ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. 13-1019
Plaintiff-Appellee,	:	
v.	:	On Appeal from the Fifth Appellate District, Stark County Court of Appeals.
RYAN LEE HAMRICK,	:	
Defendant- Appellant.	:	Court of Appeals Case No. 2011CA00041

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT RYAN LEE HAMRICK

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WHY THIS HONORABLE COURT SHOULD ACCEPT THIS CASE.

In this case the appellant was denied his constitutional right to effective assistance of appellate counsel, because the appellant's proposed assignments of error in his App.R.26(B) application were found within the record since they are based on allegations that can be determined by examination of the files and records in the case. See **State v. Milanovich** (1975), 42 Ohio St.2d 46. As such, these grounds should have been raised in a direct appeal but were not. See **Buell v. Mitchell** (6th Cir. 2001), 274 F.3d 337 at 349.

App.R.26(B) governs applications by criminal defendants to reopen an appeal "based on a claim of ineffective assistance of Appellate Counsel."**App.R.26(B)(1).** That procedure, was created by this court in **State v. Murnahan**, ensured that defendants could raise constitutional claims, but prevented state trial courts from second guessing superior appellate courts. **Murnahan** (1992), 584 N.E.2d 1204 at 1208, 63 Ohio St.3d 60 at 65.

A Murnahan application is a two stage procedure. **Lopez v. Wilson** (6th Cir. 2005), 426 F.3d 339 at 340 (en banc), cert. denied, (2006), 126 S.Ct. 1880; See also Ohio App.R.26(B) Staff Notes (July 1, 1993 Amendment))describing two stage procedure in which the first stage involves a threshold showing and the second stage involves a more extensive appellate procedures). At the first stage, the court considers whether to grant the application to reopen proceedings. In order to provide the court with the necessary facts to make this determination, Rule 26(B) requires that an application contain, inter alia, "[a] showing of good cause for untimely filing if the application is filed more than ninety days after journalization of the appellate judgment," **App.R.26(B)(2)(b),** and [o]ne or more assignments of error or arguments in support of assignments of error that previously were not considered on an incomplete record because of appellate counsel's deficient representation." **App.R.26(B)(2)(c).**

The appellant will now address the issue of the untimely filing and his good cause for the untimely filing. As attested to by the appellant in his sworn statement of the basis for the claim and by Rhonda Hamrick,(See EXHIBIT F, of the 26(B) application), appellate counsel failed to hand over any documents in a timely manner for review to determine if there was any issues that could have or should have been raised in his direct appeal that could be raised in a timely application under App.R.26(B). Once appellate counsel handed over the appellants case file it was discovered that trial counsel failed to request for and review transcripts from a pre-trial hearing on December 9, 2010,(EXHIBIT E, of the App.R.26(B) application), were the trial court determined that a defense witness was "not an expert in these issues."(EXHIBIT E, Tr.P.61). Appellate counsel failed to supply the appellant with any portions of his case file and transcripts in a timely manner for the purpose of reviewing them for a determination that there may have been other trial court errors made than those he raised in the appellant's direct appeal.

The appellant has a constitutional right to an appeal and to effective assistance of counsel on that appeal. When that said counsel restricts access to an appellants legal materials by not handing them over to an appellant or his/her's family, that counsel is the cause for an error not being raised on direct review and as in the appellants case, in a timely manner in a App.R.26(B) application.

Counsel was further ineffective for not requesting for and reviewing transcripts from a pre-trial hearing.(EXHIBIT E, of the Application). This is simply proven by the courts docket and the Docketing Statement filed in the direct appeal, which is further supported by appellate counsel's own admission found in a letter from February 12, 2013 letter.(See EXHIBIT G, Response to state's response).

After the discovery of EXHIBIT E not being transcribed for direct review, the appellant did what many other defendants have done in the State of Ohio, which is request the transcripts from the trial court, but the trial court refused that request because it was not apart of an appeal.(See EXHIBIT A, of the application).

The appellant made that request because his family already spent $174.00 on his suppression hearing transcripts at $1.50 per page,(See EXHIBIT B, of the Application), and at that time his family received a quote that it will cost $3.00 per page for Mr. Clevenger's December 9, 2010 pre-trial hearing do to the fact that the hearing was never requested or transcribed for the court.(See EXHIBIT F, of the application). The appellant's family was informed that they must deposit $200.00 before the court reporter would start transcribing the requested hearing from December 9, 2010. Once the appellants family gathered the money for the deposit they gave a money order to the Official Court Reporter and on November 6, 2012, the transcripts were ready for pick up for a total of $192.00.(See EXHIBIT C,F, of the application).

The appellant has demonstrated to the appellate court a genuine issue that his appellate counsel never handed over his case file in a timely manner nor requested for key transcripts to be transcribed for his appellate review of the case. Appellate counsel could have filed am App.R.9 motion with the court requesting the pre-trial transcripts. Instead, he failed to even try to receive or review transcripts of great importance and then the appellant was left to depend on his family to purchase transcripts from the court and proceed untimely based off of counsel's failure's, known of his own.

The appellate court erred in determining that the appellant failed to raise good cause for his untimely filing, because any appellant that is incarcerated has no control over his/her counsels failure to represent him/her to the level **Strickland v. Washington** (1984), 466 U.S. 668 requires, or to be able to make that

appellate counsel request certain transcripts, or to mail him/her the documents needed to proceed pro se in a timely App.R.26(B) application.

In this case the appellant wanted the jury to hear testimony from an expert in the field of self-defense and the use of deadly force, because like him, the jury is laypersons to the law and knows little to no information about when is the correct situation to use deadly force, but the trial court abused its discretion in determining that a highly trained, well respected police officer that is certified by this state to teach concealed, carry classes to civilians, along with teaching when is the proper time to use deadly force to civilians and other fellow police officers.

The appellate court in their latest decision, (See attached opinion), stated that since "the trial court gave the jury an instruction for self-defense over the State's objection". The jury instruction is even more of a reason on why the jury should have heard this experts testimony, how is any jury going to deliberate about a deadly force self-defense claim without knowing what the state of Ohio considers to be the correct time to use deadly force in self-defense.

The final error that occurred in this case revolves around trial counsels failure to have the potential expert completely prepared for a hearing that will determine if the trial court will certify him as an expert in the field of self-defense and the proper use of deadly force. The jury may not have rejected the appellant's claim of self-defense, or at minimum would have had a better understanding of what self-defense is had trial counsel had the potential expert more prepared for the trial courts line of questioning.

On more then one occasion, defendants in Ohio has had counsel fail to have consulted with their potential experts and this failure ended up causing prejudice in a defendants proceeding. Restricting an experts access to defense materials and the defendant should never be construed as a strategic, effective decision on the part of counsel. If the potential expert in this case would have had access to the

appellant, he would have been able to answer the trial courts line of questioning in the positive, and more likely then not, been certified be the trial court as an expert to testify in the appellants trial. A defendant should not be held responsible for his trial counsels failures, especially in the case of as serious as this one.

STATEMENT OF THE CASE AND FACTS

On or about November 14, 2009, the appellant and Jennifer McPherson, left West Virginia where they lived to pick up Demeris Tillman in Cleveland, Ohio. Jennifer has known Demeris for about a year or two. (Tr.P. 421). She knew that Demeris sold crack.(Tr.P. 424). She knew the appellant for about six months, she helped the appellant get drugs from Demeris. (Tr.P. 426). The next day, they met up with Demeris, he then picked up the drugs and they headed back to West Virginia. (Tr.P. 772-773). When they got to the Canton area, they stopped on Moore Road in Canton. Jennifer says that the appellant stopped on his own and directed her a demeris to get out and the appellant went somewhere, while he was gone she heard one gunshot. (Tr.P. 443,448). The Appellant said he stopped at the instruction of Demeris, that Demeris instructed him to get out to take the drugs that Demeris had and go make a drug transaction. (Tr.P. 775-776).

The appellant testified he did as he was told and drove to where these individuals would be and got out to make the deal. One of the two gentleman got out of their car and pulled a gun pointed it at the appellant's head, the appellant scuffled with them, he dropped the drugs the gun fell he ran to his car. As he was getting in the car the individual fired a shot at him. (Tr.P. 776-777). The appellant raced back down the road to get Jennifer who he felt certain danger because he was sure that demeris set him up. As he approached, Demeris was walking towards him. The appellant got out to avoid being ambushed. At this point, he

did not know if the two other men were behind him, so with Demeris coming at him he pulled his gun to get Demeris to stop. Demeris would not stop so he fired. He was both fearful for his safety and Jennifer's and irate becuase Demeris set him up. This all happened very quickly. (Tr.P. 783-786, 829-830). Jennifer testified when she heard that shot when the appellant was gone she was scared, but Demeris told her not to be scared, that he knows people in this area. (Tr.P. 448).

Sergeant Joseph Utt testified that the appellant told him he felt it was either him or Demeris. (Tr.P. 380).

On or about December 22, 2009, the appellant was arrested and charged with murder. He was indicted on one count of murder in violation of R.C. 2903.02(A) with a firearm specification in violation of R.C. 2941.145.

On January 19, 2011, the appellants jury trial began and the jury returned a guilty verdict as charged. The appellant was sentenced on February 15, 2011, to 18 years to life for murder with a firearm specification.

The appellant through counsel filed a timely appeal to the Fifth Appellate District, which they affirmed on March 19, 2012.

The appellant by and through pro se, filed a motion for delayed appeal to this court on September 20, 2012, in case number 12-1605, which was denied on November 7, 2012.

On February 11, 2013, the appellant untimely filed his App.R.26(B) application, which was denied on May 21, 2013. (Opinion attached).

The appellant timely files this Memorandum in Support and Notice of Appeal to this court with Four Propositions of law for this courts review.

PROPOSITIONS OF LAW AND ARGUMENTS IN SUPPORT

Proposition of Law I: The appellate court erred when it decided that the appellant failed to raise good cause for the untimely filing of his App.R.26(B) application.

As the appellant has explained previously, it is difficult to ensure that ones appellate counsel is requesting, and reviewing all the record in a defendant's case when he is incarcerated.(See the courts docket and the Docketing Statement filed in this case.) Once the appellant discovered that Mr. Clevenger's Hearing Transcripts were never transcribed for the appellate courts review,(See EXHIBIT F, of the application), he did the due diligence to get the transcripts at a great expense of his family.(See EXHIBITS C,D,E).

No appellant should be denied his constitutional right to direct review based off of appellate counsel's failure to request and review the complete record. The appellant requests that this court reverse the erroneous decision of the Fifth District court of Appeals,(Appx. Opinion), and remands it back for a full meritorious review.

Proposition of Law II: The appellant was denied his constitutional Right to effective assistance of appellate counsel as guaranteed under the Sixth and Fourteenth Amendments to the United States and the Ohio Constitution.

A criminal defendant is entitled to effective assistance of appellate counsel. **Evitts v. Lucey** (1985), 105 S.Ct. 830. In **Evitts**, the Supreme Court acknowledged the importance of appellate counsel when it noted that "the services of a lawyer will for virtually every layman be necessary to present an appeal in a form suitable for appellate consideration on the merits." **Id.** 393. Thus, the right of appeal "is not adjudicated in accord with due process if the appellant does not have the effective assistance of an attorney." **Id.** at 396.

In **Mapes v. Coyle** (6th Cir.) 171 F.3d 408, the court referred to the first prong of **Strickland v. Washington** (1984), 466 U.S. 668 and listed eleven questions as matters to be considered in determining whether an attorney on appeal acted in accordance with the objective standard of reasonableness.

A defendant is entitled to effective assistance of appellate counsel, as guaranteed under both the Sixth and Fourteenth Amendments to the United States Constitution. **Evitts Supra** at 836-837

This constitutional entitlement will only be satisfied when the evidence, law and circumstances of a particular case, viewed in their totality and as of the time of the representation, demonstrate that a defendant received "meaningful representation" from his appellate counsel. This requires an appellate counsel to undertake a thorough review of the **Complete** trial record and select the most promising issues for review. **Jones v. Barnes** (1983), 103 S.Ct. 3308 at 3313. Counsel's failure to raise an issue which if raised, would have resulted in a reversal or modification to his conviction constituted a sufficient ground to find ineffective assistance of appellate counsel. See **Grady v. Artuz** (SDNY 1966), 831 F.Supp 1048 at 1061. Even where a single, substantial error by counsel so seriously compromises a defendant's Constitutional rights, it will qualify as ineffective representation. Based on these established principles, the appellant was unconstitutionally denied his right to effective assistance of counsel of direct appeal because counsel failed to raise critical issues, which was discovered later and brought in a application for reopening App.R.26(B), pro se, upon which reopening should have been granted. Appellate counsel lost sight of the fundamental concept of scrutinizing each piece of evidence and the record.

Appellate counsel failed to raise issues of the trial court abusing its discretion in not certifying Mr.Clevenger as an expert and trial counsels ineffectiveness in not having Mr.Clevenger more prepared for the trial courts hearing, performance of appellate counsel was therefore deficient and prejudicial.

> **Proposition of Law III**: the trial court erred and abused its discretion to the prejudice of the appellant in disqualifying Daniel Clevenger as an expert witness on deadly force issues which denied the appellant of his constitutional right to a fair trial.

Under this courts analysis in **State v. Jenkins** (1984), 15 Ohio St.3d 164, expert services are "reasonably necessary" when (1) essential to the proper representation of the defendant, and (2) an available alternative would not serve the same function.

Evid.R. 702(B) provides that "a witness may testify as an expert by reason of his or her specialized knowledge, skill, experience, training, or education." But "[n]either special education nor certification is necessary to confer expert status upon a witness. The individual offered as an expert need not have complete knowledge of the field in question, as long as the knowledge he or she possesses will aid the trier of fact in performing its fact-finding function." **State v. Davis** (2008), 166 Ohio St.3d 404.

Evid.R.104(A) provides that preliminary questions concerning the qualification of a person to be a witness must be determined by the court. A trial court's ruling on the witness's qualification or competency to testify as an expert will ordinarily not be reversed on appeal unless there is a clear showing that the court abused its discretion. **Alexander v. Mt. Carmel Med. Ctr.** (1978), 56 Ohio St.2d 155; **Turnpike Comm. v. Ellis** (1955), 164 Ohio St. 377. An Abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude was unreasonable, arbitrary, or unconscionable. **State v. Adams** (1980), 62 St.2d 151 at 157.

In this case it is clear that the trial court abused its discretion, upon review of the hearing transcripts,(EXHIBIT E, of the application), that the expert defense counsel located was well qualified and certified to testify as an expert in the field of deadly force issues.(EXHIBIIT E, at page 5 L.11-17; page 5-6 at L.19-1; page 6 at L.7-21). Furthermore, Mr. Clevenger is a member of all law enforcement firearm groups, a member of the National Tactical Officers Association, I.L.E.E.T.A., and numerous other organizations.(EXHIBIT E, page 7 at L.19-24).

Mr. Clevenger's personal experience and current job should alone been enough to qualify him as an expert, a police officer for over thirty-five years,(EXHIBIT E, page 5 at L.7-10), and he is even paid by the state of Ohio to train and teach deadly force issues for the police department for over twenty-five years, and concealed carry classes for civilians for seven years at the time of this hearing testimony.(EXHIBIT E, at page 5-6 at L.24-6; page 6 at L.11-21), as well as his education and experience in the United States Army and dozens of seminars in his thirty-five years all revolved around deadly force issues.(EXHIBIT E at pages 6-7 at L.24-16).

Mr. Clevenger's personal experience as a police officer adds to his education, knowledge, skill and experience in a shooting he was involved in during his thirty-five year carrier as a police officer.(EXHIBIT E page 8 at L.8-17). One can imagine that if Mr. Clevenger was not justified in this shooting, he would not be a police officer from that point on. He was read his rights and interviewed by the Summit County Prosecutor's Office and was told not to report to work of the scene of the shooting until cleared.(EXHIBIT E at page 14 L.8-15). After a short time, Mr. Clevenger was placed back on active duty.

To further prove that the trial court erred and abused its discretion in this case is the reason the trial court did not permit Mr. Clevenger to testify in the appellants criminal trial. The trial court stated that "he is not an expert in these issues. He didn't perform any of the tests, has not examined this individual, cannot relate it to the heart rates and other things that he testified to. So I'm not going to allow him to testify,".(EXHIBIT E, page 61 L.11-17).

Under Evid.R. 702(B) "a witness may testify as an expert by reason of specialized knowledge, skill, experience, training, or education.", but no "special education nor certification" is needed to qualify Mr. Clevenger as an expert. " [A]s long as the knowledge [Mr. Clevenger] possesses will aid the trier of fact in performing its fact-finding function." **Davis, supra.**

The reason stated by the trial court does not revolve around Mr. Clevenger not having any or enough specialized knowledge, skill, experience, training or education, instead it is based on the trial courts opinion that Mr. Clevenger should have interviewed the appellant before proceeding to testify in his trial, but one needs to be able to testify in a criminal trial before getting fully prepared for said trial. It seems that the trial court would have preferred if Mr. Clevenger put the cart before the horse in this case. Mr. Clevenger has been qualified as an expert by other courts in Ohio before the appellants trial,(EXHIBIT E, page 55 at L.13-25; page 56 at L.1-14), and has been after the appellant's criminal conviction. See **State v. Petrone** (July 5, 2012), 2012-ohio-911.

It is clear to what Mr. Clevenger intended to offer in way of expert testimony, the appellant has made a claim of self-defense since the beginning of the investigation and Mr. Clevenger would have provided his vast knowledge and experience to the factfinder such as, who and what can be perceived as a threat to act in self-defense and the proper use of deadly force.(EXHIBIT E, at page 34, L.11-23), who has the right to defend themselves and use deadly force,(EXHIBIT E, at page 34 at L.24-25; page 35 at L.1-8), how many shots to use at a threat when deadly force is a correct response,(EXHIBIT E, at page 25 at L.17-19), where are the target area's when applying deadly force with a firearm,(EXHIBIT E, at page 25 at L.5-10), to clarify misconceptions about critical incidents and deadly force situations,(EXHIBIT E, at page 24 at L.16-19), along with plenty other examples throughout EXHIBIT E to help the factfinder determine if the appellant did indeed act in self-defense or not.

As pointed out previously, Evid.R. 702 explains that a witness may testify as an expert if he or she meets the requirements found in sections A, B and C. No were does it state that a potential expert witness must interview a defendant before a trial court will qualify him or her as an expert. The trial court denied Mr. Clevenger on reasons that do not pertain to his lack of knowledge, skill experience, training or education, that Mr. Clevenger clearly possess, but rather

on Mr. Clevenger's or trial counsel's failure to interview the appellant before the hearing,(EXHIBIT E, at page 61 at L.11-17). This is a clear abuse of the trial courts discretion.

> **Ground of Relief Four:** the appellant was denied his constitutional right to effective assistance of trial counsel and a fair trial when trial counsel fails to consult with the potential expert to ensure he was completely prepared for the trial courts hearing.

The Sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions. In **Strickland v. Washington** (1984), 466 U.S. 668, the Supreme Court established a two prong test to evaluate ineffective assistance claims. To obtain reversal of a conviction, the appellant must prove (1), that counsel's performance fell below an objective standard of reasonableness, and (2), that counsel's deficient performance prejudiced the defendant, resulting in an unreasonable or fundamentally unfair outcome of the proceeding.

The appellant will now address the first prong. Trial counsel's performance fellow below an objective standard or reasonableness by way of not preparing or allowing the potential expert to prepare for the scheduled hearing. Trial counsel is familiar with what transpires at a hearing such as the one had in this case and should have been aware of the possibility that the trial court would have expected the potential expert to have at least met with and interviewed the appellant, this way when the trial court asked fact based questions that are specific to the criminal case, Mr. Clevenger could have correctly and accurately answered the trial courts questions.

Trial counsel's failure to have the potential key expert prepared does not fall within the wide range of reasonable professional assistance required of an attorney defending a case such as this and this court should characterize counsel's performance as ineffective in this case.

The second prong is met in this case because there has been actual or

constructive denial of the assistance of counsel altogether. Trial counsel's decision to restrict the potential experts information of the case and the appellant is an error that is very prejudicial and deprived the appellant of a fair trial that is guaranteed to him through the United States Constitution, meaning a trial whose result is unreasonable, because had the potential expert been permitted to interview the appellant he would have been able to answer the trial courts questions which gives a reasonable probability that the trial court would have qualified Mr. Clevenger as an expert considering the only reason for the denial was based on the fact that Mr. Clevenger never interviewed the appellant this way he can relate the appellants personal experience to the things he is trained and certified in which would have allowed him to testify in the criminal case and help the factfinder in performing their factfinding function. This is very prejudicial to the proceedings because the factfinder never heard the correct information on deadly force that could have aided them in determining if the appellant's actions were justified when he used deadly force to protect himself.

The jury may have had a complete understanding about the appellant's claim of self-defense had trial counsel had Mr. Clevenger more prepared for the trial courts line of questioning. The question in this situation is did trial counsel act deficiently by not having the potential expert meet with and question the appellant before the hearing?, because there is a reasonable probability that had trial counsel done this, the trial court would have qualified Mr. Clevenger as an expert, which has the potential to change the outcome of the trial proceeding.

CONCLUSION

The appellant, Ryan Lee Hamrick, prays that this court accepts jurisdiction of his case, because it presents a great constitutional issue that defendants/appellants across Ohio continuously run into when it comes to receiving

their transcripts and other important documents from their appellate counsel, along with the fact that counsel failed to even request and review transcripts of a pre-trial hearing to determine its value and importance to his clients appellate proceedings. There is no greater cause for an untimely filing of an App.26(B) application than the one of ineffective assistance of appellate counsel and this kind of ineffectiveness will continue until this honorable court steps in and helps ensure that appellants across this state get a fair opportunity to proceed through the courts without an impediment created by their appellate counsel.

Respectfully submitted,

Ryan Lee Hamrick

Ryan Lee Hamrick
#A594-957

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was sent by ordinary U.S. mail to counsel for the Appellee, Stark County Prosecutor, at 110 Central Plaza, South, Suite 510, Canton, Ohio 44702-1413, on this 18 day of June, 2013.

Ryan Lee Hamrick

Ryan Lee Hamrick
#A594-957

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

NANCY REINBOLD
CLERK OF COURT OF APPEALS
STARK COUNTY OHIO
13 MAY 21 PM 4:20

STATE OF OHIO Plaintiff - Appellee	Case No. 2011CA00041
-vs-	
RYAN LEE HAMRICK Defendant - Appellant	JUDGMENT ENTRY

This matter is before the Court upon an Application for Reopening pursuant to App.R. 26(B) filed by Defendant-Appellant Ryan Hamrick on February 11, 2013. Plaintiff-Appellee State of Ohio filed a response on February 28, 2013. Hamrick filed a reply on March 12, 2013.

App.R. 26 states:

"**(B) Application for reopening**

"(1) A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later time.

"***

A TRUE COPY TESTE:
NANCY S. REINBOLD, CLERK
By ..... Deputy
Date 5-21-13

"(5) An application for reopening shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal."

This Court affirmed Hamrick's conviction and sentence on March 19, 2012 in *State v. Hamrick*, 5th Dist. No. 2011CA00041, 2012-Ohio-1214. Hamrick filed his Application to Reopen on February 11, 2013. App.R. 26(B)(1) states the application for reopening shall be filed in the court of appeals where the appeal was decision within ninety days from journalization of the appellate judgment, unless the applicant shows good cause for filing at a later time. The date of a timely filing would be on or about June 18, 2012.

Hamrick's application for reopening argues he was denied effective assistance of appellate counsel by counsel's failure to raise as error that challenged the trial court's refusal to allow Daniel Clevenger testify as an expert in the area of self-defense. The trial court found Clevenger was not qualified as an expert in the area of self-defense. Hamrick states he has good cause for his untimely filing because there was a delay in receiving the transcript of a hearing held on December 9, 2010 during which the trial court denied Daniel Clevenger being designated as Hamrick's expert. Hamrick requested the transcript from the trial court on October 17, 2012.

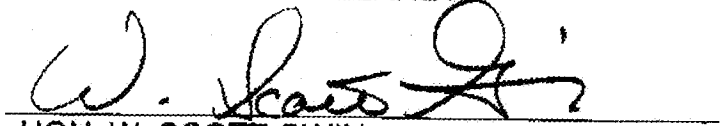
We find Hamrick has failed to raise good cause for the untimely filing of the application to reopen. Further, the trial court gave the jury an instruction for self-defense over the State's objection and we considered Hamrick's Assignment

of Error that argued the trial court erred in failing to give a jury instruction for the defense of others.

MOTION DENIED.

IT IS SO ORDERED.

HON. PATRICIA A. DELANEY



HON. W. SCOTT GWIN

HON. SHEILA G. FARMER