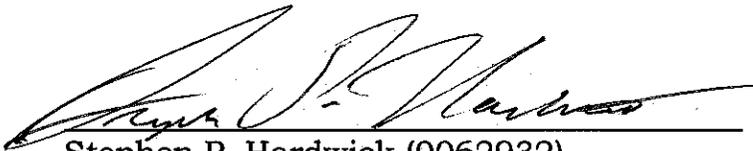
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Certificate of Service

I certify that a copy of the foregoing was sent via regular U.S. mail to Mathew Warner, Assistant Prosecuting Attorney, Holmes County Prosecutor's Office, 164 East Jackson Street, Millersburg, OH 44654, this 24th day of May, 2012.



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