

IN THE SUPREME COURT OF OHIO

STATE OF OHIO EX REL.	)	CASE NO. 2015-0080
LEWIS LEROY MCINTYRE, JR.	)	
	)	
Relator	)	
	)	ORIGINAL ACTION IN
v.	)	PROHIBITION, MANDAMUS,
	)	AND PROCEDENDO
SUMMIT COUNTY	)	
COURT OF COMMON PLEAS, et al	)	
	)	
Respondents	)	

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**APPENDIX TO MOTION TO SHOW CAUSE**

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ATTORNEY FOR RESPONDENTS

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STATE OF OHIO

)

) ss:

AFFIDAVIT

COUNTY OF LORAIN

)

Stephen P. Hanudel, being first duly cautioned and sworn, deposes and states the following:

1. I am the attorney for Lewis Leroy McIntyre, Jr. in several capacities. I write this affidavit to explain some of the background in Mr. McIntyre's case that have led to the current motion before the Ohio Supreme Court.

2. When I examined Mr. McIntyre's 1991 case in 2013 and 2014, he did not mince words about his frustration and disgust with Judge Thomas Teodosio, who had been the assigned judge on his case since 2009. Mr. McIntyre was very frustrated that his pro se motions were all denied in seemingly automatic fashion. Mr. McIntyre felt Judge Teodosio was biased against him.

3. I was surprised to hear Mr. McIntyre's frustrations because I knew of Judge Teodosio in a much different and more positive light. Even though I now practice law with my office in Elyria in Lorain County, I am originally from Summit County. I attended University of Akron for both undergraduate and law school.

4. In 2006, while I was in law school, through my involvement in the local Democratic Party, I met Judge Teodosio when he was an attorney running for Common Pleas judge. I got along with him very well and found him to be a very affable person.

5. After I finished law school, I moved out of Summit County and eventually started practicing in Medina County and now in Lorain County. In 2011, when I represented a client in a simple drug possession case in his court, Judge Teodosio was cordial and remembered me by my first name. In 2012, at a University of Akron School of Law alumni reception, I saw Judge Teodosio and again, he was cordial and we talked for a couple minutes. In the meantime, I had

heard from other attorneys, who primarily practiced in Summit County, speak positively of Judge Teodosio and how he handled himself on the bench.

6. Thus, when Mr. McIntyre expressed his frustrations, I did everything I could to convince him that Judge Teodosio was a good and fair judge and that perhaps Mr. McIntyre's motions, being crudely written pro se motions, did not convey the points they needed to make.

7. In my analysis, I was stunned by the irregularities in Mr. McIntyre's case. Further, based on my independent investigation so far, I think his claim of actual innocence is genuine. At some point, as we brainstormed what the legal path to pursue, we determined that no final appealable order had ever been issued. I decided to go further than that and take a shot at a mistrial based on the overall plethora of irregularities. So, I filed a motion for mistrial on July 18, 2014 which also addressed the final appealable order issue. The prosecutor filed a response that did not address the merits of the motion.

8. I did not expect Judge Teodosio to go so far to grant a mistrial, but I certainly had high hopes that he would address the final appealable order issue. We waited patiently because I figured Judge Teodosio needed time to evaluate our motion given his normal caseload. Finally, in December 2014, he issued a short one page entry denying our motion. In so doing, he claimed Mr. McIntyre had a final appealable order, but cited a Ninth District Court of Appeals case rooted from Mr. McIntyre's 1985 case, not his 1991 case.

9. Needless to say, I felt disappointed. Even worse, Mr. McIntyre essentially said to me, "I told you so" about Judge Teodosio. If he did not previously believe anything I had told him about Judge Teodosio being a good and fair judge, he certainly did not believe it now. No attorney likes to be proven wrong by their client. I felt embarrassed that my previous vouching for Judge Teodosio did not bear fruit in Mr. McIntyre's case.

10. As we evaluated the case, I determined that we had to pursue a writ of mandamus to compel Judge Teodosio to issue a final appealable order. I told Mr. McIntyre that we could file in the Ninth District Court of Appeals or the Ohio Supreme Court. He chose the Ohio Supreme Court because he felt that the Ninth District had exhibited a longstanding bias against him in the years past.

11. Filing an action against Judge Teodosio was not something I relished doing. Ultimately, however, I adhered to my duty to the client and desire to achieve justice in his case. Even then, I still had enough respect for Judge Teodosio that I named him as the last respondent so the main case caption would not bear his name. I kept thinking that he was just sincerely mistaken in how he viewed the case.

12. When we received notice of the Ohio Supreme Court's decision granting the mandamus on December 23, 2015, my client and I were elated and had a new sense of hope and optimism for the future. We knew there was still a long way to go with no guarantees, but at least there was a legal path to pursue. Also, I still wanted to believe all the positives about Judge Teodosio. Thus, I was hopeful, based on the Ohio Supreme Court's decision, he would now see our positions and duly consider the other meritorious issues in Mr. McIntyre's case.

13. Meanwhile, Mr. McIntyre urged me to seek Judge Teodosio's recusal or disqualification because he had no confidence in Judge Teodosio to do justice. Mr. McIntyre felt that Judge Teodosio would find a way to avoid addressing the core problems in his case. Again, I rebuffed my client on this issue. I told him that we did not have any basis for a recusal or disqualification. Also, I told him that now that the Ohio Supreme Court has clarified the final appealable order issue and the character of the criminal case, I felt optimistic that Judge Teodosio would now perhaps view the case differently and follow the proper steps to resolve the straggling issues,

including holding an open court hearing. Mr. McIntyre went along with my advice, albeit very reluctantly.

14. On Monday January 4, 2016, my first business day back from winter vacation, I filed several motions. I renewed the motion for mistrial. In so doing, I mentioned that the firearm specification to the aggravated burglary was never disposed since there was no finding by the jury. I also mentioned that the prior aggravated felony specification was not disposed for the same reason. However, Mr. McIntyre's sentence was enhanced by both specifications.

15. On the same date, I requested a hearing in a separate motion. Because there was a pending amended felonious assault charge still unresolved, I demanded discovery. I also sought a bond for my client since the matter was a pending case.

16. At the very least, I was hopeful for a conference or hearing to which the prosecutor, Judge Teodosio, and I could orally discuss the case. I felt it would have gone a long way to clear the air and put everyone on the same page. Plus, I could highlight the lingering problems in the case that needed to be corrected since there were so many of them.

17. Again, at the bare minimum, I had hoped that Judge Teodosio would address the remaining amended felonious assault charge, firearm specification to the aggravated burglary charge, and prior aggravated felony specification that were not disposed. In so doing, my client and I believed he would have been entitled to a new sentencing hearing. We had hoped that a new sentencing hearing could result in his release after serving nearly 25 years, which surpasses the maximum under today's law for a felonious assault with a firearm specification and aggravated burglary.

18. For several days after I filed my motions, there was the same deafening silence as before, so I figured some communication would be helpful this time. On Friday January 8th, I called

Judge Teodosio's staff to inquire on whether he had received the motions and if he would schedule a hearing. I spoke to someone substituting for the bailiff. I do not recall her name. However, she was very short and snappy with me. She tersely said the judge and the staff attorney were reviewing them.

19. A few more days passed and still nothing but silence. No hearing had been scheduled. On January 14th, I emailed Judge Teodosio's staff attorney Matthew Rich inquiring on if or when Mr. McIntyre would be transported to Summit County Jail. Again, I was hopeful for an open court hearing to constructively move the matter along. I never received a response.

20. Also on January 14th, the State filed a memorandum that was a half page long and did not address the merits of my motions. It simply stated that the trial court should comply with the Ohio Supreme Court mandate and nothing else.

21. After several more days of silence, I filed a motion to convey Mr. McIntyre to the Summit County Jail and a response to the State's memorandum. This time, after I filed them, I personally walked to Judge Teodosio's chambers to drop off a copy of each. When I arrived, it seemed that potential jurors were waiting outside for a trial to take place in Judge Teodosio's court. There was activity going on in the courtroom. However, the bailiff was at the front desk and I simply sought to drop off a copy with her. When I dropped off the copies, the bailiff looked at it and an annoyed look appeared on her face and she said, "Leroy McIntyre?" I said yes and told her it goes with the other motions I had filed earlier in the month and I had not heard anything as to what is going on. She said OK and placed the copies on her desk. I then left. As much I understood that she was likely busy with other matters, I knew deep down, in light of the overall circumstances, the reaction was not good.

22. More days and weeks passed with more silence. Judge Teodosio never scheduled a hearing. The State never responded to my discovery request. Mr. McIntyre became increasingly frustrated and irritated that he was sitting in a state penitentiary with no final appealable order of sentence and no end in sight. I felt so helpless to do anything about it because I had done everything I could at this point. I had received no answers or communications from Judge Teodosio's court to which I could relay to Mr. McIntyre.

23. On Monday February 1st, I contacted the Ohio Supreme Court's office on case management. I spoke to Tasha Ruth and said she would contact Judge Teodosio's staff to find out what is going on. She later called me back and said she was told by Judge Teodosio's staff that they were working on a final appealable order and would have it done that week.

24. I then realized that Judge Teodosio was not going to hold any open court hearing whatsoever, but still somehow crank out an order. My client and I were wondering how he could do that when there were charges that had yet to be disposed, which would affect the sentence. On February 3rd, without addressing any of the motions I filed in January, Judge Teodosio filed a journal entry deemed as the final appealable order.

25. To put it mildly, Mr. McIntyre was not happy. Even more so, he was very upset at me for giving Judge Teodosio the benefit of the doubt over his longstanding concerns. I felt bad that despite obtaining the writ, I was not able to turn it into any meaningful short term gain in regards to my client's freedom.

26. As my client and I reviewed the order, we spotted several discrepancies. Also, our January motions had not been addressed. At this point, we were not sure what else to do besides file an appeal to be safe. On February 17th, I filed an appeal from the February 3rd order. On February 23rd, Judge Teodosio filed an order denying our January motions. Again, to be safe, we

filed an appeal from that order too, but it was later dismissed by the Ninth District as not arising from a final appealable order.

27. With the appeal, I filed a motion with the Ninth District Court of Appeals asking them to determine whether the February 3rd order was final and appealable. The Ninth District, without delving much into the merits, eventually decided it would provisionally accept jurisdiction over the appeal.

28. Currently, Mr. McIntyre and I are seeking to have the appellate record corrected. In July 2010, Judge Teodosio signed an order to destroy the trial exhibits. To justify the destruction, the order falsely stated that McIntyre was not in prison on the 1991 case and did not have an appeal pending.

29. Based on the issues with the exhibits, I honored my client's request to seek Judge Teodosio's voluntary recusal, which he denied. We felt Judge Teodosio had a conflict to resolve the destruction of exhibits issue when he had signed the order authorizing the destruction. Mr. McIntyre has since decided on his own to pursue a pro se affidavit to disqualify Judge Teodosio.

30. Now that Judge Teodosio is seeking election to the Ninth District Court of Appeals, he is campaigning in Lorain County, where I have established a positive reputation for myself in the legal community. Further, I live in Medina County and was recently elected to serve on the executive committee of the Medina County Democratic Party. As friends and people I know in the legal community and Democratic Party support Judge Teodosio, not knowing the frustrations Mr. McIntyre and I have experienced, I have been in an awkward position not of my choosing. However, with my duty to my client, I cannot surrender his legal interests to politics.

31. I do not seek to publicly embarrass or humiliate Judge Teodosio. I do not seek to cause any trouble to his campaign for higher judicial office. However, I have an obligation to be a

zealous advocate for my client and his interests. Based on my research, the statutory and case law cited in the motion directs me to pursue a show cause action as the remedy to ensure compliance with the Ohio Supreme Court's mandate. My advocacy for the client is the sole reason why I bring the show cause action on my client's behalf.

32. When I asked the other attorneys in my office to notarize my signature to this affidavit, they declined because they expressed fear that if Judge Teodosio is elected to the Ninth District Court of Appeals, they and their clients could face negative repercussions for having any remote association to the show cause action. Even though I said they were just being a notary, they were still fearful.

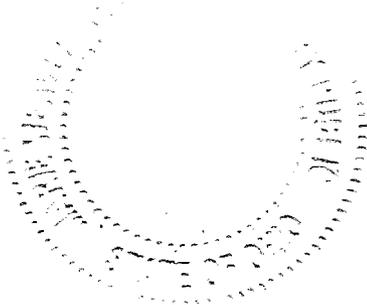
33. All the documents in the Appendix are true and accurate to the best of my knowledge.

Further, affiant sayeth naught.

  
\_\_\_\_\_  
Stephen P. Hanudel

Sworn and subscribed before me, a Notary Public in and for said County in said

State, on this 6<sup>th</sup> day of May, 2016.



  
\_\_\_\_\_  
Notary Public

**MARIE WEIMER ARCULLO**  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES April 6, 2019

2015 JAN -4 PM 12: 02  
SUMMIT COUNTY  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

STATE OF OHIO )  
)  
Plaintiff )  
)  
v. )  
)  
LERROY L. MCINTYRE )  
)  
Defendant )

CASE NO. CR-91-01-0135  
JUDGE THOMAS A. TEODOSIO

**RENEWAL OF MOTION TO  
DECLARE MISTRIAL**

Defendant, Leroy L. McIntyre (true name Lewis Leroy McIntyre, Jr.), by and through undersigned counsel, hereby renews his Motion to Declare Mistrial filed July 18, 2014. In the motion, McIntyre maintained that he has never had a final appealable order in this case. The Court denied the motion on December 2, 2014.

As this Court probably knows, the Ohio Supreme Court recently sided with McIntyre and declared that there has never been a final appealable order in this case. Thus, the Ohio Supreme Court granted McIntyre a writ of mandamus ordering this Court to produce a final appealable order. *State ex rel. McIntyre v. Summit Cty. Court of Common Pleas, et al*, 2015-Ohio-5343.

Before this Court can produce a final appealable order, however, it must address the numerous defects that have plagued this case from day one. As the Ohio Supreme Court stated, there is no res judicata in this case. Thus, McIntyre is free to raise all issues, no matter how old or new, before this Court. If he is denied, he will be permitted to raise all issues on what would be a first time direct appeal in the Ninth District Court of Appeals. But McIntyre hopes it will not go that far and this Court will finally do the right thing in his case.

McIntyre will recap the main issues in the motion for mistrial. First, the judge who presided over trial never had authority to do so. Judge William Victor was a retired judge in

1991. Thus, he needed to have a certificate of assignment from the Chief Justice to preside over the case. But he did not have one. Further, he never signed the orders. Judge Mary Spicer, the elected judge assigned to the case, signed the orders even though she never presided over trial. McIntyre raised this issue to the Ohio Supreme Court to obtain a writ of prohibition, but was denied as premature. In other words, the Ohio Supreme Court felt the issue was not ripe for prohibition and had to be pursued in the instant proceedings since there no final appealable or res judicata.

Second, the jury verdict forms were defective. The forms only had one signature block for both the charge and specification. The charge and specification require separate findings, so it follows that there must be separate forms and signature blocks for the jury to execute. From everything counsel has seen in practice elsewhere, separate forms are used for the charge and specification. This case is the only instance that counsel knows of where both the charge and specification were placed on the same form with one signature block.

Third, the firearm specification on the aggravated burglary verdict form referenced felonious assault. Thus, the aggravated burglary firearm specification (Specification One to Count One of Supplement Two of the Indictment) was never disposed. Further, the verdict form confused the jury and prejudiced McIntyre. Therefore, at the very least, a mistrial should be declared on the aggravated burglary. Since Judge Victor instructed the jury that the charges were related to one another, a mistrial on one count means a mistrial on all.

Fourth, there are two specifications that are under the same name. Supplement One of the indictment contains a firearm specification labeled as "Specification One to Count One," referencing the Count One within the supplement. Supplement Two then contains a prior aggravated felony specification labeled as, "Specification One to Count One of Supplement

One.” With specifications labeled under the same name, McIntyre was prejudiced in obtaining a proper disposal of each charge and specification.

Fifth, the prior aggravated felony specification was not tried to the jury. Instead, without McIntyre’s consent, it was tried to the bench. Further, Judge Spicer signed an entry stating that McIntyre was acquitted of the specification even though his sentence was enhanced by it.

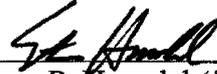
As a general note, amidst all the procedural discussion, McIntyre is seeking justice on the merits. McIntyre reminds this Court that he was convicted on the eyewitness testimony of a 15 year old and 18 year old who were manipulated by police and prosecutors.

The 15 year old, Galen Thompson, has independently retracted his testimony, stating he succumbed to the government pressure. The 18 year old, Theresa Johnson, did not identify McIntyre until trial. McIntyre’s trial attorney objected to the surprise testimony stating if he would have had prior notice that she would say that, he would have subpoenaed another witness to directly contradict her.

It was just a little more than a year ago that three men in Cleveland were exonerated after being convicted in 1975 solely on the coerced testimony of a 12 year old boy. One of the three men, Ricky Jackson, served a national record 39 years for a crime he did not commit. McIntyre was convicted under very similar circumstances.

For the foregoing reasons and all the reasons contained in the Motion to Declare Mistrial filed July 18, 2014, McIntyre asks the Court to declare a mistrial on all counts (in the first three indictments) and set this case for a new trial. It is the only way to cure the massive defects that have occurred in this case.

Respectfully submitted,



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Attorney for Defendant  
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Fax: (440) 261-4040  
[sph812@gmail.com](mailto:sph812@gmail.com)

**CERTIFICATE OF SERVICE**

~~Notice~~  
**MOTION**

I certify that a true copy of the foregoing ~~Notice~~ was delivered personally or by US Mail to the Summit County Prosecutor's office, 53 University Avenue, Akron, Ohio 44308 on January 4, 2016.



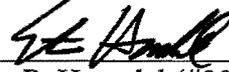
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Stephen P. Hanudel  
Attorney for Defendant



Therefore, McIntyre asks the Court for a signature bond while this case is pending.

Respectfully submitted,



\_\_\_\_\_  
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Phone: (440) 328-8973  
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[sph812@gmail.com](mailto:sph812@gmail.com)

**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing Motion was delivered personally or by US Mail to the Summit County Prosecutor's office, 53 University Avenue, Akron, Ohio 44308 on January 4, 2016.



\_\_\_\_\_  
Stephen P. Hanudel  
Attorney for Defendant



2016 JAN -4 PM 12:03

SUMMIT COUNTY  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

STATE OF OHIO )  
 )  
 Plaintiff )  
 )  
 v. )  
 )  
 LEROY L. MCINTYRE )  
 )  
 Defendant )

CASE NO. CR-91-01-0135  
JUDGE THOMAS A. TEODOSIO

**DEMAND FOR DISCOVERY**  
**AND BILL OF PARTICULARS**

Now comes Defendant, by and through undersigned counsel – with there being a pending charge and specifications – pursuant to Ohio Criminal Rules 7(E) and 16, *et seq*, and the independent disclosure doctrines in:

A. *Brady v. Maryland*, 373 U.S. 83 (1963) (When the State suppresses or fails to disclose material exculpatory evidence, the good or bad faith of the prosecution is irrelevant: a due process violation occurs whenever such evidence is withheld from the defense);

B. *United States v. Agurs*, 427 U.S. 97 (1976) (If a prosecutor fails to voluntarily disclose exculpatory evidence, even if it is not requested by the defense, and if the omitted evidence creates a reasonable doubt that did not otherwise exist, constitutional error has been committed under the Due Process Clause of Fifth Amendment of the U.S. Constitution);

C. *United States v. Bagley*, 473 U.S. 667 (1985) (“Material” evidence means evidence that has a reasonable probability of providing a different result in trial or sentencing; and impeachment evidence, as well as exculpatory evidence, falls within the *Brady* rule), and;

D. *Banks v. Dretke*, 540 U.S. 668 (2004) (Prosecutor must disclose identify of all police and prosecution informants to the defense whether or not they will be called as witnesses by the State);

hereby demands production of the following evidence:

1. All ordinances, laws, and rules the Defendant has been accused of violating;
2. List of all of the prosecution witnesses for trial, investigative witnesses, paid and unpaid informants, and witnesses who have provided statements, oral or written, to the police or the prosecution, including their complete names, addresses and phone numbers;
3. All charges and indictments pending against the Defendant;
4. Prior criminal record of Defendant and any prosecution witness;
5. Any search or arrest warrant used to obtain evidence in this case;
6. List of all exhibits the prosecution will use in its case in chief or rebuttal case;
7. Written statement outlining the terms of any agreement entered into or proposed between the government and any witness in this case;
8. Any written or recorded admission against interest, confession, or statement made by the Defendant to the police or the government, or any other witness;
9. Recorded testimony of Defendant before a grand jury;
10. Opportunity to inspect, independently test, and/or photocopy any physical evidence including, but not limited to, buildings, places, tangible objects, books, papers, documents, videotape, digital media, audiotape or any other computer media including any hard or floppy drive with all files intact that has been obtained by the prosecution and which could be used to incriminate the Defendant;
11. All records documenting chain of custody of all physical evidence that allegedly tested positive for controlled or illegal substances.
12. Any police or scientific report referring to any issue in this case that will form the basis of any prosecution witness testimony;

13. Any expert witness or medical treatment report including the expert's CV and statement of findings, and citation to data and evidence relied upon in reaching any opinions and/or conclusions at issue in this case;

14. Access to scene of the alleged crime for the purpose of making photographs or digital/video records of the scene of the alleged crime;

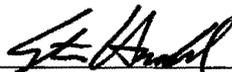
15. Any 9-1-1 emergency call audio transcript or opportunity to review audio tape or digital data record of calls made to 9-1-1 by any witness or party in this case;

16. Documentary evidence that any scientific instrument used to process evidence in this case was properly calibrated, its operating software verified as reliable, and documentary evidence showing the said scientific instrument was properly used by the police or other government agent, and the operator of the same was qualified to operate the scientific instrument;

17. All evidence favorable to Defendant, including exculpatory, material to either guilt or punishment.

MOREOVER, pursuant to Ohio Criminal Rule 7(E) the Defendant demands the prosecution to produce a bill of particulars and deliver it to the defense counsel in accord with the complete text of that Rule. In the event the prosecution fails or refuses to comply with this request for a bill of particulars, Defendant asks the Court to treat this request as a motion for an order compelling the same, pursuant to Ohio Criminal Rule 7(E).

Respectfully submitted,



---

Stephen P. Hanudel (#0083486)  
Attorney for Defendant  
124 Middle Avenue, Suite 900  
Elyria, Ohio 44035  
Phone: (440) 328-8973  
Fax: (440) 261-4040  
[sph812@gmail.com](mailto:sph812@gmail.com)

**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing Demand was delivered personally or by US Mail to the Summit County Prosecutor's office, 53 University Avenue, Akron, Ohio 44308 on January 4, 2016.



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Stephen P. Hanudel  
Attorney for Defendant

2016 JAN 14 AM 9:07  
STATE OF OHIO  
SUMMIT COUNTY  
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO**

**CASE NO. CR 91 01 0135**

**Plaintiff**

**JUDGE TEODOSIO**

**v.**

**LEWIS LEROY MCINTYRE**

**STATE'S MEMORANDUM**

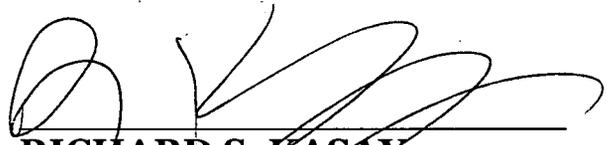
**Defendant**

The Defendant filed a Renewal of Motion to Declare Mistrial on January 4, 2016. There are no evidentiary documents only conclusory statements. This Court is under an obligation to issue a final order. *State ex rel. McIntyre v. Summit County Court of Common Pleas*, Slip Opinion 2015-Ohio-5343.

The State submits that the proper course is to obey the mandate of the Supreme Court of Ohio. At that point defendant can file for relief post-judgment or go to the Court of Appeals. The instant motion should be denied without prejudice.

Respectfully submitted,

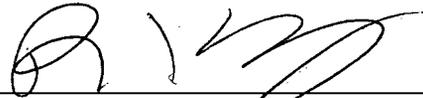
**SHERRI BEVAN WALSH**  
Prosecuting Attorney



**RICHARD S. KASAY**  
Assistant Prosecuting Attorney  
Summit County Safety Building  
53 University Avenue, 6<sup>th</sup> Floor  
Akron, Ohio 44308  
(330) 643-2800  
Reg. No. 0013952

**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing has been mailed by regular U.S. Mail to Attorney Stephen P. Hanudel, 124 Middle Avenue, Suite 900, Elyria, Ohio 44035, on this 14th day of January, 2016.



**RICHARD S. KASAY**  
Assistant Prosecuting Attorney



Stephen Hanudel &lt;sph812@gmail.com&gt;

---

**State v. McIntyre, Case No. CR-91-01-0135**

1 message

**Stephen Hanudel** <sph812@gmail.com>

Thu, Jan 14, 2016 at 7:20 AM

To: mrich@cpcourt.summitoh.net

Hi Matthew,

As you are probably aware, I filed some motions on behalf of my client Lewis Leroy McIntyre, Jr. on January 4th. I spoke to the bailiff last Friday and she told me that you and Judge Teodosio are evaluating them.

I fully understand that it may take some time to evaluate our motion for mistrial given the issues involved and that the judge has his normal everyday slate of cases.

In regards to our motion for bond, my client is getting increasingly wary about how he still is in a state prison institution when there is no final appealable order of sentence. I understand the judge has not set any hearings yet, but given that there is an unresolved charge, it is most certainly going to require open court hearings with my client's presence to properly dispose of the case. Even if our motion for mistrial fails and the State dismisses the remaining charges (which must be done in open court under Crim. R. 48), we will then take the position that he should get a sentence under HB 86 (since there has never been a valid final order of sentence), which I would want the opportunity to brief.

Thus, my client is hoping to be transferred to Summit County Jail as soon as possible. At that point, the issue of bond can hopefully be addressed in the short term while all the other matters in the case are ferreted out.

As I continue to conduct more analysis and investigation of the case, I might have more motions coming in the near future, but that remains to be seen right now. The uniqueness of this case has challenged me to think outside the box more than any other case I have ever had.

Please let me know if my client will be transferred to the local jail and how soon that may be. I know this is a very unusual and unique case, so I am trying to be very flexible in allowing the judge sufficient room to evaluate it and make the right decisions. However, at the same time, I have to represent my client, and advance his interest in that he belongs in the local jail, not the state prison.

Thank you,

Steve

Stephen P. Hanudel  
Attorney at Law  
124 Middle Avenue, Suite 900  
Elyria, Ohio 44035  
Phone: (440) 328-8973  
Fax: (440) 261-4040



seems when these issues involve Lewis Leroy McIntyre, Jr. in Summit County, they suddenly become incredibly complicated.

The State says that McIntyre makes conclusory statements in his motion for mistrial without documentation or evidence. Nothing could be further from the truth.

The January 4, 2016 filing is a **renewal** of the motion filed on July 18, 2014, which contained the documentation and evidence the State is looking for. There is no record of Judge William Victor ever having a certificate of assignment from the Chief Justice of the Ohio Supreme Court to preside over trial in this case. This is confirmed by the communication that counsel had with Diane Hayes of the Ohio Supreme Court, which was attached to the original motion. There is no record of Judge Mary Spicer, the elected judge assigned to this case, ever relinquishing her authority. Yet, Judge Victor, without authority, presided over the trial while Judge Spicer signed the orders.

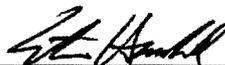
McIntyre is hopeful that the issues in this case will finally be addressed on the merits. The State has not articulated on the merits why McIntyre should not prevail on these issues. Thus, there is only one way they should go and that is in McIntyre's favor.

The State is desperately trying to cling to the guilty verdicts because it knows that if McIntyre receives a new trial, the State will never be able to prove him guilty again. First, the 15 year old victim recanted his identification of McIntyre. Second, the 18 year old, the only other person to identify McIntyre – and did so by surprise at trial – has since accumulated a voluminous felony record of dishonesty, showing her disregard for the truth. Third, the State destroyed the physical evidence in 2010, which presents another problem. If McIntyre does not succeed in getting a new trial and ultimately receives a final appealable order, his ability to appeal will have been unduly interfered with. Fourth, the State also knows that McIntyre's trial

attorney failed to subpoena his alibis. The State knows it cannot necessarily count on that the second time around.

For these reasons, McIntyre begs this Court to convey him to Summit County jail, hold a hearing in open court to determine his bond status, and declare a mistrial based on Judge Victor never having authority to preside over trial.

Respectfully submitted,



---

Stephen P. Hanudel (#0083486)  
Attorney for Defendant  
124 Middle Avenue, Suite 900  
Elyria, Ohio 44035  
Phone: (440) 328-8973  
Fax: (440) 261-4046  
[sph812@gmail.com](mailto:sph812@gmail.com)

**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing Response was delivered personally or by US Mail to the Summit County Prosecutor's office, 53 University Avenue, Akron, Ohio 44308 on January 20, 2016.



---

Stephen P. Hanudel  
Attorney for Defendant

2016 JAN 20 PM 1:21

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

STATE OF OHIO )  
SUMMIT COUNTY )  
CLERK OF COURTS )

Plaintiff )

v. )

LEROY L. MCINTYRE )

Defendant )

CASE NO. CR-91-01-0135

JUDGE THOMAS A. TEODOSIO

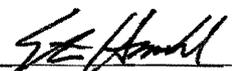
**MOTION TO CONVEY**

Defendant, Leroy L. McIntyre (true name Lewis Leroy McIntyre, Jr.), by and through undersigned counsel, hereby asks the Court to order the Sheriff to convey him from North Central Correctional Complex to Summit County Jail.

As this Court knows, based on the Ohio Supreme Court's recent ruling in *State ex rel. McIntyre v. Summit County Court of Common Pleas*, 2015-Ohio-5343, there is no final order of sentence and this case has been open and pending for the last 25 years. Thus, McIntyre does not belong in a state prison institution, but rather in the local county jail under a reasonable bond.

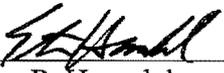
Therefore, McIntyre respectfully asks the Court to order the Sheriff to convey him to Summit County Jail.

Respectfully submitted,

  
\_\_\_\_\_  
Stephen P. Hanudel (#0083486)  
Attorney for Defendant  
124 Middle Avenue, Suite 900  
Elyria, Ohio 44035  
Phone: (440) 328-8973  
Fax: (440) 261-4046  
[sph812@gmail.com](mailto:sph812@gmail.com)

**CERTIFICATE OF SERVICE**

I certify that a true copy of the foregoing Motion was delivered personally or by US Mail to the Summit County Prosecutor's office, 53 University Avenue, Akron, Ohio 44308 on January 20, 2016.

  
\_\_\_\_\_  
Stephen P. Hanudel  
Attorney for Defendant

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

2016 FEB -3 PM 1:51

366

THE STATE OF OHIO

Case No. CR 1991-01-0135

vs.

SUMMIT COUNTY  
CLERK OF COURTS

JOURNAL ENTRY  
(FINAL APPEALABLE ORDER)

LEROY L. McINTYRE

\*\*\*\*\*

This matter came before the Court upon a peremptory writ of mandamus issued by the Supreme Court of Ohio, pursuant to S.Ct.Prac.R. 12.04(C), directing this Court "to issue a final, appealable order disposing of all the charges against McIntyre." *State ex rel. McIntyre v. Summit Cty. Court of Common Pleas*, Slip Opinion No. 2015-Ohio-5343, ¶11.

Prior to the Defendant's Jury Trial, the Court granted the Prosecuting Attorney's oral motion to amend **COUNT ONE OF SUPPLEMENT ONE** to add a second victim.

On August 12, 1991, the Defendant's Jury Trial was held.

On August 13, 1991, the Prosecuting Attorney, MAUREEN HARDY, on behalf of the State of Ohio, and the Defendant, LEROY L. McINTYRE, represented by counsel, VINCENT MODUGNO, appeared before the Court. The jury returned their verdict and found the Defendant as follows:

The jury found the Defendant GUILTY of the offense of FELONIOUS ASSAULT, as contained in **COUNT ONE**, Ohio Revised Code Section 2903.11(A)(2), an aggravated felony of the second (2<sup>nd</sup>) degree;

The jury, having found the Defendant guilty of Felonious Assault as charged in Count One, further found that the Defendant DID have a firearm on or about his person or under his control while committing the offense of Felonious Assault, as contained in **SPECIFICATION ONE TO COUNT ONE**, Ohio Revised Code Section 2941.141;

The jury, having found the Defendant guilty of Felonious Assault as charged in Count One, further found the Defendant NOT GUILTY of having previously been convicted of the offense of Robbery, as contained in **SPECIFICATION TWO TO COUNT ONE**, Ohio Revised Code Section 2941.142;

The jury was UNABLE TO REACH A DECISION ON A VERDICT for the offense of FELONIOUS ASSAULT, as contained in **AMENDED COUNT ONE OF SUPPLEMENT ONE**, Ohio Revised Code Section 2903.11(A)(2), an aggravated felony of the second (2<sup>nd</sup>) degree;

The jury was further UNABLE TO REACH A DECISION ON A VERDICT as to whether the Defendant had a firearm on or about his person or under his control while committing the offense of Felonious Assault, as contained in **SPECIFICATION ONE TO AMENDED COUNT ONE OF SUPPLEMENT ONE**, Ohio Revised Code Section 2941.141;

The jury found the Defendant GUILTY of the offense of AGGRAVATED BURGLARY, as contained in **COUNT ONE OF SUPPLEMENT TWO**, Ohio Revised Code Section 2911.11(A)(2)/(A)(3), an aggravated felony of the first (1<sup>st</sup>) degree;

The jury, having found the Defendant guilty of Aggravated Burglary as charged in Count One of Supplement Two, further found that the Defendant DID have a firearm on or about his person or under his control while committing the offense of Aggravated Burglary, as contained in **SPECIFICATION ONE TO COUNT ONE OF SUPPLEMENT TWO**, Ohio Revised Code Section 2941.141.

Based on the jury's findings, the Court accepted the jury's verdicts and made the same findings.

The offenses occurred on or about December 30, 1990.

On August 29, 1991, the Prosecuting Attorney, MAUREEN HARDY, on behalf of the State of Ohio, and the Defendant, LEROY L. McINTYRE, represented by counsel, VINCENT MODUGNO, appeared before the Court for a sentencing hearing.

The Court inquired of the Defendant if he had anything to say as to why judgment should not be pronounced against him. The Defendant failed to show good and sufficient cause why judgment should not be pronounced.

The Court then ORDERED that the Defendant, LEROY L. McINTYRE, be committed to the Ohio Department of Rehabilitation and Corrections as follows:

For an indeterminate period of not less than Eight (8) Years and not more than the maximum of Fifteen (15) Years, and the Eight (8) Year minimum shall be a period of actual incarceration, as punishment for the crime of FELONIOUS ASSAULT, as contained in **COUNT ONE**, Ohio Revised Code Section 2903.11(A)(2), an aggravated felony of the second (2<sup>nd</sup>) degree;

For a definite term of Three (3) Years, which is a MANDATORY term, as punishment for having a firearm on or about his person or under his control while committing the offense of Felonious Assault, as contained in the **SPECIFICATION ONE TO COUNT ONE**, Ohio Revised Code Section 2941.141;

For an indeterminate period of not less than Eight (8) Years and not more than the maximum of Twenty-Five (25) Years, as punishment for the crime of AGGRAVATED BURGLARY, as contained in **COUNT ONE OF SUPPLEMENT TWO**, Ohio Revised Code Section 2911.11(A)(2)/(A)(3), an aggravated felony of the first (1<sup>st</sup>) degree;

For a definite term of Three (3) Years, which is a MANDATORY term, as punishment for having a firearm on or about his person or under his control while committing the offense of Felonious Assault, as contained in the **SPECIFICATION ONE TO COUNT ONE OF SUPPLEMENT TWO**, Ohio Revised Code Section 2941.141.

The Court ORDERED that the sentence imposed for SPECIFICATION ONE TO COUNT ONE is to be served CONSECUTIVELY, and not concurrently, with the sentence imposed for SPECIFICATION ONE TO COUNT ONE OF SUPPLEMENT TWO.

The Court FURTHER ORDERED that the sentences imposed for COUNT ONE and COUNT ONE OF SUPPLEMENT TWO were to be served CONSECUTIVELY, and not concurrently, with each other.

The Court FURTHER ORDERED that the sentences imposed for SPECIFICATION ONE TO COUNT ONE and SPECIFICATION ONE TO COUNT ONE OF SUPPLEMENT TWO are to be served CONSECUTIVELY, and not concurrently, with the sentences imposed in COUNT ONE and COUNT ONE OF SUPPLEMENT TWO.

The Court ORDERED the Defendant to pay the costs of this prosecution for which execution was awarded; said monies to be paid to the Summit County Clerk of Courts, Court House, Akron, Ohio 44308.

The Court ORDERED, pursuant to the above sentence, that the Defendant be conveyed to the Lorain Correctional Institution at Grafton, Ohio, to commence the prison intake procedure.

On May 21, 1992, the Prosecuting Attorney, LYNNE LAMBERT, on behalf of the State of Ohio, and the Defendant, LEROY L. McINTYRE, represented by counsel, THOMAS CICCOLINI, appeared before the Court for a hearing. The Defendant was fully advised of his constitutional rights and his rights as required under Crim.R. 11.

Upon motion of the prosecutor for the State of Ohio, the Court amended **COUNT ONE OF SUPPLEMENT SIX** to the offense of AGGRAVATED ASSAULT, Ohio Revised Code Section 2903.12, a felony of the fourth (4<sup>th</sup>) degree.

Thereupon, the Defendant retracted his plea of NOT GUILTY and entered a plea of GUILTY to the amended charge of AGGRAVATED ASSAULT, as contained in the **AMENDED COUNT ONE OF SUPPLEMENT SIX**, Ohio Revised Code Section 2903.12, a felony of the fourth (4<sup>th</sup>) degree; which plea, voluntarily made and with a full understanding of the consequences, was accepted by the Court. The Court found the Defendant GUILTY of AGGRAVATED ASSAULT, as contained in the **AMENDED COUNT ONE OF SUPPLEMENT SIX**, Ohio Revised Code Section 2903.12, a felony of the fourth (4<sup>th</sup>) degree.

The offense occurred on or about August 14, 1991.

The Court FURTHER ORDERED the following charges to be DISMISSED:

FAILURE TO APPEAR, as contained in **COUNT ONE OF SUPPLEMENT THREE**, Ohio Revised Code Section 2937.29, an unclassified felony;

FELONIOUS ASSAULT, as contained in **COUNT ONE OF SUPPLEMENT FOUR**, Ohio Revised Code Section 2903.11(A)(2), an aggravated felony of the second (2<sup>nd</sup>) degree;

**SPECIFICATION ONE TO COUNT ONE OF SUPPLEMENT FOUR**, as contained in SUPPLEMENT FIVE, Ohio Revised Code Section 2941.142, alleging the Defendant has been previously convicted of an aggravated felony;

HAVING WEAPON WHILE UNDER DISABILITY, as contained in **COUNT TWO OF SUPPLEMENT FOUR**, Ohio Revised Code Section 2923.13(A)(2), a felony of the fourth (4<sup>th</sup>) degree;

**SPECIFICATION ONE TO COUNT TWO OF SUPPLEMENT FOUR**, as contained in SUPPLEMENT FIVE, Ohio Revised Code Section 2941.143(B), alleging the Defendant has been previously convicted of or pleaded guilty to a crime of violence;

**SPECIFICATION ONE TO AMENDED COUNT ONE OF SUPPLEMENT SIX<sup>1</sup>**, as contained in SUPPLEMENT SIX, Ohio Revised Code Section 2941.142, alleging the Defendant has been previously convicted of the offense of Robbery and/or Felonious Assault;

FELONIOUS ASSAULT, as contained in **COUNT TWO OF SUPPLEMENT SIX**, Ohio Revised Code Section 2903.11(A)(2), an aggravated felony of the second (2<sup>nd</sup>) degree;

**SPECIFICATION ONE TO COUNT TWO OF SUPPLEMENT SIX<sup>2</sup>**, as contained in SUPPLEMENT SIX, Ohio Revised Code Section 2941.142, alleging the Defendant has been previously convicted of the offense of Robbery and/or Felonious Assault.

The Court inquired of the Defendant if he had anything to say as to why judgment should not be pronounced against him. The Defendant failed to show good and sufficient cause why judgment should not be pronounced.

The Court then ORDERED that the Defendant, LEROY L. McINTYRE, be committed to the Ohio Department of Rehabilitation and Corrections as follows:

For a definite term of One and One-Half (1½) Years, as punishment for the crime of AGGRAVATED ASSAULT, as contained in the **AMENDED COUNT ONE OF SUPPLEMENT SIX**, Ohio Revised Code Section 2903.12, a felony of the fourth (4<sup>th</sup>) degree.

The Court ORDERED that the sentence imposed for the AMENDED COUNT ONE OF SUPPLEMENT SIX be served CONCURRENTLY, and not consecutively, with the sentences imposed in COUNT ONE and COUNT ONE OF SUPPLEMENT TWO.

The Court ORDERED the Defendant to pay the costs of this prosecution for which execution was awarded; said monies to be paid to the Summit County Clerk of Courts, Court House, Akron, Ohio 44308.

The Court ORDERED the Defendant to be given credit for all time served locally while awaiting disposition of this case.

The Court ORDERED, pursuant to the above sentence, that the Defendant be conveyed to the Lorain Correctional Institution at Grafton, Ohio, to commence the prison intake procedure.

---

<sup>1</sup> There is a typographical error in the Court's Journal Entry filed on May 22, 1992. In the third paragraph of page one, the entry erroneously reads "SPECIFICATION ONE TO COUNT ONE OF SUPPLEMENT FIVE" when it should read "SPECIFICATION ONE TO COUNT ONE OF SUPPLEMENT **SIX**." The specification has been dismissed and the Defendant has suffered no prejudice.

<sup>2</sup> There is a typographical error in the Court's Journal Entry filed on May 22, 1992. In the first partial paragraph of page two, the entry erroneously reads "SPECIFICATION ONE TO COUNT TWO OF SUPPLEMENT FIVE" when it should read "SPECIFICATION ONE TO COUNT TWO OF SUPPLEMENT **SIX**." The specification has been dismissed and the Defendant has suffered no prejudice.

On June 27, 2012, Prosecuting Attorney RICHARD KASAY filed a Memorandum giving notice that the State of Ohio will not retry **AMENDED COUNT ONE OF SUPPLEMENT ONE** and **SPECIFICATION ONE TO AMENDED COUNT ONE OF SUPPLEMENT ONE**.

On June 28, 2012, the Court ORDERED that the following charges be DISMISSED:

FELONIOUS ASSAULT, as contained in **AMENDED COUNT ONE OF SUPPLEMENT ONE**, Ohio Revised Code Section 2903.11(A)(2), an aggravated felony of the second (2<sup>nd</sup>) degree;

**SPECIFICATION ONE TO AMENDED COUNT ONE OF SUPPLEMENT ONE**, as contained in SUPPLEMENT ONE, Ohio Revised Code Section 2941.141, alleging the Defendant had a firearm on or about his person or under his control while committing the offense of Felonious Assault.<sup>3</sup>

On February 3, 2016, the Court hereby finds that there is a typographical error contained in SUPPLEMENT TWO, which erroneously reads "SPECIFICATION **ONE** TO COUNT ONE OF SUPPLEMENT ONE." (Emphasis added.)

IT IS HEREBY ORDERED that, pursuant to Crim.R. 7(D), SPECIFICATION ONE TO COUNT ONE OF SUPPLEMENT ONE, as contained in SUPPLEMENT TWO, is amended to correctly read "SPECIFICATION **TWO** TO COUNT ONE OF SUPPLEMENT ONE." No change has been made to the substance of the Indictment, or in the name or identity of the crime charged. The Defendant has suffered no prejudice from the amendment.

IT IS FURTHER ORDERED that, pursuant to the prior dismissal of **AMENDED COUNT ONE OF SUPPLEMENT ONE**, the **AMENDED SPECIFICATION TWO TO AMENDED COUNT ONE OF SUPPLEMENT ONE**, as contained in SUPPLEMENT TWO, Ohio Revised Code Section 2941.142, alleging the Defendant has been previously convicted of the offense of Robbery, is hereby DISMISSED.

IT IS FURTHER ORDERED that the Defendant be given credit for 81 days served in the Summit County Jail as of his initial sentencing date of August 29, 1991.<sup>4</sup> The Ohio Department of Rehabilitation and Correction shall calculate the Defendant's credit for all prison, jail, and transport time served after his initial sentencing on August 29, 1991, and the Defendant shall be credited accordingly.

The Defendant has the right to appeal pursuant to Rule 32(B) of the Ohio Rules of Criminal Procedure. If the Defendant elects to appeal the verdict and sentence, and if the Defendant is found to be indigent, the Court may appoint counsel to represent the Defendant for purposes of appeal. A

<sup>3</sup> There is a typographical error in the Court's Order filed on June 28, 2012. In the third paragraph, the Order erroneously reads "The Court dismisses the charge of Felonious Assault, as contained in Count One of Supplement One to the Indictment, as well as the Specification One to Count One of Supplement One to the Indictment" when it should read "The Court dismisses the **amended** charge of Felonious Assault, as contained in **Amended Count One of Supplement One**, as well as the Specification One to **Amended** Count One of Supplement One." The charges have been dismissed and the Defendant has suffered no prejudice.

<sup>4</sup> The Defendant was in the Summit County Jail prior to his initial sentencing in this case from December 31, 1990, to March 4, 1991 (64 days) and from August 13, 1991, to August 29, 1991 (17 days), for a total of 81 days as of August 29, 1991.

COPY

Notice of Appeal shall be filed within 30 days of this entry, in accordance with Rule 4(A) of the Ohio Rules of Appellate Procedure.



THOMAS A. TEODOSIO, Judge  
Court of Common Pleas  
Summit County, Ohio

cc: Assistant Prosecutor Rick Kasay  
Attorney Stephen Hanudel  
*Criminal Assignment*  
*Bureau of Sentence Computation - CERTIFIED*  
*The Supreme Court of Ohio - CERTIFIED*

SANDRA KURT

IN THE COURT OF COMMON PLEAS  
SUMMIT COUNTY, OHIO

2016 FEB 23 AM 11:25

SUMMIT COUNTY  
STATE OF OHIO  
CLERK OF COURTS

Plaintiff,

vs.

LEROY L. McINTYRE,

Defendant.

) CASE NO. CR 1991-01-0135  
)  
) JUDGE THOMAS A. TEODOSIO  
)

**ORDER**

\*\*\*\*\*

This matter came before the Court upon the Defendant's "Renewal of Motion to Declare Mistrial," filed on January 4, 2016, "Demand for Discovery and Bill of Particulars," filed on January 4, 2016, "Motion for Signature Bond," filed on January 4, 2016, "Request for Hearing on All Motions and Pretrial on Pending Charge and Specifications," filed on January 4, 2016, and "Motion to Convey," filed on January 20, 2016. The State of Ohio filed a "Memorandum" on January 14, 2016. The Defendant filed a "Response to State's Memorandum" on January 20, 2016.

On February 3, 2016, a final appealable order was filed in compliance with the Supreme Court of Ohio's peremptory writ of mandamus directing this Court "to issue a final, appealable order disposing of all the charges against McIntyre." *State ex rel. McIntyre v. Summit Cty. Court of Common Pleas*, Slip Opinion No. 2015-Ohio-5343, ¶11. The Defendant filed a Notice of Appeal on February 17, 2016.

The Court finds all of the Defendant's motions not well-taken and **DENIES** the same.

IT IS SO ORDERED.

  
JUDGE THOMAS A. TEODOSIO

cc: Richard Kasay, Assistant Prosecutor  
Stephen Hanudel, Attorney for Defendant

STATE OF OHIO )  
 )ss:  
COUNTY OF SUMMIT )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

COURT OF APPEALS  
SANDRA KURT

STATE OF OHIO

C.A. No. 28125

Appellee

2016 MAR 17 AM 10:43

v.

SUMMIT COUNTY  
CLERK OF COURTS

LEROY L. MCINTYRE

Appellant

JOURNAL ENTRY

Appellant has moved this Court to determine the finality of the order appealed, contending that the trial court's order fails to resolve Specification One to Count One of Supplement Two to the indictment. Specifically, appellant argues that the trial court found him guilty of a firearm specification associated with Aggravated Burglary but sentenced him on a firearm specification associated with Felonious Assault. Appellant contends that this mistake is not a typographical error because the jury was also improperly instructed and provided with a faulty verdict form concerning the specification. Appellant concludes that the trial court has yet to sentence appellant on the specification and, therefore, asks this Court to determine whether the order is a final judgment of conviction. Appellee has not responded in opposition.

Upon review of appellant's filings, this Court provisionally determines that the trial court's February 3, 2016, order is a final judgment of conviction. This issue may be revisited, however, during the final disposition of the appeal.



Judge