

ORIGINAL

NO. 2011-1921

IN THE SUPREME COURT OF OHIO

CAPITAL CASE, APPEAL FROM
THE CUYAHOGA COUNTY COURT OF COMMON PLEAS
NO. CR-530885

STATE OF OHIO

Plaintiff-Appellee,

-vs-

ANTHONY SOWELL

Defendant-Appellant

STATE'S RESPONSE TO APPELLANT'S MOTION TO SUPPLEMENT THE RECORD

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Now comes the State of Ohio, having received Appellant's Motion to Supplement the Record, and respectfully submits that it has no objection to Appellant's motion.

Appellant requests that this Court order supplementation of the record with two defense exhibits from the mitigation phase of Appellant's capital trial, Exhibits LLL and JJJJ. The State has no objection to either exhibit. The transcript of Appellant's trial reveals that the trial court admitted both exhibits as evidence during the mitigation phase:

THE COURT: Then the LLL, that's photos of the defendant in the Marines. There's another photo of him in the Marines. And XXX, letter from the Department of Job and Family Services. That will be out. I'll exclude those except for the four J exhibit, and everything else then will come in and will be available for the jury to review.

MR. PARKER: Judge, I would ask you to reconsider on this photograph in the Marines. I mean, this is an individual photo of him.

THE COURT: Let me see that.

MR. PARKER: Which is the only photograph we could find anywhere of him individually, versus the group graduation photo. And we just ask that it be considered, that you reconsider it.

THE COURT: I don't know. It's a plastic bag. I'll reconsider it. I'll admit it's a terrible picture. You can barely see the defendant's face at all. All right. So LLL will come in. So with that then, the defense has rested.

(Tr. 11214-11215). S.Ct. Prac. R. 19.4(D) provides in part:

"If anything material to either party is omitted from the record by error or accident or is misstated in the record, the parties by stipulation, or the trial court, either before or after the record is transmitted to the Supreme Court, or the Supreme Court, sua sponte or upon motion, may direct that the omission or misstatement be corrected, and if necessary that a supplemental record be certified and transmitted."

Because both exhibits were actually admitted at trial, the State respectfully submits both parties are in agreement that these exhibits should be a part of the record. The omission of these two exhibits from the record filed in this Court was the result of an error or accident. The State therefore has no objection to this Court ordering supplementation of the record with the two exhibits referenced in Appellant's motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *State's Response to Appellant's Motion to Supplement the Record* was sent via ordinary U.S. Mail, postage prepaid this 3rd day of December, 2012, to:

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