

ORIGINAL

IN THE "SUPREME COURT OF OHIO"

MALIK ALLAH-U-AKBAR,

"CASE NO. 98-1483"

v.

"DEATH PENALTY CASE"

STATE OF OHIO

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OHIO RULE OF CIVIL PROCEDURE 60 (B) (4)  
MOTION FOR RELIEF FROM JUDGMENT.

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## MEMORANDUM IN SUPPORT

1. The Petitioner is imprisoned pursuant to an indictment process and sentence that violate double jeopardy, right to trial by jury, and due process. There has been no conviction of the predicate felony which is an element of this theory of aggravated murder (Ex. 8).

2. The Petitioner was purportedly indicted on two counts of aggravated robbery on November 26, 1997, Case No. 97-CR-220 (Ex. 1). The state allegedly indicted the Petitioner on November 26, 1997 on one count of aggravated murder with prior calculation and design, Case No 97-CR-221 (Ex. 2). According to this document, at specification one, the murder was alleged to be committed for the purpose of escaping. . . aggravated robbery.

3. This separation of "indictments," sending them to two different courts, and scheduling the trial for the robberies to take place after the murder proceedings (Ex. 3) put the Petitioner at risk of being tried twice for one offense, violating double jeopardy. In HARRIS v. OKLAHOMA, 433 U.S. 682 (1977), the Supreme Court ruled that a state cannot prosecute felony murder and the underlying felony in separate trials; as the underlying felony was an element of felony murder.

4. The Double Jeopardy Clause protects, not only against "the ultimate legal

consequences of (an adverse) verdict," but also against the mere "risk or hazard" of twice defending against the same claim. Price v. Georgia, 398 U.S. 323, 331, 90 S. Ct. 1757, 26 L. Ed. 2d 300 (1970). "The 'prohibition is not against being twice punished, but against being twice put in jeopardy.'" Ball v. United States, 163 U.S. 662, 669, 16 S. Ct. 1192, 41 L. Ed. 300 (1896). Counsel's performance was deficient for failure to object to the "indictment" scheme under principles of double jeopardy; and death sentence after dismissal of predicate felony (Ex.5). Respectively. The prejudice is imprisonment pursuant to a charging document that fails to charge a crime.

5. The elements of the predicate felony were not submitted to the jury (Ex. 6), thus, the Petitioner is not convicted. Neither the jury's verdict, nor the "Sentencing Opinion" reflect a finding of guilt on any of the elements of aggravated robbery (Ex. 7). The court only states that a warrant was found to exist, not that the Petitioner was found to have committed any robbery. The "indictment" error(s) led to the jury being prevented from finding the Petitioner not guilty of those elements which would have entitled him to an acquittal of aggravated murder. Aggravated robbery relates to the elements in the equation of whether prior calculation and design existed, beyond a reasonable doubt. (Tr. 3099-3101).

6. The "Sentencing Opinion" fails to reflect the dismissal of the aggravated robberies, *nolle prosequi*, (Ex. 5). Instead the "Opinion" reflects the court's misconstruction/misunderstanding of the statutory elements necessary to try or convict of aggravated murder; it counts a warrant as a non-statutory aggravator (Ex. 7, Pgs. 2,

4). Thus, it is not a “Final Appealable Order.” It is void.

7. In State v. Simpkins, 117 Ohio St. 3d 420, 2008-Ohio-1197, 884 N.E.2d 568, the “Ohio Supreme Court” reiterated that courts do not have authority to substitute different sentences for what is required by law. The court stressed that when judges disregard what the law clearly commands, they act without authority, and "such actions are not mere errors that render a sentence voidable rather than void."

8. This little device (of dividing the charge) allowed the state to avoid its burden of proving all the elements of the offense to the jury beyond a reasonable doubt, depriving the Petitioner of his right to a jury trial and not to be convicted unless all the elements are proven beyond a reasonable doubt. No alleged victim was presented, no alleged witnesses testified, no date, place, time, property, threats, force, or weapon was mentioned. Such failure to produce a victim (or witnesses) of any robbery deprived the Petitioner of his right to confront and cross examine his accuser and compel witnesses in his favor. Testimony regarding robbery was inadmissible hearsay and counsel was ineffective for stipulating to an “outstanding warrant.” The officer who put together the “warrant” didn't testify either; such “warrant” testimonial and inadmissible hearsay.

9. A structural error, in and of itself, was committed where there was no instruction to the jury on the elements of aggravated robbery or reasonable doubt. (Instructions; Tr. 3102-3122). SULLIVAN v. LOUISIANA, 508 U.S. 279. Only the jury has the initial authority to render a determination of guilt, which is the predicate for a judgment of conviction and sentence. The trial court, of course, is not empowered to enter a judgment

of conviction. As the Supreme Court has explained,

in a jury trial the primary finders of fact are the jurors. Their overriding responsibility is to stand between the accused and a potentially arbitrary or abusive Government that is in command of the criminal sanction. For this reason, a trial judge is prohibited from entering a judgment of conviction or directing the jury to come forward with such a verdict, see *Sparf & Hansen v. United States*, 156 U.S. 51, 105, 39 L. Ed. 343, 15 S. Ct. 273 (1895); *Carpenters v. United States*, 330 U.S. 395, 408, 91 L. Ed. 973, 67 S. Ct. 775 (1947), ... The trial judge is thereby barred from attempting to override or interfere with the jurors' independent judgment in a manner contrary to the interests of the accused.

*United States v. Martin Linen Supply Co.*, 430 U.S. 564, 572-73, 51 L. Ed. 2d 642, 97 S. Ct. 1349 (1977).

10. "Appellate counsels" have erroneously proceeded as if there's been a conviction on the elements of "aggravated robbery," as opposed to an acquittal. (Ex. 5) The Petitioner could not be convicted/sentenced for charges that did not exist. Under Ohio law, a *nolle prosequi* amounts to an acquittal. A *nolle prosequi* completely terminates a prosecution. The mere fact that the charges could be dismissed by "Judge Mackey," in Case No. 97-CR220, is proof that they weren't before "Judge Vettel," in case No. 97-CR-221. Vettel is the one who sent the case to Mackey instead of himself, in an apparent "misunderstanding" of what was statutorily necessary to convict under this particular theory of aggravated murder.

11. 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,

**EVANS v. MICHIGAN, 133 S.Ct. 1069 (2013).**

12. A court of appeals has no jurisdiction over orders that are not final and appealable,

**Section 3(B)(2), Article IV, Ohio Constitution.**

13. Given that state of the case, there have been no appeal(s) to satisfy the exhaustion requirements under AEDPA, and this case must be remanded to the "trial court" with an order to dismiss due to lack of jurisdiction to try, convict pursuant to the indictment/instruction/ *nolle prosequi* errors. Or simply enter an order granting relief under the principles of Double Jeopardy, Collateral estoppel.

14. Post-conviction counsel should have sought relief under principles of Collateral estoppel and Double Jeopardy. If they were never provided the documents in time because they weren't a part of case no. 97-CR-221, the state is at fault for the failure to develop the record. Post-conviction counsel filed for discovery and an evidentiary hearing which was denied. Apparently, post-conviction counsel only came into possession of the documents regarding the dismissal in after the Appellant requested paperwork regarding the disposition of that case.

15. Only the jury (or judge sitting as a trier of fact) has the initial authority to render a determination of guilt, which is the predicate for a judgment of conviction and sentence. Although an appellate court may affirm, modify or reverse a judgment of conviction, it lacks the authority to impose a judgment of conviction in the first instance. There is no

jury verdict of guilt of all the necessary elements because there is no verdict of guilt on any robbery. The “Ohio Supreme Court” imposed one. See *State v. Jones*, 91 Ohio St. 3d at 347-348.

16. Those aggravated robberies were elements of the “offense” for which he is purported to be imprisoned. The lack of indictment, proof, instruction on them in the Vettel court prevent conviction, and dismissal, *nolle prosequi*, in the Mackey court amounts to an acquittal on those elements. Thus a judgment of conviction, based, in part, on those elements, is void.

17. An appeal or review of the dismissal of the aggravated robberies used as an eligibility factor cannot take place without violating the double jeopardy clause, **Green v. United States, 355 U.S. 184 (1957).**

18. When a *nolle prosequi* was entered into the record, June 9<sup>th</sup>, any aggravated robbery charges ceased to exist. The jury had been sworn in the murder proceedings where aggravated robberies were purported to be the purpose of the murder; Specification one. (Ex. 2) The court of Vettel could not convict the Appellant on an “indictment” that was before the court of Mackey. Nor could the Vettel court sentence the Petitioner pursuant to charges that were dismissed. Nor could the state court affirm a verdict the jury never entered, **PRESNELL v. GEORGIA, 439 U.S. 14; SULLIVAN v. LOUISIANA, 508 U.S. 279.** See *State v. Jones*, 91 Ohio St. 3d at 347-348 and *Jones v. Bradshaw*, 489 F. Supp. 2d 786 grounds for relief 9 and 30, at 824-828. The Petitioner is also asserting the judgment of the district court is void and that the integrity of the

proceedings were impugned because of the failures of all counsels to recognize the errors outlined in this motion. The jurisdictional basis does not exist under §2254.

19. The court, state, “Trial” and “appellate” counsels have proceeded based upon misunderstandings (or misconstruction) of the law, and have thus deprived the Petitioner of Due Process, effective assistance of counsel in all proceedings, trial by jury, and meaningful appellate review of these errors (among others).

### **STATEMENT OF FACTS**

20. The Petitioner incorporates, by reference, paragraphs 1-19, as if fully rewritten herein. The Ashtabula County Court of Common Pleas presided over by Ronald W. Vettel, did not acquire jurisdiction to try or convict the Petitioner for any crime due to the failure of the “indictment” in case no 97-CR-221 to allege all the elements necessary to charge the offense of aggravated murder with prior calculation and design.

21. Namely, aggravated robbery, mentioned in specification one. It (case no. 97-CR-220) was not before Vettel's court, not within his jurisdiction. The robbery “indictment(s)” were sent to the court of Alfred W. Mackey. Both courts could not, simultaneously, have subject-matter jurisdiction over the aggravated robbery charges. Mackey's court had jurisdiction over those charges, by the Vettel's/state error. For two courts to have the ability to convict and sentence for the same offense would, necessarily, violate double jeopardy principles.

22. The Petitioner was purportedly indicted on two counts of aggravated robbery on November 26, 1997. (Ex. 1). The state allegedly indicted the Petitioner on November 26, 1997 on one count of aggravated murder with prior calculation and design (Ex. 2).

23. Each alleged indictment was sent to a different court (Ex. 3). This was error, **HARRIS v. OKLAHOMA, 433 U.S. 682 (1977)**. This error resulted in a failure to charge all the elements of aggravated murder with prior calculation and design in the “aggravated murder indictment.” See *State v. Colon*, 118 Ohio St. 3d 26; 2008-Ohio-1624, 885 N.E. 2d 917, 2008 Ohio LEXIS 874. The error was structural. This error also resulted in a lack of notice, lack of proof or defense, failure to instruct, 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.**

24. 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)**.

25. The 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. 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.

26. It is statutorily mandated that a finding of the offense of aggravated robbery, beyond a reasonable doubt, is a necessary predicate of proving the Petitioner possessed the requisite *mens rea* of 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.

27. Prior calculation and design is the element which distinguishes between guilt and innocence of aggravated murder. Plus, "Prior calculation and design" means that the purpose . . . was reached by a definite process of reasoning in advance. . . (Tr. 3100) Absent any aggravated robbery, there is no purpose. There is no definite process of reasoning . . . in advance. There is no prior calculation and design, no killing for the purpose of escaping . . . aggravated robbery. Hence, the Petitioner is not guilty of aggravated murder.

28. 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).

29. In the murder proceedings, no victim of robbery was presented, no witnesses testified (in violation of Appellant's Confrontation, Cross-Examination Rights), no items were alleged/specified to have been taken, no date, time, or venue was mentioned, and no instruction on the elements of aggravated robbery were ever mentioned to the jury. Nor was the Petitioner provided the requested Bill of Particulars. Counsel was constitutionally deficient for stipulating to a "warrant," which was inadmissible hearsay, without consultation or consent from the Appellant.

30. The Petitioner was denied counsel and counsel of choice. Appointed counsel's performance was deficient for failing to challenge the separate indictments as violative of Double Jeopardy; for stipulating to a "warrant" that was invalid and hearsay, respectively; 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;" and failing to argue to the jury that they could not find guilt without finding the Appellant had committed an aggravated robbery and pointing out that absolutely no one offered any evidence beyond a reasonable doubt that an aggravated robbery ever took place, much less that the Appellant committed it

31. The prejudice is that the Petitioner is wrongfully imprisoned based upon the state's structural error(s), and the court's failure to give effect to the dismissal of aggravated robbery charges. Appellate counsel were ineffective for not recognizing errors under Double Jeopardy, APPRENDI v. NEW JERSEY, 530 U.S. 466, and SULLIVAN v. LOUISIANA, 508 U.S. 279.

32. 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.

33. It was violative of Double Jeopardy to divide the elements into two "indictments," placing the Petitioner at risk of two prosecutions for one charge. It was violative of Petitioner's right to notice, Due Process, and trial by jury to fail to include all the elements of aggravated robbery in the aggravated murder "indictment," failure to produce a bill of particulars, fail to offer proof of any elements of aggravated robbery, and failure to instruct the jury on the elements of aggravated robbery. It was violative of Double Jeopardy for sentence to be imposed which failed to take into account the dismissal of aggravated robberies; it was violative of Double Jeopardy and Due Process for review/appeal to take place without effect and force being given to the dismissal of any aggravated robbery charges.

34. This court must remand to Vettel's court to dismiss the charges due to judicial acquittal of elements of the offense. The state had a full and fair opportunity to properly indict and convict the Petitioner. It erroneously decided not to. The state elected to make two indictments and ask for dismissal of one all of its own accord. This court should order the state to unconditionally release the prisoner, as anything other than that would be a relitigation of the judicial acquittal, which the state is collaterally estopped from.



**CLAIM FOR RELIEF 1.**

**THE STATE VIOLATED THE DOUBLE JEOPARDY CLAUSE WHEN IT FAILED TO SEEK ONE INDICTMENT FOR FELONY-MURDER AND THE UNDERLYING FELONY, DIVIDING THE "INDICTMENT" OF AGGRAVATED MURDER INTO AGGRAVATED MURDER AND AGGRAVATED ROBBERIES, SENDING THEM TO TWO DIFFERENT COURTS, WHERE AGGRAVATED ROBBERIES WERE DISMISSED, *NOLLE PROSEQUI*, PRIOR TO SENTENCE WHICH AMOUNTS TO AN ACQUITTAL RESULTING IN A VOID JUDGMENT.**

35. The Petitioner incorporates, by reference, paragraphs 1-34, as if fully rewritten herein. The aggravated robbery "indictment" was sent to the court of Alfred Mackey And dismissed *nolle prosequi*. (Ex.5) There is no felony-murder without the felony.

36. This action is commenced to give effect to the Double Jeopardy protections. The Petitioner has been judicially acquitted, he has not been found guilty of the necessary elements which make up the purported offense. His incarceration is therefore illegal.

37. 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**. 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).

38. The Petitioner contends that both courts, in this case, could not have concurrent jurisdiction of the subject-matter; aggravated robbery. Such concept, per se, violates Double Jeopardy. 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.

39. 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.

40. The state legislature has mandated that for the purposes of charging a person with 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 the jury being instructed to find, or how to find, whether any aggravated robbery actually occurred, there cannot be proof, in law or fact, beyond a

reasonable doubt, that there was a killing for the purpose of . . . escaping aggravated robbery. A warrant is not a statutory eligibility factor which can permit a conviction of a capital offense.

41. The state and court apparently proceeded upon the erroneous premise that the jury 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. See “Appellee's Merit Brief,” in “case no. 98-1483,” Pgs. 55, 57 where the state asserts that a warrant is all that is needed to convict:

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.”

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. Yet, the court repeatedly told the jury a warrant was not evidence. 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 by the trier of fact. Crime not charged cannot be found in a court, counted as a conviction. 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. See void judgment “affirming” void judgment, at 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.””

(italics added.) The judgment is void. The court “affirmed” a verdict that did not exist.

(Ex. 8)

43. An extra-judicial confession, is not sufficient without other evidence of the corpus delicti. KERCHEVAL v. UNITED STATES (1927), 274 U.S. 220, 223, 47 S.Ct. 582, 71 L.Ed. 1009. 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. The “Ohio Supreme” court is the first entity to find the Petitioner guilty of “robbery.” Not aggravated robbery as mentioned in Specification 1 and separate “indictment.”

44. Robbery and aggravated robbery are two distinct offenses. Note how the supposed Jackson analysis makes no “explicit reference” to the elements of aggravated robbery. A reviewing court may not convict a person of a crime. SULLIVAN v. LOUISIANA, 508

**U.S. 279.**

45. By statute, it was mandatory that a jury find the Petitioner committed an aggravated robbery in order to find that the Petitioner committed an aggravated murder for the purpose of escaping . . . aggravated robbery, and purpose relates to the elements of prior calculation and design in the state's theory; otherwise, what would the prior calculation and design be? The jury could not (and did not) do that without an instruction on the elements of aggravated robbery. **SULLIVAN v. LOUISIANA, 508**

**U.S. 279.**

46. "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.**

47. 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.**

48. 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 sentence. The dismissal, *nolle prosequi*, cannot be reviewed. It must be given force and effect. Aggravated robbery was the **causa sine qua non** of the theory.

49. The aggravated robberies "indictment" was dismissed, *nolle prosequi*, by the



court of Alfred Mackey, June 9<sup>th</sup> 1998, (Ex.5), two days before the “Sentencing Opinion of the Court,” by “Judge Vettel” stamped as “Final Appealable Order,” June 11<sup>th</sup> (Ex.6).

50. 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. 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.**

52. There is no “final appealable order” in this case because Vettel's court based its sentence on a constitutional misconstruction of what is required to permit a conviction/sentence under the aggravated murder statutes under the United States Constitution, and Ohio death penalty statutes. Such judgments were based upon elements that were not submitted to the jury, not before Vettel's court, not proven beyond a reasonable doubt, elements that were dismissed, legally non-existent. Such judgment is void.

53. 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 prossed* 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;

**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.

54. 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.** Or re-prosecuted at all, **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 “indictment” due to Double Jeopardy. Or itself order the case dismissed and the Petitioner released.

55. 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. Dismissal/acquittal cannot be appealed without violating double jeopardy. See **BIES v. BAGLEY, 519 F.3d 324 (2008).**

56. In **HARRIS v. OKLAHOMA, 433 U.S. 682 (1977),** the United States Supreme Court held: to prove felony murder, "it was necessary for all the ingredients of the underlying felony" to be proved. 433 U.S. at 682-683. "A jury is presumed to follow its instructions." Weeks v. Angelone, 528 U.S. 225, 234, 120 S. Ct. 727, 145 L. Ed. 2d 727 (2000). The Supreme Court has described its *per curiam* in **Harris** as standing for the proposition that, for double jeopardy purposes, "the crime generally described as felony

murder" is not "a separate offense distinct from its various elements." Illinois v. Vitale, 447 U.S. 410, 420-421, 65 L. Ed. 2d 228, 100 S. Ct. 2260 (1980).

57. The fundamental nature of Double Jeopardy is manifested by its explicit extension to situations where an acquittal is "based upon an egregiously erroneous foundation." Fong Foo v. United States, 369 U.S. 141, 143 (1962); see Green v. United States, 355 U.S. 184, 188 (1957). In *Fong Foo* the Court of Appeals held that the District Court had erred in various rulings and lacked power to direct a verdict of acquittal before the Government rested its case. The Supreme Court accepted the Court of Appeals' holding that the District Court had erred, but nevertheless found that the Double Jeopardy Clause was "violated when the Court of Appeals set aside the judgment of acquittal and directed that petitioners be tried again for the same offense." 369 U.S., at 143. Thus when a defendant has been acquitted at trial he may not be retried on the same offense, even if the legal rulings underlying the acquittal were erroneous.

58. The double jeopardy clause of the Fifth Amendment is not such a fragile guarantee that prosecutors can avoid its limitations by the simple expedient of dividing a single crime into a series of temporal or spatial units.

59. The Petitioner has not had a trial by jury, he has been judicially acquitted of elements of the underlying felony in the felony-murder charge, thus, he is not convicted. The proper remedy is immediate, unconditional release and dismissal of the "indictment" with prosecution being barred due to double jeopardy.

CERTIFICATE OF SERVICE

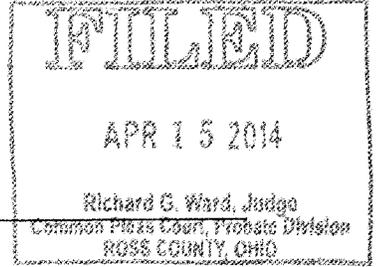
I hereby certify that a copy of this motion for Relief was sent by regular U.S. mail to Ashtabula County prosecutor, Nicholas Iarocci, this 2<sup>nd</sup> day of May, 2014, at 25 W. Jefferson St., Jefferson, Ohio 44047.

  
MALIK ALLAH-ULAKBAR



FOR THE COURT RECORDS

PROBATE COURT OF ROSS COUNTY, OHIO



IN RE: CHANGE OF NAME OF "Odraye Genaro Jones" (Present Name)

TO Malik Allah-U-Akbar (Name Requested)

Case No. 2014CN005

JUDGMENT ENTRY - CHANGE OF NAME OF ADULT

On April 15, 2014 an application for change of name was heard by this Court. The Court finds that proper notice of the application and hearing date was given by one publication in a newspaper of general circulation in this county at least thirty days prior to the hearing on the application. The Court further finds that reasonable and proper cause exists for changing the name.

The Court further finds that the applicant's complete name at birth was "Odraye Genaro Jones" applicant's date of birth was 9-21-1976

and the place of birth was Ashtabula Ashtabula Ohio City County State

Therefore, it is ORDERED the name of "Odraye Genaro Jones" be changed to Malik Allah-U-Akbar

Richard G. Ward Probate Judge

CERTIFICATE OF JUDGMENT ENTRY

The above Judgment Entry - Change of Name of Adult is a true copy of the original kept by me as custodian of the records of this Court.

RICHARD G WARD Probate Judge/Clerk

By [Signature] Deputy Clerk

APR 15 2014 Date

220  
CASE NO. 97-CR-DIRECT

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

NOV 26 9 12 AM '97  
CAROL A HEAD  
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  
M. R. JOHNSON, SHERIFF  
ASHTABULA COUNTY  
ASHTABULA, OHIO

THOMAS L. SARTINI  
PROSECUTING ATTORNEY

INDICTMENT - TWO COUNTS

STATE OF OHIO )  
 ) SS.  
COUNTY OF ASHTABULA )

CASE NO.- DIRECT

STATE OF OHIO VS. ODRAYE 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 **ODRAYE 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 **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.

COUNT TWO

On or about the 8th day of November, 1997, in the City of Ashtabula, Ashtabula County, Ohio, one **ODRAYE 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

221  
CASE NO. 97-CR-DIRECT

EX-#2

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. METZ  
COMMON PLEAS COURT  
ASHTABULA COUNTY  
FILED

P-2330  
HW-2000

---

A TRUE BILL

*Susan E. Golen*

SUSAN E. GOLEN  
GRAND JURY FOREMAN

---

THOMAS L. SARTINI  
PROSECUTING ATTORNEY

✓

MF 1343

INDICTMENT - ONE COUNT

STATE OF OHIO

)

) SS.

COUNTY OF ASHTABULA

)

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 17th day of November, 1997 in the City of Ashtabula, Ashtabula County, Ohio, one **ODRAVE 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 **ODRAYE 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 **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 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

57-13

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.

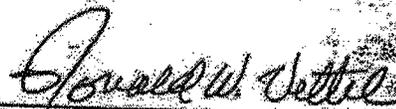
Pursuant to Civil Rule 58(B), the Clerk of this Court is ordered to serve copies of this Judgment Entry upon Prosecuting Attorney Thomas L. Sartini; defense counsel for the arraignment, Marc B. Minor and Andrew J. Love of the State Public Defender's Office, 8 East Long Street, 11th Floor, Columbus, Ohio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

December 4, 1997  
RWV/tlt

001466

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

EX #4

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-15

STATE OF OHIO,

CASE NO. 97-CR-220

Plaintiff,

ATT. REPLY

JUDGE ALFRED W. MACKEY

vs.

ODRAYE JONES

MOTION TO DISMISS

Defendant.

JUN 9 4 21 PM '98  
COURT OF COMMON PLEAS  
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:

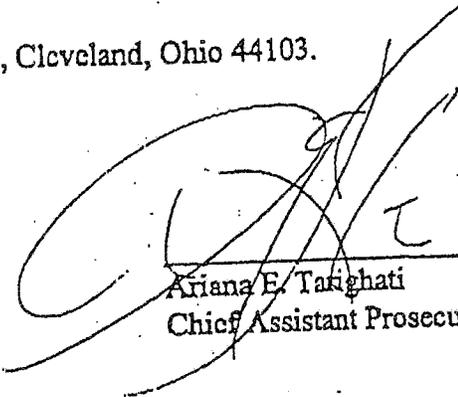
Ariana E. Tarighati 0039372  
Chief Assistant Prosecutor

36

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 10<sup>th</sup> day of June, 1998, to David Doughten and Robert Tobik, attorneys for Defendant, at 4403 St. Clair Avenue, Cleveland, Ohio 44103.



Ariana E. Tarighati  
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.

CAPED 4511 )  
COM. COURT )  
ASHTABULA CO. 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 GUNNY GROUP | 800 266 6040

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

57#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 4 01 PM '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 43<sup>rd</sup> 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 the Defendant and after chasing him

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 43<sup>rd</sup> 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 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

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.

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 ~~paranoia~~ <sup>paranoia</sup>, 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.

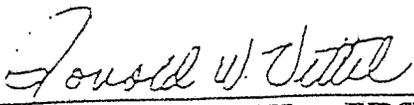
Upon consideration of the relevant evidence raised at trial, the relevant testimony, the other evidence, and the arguments of counsel, it is the judgment of <sup>A-44</sup> the Court that the aggravating

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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

*Ex. #8*

VERDICT

Court of Common Pleas  
Ashtabula County, Ohio  
May Session, 1998

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

CASE NO. 97-CR-221

INDICTMENT FOR:

Aggravated Murder

MAY 21 8 58 AM '98  
GARCI A HEAD  
COMMON PLEAS COURT  
ASHTABULA COUNTY, OHIO

We, the Jury in this case, being duly empaneled and sworn, find the Defendant, ODRAYE G. JONES (\*) Guilty of Aggravated Murder, in the manner and form as he stands charged in the Indictment, under §2903.01(A) of the Ohio Revised Code.

(\*) INSERT IN INK: "GUILTY" or "NOT GUILTY"

(If you find the Defendant guilty of Aggravated Murder in the above form, you will consider and complete the following verdict forms relating to Specifications 1, 2, 3 and 4.)

(If you find the Defendant not guilty of the offense of Aggravated Murder, or if you are unable to reach a unanimous verdict of either guilty or not guilty of Aggravated Murder, you will consider and complete the following verdict form on page 6.)

Wade W. Broshway  
Mary Rulley  
Mayone E. Pierce  
Binger F. Whitehead  
Matthew S. Baalman  
Quaym Hays

Leah M. Riskey  
Jane L. Ediyon  
May Lou Mason  
Ivan D Cooper  
George Maister  
John L. Washburn

Foreman or Forelady

230 - 710 61366

VERDICT FORM  
"STATE V. JONES"; CASE NO. 97-CR-221

MAY 27 8 58 AM '98  
CLERK OF COURT  
COMMON PLEAS COURT  
ASHTABULA, OHIO

SPECIFICATION NUMBER 1:

We, the Jury in this case, find the Defendant, ODRAYE G. JONES, (\*\*) DID  commit the offense of Aggravated Murder for the purpose of escaping apprehension, trial or punishment for another offense committed by the Defendant.

(\*\*) INSERT IN INK: "DID" or "DID NOT"

<u>Wade W. Brockway</u>	<u>Paul W. Risher</u>
<u>Mary Kesley</u>	<u>Jane L. Edinger</u>
<u>Wayne D. Pierce</u>	<u>May Lou Mason</u>
<u>Dinger F. Whitehead</u>	<u>Edward Cooper</u>
<u>Matthew S. Baliletta</u>	<u>George Mathis</u>
<u>Douane Hays</u>	<u>Tom L. Washburn</u>
	Foreman or Forelady

VERDICT FORM  
"STATE V. JONES"; CASE NO. 97-CR-221

MAY 27 8 59 AM '98  
GAROL A. HELEN  
COMMON PLEAS COURT  
ASHTABULA CITY, OH.  
FILED

SPECIFICATION NUMBER 2:

We, the Jury in this case, find that the victim of the offense, William D. Glover, Jr., (\*\*\*) WAS a peace officer, whom the Defendant (\*\*) DID know or have reasonable cause to know to be a peace officer, and at the time of the offense, the victim, William D. Glover, Jr.

(\*\*\*) WAS engaged in his duties as a peace officer.

(\*\*\*) INSERT IN INK: "WAS" or "WAS NOT"

(\*\*) INSERT IN INK: "DID" or "DID NOT"

Wade H. Broadway

Mary Rusley

Marysue D. Pierce

Dinger F. Whitehead

Matthew S. Kalbits

Dwayne Hayes

Les M. Rusley

Jane R. Edison

May Lou Mason

Ivank Cooper

George Matthe

Ray L. Washburn  
Foreman or Forelady

VERDICT FORM  
"STATE V. JONES"; CASE NO. 97-CR-221

APR 21 8 59 AM '98  
CLERK OF DISTRICT COURT  
COMPLAINT FILED  
ASHTABULA COUNTY, OH.

SPECIFICATION NUMBER 3:

We, the Jury in this case, find that the Defendant, ODRAYE G. JONES, (\*\*) DID  know or have reasonable cause to know that William D. Glover, Jr. was a peace officer and that it (\*\*\*) WAS  the Defendant's specific purpose to kill a peace officer at the time of the offense.

(\*\*) INSERT IN INK: "DID" or "DID NOT"

(\*\*\*) INSERT IN INK: "WAS" or "WAS NOT"

Wade H. Brockway

Mary Risley

Margorie D. Pierce

Dwight F. Whitehead

Matthew S. Sollette

Dwayne Hayes

Lee M. Rising

Jane R. Edison

Mary Lou Mason

Frank Cooper

George Mattern

Tom L. Washburn  
Foreman or Forelady

VERDICT FORM  
"STATE.V. JONES"; CASE NO. 97-CR-221

MAY 21 8 59 AM '98  
CLERK OF SUPERIOR COURT  
6000 BULLOCK ST. S.W.  
ALBUQUERQUE, N.M. 87102  
FILED

SPECIFICATION NUMBER 4:

We, the Jury in this case, find that the Defendant, ODRAYE G. JONES, at the time he committed the offense (\*\*)  DID   have a firearm on or about his person or under his control and (\*\*)  DID   use the firearm to facilitate the offense.

(\*\*) INSERT IN INK: "DID" or "DID NOT"

Wade T. Brockway  
Mary Riskey  
Maguire D. Pierce  
Dinger F. Whitehead  
Matthew S. Kallitta  
Dwayne Hays

Leah M. Riskey  
Jane R. Edison  
Mary Lou Mason  
Luan D. Cooper  
Genevieve Mathis  
Toby L. Workman  
Foreman or Forelady

MAY 27 8 59 AM '98  
GARCI A HELLO  
COMMUNITY COURT, OH.  
FILED

VERDICT FORM  
"STATE V. JONES"; CASE NO. 97-CR-221

We, the Jury in this case, being duly empaneled and sworn,  
find the Defendant, ODRAYE G. JONES, (\*) \_\_\_\_\_ of  
the lesser included offense of Murder under §2903.02(A) of the  
Ohio Revised Code.

(\*) INSERT IN INK: "GUILTY" or "NOT GUILTY"

(If you find the Defendant guilty of the lesser offense  
of Murder, you will consider and complete the following  
verdict form relating to Specification Number 4.)

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Foreman or Forelady

IN THE COURT OF COMMON PLEAS  
ASHTABULA COUNTY, OHIO

STATE OF OHIO,  
Plaintiff,  
-VS-  
ODRAYE G. JONES,  
Defendant.

CASE NO. 97-CR-221

VERDICT  
(Death)

JUN 4 4 13 PM '98  
CAROL A. HENDON  
CLERK OF COURT  
ASHTABULA COUNTY, OHIO

We, the Jury, being duly impaneled and sworn, do find beyond a reasonable doubt that the aggravating circumstances which the Defendant, ODRAYE G. JONES, was found guilty of committing outweigh the mitigating factors in this case and, a sentence of death is imposed herein.

- |                              |                               |
|------------------------------|-------------------------------|
| 1. <u>Mary R. Rusin</u>      | 7. <u>Matthew Galietta</u>    |
| 2. <u>Margaret M. Pierce</u> | 8. <u>Jane Edisher</u>        |
| 3. <u>Mary Lou Mason</u>     | 9. <u>George F. Whitehead</u> |
| 4. <u>George Hays</u>        | 10. <u>Robert M. ...</u>      |
| 5. <u>George ...</u>         | 11. <u>Wade ...</u>           |
| 6. <u>Ernest W. Cooper</u>   | 12. <u>Tom ...</u>            |

DATE: 6-4-98

348 01000

VERDICT FORM  
"STATE V. JONES"; CASE NO. 97-CR-221

SPECIFICATION NUMBER 4:

We, the Jury in this case, find that the Defendant, ODRAYE  
G. JONES, at the time he committed the offense (\*\*)  
have a firearm on or about his person or under his control and  
(\*\*) use the firearm to facilitate the offense.

(\*\*) INSERT IN INK: "DID" or "DID NOT"

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Foreman or Forelady

Date: MAY 26, 1998