

ORIGINAL

BEFORE THE SUPREME COURT OF OHIO

STATE OF OHIO

PLAINTIFF-APPELLEE

-vs-

CHAD BARNETTE

DEFENDANT-APPELLANT

CASE NO.: 2013-1281

ON APPEAL FROM CASE NO. 02 MA 65
BEFORE THE COURT OF APPEALS FOR
THE SEVENTH APPELLATE DISTRICT

APPELLEE-STATE OF OHIO'S RESPONSE TO
DEFENDANT'S MOTION TO CONSIDER HOLDING THIS CASE
FOR THE DECISION IN *STATE V. QUARTFRMAN*, CASE NO. 2013-1591

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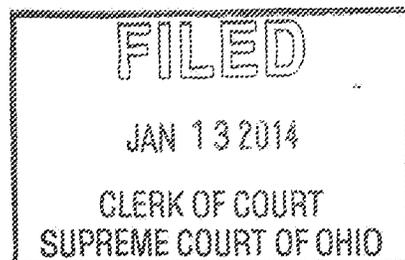
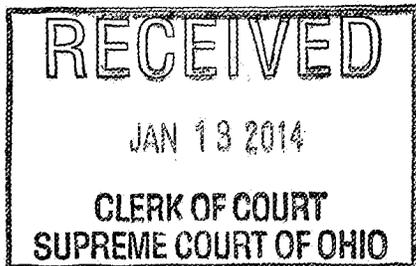
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Memorandum in Support

Now comes the State of Ohio and hereby Opposes Appellant-Defendant Chad Barnette's Motion to Consider Holding this Case for this Court's Decision in *State v. Quarterman*, Case No. 2013-1591.

Again, Defendant was properly sentenced to eighty-five and one-half (85 ½) years after he and his co-defendant James Goins "decided to wreak mayhem on their Youngstown neighborhood." *State v. Barnette*, 7th Dist. No. 06 MA 135, 2007 Ohio 7209, ¶ 2. Defendant and Goins were sixteen years old when they attacked, robbed, and assaulted three elderly persons in their neighborhood:

First, they attacked William Sovak, age 84, who had alighted from his home to retrieve his newspaper. Appellant and Goins repeatedly pushed and hit Mr. Sovak; each time they pushed him or he fell to the ground, they kicked him. They also hit Mr. Sovak on the head with his telephone as they stole a set of keys from the kitchen.

After this initial beating, they threw Mr. Sovak down the basement stairs, causing him to lose consciousness. Appellant and Goins then beat Mr. Sovak with a mallet and dragged him to a fruit cellar storage room. They used a screwdriver as a lock to bar his escape and left him there to die. Luckily, a neighbor telephoned a relative to report that there was blood all over Mr. Sovak's house and a trail leading to the basement. Mr. Sovak was then discovered in the fruit cellar. Mr. Sovak sustained a concussion, a spinal cord contusion, fractured vertebrae, a punctured lung, broken ribs and multiple external wounds.

That same night, appellant and Goins donned scarves over their faces and kicked their way into the home of Louis and Elizabeth Luchisan. Mr. Luchisan was sixty-four years old and was nearly confined to a chair on wheels due to medical infirmities. One of the two intruders entered with a sawed-off shotgun. They both demanded money and dragged Mrs. Luchisan around her house looking for cash. Mrs. Luchisan surrendered approximately \$167, and Mr. Luchisan handed over \$20. The assailants hit Mr. Luchisan over the head with plates and other objects causing severe head contusions and profuse bleeding. Mrs. Luchisan was

hit in the head and legs with the shotgun. The assailants also hit her with a telephone and threatened to kill her. Her head trauma later had to be remedied with staples.

As they fled the house, the assailants stopped to take a 27-inch television set and the keys to the Luchisan's vehicle in which they absconded. The police spotted the stolen car as they were later inspecting the two crime scenes. A police officer stood in the road with his weapon drawn while officers in cruisers caused other obstacles. The car veered from the armed officer and crashed into a tree. There were four people in the car. Goins, who was in the front passenger seat, fled from the crash but was soon captured.

Appellant was in the back seat. Citing his position in the vehicle, appellant later claimed that he was not involved in the intrusions and beatings. However, Mr. Sovak positively identified appellant as one of his attackers. Moreover, the tread of appellant's shoes matched shoe tread marks that were left at the crime scene. Officers discovered a sawed-off shotgun in the vehicle and found Mr. Sovak's keys in Goins' residence.

Id. at ¶¶ 2-6.

Here, Defendant contends that this Court's decision in *Quarterman*, Case No. 2013-1591, could be relevant to this Court's determination of Defendant's motion for reconsideration. In *Quarterman*, this Court will decide whether the mandatory transfer of juvenile offenders to adult court pursuant to R.C. 2152.10(A)(2)(b) and 2152.12(A)(1)(b) violates their right to due process, equal protection, and/or the prohibition of cruel and unusual punishment. Defendant contends that an extension of *Graham v. Florida*, 130 S.Ct. 2011 (2010) in *Quarterman* is determinative of Defendant's case.

In *Graham v. Florida*, the juvenile was sentenced to life in prison without the possibility of parole under Florida law after he committed armed burglary and attempted armed robbery. The Court concluded that due to "the limited culpability of juvenile nonhomicide offenders; and the severity of life without parole sentences * * * the

sentencing practice under consideration is cruel and unusual.” *Graham*, at 130 S.Ct. at 2030.

More recently in *Miller v. Alabama*, the Court concluded that a mandatory life in prison without the possibility of parole was cruel and unusual punishment under the Eight Amendment. *See State v. Long*, 1st Dist. No. C-110160, 2012 Ohio 3052, ¶ 52, citing *Miller*, supra.

In *Long*, the First District applied *Miller* and concluded that a juvenile’s sentence of life in prison without the possibility of parole under Ohio law was not cruel and unusual, because Ohio’s sentencing statute allows the trial court wide discretion when imposing a sentence, and the life in prison without parole is not mandatory like it was in *Miller* and *Graham*. *See id.*

Thus, Defendant is not similarly situated as the juveniles in *Graham* and *Miller*, because he has an opportunity to obtain a release from the penitentiary. And the fact that Defendant has several more years to serve before he may seek such release is based on his actions, and his actions alone, rather than a deprivation of his constitutional rights.

Therefore, Defendant’s Motion to Consider Holding this Case for this Court’s Decision in *State v. Quarterman*, Case No. 2013-1591 must be Denied.

Respectfully Submitted,

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MAHONING COUNTY PROSECUTOR BY:



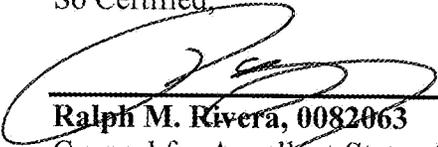
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Certificate of Service

I certify that a copy of the State of Ohio's Response to Defendant's Motion for Reconsideration was sent by ordinary U.S. mail to counsel for Defendant, **Stephen P. Hardwick, Esq.**, at the Office of the Ohio Public Defender, 250 W. Broad Street, Suite 1400, Columbus, OH 43215, on January 9, 2014.

So Certified,



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