

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2011-1473
Plaintiff-Appellee,	:	
vs.	:	On Appeal from the Franklin County
	:	Court of Appeals, Tenth Appellate
EMMANUEL HAMPTON,	:	District Case No. 10AP-1109
	:	
Defendant-Appellant.	:	

RESPONSE OF AMICUS CURIAE CUYAHOGA COUNTY PUBLIC DEFENDER TO STATE OF OHIO'S MOTION FOR RECONSIDERATION

RON O'BRIEN (0017245)
Franklin County Prosecuting Attorney
STEVEN L. TAYLOR (0043876)
Chief Counsel, Appellate Division
(Counsel of Record)
373 South High Street, 13th Floor
Columbus, Ohio 43215
(614) 525-3555
(614) 525-6103 – Fax
**COUNSEL FOR APPELLANT,
STATE OF OHIO**

ALEXANDRA T. SCHIMMER (0075732)
Solicitor General
Officer of the Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
**COUNSEL FOR AMICUS CURIAE,
ATTORNEY GENERAL OF OHIO**

JONATHAN TYACK (0066329)
Tyack, Blackmore & Liston Co., LPA
(Counsel of Record)
536 South High Street
Columbus, Ohio 43215
(614) 221-1341
**COUNSEL FOR APPELLEE,
EMMANUEL HAMPTON**

ROBERT L. TOBIK (0029286)
Public Defender
JOHN T. MARTIN (0020606)
Assistant Public Defender – Counsel of Record
310 Lakeside Avenue, Suite 200
Cleveland, Ohio 44113
(216) 443-7583
**COUNSEL FOR AMICUS CURIAE,
CUYAHOGA COUNTY PUBLIC DEFENDER**

TIMOTHY YOUNG (0059200)
Ohio Public Defender
VALERIE KUNZE (0086927)
Assistant State Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215
**COUNSEL FOR AMICUS CURIAE,
OHIO PUBLIC DEFENDER**

FILED
DEC 27 2012
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 2011-1473
Plaintiff-Appellee,	:	
vs.	:	RESPONSE OF AMICUS CURIAE
EMMANUEL HAMPTON,	:	CUYAHOGA COUNTY PUBLIC
Defendant-Appellant.	:	DEFENDER TO STATE OF OHIO'S
	:	MOTION FOR
	:	RECONSIDERATION

In opposition to the State of Ohio's motion for reconsideration, Amicus Curiae Cuyahoga County Public Defender suggests that the State's own motion demonstrates why the Court's opinion in this case was, and continues to be, correct.

The State's "Big Picture" Argument: Can A Court Act Without Venue?

The State's "big picture" argument confuses venue with jurisdiction, arguing that a court that finds it lacks venue is powerless to act. Thus, argues the State, despite the fact that the Franklin County Prosecutor prosecuted the case in Franklin County, the State deserves a second¹ chance when after the trial has begun, the State figures out that it never should have been filed in Franklin County. The State contends that the Common Pleas Court, General Division in Franklin County was powerless to acquit the defendant despite the lack of venue.

But under the State's view, venue is apparently a concept that only leaves the Franklin County Common Pleas Court *General Division* judges powerless. The State never addresses how the Franklin County Common Pleas Court *Juvenile Division* judge was able to bind over Emanuel Hampton in the first instance if all courts in Franklin County are powerless to act in the absence of venue. The State never addresses how the Franklin County grand jury had the power

¹ Nothing in the State's logic would prevent it from taking more chances to convict a defendant – so long as the proof problem is that of venue. Under the State's theory, it could bring 88 successive prosecutions until it stumbles across the correct county.

to indict if the Common Pleas Court that supervised the grand jury was, itself, powerless to acquit in the absence of venue. And the State never addresses how the Franklin County Court of Appeals was able to hear an appeal if the trial court in Franklin County was powerless to act in the absence of venue. In short, the State's argument is that improper venue is only debilitating to a trial court's ability to decide the case against the State, but affects no other court and no other decision by that trial court.

The State's Actions in This Case Belie Its Argument

Whether framed as lack of a final verdict or a lack of authority to acquit, the State's argument is inherently inconsistent with the procedural posture of this case. The State does not appear to believe its own rhetoric, for if the State believed in its argument, it never would have appealed the decision of the Franklin County Common Pleas Court in the first place. Instead, the State would have ignored the actions of the Franklin County Common Pleas Court and simply brought the case to Fairfield County. After all, if the State really believes that the Franklin County judge's ruling was a nullity, *i.e.*, an action taken by one without authority, the State would not have treated that ruling as something that needed to be appealed.

Opening the Pandora's Box

If the State really wants this Court to go down this "venue is authority" road, the consequences could be as colossal as they are unintended. If courts are powerless to acquit in the absence of venue, then they are likewise powerless to convict—accordingly, convictions can be re-examined regardless of the passage of time. And if courts are inherently powerless in the absence of venue, it is arguable that venue can never be transferred. This Court's decision in the instant case keeps the door shut on venue-based challenges that would know no time limitations.

CONCLUSION

For these reasons, as well as those argued in the briefs on the merits and in oral argument, the motion for reconsideration should be denied.

Respectfully submitted,


JOHN T. MARTIN, ESQ. per Jan 0069870
Counsel for Amicus Curiae
Cuyahoga County Public Defender

SERVICE

I hereby certify that, on December 27, 2012, has been effected by U.S. Mail upon the following:

JONATHAN TYACK (0066329)
Tyack, Blackmore & Liston Co., LPA
536 South High Street
Columbus, Ohio 43215
(614) 221-1341

STEVEN L. TAYLOR (0043876)
Franklin County Prosecutor's Office
373 South High Street, 13th Floor
Columbus, Ohio 43215

ALEXANDRA T. SCHIMMER
Solicitor General
Officer of the Ohio Attorney General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215

VALERIE KUNZE
Assistant State Public Defender
250 East Broad Street, Suite 1400
Columbus, Ohio 43215


JOHN T. MARTIN, ESQ. per Jan 0069870