

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2010-2260
Plaintiff-Appellee,	:	
	:	On Appeal from the Cuyahoga
v.	:	County Court of Appeals,
	:	Eighth Appellate District
JAMES D. HOOD,	:	
	:	Court of Appeals
Defendant-Appellant.	:	Case No. 93854

Appellant's Response to Motion for Reconsideration

OFFICE OF THE
OHIO PUBLIC DEFENDER

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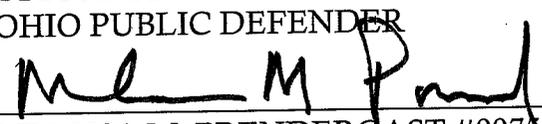
Response

On December 3, 2012, this Court issued its decision in this case and held that cell phone records, even when unidentified and unauthenticated, are non-testimonial business records and as such, are not within the purview of the Confrontation Clause. *State v. Hood*, Case No. 2010-2260, Slip Opinion No. 2012-Ohio-5559, at ¶36. Further, this Court held that because the cell phone records in Mr. Hood's case were not properly authenticated, the admission of those records at trial was error, but that the error was harmless in light of the other evidence offered at trial. *Id.* at ¶43.

Appellee State of Ohio and Amicus Curiae Attorney General of Ohio now ask this Court to reconsider its decision. But this Court's decision fully resolved the issues related to Mr. Hood, and resolved those issues in the favor of the State. The State is merely asking for guidance regarding future prosecutions of yet to be identified defendants. Reconsideration of the decision in this case would amount to an advisory opinion, which this Court will not render. *City of N. Canton v. Hutchinson*, 75 Ohio St. 3d 112, 114, 661 N.E.2d 1000 (1996) (citations omitted).

Respectfully submitted,

OFFICE OF THE
OHIO PUBLIC DEFENDER


MELISSA M. PRENDERGAST #0075482
Assistant State Public Defender

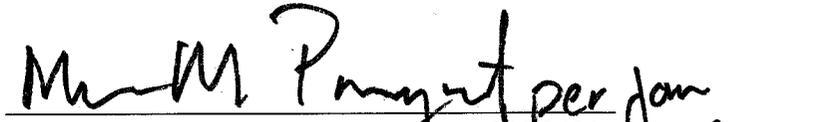
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Appellant's Response to Motion for Reconsideration** has been sent by regular U.S. mail, postage prepaid to Kristen Sobieski, Assistant Prosecuting Attorney, Cuyahoga County Prosecutor's Office, Justice Center, 8th Floor, 1200 Ontario Street, Cleveland, Ohio 44113, this 21st day of December, 2012.


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