

"IN THE SUPREME COURT OF OHIO"

ORIGINAL

14-0294

CASE NO. 97-CR-220, CR-97-221

ASHTABULA COUNTY
COURT OF COMMON PLEAS

MALIK ALLAH-U-AKBAR,

PETITIONER,

AN ORIGINAL ACTION

V.

STATE OF OHIO,

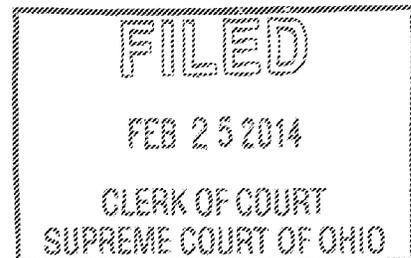
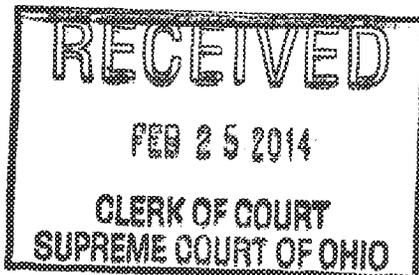
DEFENDANT.

HABEAS CORPUS PETITION

Malik Allah-U-Akbar.
(#A358112/dr 3-331 B)
15802 State Route 104 N.
Chillicothe, Ohio 45601
Pro Se.

Nicholas Iarocci,
Ashtabula County Prosecutor,
Counsel of Record.

25 West Jefferson St.
Jefferson, Ohio 44047



STATEMENT OF FACTS

1. The Ashtabula County Court of Common Pleas presided over by Ronald W. Vettel, did not acquire jurisdiction to try or sentence the Petitioner for any crime due to the failure of the grand jury to allege all the elements necessary to charge the offense of aggravated murder with prior calculation and design. Namely, the underlying felony, aggravated robbery, mentioned in specification one was not before Vettel's court, not within his jurisdiction. And, the robbery "indictment(s)" were sent to the court of Alfred W. Mackey.

2. The Petitioner was purportedly indicted on two counts of aggravated robbery on November 26, 1997. (Ex. 1). (This "indictment" also fails to charge an offense; no victim is named, no thing of value alleged to be taken or attempted to be taken, no place, no time, or threats alleged.) The state allegedly indicted the Petitioner on November 26, 1997 on one count of aggravated murder with prior calculation and design (Ex. 2).

3. Each alleged indictment was sent to a different court (Ex. 3). This was error. This error resulted in a failure to charge all the elements of aggravated murder with prior calculation and design in the "aggravated murder indictment." State v. Colon, 118 Ohio St. 3d 26; 2008-Ohio-1624; 885 N.E. 2d 917; 2008 Ohio LEXIS 874. This error also resulted in a dismissal, *nolle prosequi*, of the aggravated robbery charges prior to entry of a "Final Appealable Order" in the aggravated murder proceedings. Such dismissal, *nolle prosequi*, amounts to an acquittal of the elements necessary to convict of

aggravated murder with prior calculation and design. IN RE GOLIB (1955), 99 Ohio App. 88, 130 N.E.2d 855. Such acquittal cannot be reviewed without violating the Double Jeopardy Clause. The United States Supreme Court has held that a judicial acquittal premised upon a “misconstruction” of a criminal statute is an acquittal on the merits that bars retrial. There is no meaningful constitutional distinction between a trial court’s “misconstruction” of a statute and its erroneous addition of a statutory element, and a midtrial acquittal in those circumstances is an acquittal for double jeopardy purposes as well, EVANS v. MICHIGAN, 133 S.Ct. 1069 (2013). This Court has previously held that a judicial acquittal premised upon a “misconstruction” of a criminal statute is an “acquittal on the merits . . . [that] bars retrial.” Arizona v. Rumsey, 467 U. S. 203, 211, 104 S. Ct. 2305, 81 L. Ed. 2D 164 (1984). An acquittal is unreviewable whether a judge directs a jury to return a verdict of acquittal, *e.g.*, Fong Foo, 369 U. S., at 143, 82 S. Ct. 671, 7 L. Ed. 2d 629, or forgoes that formality by entering a judgment of acquittal herself. See Smith v. Massachusetts, 543 U. S. 462, 467-468, 125 S. Ct. 1129, 160 L. Ed. 2d 914 (2005) (collecting cases). And an acquittal precludes retrial even if it is premised upon an erroneous decision to exclude evidence, Sanabria v. United States, 437 U. S. 54, 68-69, 78, 98 S. Ct. 2170, 57 L. Ed. 2d 43 (1978); a mistaken understanding of what evidence would suffice to sustain a conviction, Smith, 543 U. S., at 473, 125 S. Ct. 1129, 160 L. Ed. 2d 914; or a “misconstruction of the statute” defining the requirements to convict, Rumsey, 467 U. S., at 203, 211, 104 S. Ct. 2305, 81 L. Ed. 2d 164; cf. Smalis v. Pennsylvania, 476 U. S. 140, 144-145, n. 7, 106 S.

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Ct. 1745, 90 L. Ed. 2d 116 (1986). In all these circumstances, "the fact that the acquittal may result from erroneous evidentiary rulings or erroneous interpretations of governing legal principles affects the accuracy of that determination, but it does not alter its essential character." United States v. Scott, 437 U. S. 82, 98, 98 S. Ct. 2187, 57 L. Ed. 2d 65 (1978) (internal quotation marks and citation omitted). But if the prosecution has not yet obtained a conviction, further proceedings to secure one are impermissible: "[S]ubjecting the defendant to postacquittal factfinding proceedings going to guilt or innocence violates the Double Jeopardy Clause." Smalis v. Pennsylvania, 476 U.S. 140, 145, 90 L. Ed. 2d 116, 106 S. Ct. 1745 (1986). *Smalis* squarely held, not that further factfinding proceedings were barred because there had been an appeal, but that appeal was barred because further factfinding proceedings before the trial judge (the factfinder who had pronounced the acquittal) were impermissible. 476 U.S., at 145, 90 L. Ed. 2d 116, 106 S. Ct. 1745.

4. The error of dividing the indictments into two was structural: it also resulted in other errors; a lack of notice; a failure to present sufficient evidence to sustain a conviction of aggravated murder with prior calculation and design; violation of Petitioner's right to confront and cross-examine any alleged victim of robbery, alleged witnesses, and compulsory process; and, the right to have a jury trial, I.e. properly instructed on reasonable doubt as to all the elements of the offense attempted to be charged.

5. This case centers upon the fundamental Due Process and jury trial guarantees of

the Sixth and Fourteenth Amendments that a person cannot be convicted where he has not been given notice.

6.. It is statutorily mandated that a finding of the offense of aggravated robbery, beyond a reasonable doubt, is a necessary predicate element of proving the Petitioner possessed the requisite *mens rea* of purpose (intent) and prior calculation and design. Since the Petitioner was not charged in the murder indictment with committing aggravated robbery, the indictment was insufficient to charge an offense.

7. Prior calculation and design is the element which distinguishes between guilt and acquittal of aggravated murder.

8. The dividing of the charges error also constituted a lack of notice. A kind of fraud. The Petitioner did not have notice he had to defend against aggravated robbery in his aggravated murder proceedings because that charge was sent to a different court and scheduled to take place *after* the murder proceedings (Ex. 4).

9. In the murder proceedings, no victim of robbery was presented, no witnesses testified, no items were alleged to have been taken, no date, time, or place was mentioned, and no instruction on the elements of aggravated robbery were mentioned to the jury. Nor was the Petitioner provided the requested Bill of Particulars. Then, the aggravated robbery charges were dismissed *nolle prosequi*. (Ex.5) which amounts to an acquittal; consequently, the basis for conviction of prior calculation and design is non-existent.

10. The Petitioner was denied counsel and counsel of choice. Appointed counsel's performance was deficient for failing to move for a Rule 29 Motion for Acquittal based on the Principles outlined in this motion, as the elements necessary for the jury to find guilt were not charged in the "indictment." The prejudice is that the Petitioner is wrongfully imprisoned based upon the state's structural error(s), failure to charge (all the elements of) an offense, sending the elements of the purported charge to a separate court, divesting the Vettel court of jurisdiction, failure to prove those missing elements beyond a reasonable doubt, and failure to instruct the jury on reasonable doubt as to those elements of aggravated robbery. DILLINGHAM v. STATE (1855), 5 Ohio St. 280, 285; STATE v. HARRIS (1932), 125 Ohio St. 257, 264. And appellate counsel were ineffective for not recognizing errors under APPRENDI v. NEW JERSEY, 530 U.S. 466 and SULLIVAN v. LOUISIANA, 508 U.S. 279 and litigating the fact that the court lacked jurisdiction to try or convict the Petitioner. MARTINEZ v. RYAN.

11. Since the judgment of conviction was void, no appellate court has had, nor could acquire, jurisdiction. A court of appeals has no jurisdiction over orders that are not final and appealable, Section 3(B)(2), Article IV, Ohio Constitution.

This court must remand to Vettel's court to dismiss the charges due to lack of jurisdiction. Or order the state to unconditionally release the prisoner, as a retrial would be barred under principles of double jeopardy since a *nolle prosequi* acts as an acquittal of aggravated robberies, and the state failed to meet its burden when it was obligated to do so the first time.

THE STATE CREATED STRUCTURAL ERROR BY SEPARATING THE “INDICTMENT” OF AGGRAVATED ROBBERY FROM ITS ALLEGATIONS OF AGGRAVATED MURDER AND SENDING THEM TO TWO DIFFERENT COURTS, RESULTING IN A LACK OF JURISDICTION AND VOID JUDGMENT.

12. The Ashtabula County Court of Common Pleas (of Ronald W. Vettel) never acquired jurisdiction over the alleged capital offense because the “indictment” fails to charge the all the elements of aggravated murder by omitting the elements of aggravated robbery; and because that aggravated robbery “indictment” was sent to the court of Alfred Mackey. And dismissed *nolle prosequi*. (Ex.5)

13. Therefore, no trial was had, any judgment entered is void, and no appellate court could assume jurisdiction. The proceedings were void *ab initio*. This action is commenced to prohibit any further unauthorized exercise of jurisdiction and to correct previous unauthorized exercise of it.

14. According to the Ohio Constitution Article 1, Section 10, no person shall be held to answer for a capital, or otherwise infamous, crime, unless on presentment or indictment of a grand jury...in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation

against him. The Sixth Amendment to the United States Constitution requires that an accused "be informed of the nature and cause of the accusation." U.S. Const. amend.

VI.

15. The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defence, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place, and circumstances. U.S. v. CRUIKSHANK, 92 U.S. 542, 558, 23 L. Ed. 588 (1875).

16. Subject-matter jurisdiction "connotes the power to hear and decide a case upon its merits." MORISSON v. STEINER (1972), 32 Ohio St.2d 86, 87, 290 N.E.2d 841. Subject-matter jurisdiction defines the competency of a court to render a valid judgment in a particular action. See McCormac, Venue -- "New" Concepts in Ohio, 39 Cincinnati L. Rev. 474; Field and Kaplan, Civil Procedure (2d Ed.) 737. The "Ohio Supreme" court has held that, "subject-matter jurisdiction is conferred on courts, rather than on judges." BARNES v. UNIV. HOSPS. OF CLEVELAND, 119 Ohio St.3d 173, 2008 Ohio 3344, 893 N.E.2d 142 Id. at ¶29.

17. Court records show that "Judge Ronald W. Vettel" sent Case No. 97 CR 220

(aggravated robbery) to the court of Alfred W. Mackey; and sent Case No. 97 CR 221, "aggravated murder" to the court of Ronald W. Vettel, (Ex.3, Dec. 4, 1997 judgment entries by Ronald Vettel). Vettel deprived his court of jurisdiction over the aggravated robbery charges mentioned in specification one and, therefore, of material elements of aggravated murder with prior calculation and design.

18. The state's theory was (1) aggravated robbery, (2) warrant, (3) killing for the purpose of escaping punishment for it. The state legislature has mandated that for the purposes of charging and convicting a person of aggravated murder the term "committed by the defendant" means the state bears the burden of proving beyond a reasonable doubt that the defendant, in fact, committed some "other offense." Without proving any aggravated robbery actually occurred, there cannot be proof, beyond a reasonable doubt, that there was a killing for the purpose of escaping aggravated robbery. That would be absurd. This is not one of those cases that are exceptions: a witness to the underlying crime being killed to prevent their reporting or testifying.

19. The state and court apparently proceeded upon the erroneous premise that it could find the Petitioner guilty of aggravated murder with prior calculation and design (killing to escape some other offense) if it presented evidence a warrant existed for that other offense. Yet, the court repeatedly told the jury a warrant was not evidence.

20. An offense is not an "offense" "committed by the defendant" unless it has been found to have been committed by the defendant beyond a reasonable doubt. See Due process of law, Black's Law Dictionary, Sixth Edition. It cannot be found if it is not

charged. PRESNELL v. GEORGIA, 439 U.S. 14; MULLANEY v. WILBUR, 421 U.S. 684; IN RE WINSHIP, 397 U.S. 358, 364; JACKSON v. VIRGINIA, 443 U.S. 307. That was not the legislature's intent, nor compatible with Due Process and jury trial guarantees. See void judgment "affirming" void judgment in State v. Jones, 91 Ohio St. 3d at 347-348.

Appellant's interpretation of R.C. 2929.04(A)(3) is consistent with both the statute's plain language and established constitutional law. R.C. 2929.04(A) plainly states that all of the aggravating circumstances listed therein, including that contained in subsection (A)(3), must be proven beyond a reasonable doubt. Indeed, conviction under any lesser standard of proof would be inconsistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. It is axiomatic that the state must prove each and every element of an offense beyond a reasonable [*348] doubt. See Jackson v. Virginia (1979), 443 U.S. 307, 99 S. Ct. 2781, 61 L. Ed. 2d 560; In re Winship (1970), 397 U.S. 358, 90 S. Ct. 1068, 25 L. Ed. 2d 368. We find that the defendant's commission of the prior offense constitutes an essential element of the R.C. 2929.04(A)(3) specification. Had the General Assembly intended that the death penalty be applied to those who simply attempt to avoid apprehension on a *warrant*, it would not have included the words "committed by the offender."

(Emphasis added.) The judgment is void. The court "affirmed" a verdict that did not exist. See "Sentencing Opinion" (Ex. 7) at pgs 2, 4 stating that the jury/court found a *warrant*, not actual commission of any elements of aggravated robbery.

21. The Petitioner was purportedly charged with murder "committed for the purpose of escaping ... another offense committed by the defendant, to wit; aggravated robbery..." But, no other offense was within the court's jurisdiction. The "other offense" was dismissed prior to sentence.

22. By statute, it was mandatory that a jury find the Petitioner committed an aggravated robbery in order to find that the Petitioner committed a murder for the

purpose of escaping . . . aggravated robbery. It could not, and did not, do that without an instruction on the elements of aggravated robbery. SULLIVAN v. LOUISIANA, 508 U.S. 279.

23. If the court had no jurisdiction of any "other offense," because it (aggravated robbery) was in the jurisdiction of another court on a separate "indictment", the murder proceedings were void for failing to include the elements of aggravated robbery in the aggravated murder indictment.

24. "There can be no trial, conviction, or punishment for a crime without a formal and sufficient accusation. In the absence thereof the court acquires no jurisdiction whatever, and if it assumes jurisdiction, a trial and conviction are a nullity. * * *," STEWART v. STATE (1932), 41 Ohio App. 351, at 353-354.

25. In this case, the state's choice to divide the charges created a structural defect in the trial mechanism which deprived the court of subject-matter jurisdiction. "The issue of subject-matter jurisdiction cannot be waived or forfeited and can be raised at any time." STATE v. BESS, 5th Dist. No. C-110700, 2012 Ohio 3333.

26. The state can't simply tell a jury "trust us" the defendant committed another offense which you are to use to conclude he committed this offense, which makes this offense eligible for the maximum penalty.

27. Failure to include any of those elements in the indictment, trial proceedings, and instructions rendered the proceedings a nullity, fatal to the attempted charge and conviction.

28. Vettel deprived his court of subject-matter jurisdiction over the aggravated robbery charges mentioned in specification one by sending them to the court of Mackey and, therefore, of the elements the state had to prove beyond a reasonable doubt to support a conviction on its theory of aggravated murder with prior calculation and design.

29. Since aggravated robbery was before Mackey's court, not Vettel's, Vettel's court did not have jurisdiction to use those allegations as a factor in "convicting" the Petitioner of aggravated murder with prior calculation and design. Aggravated robbery was the *sine qua non* of that "charge."

30. Trial for the aggravated robberies were set to take place, in "Judge Mackey's" court *after* the aggravated murder proceedings, (Ex. 4, Dec. 8, 1997 entry by Assignment Commissioner, David F. Silva). In fact, the "indictments" were dismissed, *nolle prosequi*, by the court of Alfred Mackey, June 9th 1998, (Ex.5), two days before the "Sentencing Opinion of the Court," by "Judge Vettel" stamped as "Sentencing Opinion," June 11th (Ex.6). If nothing else, the court of Vettel lacked jurisdiction to sentence the Petitioner, June 11th, after the nolle was entered June 9th.

31. It is axiomatic that a conviction upon a charge not made or upon a charge not tried constitutes a denial of due process. COLE v. ARKANSAS, 333 U.S. 196, 201;
PRESNELL v. GEORGIA, 439 U.S. 14.

32. In the absence of subject-matter jurisdiction, a court lacks the authority to do

anything but announce its lack of jurisdiction and dismiss. STEEL Co. v. CITIZENS FOR A BETTER ENV'T, 523 U.S. 83, at 94, 118 S. Ct. 1003, 140 L. Ed. 2d 210.

"Without jurisdiction the court cannot proceed at all in any cause...the only function remaining to the court is that of announcing the fact and dismissing the cause."

§3. The jury was never instructed on elements of aggravated robbery. (Ex. 6; Tr. 3102-3122, Specifically, 3105, 3108, 3109). An appellate court may not add the elements not submitted to, nor found by the jury; the wrong entity would find the appellant guilty, affirming a hypothetical verdict that was not, in fact, rendered.

SULLIVAN v. LOUISIANA, 508 U.S. 279. This kind of error is not amenable to harmless error analysis.

§4. If one of the vital and material elements identifying and characterizing the crime has been omitted from the indictment such defective indictment is insufficient to charge an offense, and cannot be cured by the court. STATE v. HARRIS (1932), 125 Ohio St. 257, 264, 181 N.E. 104. Without a sufficient or formal accusation, the court had no jurisdiction, and if it had assumed jurisdiction, the trial and conviction are a nullity.

§5. A *nolle prosequi* completely terminates a prosecution. Where a *nolle* has been entered after a jury is sworn to try the causes it amounts to an acquittal. DOUGLAS v. ALLEN, 56 Ohio St. 156 (1897). EVANS v. MICHIGAN, 133 S.Ct. 1069 (2013).

§6. The court of Ronald W. Vettel did not acquire subject-matter jurisdiction because: (1) to charge all of the elements of aggravated murder with prior calculation and design in this case required sufficient and formal charge of aggravated robbery to be charged in

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that court and proven beyond a reasonable doubt (2) the "indictment" for aggravated robbery was separated from "indictment" for aggravated murder (3) the elements of aggravated robbery were, thus, not charged as elements of aggravated murder (4) the court of Alfred W. Mackey had jurisdiction of aggravated robbery charges (5) the court of Alfred W. Mackey dismissed those charges, *nolle prosequi*, two days prior to "Sentencing Opinion" of Ronald W. Vettel. Thus, the court of Vettel did not have jurisdiction. Judgment of conviction and sentence are void, respectively.

§7. A judgment of conviction based on an indictment which does not charge an offense is void for lack of jurisdiction of the subject matter. STATE v. WOZNIAK, 172

Ohio St. 517.

§8. There is no "final appealable order" in this case because the court never acquired jurisdiction and based its judgment of conviction and sentence upon serious misunderstanding or misconstruction of what is required to sustain a conviction under the aggravated murder statutes under the United States Constitution, Ohio Constitution, and Ohio death penalty statutes. Such judgments were based upon elements that were not before the court, and were not proven beyond a reasonable doubt; elements that were invalid, legally non-existent. Judgment is void.

§9. A prosecution ended by a *nolle prosequi* has the same effect as one ended by an acquittal. IN RE GOLIB (1955), 99 Ohio App. 88, 130 N.E.2d 855; GREEN v. United States 355 U.S. 184 (1957), Since *nolle prosequi* charge did not exist, as such, therefore wasn't appeal[able] or revers[able]; BURKS v. U.S. 437 U.S. 1 (1978);

WILSON V. MEYER, 665 F.2d 118; *Nolle prosequi* literally means “to be unwilling to prosecute,” AL HAKIM v. ROBERTS, 2009 U.S. Dist. LEXIS 59400; STATE v. BOWERS, 1977 Ohio App. LEXIS 8426; STATE v. EUBANK, 2012 Ohio 3512; MOUNT v. STATE, 14 OHIO 295 (1846), A *nolle prosequi* cannot be entered by the state without operating as an acquittal to the accused; STATE v. EBERHARDT (1978) 56 Ohio App. 2D 193, *Nolle prosequi* is a withdrawal of indictment; CITY OF COLUMBUS v. STIRES; BERMAN v. U.S. 302 U.S. 211, 212; HART v. BIRKETT, 2012 U.S. Dist. LEXIS 184174. Any action taken subsequent to the filing of the *nolle prosequi* is a nullity; STATE EX REL. WILLACY v. SMITH (1997), 78 Ohio St. 3d 47, 51; STATE EX REL. LITTY v. LESKOVYANSKY (1996), 77 Ohio St. 3d 97, 98; STATE EX REL. HANLEY v. ROBERTS (1985), 17 Ohio St. 3d 1, 4, A court of record speaks only through its journal and not by oral pronouncement or mere written minute or memorandum; STATE EX REL. ROGERS v. McGEE BROWN, 80 Ohio St. 3d 408, 410; STATE EX REL. WHITE v. JUNKIN, 80 Ohio St. 3d 335, 336; SANDER v. OHIO, 365 F. SUPP. 1251; MALONEY v. MAXWELL (1962), 176 Ohio St. 84, 87; STATE v. SUTTON (1979), 64 Ohio App. 2D 105, Once an indictment is *nolled*, the court loses jurisdiction; STATE v. BROWN (1981), 2 Ohio App. 3d 400; STATE EX REL. FLYNT v. DINKELEACKER, 156 Ohio App. 3d 595; STATE EX REL. ENYART v. O'NEILL, 71 Ohio St. 3d 655, 656; STATE EX REL. FOGLE v. STEINER, 74 Ohio St. 3d 158, 161; DOYLE v. STATE, 17 Ohio 222; STATE v. MANNS, 2012 OHIO 234; STATE v. BRYSKI, 2012 OHIO 3518;

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STATE EX REL. DAVIS v. CUYAHOGA CTY. COURT OF COMMON PLEAS,

127 Ohio St. 3d 29; STATE v. BAKER, 119 Ohio St. 3d 197, A court of appeals has no jurisdiction over orders that are not final and appealable. Section 3(B)(2), Article IV, Ohio Constitution.

¶0. The Petitioner cannot, then, be re-prosecuted under a new indictment which includes the aggravated robbery. KLOPFER v. NORTH CAROLINA (1967), 386 U.S. 213, 87 S. Ct. 988, 18 L. Ed. 2D 1; EVANS v. MICHIGAN, 133 S.Ct. 1069 (2013).

No appellate court has had, nor could acquire, jurisdiction. This court must remand to the "trial court" to dismiss the charges due to its lack of subject-matter jurisdiction. Or order the case dismissed and the Petitioner released.

¶1. The state's request for dismissal, *nolle prosequi*, is an admission that it has not prosecuted nor convicted the Petitioner for aggravated robbery. (Ex.5) The state is bound by such admission. GERRICK v. GORSUCH, 172 Ohio St. 417. The court's judgment of dismissal is the law of the case. Dismissals cannot be appealed without violating double jeopardy. Moreover, see "Appellee's Merit Brief," in case no. 98-1483, Pgs. 55, 57 where the state asserts a warrant is all that is needed to convict, disclaimed any need to prove the Petitioner committed any robbery:

Pg. 55, "This warrant served as the basis for appellant's conviction on the R.C. 2929.04 (A)(3) specification, which indicated that Glover's murder was committed for the purpose of escaping detection, apprehension, trial or punishment for another offense committed by appellant, namely, the aggravated robbery charge upon which the warrant was issued."

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Pg. 57, "Clearly, Lawson supports the state's position that R.C. 2929.04 (A)(3) does not require the state to "prove" the commission of the crime from which a capital defendant sought to escape accountability."

Pg. 57, "This warrant was the only "proof" needed to support appellant's conviction for aggravated murder "committed for the purpose of escaping detection, apprehension, trial, or punishment" for the aggravated (sic) burglary charge."

42. It is axiomatic that a court's jurisdiction is limited to actions before it. "An action is an ordinary proceeding in a court of justice, involving process, pleadings, and ending in a judgment or decree, by which a party prosecutes another for the redress of a legal wrong, enforcement of a legal right, or the punishment of a public offense." R.C. 2307.01. Since no aggravated robbery charges were pending before Vettel's court, that court had no jurisdiction to convict or sentence Petitioner for any elements of aggravated robbery. State ex rel. Jefferson County Children Services Bd. v. Hal..., 28 Ohio St.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this habeas corpus petition was sent by regular mail to Nick Iarocci, the Ashtabula County Prosecutor on February 20, 2014.

MALIK ALLAH-U-AKBAR

A handwritten signature in black ink, appearing to be "MALIK ALLAH-U-AKBAR", written in a stylized, somewhat chaotic manner with many overlapping lines.A small, handwritten mark in black ink, resembling a stylized number '7' or '17'.

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CASE NO. 97-CR-DIRECT

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1997 GRAND JURY
SEPTEMBER SESSION, NOVEMBER RECALL, SPECIAL SESSION

COMMON PLEAS COURT
Ashtabula County, Ohio

THE STATE OF OHIO

vs.

ODRAYE G. JONES

INDICTMENT FOR:

AGGRAVATED ROBBERY (TWO COUNTS) (F-1) (w/spec.)

NOV 26 9 12 AM '97
CAROL A. MEAD
COMMON PLEAS COURT
ASHTABULA CNTY. OH
FILED

A TRUE BILL

Susan E. Golen
SUSAN E. GOLEN
GRAND JURY FOREMAN

RECEIVED
97 NOV 26 AM 10 47
W. J. JOHNSON, SHERIFF
ASHTABULA COUNTY
ASHTABULA, OHIO

THOMAS L. SARTINI
PROSECUTING ATTORNEY

INDICTMENT - TWO COUNTS

STATE OF OHIO

COUNTY OF ASHTABULA

)
) SS.
)

CASE NO.- DIRECT

STATE OF OHIO VS. ODRAVE G. JONES

Of the September Term, November Recall, Special Session, November 25, 1997:

THE JURORS OF THE ASHTABULA COUNTY GRAND JURY of the State of Ohio on their oaths, in the name and by the authority of the State of Ohio, do find and present that:

COUNT ONE

On or about the 18th day of October, 1997, in the City of Ashtabula, Ashtabula County, Ohio, one ODRAVE G. JONES did, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense did have a deadly weapon, as defined in section 2923.11 of the Revised Code, on or about his person or under his control and did display the weapon, brandish it, indicate that he possessed it, or used said weapon.

Specification 1 of Count One: The Grand Jury further finds and specifies that ODRAVE G. JONES had a firearm on or about his person or under his control while committing this offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in violation of Section 2941.145 of the Ohio Revised Code.

This act, to-wit: Aggravated Robbery, with a three (3) year firearm specification, constitutes a Felony of the First degree, contrary to and in violation of the Ohio Revised Code, Title 29, §2911.01, and against the peace and dignity of the State of Ohio.

COUNT TWO

On or about the 8th day of November, 1997, in the City of Ashtabula, Ashtabula County, Ohio, one ODRAVE G. JONES did, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing

immediately after the attempt or offense did have a deadly weapon, as defined in section 2923.11 of the Revised Code, on or about his person or under his control and did display the weapon, brandish it, indicate that he possessed it, or used said weapon.

Specification 1 of Count Two: The Grand Jury further finds and specifies that **ODRAYE G. JONES** had a firearm on or about his person or under his control while committing this offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in violation of Section 2941.145 of the Ohio Revised Code.

This act, to-wit: Aggravated Robbery, with a three (3) year firearm specification, constitutes a Felony of the First degree, contrary to and in violation of the Ohio Revised Code, Title 29, §2911.01, and against the peace and dignity of the State of Ohio.

RESPECTFULLY SUBMITTED,



THOMAS L. SARTINI, 0001937
PROSECUTING ATTORNEY

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CASE NO. 97-CR-DIRECT

EX-#1

1997 GRAND JURY
SEPTEMBER SESSION, NOVEMBER RECALL, SPECIAL SESSION

COMMON PLEAS COURT
Ashtabula County, Ohio

THE STATE OF OHIO

vs.

ODRAYE G. JONES

INDICTMENT FOR:

AGGRAVATED MURDER w/specs

Nov 26 9 13 AM '97
CAROL A. MITAL
COMMON PLEAS COURT
ASHTABULA COUNTY
FILED

P-2330
H/W W-1000

A TRUE BILL

Susan E. Golen

SUSAN E. GOLEN
GRAND JURY FOREMAN

THOMAS L. SARTINI
PROSECUTING ATTORNEY

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INDICTMENT - ONE COUNT

STATE OF OHIO)
) SS.
COUNTY OF ASHTABULA)

CASE NO.- DIRECT

STATE OF OHIO VS. ODRAYE G. JONES

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THE JURORS OF THE ASHTABULA COUNTY GRAND JURY of the State of Ohio on their oaths, in the name and by the authority of the State of Ohio, do find and present that:

COUNT ONE

On or about the 17th day of November, 1997 in the City of Ashtabula, Ashtabula County, Ohio, one ODRAYE G. JONES did, purposely and with prior calculation and design, cause the death of another, to wit: William D. Glover, Jr., a peace officer, in violation of Section 2903.01 (A) of the Ohio Revised Code and against the peace and dignity of the State of Ohio.

Specification 1 of Count One: The Grand Jury further finds and specifies that the offense was committed for the purpose of escaping detection, apprehension, trial, or punishment of another offense committed by the defendant, to wit; aggravated robbery, an aggravating circumstance as specified in Section 2929.04 (A) (3) of the Ohio Revised Code.

Specification 2 of Count One: The Grand Jury further finds and specifies that the victim of the offense, William D. Glover, Jr., was a peace officer, as defined in Section 2935.01 of the Ohio Revised Code whom the defendant had reasonable cause to know or knew to be such and at the time of the offense the victim, William D. Glover Jr. , was engaged in his duties as a peace officer, an aggravating circumstance as specified in Section 2929.04 (A) (6) of the Ohio Revised Code.

Specification 3 of Count One: The Grand Jury further finds and specifies that ODRAVE G. JONES had reasonable cause to know or knew William D. Glover, Jr., was a peace officer as defined in Section 2935.01 of the Ohio Revised Code, and that it was Odraye G. Jones' specific purpose to kill a peace officer at the time of the offense, an aggravating circumstance as specified in Section 2929.04 (A) (6) of the Ohio Revised Code.

Specification 4 of Count One: The Grand Jury further finds and specifies that ODRAVE G. JONES had a firearm on or about his person or under his control while committing this offense and displayed the firearm, brandished the firearm, indicated that he possessed the firearm, or used it to facilitate the offense in violation of Section 2941.145 of the Ohio Revised Code.

This offense constitutes the crime of Aggravated Murder with specifications, an offense for which the Death Penalty may be imposed, with a Three Year Firearm Specification, in such case made and provided and against the dignity of the State of Ohio.

RESPECTFULLY SUBMITTED,


THOMAS L. SARTINI, 0001937
PROSECUTING ATTORNEY

5/3

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

Dec 4 2 45 PM '97
CAROL A. HEAD
COMMON PLEAS COURT
ASHTABULA CNTY. OH
FILED

THE STATE OF OHIO,

Plaintiff,

-vs-

ODRAYE G. JONES,

Defendant.

CASE NO. 97-CR-220

JUDGMENT ENTRY

This 3rd day of December, 1997, came Prosecuting Attorney Thomas L. Sartini and Assistant Prosecuting Attorney Ariana Tarighati; and also came the defendant, Odraye G. Jones, under warrant heretofore issued on an indictment charging under each of Counts One and Two the offenses of Aggravated Robbery, with specifications, in violation of R.C. 2911.01, the same being felonies of the first degree.

Whereupon, the Court explained to the defendant the nature of the charges and provided an explanation of his rights pursuant to Criminal Rule 10.

The Court determined that the defendant, Odraye G. Jones, was an indigent person and appointed Marc B. Minor and Andrew J. Love of the State Public Defender's Office as counsel for the defendant for arraignment purposes only. With said counsel present in court, the defendant was thereupon arraigned. The Court further appointed David L. Doughten as trial counsel of record for the defendant in this case.

A copy of the indictment having been furnished the

Case No. 97-CR-220
Ohio v. Jones

December 4, 1997

defendant more than one day prior hereto, and counsel having had the opportunity to examine it, the defendant thereupon waived the reading of the indictment.

The defendant then being inquired of by the Court whether he is guilty or not guilty of the offenses as charged for plea says to each count that he is not guilty.

The date for trial will be set by the Assignment Commissioner of this Court within the time limits of R.C. 2945.71(C), and written notice thereof furnished to counsel.

Upon inquiry of the Court, the defendant indicated that he has been incarcerated on this case since November 18th, 1997.

This case is assigned to Judge Alfred W. Mackey.

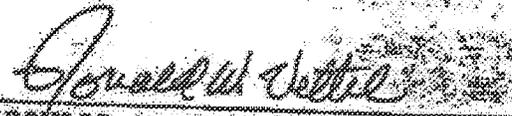
Bond as previously set in the sum of Fifty Thousand Dollars (\$50,000.00) cash or surety is continued. The defendant is remanded to the custody of the Ashtabula County Sheriff's Department in lieu of posting said bond.

Pursuant to Civil Rule 58(B), the Clerk of this Court is ordered to serve copies of this Judgment Entry upon Prosecuting Attorney Thomas L. Sartini; defense counsel for the arraignment, Marc B. Minor and Andrew J. Love of the State Public Defender's Office, 8 East Long Street, 11th Floor, Columbus, Ohio 43215; to trial counsel, David L. Doughten, 4403 St. Clair Avenue, Cleveland, Ohio 44103-1125; Honorable Alfred W. Mackey; the

Case No. 97-CR-220
Ohio v. Jones

December 4, 1997

Ashtabula County Sheriff's Department; and the Assignment
Commissioner.


RONALD W. VETTEL, JUDGE

December 4, 1997
RWV/tlt

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

DEC 4 2 41 PM '97
CAROL A. WEAD
COMMON PLEAS COURT
ASHTABULA CNTY, OH.
FILED

THE STATE OF OHIO,)
)
Plaintiff,)
)
-vs-)
)
ODRAYE G. JONES,)
)
Defendant.)

CASE NO. 97-CR-221

JUDGMENT ENTRY

This 3rd day of December, 1997, came Prosecuting Attorney Thomas L. Sartini and Assistant Prosecuting Attorney Ariana Tarighati; and also came the defendant, Odraye G. Jones, under warrant heretofore issued on an indictment charging Aggravated Murder, with specifications of aggravating circumstances and a specification of firearm use, in violation of R.C. 2903.01(A).

Whereupon, the Court explained to the defendant the nature of the charge and provided an explanation of his rights pursuant to Criminal Rule 10.

The Court determined that the defendant, Odraye G. Jones, was an indigent person and appointed Marc B. Minor and Andrew J. Love of the State Public Defender's Office as counsel for the defendant for arraignment purposes only. With said counsel present in court, the defendant was thereupon arraigned. The Court further appointed David L. Doughten as lead counsel and Robert L. Tobik as co-counsel to serve as trial counsel of record for the defendant in this case. Both of said counsel are

Case No. 97-CR-221
Ohio v. Jones

-2-

December 4, 1997

certified by the Ohio Supreme Court pursuant to Rule 20 of the Rules of Superintendence for the Courts of Ohio.

A copy of the indictment having been furnished the defendant more than one day prior hereto, and counsel having had the opportunity to examine it, the defendant thereupon waived the reading of the indictment.

The defendant then being inquired of by the Court whether he is guilty or not guilty of the offense as charged and the specifications for plea says to the charge and each specification that he is not guilty.

The date for trial will be set by the Assignment Commissioner of this Court within the time limits of R.C. 2945.71(C), and written notice thereof furnished to counsel.

Upon inquiry of the Court, the defendant indicated that he has been incarcerated since November 17th, 1997.

This case is assigned to Judge Ronald W. Vettel.

The defendant's request for bond is hereby denied for the reason that the Court finds that this is a capital case and the proof is evident or the presumption great. The defendant is ordered to be held without bond.

Pursuant to Civil Rule 58(B), the Clerk of this Court is ordered to serve copies of this Judgment Entry upon Prosecuting Attorney Thomas L. Sartini; defense counsel for the arraignment, Marc B. Minor and Andrew J. Love of the State Public Defender's Office, 8 East Long Street, 11th Floor, Columbus, Ohio 43215;

001465

Case No. 97-CR-221
Ohio v. Jones

-3-

December 4, 1997

to trial counsel, David L. Doughten, 4403 St. Clair Avenue,
Cleveland, Ohio 44103-1125, and Robert L. Tobik, 4403 St. Clair
Avenue, Cleveland, Ohio 44103; Honorable Ronald W. Vettel; the
Ashtabula County Sheriff's Department; and the Assignment
Commissioner.

Ronald W. Vettel
RONALD W. VETTEL, JUDGE

December 4, 1997
RWV/tlt

001466

COURT OF COMMON PLEAS
ASHTABULA COUNTY
25 WEST JEFFERSON STREET
JEFFERSON, OHIO 44047-1092

EX-#1

Judge Alfred W. Mackey
Judge Gary L. Yost
Judge Ronald W. Vettel

Date: December 8, 1997

TO: SANDY CLAYPOOL
SHERIFF'S DEPT.

Case No. 97 CR 00220

STATE OF OHIO

VS

ODRAYE G JONES

will be on for JURY TRIAL on Tuesday, February 10, 1998, at 09:00 AM
before Judge ALFRED W. MACKEY.

By: David F. Silva
Assignment Commissioner
PH: 440-576-3686 or 576-3687

cc: FILE COPY
DAVID L. DOUGHTEN
PROSECUTING ATTORNEY
GLEN OSBURN
JOHN BERNARDO

001458

COURT OF COMMON PLEAS
ASHTABULA COUNTY
25 WEST JEFFERSON STREET
JEFFERSON, OHIO 44047-1092

Judge Alfred W. Mackey
Judge Gary L. Yost
Judge Ronald W. Vettel

Date: December 8, 1997

TO: SANDY CLAYPOOL
SHERIFF'S DEPT.

Case No. 97 CR 00221

STATE OF OHIO

VS

ODRAYE G JONES

will be on for JURY TRIAL on Tuesday, February 03, 1998, at 09:00 AM
before Judge RONALD W. VETTEL.

By: David F. Silva
Assignment Commissioner
PH: 440-576-3686 or 576-3687

cc: FILE COPY
DAVID L. DOUGHTEN
ROBERT L. TOBIK
PROSECUTING ATTORNEY
GLEN OSBURN
JOHN BERNARDO

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

EX-75

STATE OF OHIO,

CASE NO. 97-CR-220

Plaintiff,

ATT. RECEIVED

JUDGE ALFRED W. MACKEY

vs.

ODRAYE JONES

MOTION TO DISMISS

Defendant.

JUN 9 4 21 PM '99
COURT CLERK
ASHTABULA COUNTY, OHIO

This day, came the Ashtabula County Prosecuting Attorney, THOMAS L. SARTINI, by and through Ariana E. Tarighati, Chief Assistant Prosecutor, on behalf of the State of Ohio, and with leave of Court and for good cause shown, enters a nolle prosequi, without prejudice, in the above captioned case for the reason that the defendant was convicted of Aggravated Murder and sentenced to the death penalty in Case Number 97-CR-221. The prosecutor's office has contacted the Ashtabula City Police Department and the victim in the above captioned matter and they concur in the resolution of this case in this manner. Given that the defendant has received a sentence of death, the interests of justice would not be served by further prosecution herein.

Wherefore, the State of Ohio respectfully requests this Honorable Court to dismiss the above captioned case without prejudice.

Respectfully submitted,

THOMAS L. SARTINI 0001937
PROSECUTING ATTORNEY

By:

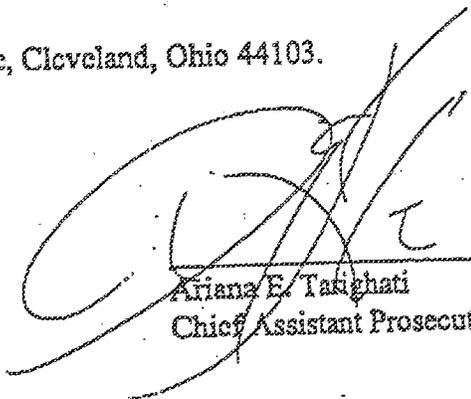
Ariana E. Tarighati 0039372
Chief Assistant Prosecutor

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MF 1386

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Motion to Dismiss has been sent by regular U.S. Mail this 10th day of June, 1998, to David Doughten and Robert Tobik, attorneys for Defendant, at 4403 St. Clair Avenue, Cleveland, Ohio 44103.



Ariana E. Tasighati
Chief Assistant Prosecutor

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

JUN 9 4 33 PM '98

STATE OF OHIO,

Plaintiff,

vs.

ODRAYE JONES,

Defendant.

CASE NO. 97-CR-220
COMM. PLEAS COURT
ASHTABULA COUNTY, OH.
FILED

CASE NO. 97-CR-220

JUDGE ALFRED W. MACKEY

JUDGMENT ENTRY

Upon application and for good cause shown, the Court finds Plaintiff's Motion To
Dismiss without prejudice is well taken.

IT IS SO ORDERED.

Alfred W. Mackey
JUDGE ALFRED W. MACKEY
CIV-I-7

Ex #6

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A "firearm" means any deadly weapon capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant. Firearm includes an unloaded firearm and any firearm which is inoperable but which can readily be rendered operable.

"On or about his person or under his control" means on or so near to his person as to be conveniently accessible and within his immediate physical reach.

To facilitate the offense, means to make easy or easier to carry out.

If your verdict is guilty of Aggravated Murder, you will then determine beyond a reasonable doubt under specification number one, whether the defendant, Odraye G. Jones, committed the offense of Aggravated Murder for the purpose of escaping apprehension, trial or punishment for another offense committed by the defendant.

Under specification number 2, whether the victim of the offense, William D. Glover, Jr., was a peace officer whom the defendant had reasonable cause to know or knew to be a peace

THE LORRY GROUP | 800 255 8840

1 written instructions.

2 The verdict form is a seven-page
3 document. On the first page it starts out with
4 the caption. It says Verdict, Court of common
5 Pleas, Ashtabula County, Ohio, May Session,
6 1998. Then it has the caption of the case. It
7 says State of Ohio, Plaintiff v. Odraye G.
8 Jones, Defendant, Case No. 97-CR-221, Indictment
9 for Aggravated Murder.

10 The first paragraph reads as follows:
11 "We, the jury in this case, being duly impaneled
12 and sworn, find the defendant, Odraye G.
13 Jones..." and then you'll see a single asterisk
14 and a blank line. If you look down below the
15 paragraph you'll see another single asterisk and
16 behind it the words "Insert in ink guilty or not
17 guilty." So on that blank line you will insert
18 the word "guilty" or the words "not guilty" in
19 accordance with your findings. And it goes on,
20 "...of Aggravated Murder in the manner and form
21 as he stands charged in the indictment under
22 Section 2903.01(A) of the Ohio Revised Code."

23 Then down below that paragraph you're
24 going to see two additional paragraphs in
25 parentheses. The first paragraph reads "If you

1 find the defendant guilty of Aggravated Murder
2 in the form above, you will consider and
3 complete the following verdict forms relating to
4 specifications 1, 2, 3 and 4."

5 The next paragraph in parenthesis says
6 "If you find the defendant not guilty of the
7 offense of Aggravated Murder, or if your unable
8 to reach a unanimous verdict of either guilty or
9 not guilty of Aggravated Murder, you will
10 consider and complete the following verdict form
11 on Page 6." If that were the case, you would
12 then go to Page 6. Below that you'll see 12
13 signature lines.

14 On Page Number 2, is specification
15 number 1. It reads, "We, the jury in this case,
16 find the defendant, Odraye G. Jones...", and
17 there you'll see a double asterisk, two of them.
18 If you look down that paragraph, you'll see
19 another double asterisk and behind it the words
20 "Insert in ink did or did not" on that blank
21 line directly to the right the word "did" or the
22 words "did not" in accordance with your
23 findings. And it goes on, "...commit the
24 offense of Aggravated Murder for the purpose of
25 escaping apprehension, trial, or punishment for

1 another offense committed by the defendant.
2 Again you'll see 12 signature lines below that
3 specification. The last line is always
4 reserved for the foreman or forelady.

5 On Page 3, it says specification number
6 2. "We, the jury in this case, find that the
7 victim of the offense, William D. Glover, Jr..."
8 and behind that you're going to see three
9 asterisks or a triple asterisk. And if you look
10 down below that paragraph you'll see another
11 triple asterisk and the words "Insert in ink was
12 or was not." On that first blank line you're
13 going to write in "was" or "was not" in
14 accordance with your findings. And it goes on,
15 "...a peace officer, whom the defendant...", and
16 then you'll see a double asterisk and you look
17 below. You'll see another double asterisk with
18 the words "Insert in ink did or did not".

19 So on that second line you're going to
20 write in the words "did" or "did not" in
21 accordance with your findings. And it goes on,
22 "... know or have reasonable cause to know to be
23 a peace officer, and at the time of the offense
24 the victim, William D. Glover, Jr...", and again
25 a triple asterisk with the words "Insert in ink

7-#7

IN THE COURT OF COMMON PLEAS
ASHTABULA COUNTY, OHIO

STATE OF OHIO,

Plaintiff,

vs.

ODRAYE G. JONES,

Defendant.

CASE NO. 97-CR-221

FINAL APPEALABLE ORDER

SENTENCING OPINION
OF THE COURT

JUN 11 11 01 AM '98
CLERK OF COURT

This opinion is rendered pursuant to Ohio Revised Code §2929.03(F).

The trial of this cause commenced on May 5, 1998, a Jury was sworn on May 14, 1998, and the Jury returned a verdict on May 26, 1998, finding the Defendant guilty of Aggravated Murder, in violation of Ohio Revised Code §2903.01(A). The Defendant, Odraye G. Jones, was convicted of purposely and with prior calculation and design causing the death of another, to-wit: William D. Glover, Jr. In addition, the Jury returned a verdict of guilty of Specification No. 1 an aggravating circumstance as specified in Ohio Revised Code §2929.04(A)(3), of Specification No. 2 an aggravating circumstance as specified in Ohio Revised Code §2929.04(A)(6), and of Specification No. 3 an aggravating circumstance as specified in Ohio Revised Code §2929.04(A)(6). Thereafter, and prior to the commencement of the sentencing phase of the trial, the Court merged Specification No. 2 and Specification No. 3.

On June 2, 1998, the Court commenced the sentencing phase of the trial and on June 4, 1998, the Jury returned a verdict recommending the penalty of Death.

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On June 8, 1998, the Court conducted a sentencing hearing at which time the Court found independently, after weighing the aggravating circumstances against the mitigating factors, that the aggravating circumstances outweighed the mitigating factors beyond a reasonable doubt, and the Court thereupon imposed the sentence of Death.

The Court finds that the following aggravating circumstances were proved beyond a reasonable doubt, to-wit:

1. That the Defendant committed the offense of Aggravated Murder for the purpose of escaping apprehension, trial or punishment for the commission of another offense committed by the Defendant. The evidence established that on November 10, 1997, a warrant for the arrest of the Defendant, Odraye G. Jones, was issued by the Ashtabula Municipal Court on a charge of Aggravated Robbery. The Defendant was aware that he was wanted by the police and had discussed this fact with Jimmy Lee Ruth. The Defendant told Ruth he knew he was facing a lot of time and if the police tried to arrest him he would shoot the police. The evidence established that at the time Officer Glover exited his police cruiser and approached the Defendant who was standing on a porch at 907 West 43rd Street, that the officer motioned to the Defendant and stated "You know why I am here, I am only doing my job". The Defendant then jumped over the railing of the porch and began to flee north along the side of the residence. Officer Glover took off in pursuit of ^{A-36}the Defendant and after chasing him

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to the rear of the residence and behind a garage area, was shot four (4) times by the Defendant who was observed to produce a hand gun and fire the fatal shots.

2. That the Defendant, at the time he committed the offense of Aggravated Murder, knew or had reasonable cause to know that the victim, William D. Glover, Jr., was a peace officer who, at the time, was engaged in his duties as a peace officer. The evidence in this case establishes that Officer Glover, on November 17, 1997, at the time he approached the Defendant, exited a marked police cruiser and was in full uniform. The Defendant had observed Officer Glover drive by in a police car and had been told by Jimmy Lee Ruth that the police car had turned around and was returning to them. Officer Glover approached the Defendant, motioned to him to come off of a porch at 907 West 43rd Street, Ashtabula, Ohio, and stated "You know why I am here, I am only doing my job". At that time, the Defendant jumped the hand rail on the porch and fled along the side of the house in a northerly direction. The evidence established that Officer Glover pursued the Defendant around the side of the house and into a field located at the rear of a garage. At that point, the Defendant was observed by witness, Theresa Taylor, to pull a hand gun from his coat pocket, to extend his right arm and to fire the gun at the police officer. The evidence established that the officer fell to ground after the first two shots, at

which time the Defendant walked back to the officer, and from a distance of two to twelve inches, fired two more shots, one striking the officer below the eye and the second shot striking him in the top of the head. Scientific evidence established that gun powder residue and stippling found on the deceased established the close proximity of the fatal shots. The victim was, in fact, a full time patrolman employed by the Ashtabula City Police Department in Ashtabula County, Ohio. From tape recordings made of the police radio system, it was established that Officer Glover, at the time, was attempting to arrest the Defendant on the warrant for Aggravated Robbery previously issued by the Ashtabula Municipal Court.

The Court has considered and weighed the mitigating factors which were presented by the Defendant. Those mitigating factors are as follows:

1. The nature and circumstances of the offense has been considered by the Court to determine whether they are mitigating in nature. From the evidence, it has been established that the Defendant fled from the victim in order to avoid apprehension on an Aggravated Robbery warrant previously issued by the Ashtabula Municipal Court. During the pursuit, the evidence established that the Defendant ran behind a residential home and into an open field at the rear of a garage. The Defendant pulled a hand gun from his coat pocket and shot the officer pursuing him in the shoulder and arm areas. When the ~~the~~ officer fell to ground, the

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Defendant walked back to him and fired two more shots striking the victim below the eye and into the top of his head. The evidence clearly indicates that the two fatal shots were fired at a range of two to twelve inches after the officer had been struck in the shoulder and arm. The Defendant was arrested minutes after the shooting as he fled in a northerly direction two and one-half blocks from the scene. Defendant was observed to drop a hand gun which was later proved to be the murder weapon. It was also established that he had gun powder residue on his hands. The evidence in this case establishes that the killing was an execution style slaying and that there is absolutely nothing in mitigation in the nature and circumstances of the offense.

2. The history, character and background of the Defendant has been considered and weighed by the Court. The evidence presented establishes that the Defendant, Odraye G. Jones, was born on September 21, 1976. His mother, Darlene Jones, was fifteen years old at the time. During the Defendant's infancy, his mother avoided parental responsibility as established by evidence that she did not desire to feed him after his birth in the hospital, and did not care to hold or embrace the child. The Defendant's mother was in and out of his life, the Defendant living with his foster grandmother for periods of time and then with his mother. At the Defendant's age of thirteen, his mother died of an apparent drug overdose. She had been convicted previously of criminal offenses and had been incarcerated during

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the Defendant's youth. The Defendant had no knowledge as to the identity of his father until his mother's death at his age of thirteen. No male played a role in the raising or development of the Defendant. There were no male role models in his life.

The evidence indicates that the Defendant's family was dysfunctional and that he was raised in a culture of violence. Numerous friends and relatives of the Defendant either died or were killed in violent manners or were otherwise incarcerated. Records indicated that when the Defendant was a youth on some occasions he walked himself to the hospital for medical treatment being without an adult to supervise or look after him. Evidence was received that the Defendant was provided a home with his foster grandmother, Theresa Lyons, who attempted to put a roof over his head and provide him with the necessities in life. However, Ms. Lyons was gainfully employed and often worked second shift leaving the Defendant basically unsupervised or, during his tender years, in the care of other teenage foster children. The Defendant experienced difficulty in school after the death of his mother, was often absent for periods of thirty to forty days per school year, and was eventually expelled from school for setting a fire in a waste basket. The Defendant had contacts with the juvenile justice system and had experimented with marijuana during his school years. During 1994, the Defendant was injured when struck in the head by a hammer and was hospitalized after being life flighted to Metro General Hospital in Cleveland, Ohio.

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Defendant was hospitalized for three days and according to testimony, he sustained a fractured skull which did not impact the brain or cause any brain injury. The Defendant never returned for follow up treatment after being released from the hospital. However, this incident did adversely affect him in that he became isolated and distrustful of people he had previously considered to be friends. The Defendant gravitated toward gang involvement in order to provide bonds and interactions with other people which were so lacking in his family life. The Court finds that the history, character and background of the Defendant indicate that the Defendant was deprived morally and socially and raised in a culture of violence. Due to his upbringing, the Defendant never had the moral and ethical training and teaching that one would expect to receive from nurturing parents. The Court finds this mitigating factor is entitled to some weight.

3. The Court has considered the youth of the Defendant who was born on September 21, 1976, and who was of the age of twenty-one years at the time he committed the Aggravated Murder. However, the Court also finds that the Defendant had a relatively high IQ having been examined by Dr. Eisenberg and Dr. Kinny. The expert witnesses placed his IQ in the range of 112. The Court finds that the youth of the Defendant is entitled to some modest weight.

4. The Court has considered the other mitigating factors submitted by the Defendant and finds that the Defendant suffers from an antisocial personality disorder. Dr. Eisenberg testified that the evidence was overwhelming that he had this disorder, the features and symptoms of which are a need for immediate gratification, the failure to consider the long range consequences of specific actions, a lack of empathy, an adolescent level of relationships which are immature and impulsive and a manipulative nature with indifference to the consequences of his activities. Evidence was also received that the Defendant suffers from an attachment disorder which prevents him from forming bonds or attachments with other people based on a deep seeded fear of separation which may later occur. This caused the Defendant to be a loner and to be suspicious of other persons which caused him to avoid any lasting relationships with others. The Defendant was also diagnosed as having a paranoid feature to the anti-social personality disorder which caused him to be suspicious of the motives of other persons. The loss by death of his mother, a minor child and other friends and relatives all contributed to the creation of the attachment disorder and the paranoid feature. Dr. Kinny also testified that he diagnosed an attention deficit and a residual speed of processing deficiency in the Defendant in that he could not rapidly process new information which caused him to be irritable, and, when combined with his ⁴⁴²paranoia, to trigger aggressive

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outbursts when confronted with changing situations. Dr. Kinny attributed this feature to the trauma suffered by the Defendant in the attack wherein a hammer was used to strike him in the head. However, this testimony was somewhat rebutted by the testimony of Dr. Robert White who testified on rebuttal that the head injury suffered by the Defendant in 1994 was minor in nature and did not involve injury to the brain itself. Dr. White testified that he doubted that any significant brain injury was suffered by the Defendant, and that he suffered no adverse affect upon his emotional or cognitive functions as a result of the hammer inflicted injury.

The Court has also considered the evidence from both Dr. Eisenberg and Dr. Kinny that the Defendant, on November 17, 1997, was able to differentiate between right and wrong conduct and that he understood the criminality of his conduct. The expert witnesses both agreed that the Defendant was able to make choices and that the decision to kill Officer Glover was made freely in spite of his antisocial personality disorder with paranoid feature and his attachment disorder. The evidence clearly established that these disorders did not effect the Defendant's knowledge of the criminality of his conduct and did not prevent him from conforming his conduct to the requirements of law. The Court concludes that this evidence, along with the evidence that the Defendant was fairly sophisticated and more intelligent than the expert witnesses had initially been led to believe, tend to

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lessen the weight to be accorded these other mitigating factors. The Court, therefore, finds that the other mitigating factors should be accorded little weight.

Upon weighing the aggravating circumstances, the Court finds, from the evidence, that the Defendant could have escaped arrest or apprehension once the officer was shot in the shoulder and the arm. In addition, the Defendant testified that he could have outrun the police officer without the necessity of using deadly force. The Court finds that the act of killing a police officer who, in the pursuit of his duties is attempting to apprehend a person accused of a felony crime, strikes at the very heart of the justice system. The criminal justice system is designed to protect both the rights of the accused and the rights of the victims. However, one who commits a purposeful killing with prior calculation and design in order to avoid apprehension, punishment or trial, seeks to defeat the entire system of criminal justice and strikes a fatal blow at its heart. The Court has also considered the fact that the victim was known by the Defendant to be a duly authorized and employed police officer with the City of Ashtabula, who at the time was engaged in his official duties. The Court finds that the aggravating circumstances are entitled to great or substantial weight.

Upon consideration of the relevant evidence raised at trial, the relevant testimony, the other evidence, and the arguments of counsel, it is the judgment of the Court that the aggravating

circumstance outweigh the mitigating factors beyond a reasonable doubt. This determination is made by the Court separately and distinctly from that made by the Jury. Accordingly, the Court sentenced the Defendant, Odraye G. Jones, to death and this pronouncement was made on June 8, 1998.

Pursuant to Civil Rule 58(B), the Clerk of this Court is directed to serve notice of this judgment and its date of entry upon the journal upon the following: Thomas L. Sartini, Prosecuting Attorney; David L. Doughten, Esq. & Robert L. Tobik, Esq., 4403 St. Clair Avenue, Cleveland, Ohio 44113; Clerk of the Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266-0419; Joseph E. Wilhelm, Esq., The State Public Defenders Office, 8 East Long Street, Columbus, Ohio 43266-0587; Robert A. Dixon, Esq., 1280 West Third Street, First Floor, Cleveland, Ohio 44113-0000; and, the Assignment Commissioner.

I also certify that a copy of the foregoing opinion was duly mailed by ordinary U.S. Mail to the Clerk of Courts of the Supreme Court of Ohio on this 11 day of June, 1998, by the undersigned Judge.


RONALD W. VETTEL, JUDGE