

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff,

-v-

TYRONE NOLING,

Defendant.

CASE NO. 2011-0778

On Appeal from the Portage
County Court of Common Pleas
Case No. 95-CR-220

Pursuant to R.C. 2953.73(E)(1)

This is a capital case.

Motion for Leave to File a Supplemental Brief

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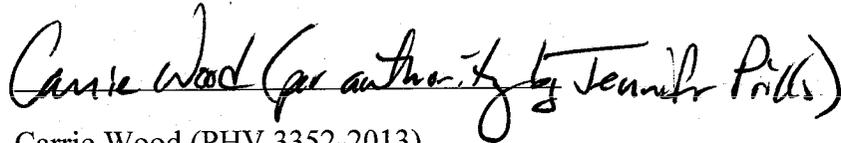
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Motion for Leave to File a Supplemental Brief

Pursuant to S.Ct.Prac.R. 17.09(A), Tyrone Noling moves for leave to file a supplemental brief regarding the meaning of the new “outcome determinative” standard. Noling proposes to file his supplemental brief 7 days after the Court rules on this motion.

Respectfully Submitted,



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MEMORANDUM IN SUPPORT

Noling moves for leave to file a concise, supplemental brief regarding the meaning of the language “outcome determinative” and “available admissible evidence” in Ohio’s DNA testing statute, Ohio Rev. Code §§ 2953.71(L) and 2953.74(B), as it is defined in the statute itself and in the cases interpreting it. Noling is requesting this supplemental briefing because the meaning of “outcome determinative” became a central point of inquiry at oral arguments, yet it was not an issue addressed by the trial court and, therefore, was not fully briefed by the parties. Noling respectfully submits that, from the questioning at oral argument, it appeared that there were unresolved questions regarding the meaning of this important standard. Noling thus submits that proper briefing on the issue would be beneficial to the Court. Noling will be prepared to file such a brief 7 days after the Court rules on this motion. Such brief would be five pages or less in length. Any response from the State of Ohio should be similarly constrained.

Respectfully Submitted,

Carrie Wood (per authority by Jennifer Pillo)

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum for Leave to File a Supplemental Brief was delivered by U.S. Mail to Victor V. Vigluicci, Prosecuting Attorney, 466 South Chestnut Street, Ravenna, OH 44266 and to Mike DeWine, Ohio Attorney General, DNA Testing Unit, 150 East Gay Street, 16th Floor, Columbus, OH 43215 on this 14th day of January, 2013.

Carrie Wood (per authority by Jennifer P. (11))

Carrie Wood (PHV 3352-2013)
Attorney for Tyrone Noling