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**Court of Appeals**

**APPELLANT'S BRIEF FILED**  
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By: WILLIAM NORMAN 0088113

Confirmation Nbr. 1307277

STATE OF OHIO

CA 17 105769

vs.

JEIMIL HUNT

**Judge:**

**Pages Filed: 33**

IN THE COURT OF APPEALS  
EIGHTH JUDICIAL DISTRICT OF OHIO  
CUYAHOGA COUNTY

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CASE NO. CA-17-105769

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**STATE OF OHIO,**

Plaintiff-Appellee

v.

**JEIMIL HUNT,**

Defendant-Appellant.

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Appeal from judgment of the Cuyahoga County Court of Common Pleas

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**BRIEF OF APPELLANT**

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## ASSIGNMENT OF ERROR

- I. APPELLANT HUNT'S PANEL FATALLY ERRED, UNDER *STATE V. GREEN*, 81 OHIO ST. 3D 100 (1998), BY ACCEPTING HIS GUILTY PLEA TO CAPITAL MURDER, WITH SPECIFICATIONS, ABSENT REQUIRING EVIDENCE, TESTIMONY, AND WITNESSES ESTABLISHING APPELLANT HUNT'S GUILT BEYOND A REASONABLE DOUBT, AND BY FURTHER FAILING TO ENTER A JOURNAL ENTRY REFLECTING *GREEN* COMPLIANCE.
- II. INSUFFICIENT EVIDENCE EXISTS TO SUSTAIN APPELLANT HUNT'S CONVICTION FOR CAPITAL MURDER, WITH SPECIFICATIONS.
- III. APPELLANT HUNT'S GUILTY PLEA TO CAPITAL MURDER WITH SPECIFICATIONS WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY AS REQUIRED BY ARTICLE I, SECTION 10, TO THE OHIO CONSTITUTION, AND AMENDMENTS V AND XIV TO THE UNITED STATES CONSTITUTION.
- IV. THE PANEL'S COMPLETE FAILURE TO COMPLY WITH CRIM. R. 11 REQUIRES VACATUR OF APPELLANT HUNT'S GUILTY PLEA TO CAPITAL MURDER, WITH SPECIFICATIONS.
- V. APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED ROBBERY, WITH A FIREARM SPECIFICATION, WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY, AS REQUIRED BY ARTICLE I, SECTION 10, TO THE OHIO CONSTITUTION, AND AMENDMENTS V AND XIV TO THE UNITED STATES CONSTITUTION.
- VI. THE TRIAL COURT'S COMPLETE FAILURE TO COMPLY WITH CRIM. R. 11, WHEN ACCEPTING APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED ROBBERY, WITH A FIREARM SPECIFICATION, REQUIRES VACATUR OF HIS PLEA AND SENTENCE.
- VII. APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED BURGLARY WAS KNOWING, INTELLIGENT, AND VOLUNTARY AS REQUIRED BY ARTICLE I, SECTION 10, TO THE OHIO CONSTITUTION, AND AMENDMENTS V AND XIV. TO THE UNITED STATES CONSTITUTION.
- VIII. THE TRIAL COURT'S COMPLETE FAILURE TO COMPLY WITH CRIM. R. 11, WHEN ACCEPTING APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED BURGLARY, REQUIRES VACATUR OF HIS PLEA AND SENTENCE.

**IX. THE TRIAL COURT FATALLY ERRED, AND DEPRIVED APPELLANT HUNT DUE PROCESS OF LAW, BY REJECTING HIS UNOPPOSED APP. R. 9(C) STATEMENT, AND SUBMITTING A RECORD WHICH LACKS AN INTELLIGENT BASIS IN FACT.**

**ISSUES PRESENTED FOR REVIEW**

- I. WHETHER APPELLANT HUNT'S PANEL FATALLY ERRED, UNDER *STATE V. GREEN*, 81 OHIO ST. 3D 100 (1998), BY ACCEPTING HIS GUILTY PLEA TO CAPITAL MURDER, WITH SPECIFICATIONS, ABSENT REQUIRING EVIDENCE, TESTIMONY, AND WITNESSES ESTABLISHING APPELLANT HUNT'S GUILT BEYOND A REASONABLE DOUBT, AND BY FURTHER FAILING TO ENTER A JOURNAL ENTRY REFLECTING *GREEN* COMPLIANCE. (AOE I).**
- II. WHETHER SUFFICIENT EVIDENCE EXISTS TO SUSTAIN APPELLANT HUNT'S CONVICTION FOR CAPITAL MURDER, WITH SPECIFICATIONS. (AOE II).**
- III. WHETHER APPELLANT HUNT'S GUILTY PLEA TO CAPITAL MURDER WITH SPECIFICATIONS WAS KNOWING, INTELLIGENT, AND VOLUNTARY AS REQUIRED BY ARTICLE I, SECTION 10, TO THE OHIO CONSTITUTION, AND AMENDMENTS V AND XIV TO THE UNITED STATES CONSTITUTION. (AOE III).**
- IV. WHETHER THE PANEL'S COMPLETE FAILURE TO COMPLY WITH CRIM. R. 11 REQUIRES VACATUR OF APPELLANT HUNT'S GUILTY PLEA TO CAPITAL MURDER, WITH SPECIFICATIONS. (AOE IV).**
- V. WHETHER APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED ROBBERY, WITH A FIREARM SPECIFICATION, WAS KNOWING, INTELLIGENT, AND VOLUNTARY, AS REQUIRED BY ARTICLE I, SECTION 10, TO THE OHIO CONSTITUTION, AND AMENDMENTS V AND XIV TO THE UNITED STATES CONSTITUTION. (AOE V).**
- VI. WHETHER THE TRIAL COURT'S COMPLETE FAILURE TO COMPLY WITH CRIM. R. 11, WHEN ACCEPTING APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED ROBBERY, WITH A FIREARM SPECIFICATION, REQUIRES VACATUR OF HIS PLEA AND SENTENCE. (AOE VI).**
- VII. WHETHER APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED BURGLARY WAS KNOWING, INTELLIGENT, AND VOLUNTARY AS REQUIRED BY ARTICLE I, SECTION 10, TO THE OHIO CONSTITUTION, AND AMENDMENTS V AND XIV. TO THE UNITED STATES CONSTITUTION. (AOE VII).**
- VIII. WHETHER THE TRIAL COURT'S COMPLETE FAILURE TO COMPLY WITH CRIM. R. 11, WHEN ACCEPTING APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED BURGLARY, REQUIRES VACATUR OF HIS PLEA AND SENTENCE. (AOE VIII).**



**IX. WHETHER THE TRIAL COURT FATALLY ERRED, AND DEPRIVED APPELLANT HUNT DUE PROCESS OF LAW, BY REJECTING HIS UNOPPOSED APP. R. 9(C) STATEMENT, AND SUBMITTING A RECORD WHICH LACKS AN INTELLIGENT BASIS IN FACT. (AOE IX).**

## STATEMENT OF THE CASE

Appellant Hunt appears before this Court on direct appeal in State of Ohio v. Jeimil Hunt, CR-91-273936-C; State of Ohio v. Jeimil Hunt, CR-94-305667-D; and State of Ohio v. Jeimil Hunt, 94-CR-307512-B.

Each case involved a guilty plea, and each case before this Court under this Court's May 17, 2017 grant of Appellant Hunt's motion for delayed appeal.

Appellate counsel filed an affidavit with the trial court verifying that he had exhausted every available means to obtain a transcript of each proceeding, and that no transcripts were available. *See Appellant's Statement of the Record*, Filed with the trial court on 8/30/2017, and attached hereto as *Appendix A*.

Appellate counsel filed a Statement of Record and Proceeding, pursuant to Ohio App. R. 9(c).

The State filed no objection.

The trial court verified and accepted Appellate counsel's statement that transcripts relating to these cases remain unavailable and impossible to obtain; but registered disagreement with unspecified portions of Appellant Hunt's App. R. 9(c) statement.

Following this entry, the trial court certified a modified Statement of the Record and Proceeding, pursuant to Ohio App. R. 9(c), and forwarded the same to this Court. *See App. R. 9(C) Statement of the Record or Proceedings* filed 12/15/2017, transmitted to the Court of Appeals 12/27/2017 ("hereinafter Statement of the Record").

## STATEMENT OF FACTS

As submitted and approved, the record establishes that:

A. *Case No. Cr-91-273936-C*

In January 1992, Appellant Hunt was indicted for one count of attempted aggravated burglary, in violation of R.C. 2923.02, 2911.11, with a three-year firearm specification under Section 2941.141; one count of conspiracy to commit aggravated robbery, in violation of Section 2923.01, 2911.01, with a three-year firearm specification under Section 2941.141; and one count of possessing criminal tools, in violation of Section 2923.24. *See Statement of the Record* at 1-2.

On March 11, 1992, Appellant Hunt, in open court and with counsel present, was fully advised of his constitutional rights. *Id.* On behalf of Appellant Hunt, the public defender was present. On behalf of the State, Prosecutor Tony Kellon was present. *Id.* On recommendation of the prosecutor, Count One of the indictment was amended by deleting the firearm specification. Appellant Hunt pled guilty to one count of attempted aggravated burglary, in violation of Section 2923.02, 2911. Counts Two and Three were nolle. Judge Patricia Anne Gaughan presided over the proceeding. *Id.*

On April 13, 1992, the case proceeded to sentencing and Judge Gaughan sentenced Appellant Hunt to 4-15 years, execution of sentence suspended. Appellant Hunt was ordered to serve three years of probation with conditions that he (1) be supervised by intensive special probation unit, (2) obtain employment within sixty days, and (3) pay court costs at \$15.00 per month. *Id.*

On August 13, 1992, Judge Gaughan held Appellant Hunt to be a probation violator and sentenced him to 3-15 years. On July 7, 1993, Judge Gaughan granted Appellant Hunt's motion to suspend further execution of sentence as provided for by Section 2944.061. Appellant Hunt was placed on five years probation with the conditions that he (1) be supervised by intensive special probation, (2) serve one-hundred hours community service, (3) obtain employment, and (4) pay court costs at the rate of \$20.00 per month. *Id.*

On May 31, 1994, at the request of Kathleen Ann Sutula and Administrative Judge James J. Sweeney, a probation violation hearing regarding Appellant Hunt was transferred to Judge Kathleen Ann Sutula. *Id.*

On June 14, 1994, Judge Kathleen Sutula held a probation hearing, found Appellant Hunt to be a probation violator, and sentenced Appellant Hunt to his original sentence. *Id.*

*B. Case No. CR-93-300402*

In CR-93-300402, Appellant Hunt was charged with receiving stolen property. On May 31, 1994, at the request of Judge Kathleen Ann Sutula and Administrative Judge James J. Sweeney, the case was transferred to the docket of Kathleen Ann Sutula. *Id.* On May 31, 1994, the State of Ohio, with leave and good cause shown, entered a *nolle prosequi* for the indictment. Judge Kathleen Ann Sutula signed the journal entry. *Id.*

*C. Case No. CR-94-305667-D*

In CR-94-305667-D, Appellant Hunt was charged with capital murder, with specifications, kidnapping, and robbery. On May 31, 1994, Appellant Hunt was present with counsel, Attorneys Donald Butler and Alan Rossman, and was fully advised of his constitutional rights. Appellant Hunt pled guilty to aggravated murder, capital case, under R.C. 2903.01, as charged in Count Three of the indictment. *Id.* The plea was accepted by a three-judge panel consisting of Judge Kathleen Ann Sutula, Judge Patricia A. Cleary, and Judge James J. Sweeney. Prosecutor Richard Bombik represented the State of Ohio. *Id.* at 3.

On June 14, 1994, Appellant Hunt proceeded to sentencing. The panel asked Appellant Hunt if he had anything to say as to why judgment should not be pronounced. Appellant Hunt stated that he had nothing to offer other than what he had already said. Appellant Hunt, present with counsel, was sentenced to life in prison, with parole eligibility after thirty years. Appellant

Hunt was also sentenced to the three-year mandatory consecutive term which attached to the gun specification, (to be served prior and consecutive to the 30 year to life term). *Id.*

*D. Case No. 94-CR-307512-B*

On May 31, 1994, at the request of Judge Kathleen A. Sutula and Administrative Judge James J. Sweeney, the case was transferred to the docket of Judge Kathleen Ann Sutula. *Id.* at 4.

On May 13, 1994, Appellant Hunt, present with counsel, Attorneys Donald Butler and Alan Rossman, was fully advised of his constitutional rights. *Id.*

Prosecutor Richard Bombik represented the State of Ohio.

Appellant Hunt pled guilty to aggravated robbery, in violation of R.C. 2911.01, with a prior aggravated felony specification.

Appellant Hunt was sentenced to a term of 15-25 years, to be ran consecutive to the sentences imposed in CR-94-305667-D. *Id.*

The remaining counts were nolle.

## ARGUMENT

**I. APPELLANT HUNT'S THREE JUDGE PANEL ERRED, UNDER *STATE V. GREEN*, 81 OHIO ST. 3D 100 (1998), BY ACCEPTING HIS GUILTY PLEA TO CAPITAL MURDER, WITH SPECIFICATIONS, ABSENT REQUIRING EVIDENCE, TESTIMONY, AND WITNESSES ESTABLISHING GUILT BEYOND A REASONABLE DOUBT, AND BY FURTHER FAILING TO ENTER A JOURNAL ENTRY REFLECTING COMPLIANCE WITH *GREEN*.**

The panel's failure to follow the special procedures required when a defendant pleads guilty to a capital murder count invalidates Hunt's guilty plea. The Supreme Court has clearly stated that a panel accepting a guilty plea to a capital murder charge must take evidence and testimony establishing the pleading defendant's guilty beyond a reasonable doubt, and must further enter a journal entry reflecting compliance with this procedure. *State v. Green*, 81 Ohio

St. 3d 100 (1998); *See also R.C. 2945.06*. Courts must strictly comply with the procedures set forth by statute for waiving a trial and entering a plea of guilty in a capital murder case. *See State v. Pless*, 74 Ohio St. 3d 333, (1996). The failure of a trial court to adhere to the statutory procedures is an error in the exercise of jurisdiction to be addressed on direct appeal, and “upon remand, the trial panel is required to proceed from the point at which the error occurred. *Pratts v. Hurley*, 102 Ohio St.3d 81, at 86 (2003) quoting *State v. Filiaggi*, 86 Ohio St.3d 230, at 240, (1999); *see also State v. Parker*, 95 Ohio St. 3d 524, 769 N.E. 2d 846 2002. In the instant case, a three-judge panel accepted Appellant Hunt’s guilty plea to capital murder, with specifications, absent requiring any evidence, witnesses, or testimony establishing Hunt’s guilt beyond a reasonable doubt. *See Statement of the Record*. The judgment of conviction journal entry confirms the same. (R. #69). The panel's failure to require evidence, witnesses, and testimony establishing Appellant Hunt's guilt of capital murder, with specifications, beyond a reasonable doubt constituted an error in the exercise of jurisdiction which requires reversal of conviction and remand for plea anew. *See Green, Parker, Filiaggi supra*.

## **II. INSUFFICIENT EVIDENCE EXISTS TO SUSTAIN APPELLANT HUNT'S CONVICTION FOR CAPITAL MURDER, WITH SPECIFICATIONS.**

The panel’s failure to require and the state’s failure to produce, evidence establishing Hunt’s guilt of capital murder requires dismissal. The Supreme Court of Ohio has made clear that a panel’s failure to require evidence in a capital murder guilty plea hearing, renders a conviction for capital murder with specifications open to a sufficiency challenge. *See State v. Ketterer*, 111 Ohio St. 3d 70, 81 (2006); *State v. Montgomery*, 148 Ohio St. 3d 347, 361-62 (2016). Appellant Hunt's three judge panel did not require, and the prosecutor did not produce, evidence, witnesses, and testimony establishing Appellant Hunt's guilt of capital murder, with specifications, beyond a reasonable doubt. *See Statement of the Record*. The judgment of

conviction journal confirms the same. (R. #69). By failing to offer evidence, witnesses, and testimony establishing Appellant Hunt's guilt of capital murder, with specifications, beyond a reasonable doubt, the State produced insufficient evidence to sustain Appellant Hunt's conviction for capital murder, with specifications, (and, for that matter, each lesser included offense).

*Compare e.g., State v. Ketterer*, 111 Ohio St. 3d 70, 81 (2006); *State v. Montgomery*, 148 Ohio St. 3d 347, 361-62 (2016).

**III. APPELLANT HUNT'S GUILTY PLEA TO CAPITAL MURDER WITH SPECIFICATIONS WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY AS REQUIRED BY ARTICLE I, SECTION 10, TO THE OHIO CONSTITUTION, AND AMENDMENTS V AND XIV TO THE UNITED STATES CONSTITUTION.**

The panels' omission and failure to inquire as to Hunt's understanding of several material advisements which are required during a guilty plea colloquy rendered Hunt's plea invalid as not knowingly, voluntarily and intelligently entered. Hunt's three judge panel failed to inform him of, or inquire whether he understood: (a) the elements of capital murder, with specifications; (b) the range of allowable punishments; (c) the mandatory minimum and consecutive sentence which applied under O.R.C. 2941.141; (d) the effect of his guilty plea; and (e) the affirmative defense which applied under O.R.C. 2923.03(E). *See* (R. #69) and *Statement of the Record*. In light of *Green, supra*, and the special circumstances which attach to a guilty plea in a capital case, the panel's failure to produce a record establishing that Appellant Hunt was made aware of and understood: (a) the elements of capital murder, with specifications; (b) the range of allowable punishments; (c) the mandatory minimum and consecutive sentence which applied under O.R.C. 2941.141; (d) the effect of his guilty plea; and (e) the affirmative defense which applied under O.R.C. 2923.03(E) precluded the constitutionally required determination that Appellant Hunt's offer to plead guilty was knowing, intelligent, and voluntary; rendering Appellant Hunt's guilty plea obtained in violation of *U.S. Const. Amend. V*, and Article 1,

Section 10 to the Ohio Constitution. *See also, Ohio Crim. R. 11(c)(3); McCarthy v. United States*, 394 U.S. 459, 465-66 (1969); *United States v. Syal*, 963 F.2d 900, 904-06 (6th Cir. 1992)(citing *United States v. Van Buren*, 804 F.2d 888, 892 (6th Cir. 1986)). Accordingly, this Court must vacate the plea, and remand the case for further proceedings.

**IV. THE COMPLETE FAILURE OF APPELLANT HUNT'S PANEL TO COMPLY WITH CRIM. R. 11 REQUIRES VACATUR OF HIS GUILTY PLEA TO CAPITAL MURDER, WITH SPECIFICATIONS, AND REMAND FOR PLEA ANEW.**

The trial court's Ohio App. Rule 9 statement submitted in this case fails to state that the panel complied with Ohio Crim. R. 11(c)(3), requiring vacature of the plea, and remand for further proceedings. A trial court's complete failure to comply with the commands of Ohio Crim. R. 11(c)(3) requires a reviewing court to vacate the plea as not knowingly, voluntarily and intelligently entered. *See State v. Sarkozy*, 117 Ohio St. 3d 86, 91 (2008); *State v. Carlozzi*, 1992 Ohio App. LEXIS 395 (1992); *Green, supra*. The record approved and submitted, under App. R. 9(c), establishes that Appellant Hunt's panel completely failed to comply with the mandate of Ohio Crim. Rule 11(c)(3). Namely, (1) require Appellant Hunt to plead guilty to the charge of capital murder and each specification separately; (2) advise Appellant Hunt of each direct consequences of his plea, and produce a record establishing that he understood such; and (3) require testimony and evidence establishing Appellant Hunt's guilt and degree of offense, beyond a reasonable doubt. *See (R. #69) and Statement of the Record; Ohio Crim. R. 11(c)(3)*. This failure was fatal; requiring reversal of conviction and remand for plea anew. *See Sarkozy; Carlozzi; and Green supra*.

**V. APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED ROBBERY, WITH A FIREARM SPECIFICATION, WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY, VIOLATING ARTICLE I, SECTION 10, TO THE OHIO CONSTITUTION, AND AMENDMENTS V AND XIV TO THE UNITED STATES**



## **CONSTITUTION.**

The panel's failure to inquire and assure that Appellant Hunt understood the nature of his charge, the range of allowable sanctions, and that a three-year mandatory consecutive term attached under O.R.C. 2941.141, renders Hunt's plea invalid, requiring vacature. A trial court's failure to substantially comply with the requirements of Rule 11 during a plea colloquy, invalidates the guilty plea. *See State v. Douglas*, 2007-Ohio-714 (Ohio Ct. App. Cuyahoga County 2007); *State v. Norman*, 2009-Ohio-4044 (Ohio Ct. App. Cuyahoga County 2009). According to the record, Appellant Hunt's three judge panel failed to inform Appellant Hunt of, or inquire whether he understood: (a) the elements of aggravated robbery, with specifications; (b) the range of allowable punishments which attached; (c) each direct consequence of his guilty plea; (d) the effect of his guilty plea; (e) the mandatory three year consecutive term which attached per O.R.C. 2941.141; and (f) the affirmative defense which applied per O.R.C. 2923.03(E). *See* (R. #69) and *Statement of the Record*.

The panel further failed to require a factual basis. *Id.* By failing to inquire and assure that Appellant Hunt understood the nature of his charge, the range of allowable punishments, and that a three year mandatory consecutive term attached under O.R.C. 2941.141, the trial court failed its constitutional duty to ensure that Appellant Hunt's guilty plea to aggravated robbery, with specifications, was knowing, intelligent, and voluntary; rendering his guilty plea obtained in violation of U.S. Const. Amend. V, and Article I, Section 10 to the Ohio Constitution. *See State v. Douglas*, 2007-Ohio-714 (Ohio Ct. App. Cuyahoga County 2007); *State v. Norman*, 2009-Ohio-4044 (Ohio Ct. App. Cuyahoga County 2009).

## **VI. THE TRIAL COURT'S COMPLETE FAILURE TO COMPLY WITH CRIM. R. 11, WHEN ACCEPTING APPELLANT HUNT'S GUILTY PLEA TO**

**AGGRAVATED ROBBERY, WITH A FIREARM SPECIFICATION, REQUIRES VACATUR OF CONVICTION AND REMAND FOR PLEA ANEW.**

The record approved and submitted, under App. R. 9(c), establishes complete non-compliance with Rule 11. *See Statement of the Record*. This was fatal; requiring reversal of conviction and remand for plea anew. *Cf., Sarkozy; Carlozzi, supra*.

**VII. APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED BURGLARY WAS NOT KNOWING, INTELLIGENT, AND VOLUNTARY, VIOLATING ARTICLE I, SECTION 10, TO THE OHIO CONSTITUTION, AND AMENDMENTS V AND XIV TO THE UNITED STATES CONSTITUTION.**

According to the record approved and submitted by the trial court in this case, shows that Hunt's guilty plea was not knowingly, voluntarily, and intelligently entered requiring this Court to vacate the plea and remand for further proceedings. Where a trial court completely fails to adhere to Ohio Crim. R. 11 during a plea colloquy, prejudice is presumed, and a reviewing court must vacate the conviction and remand the case to the trial court. *State v. Tokar*, 8<sup>th</sup> Dist. Cuyahoga No. 91941, 2009-Ohio-4369 para.14; *citing Sarkozy supra* at 22-23. The trial court's approved and submitted Rule 9 statement shows that the panel completely failed to adhere to Ohio Crim. R. 11 where it did not inform Hunt of, or inquire whether he understood: (a) the elements of aggravated burglary; (b) the range of allowable punishments which attached; (c) each direct consequence of his guilty plea; (d) the effect of his guilty plea; and (e) the affirmative defense which applied per O.R.C. 2923.03(E). *See (R. #69)*, and *Statement of the Record*. Therefore, this Court must vacate Hunt's conviction, and remand the case to the trial court for further proceedings. *Tokar supra*.

**VIII. THE TRIAL COURT'S COMPLETE FAILURE TO COMPLY WITH CRIM. R. 11, WHEN ACCEPTING APPELLANT HUNT'S GUILTY PLEA TO AGGRAVATED BURGLARY, REQUIRES VACATUR OF CONVICTION AND REMAND FOR PLEA ANEW.**

The record approved and submitted, under App. R. 9(c), establishes complete non-compliance with Rule 11.

This was fatal; requiring reversal of conviction and remand for plea anew. *Cf., Sarkozy; Carlozzi, supra.*

**IX. THE TRIAL COURT FATALLY ERRED, AND DEPRIVED APPELLANT HUNT DUE PROCESS OF LAW, BY REJECTING HIS UNOPPOSED APP. R. 9(C) STATEMENT AND SUBMITTING A MODIFIED STATEMENT OF THE RECORD WHICH LACKS AN INTELLIGENT BASIS IN FACT.**

Appellant Hunt suffered conviction and de facto life sentences for capital murder, with specifications; aggravated robbery with specifications; and aggravated burglary.

This Court granted Appellant Hunt leave to file a delayed direct appeal.

Appellate counsel confirmed, and the trial court agreed, that no transcripts for either case being appealed are available.

Appellate counsel was granted leave to proceed under App. R. 9(c).

After consulting and exhausting every possible source, appellate counsel constructed an App. R. 9(c) statement based on the personal recollections of Appellant Hunt and Ms. Tiona Latten. *See Appellant's Statement of the Record*, attached hereto as *Appendix A*.

The prosecutor did not object to the accuracy or integrity of Appellant Hunt's App. R. 9(c) statement, or file one of his own.

Sua sponte, the trial court submitted for review a modified statement of the record,

including reasons in support. *See generally, Statement of the Record.*

Appellant Hunt filed a timely motion for reconsideration, including an affidavit reaffirming the content of his App. R. 9(c) statement.

The trial court granted Appellant Hunt's request for reconsideration, and reaffirmed its statement as modified.

Because the trial court submitted a modified statement of the record lacking any basis in fact, (i.e., sworn attestations, trial court recollections, etc), the modified statement of the record submitted lacks an intelligent basis in fact, and requires reversal of Appellant Hunt's several convictions and remand for new trials. *State v. Polk*, Cuyahoga App. No. 57511 (8th Dist. 1991). Properly credited, Appellant Hunt's App. R. 9(c) statement required new trials and concurrent sentences.

Accordingly, rejecting his App. R. 9(c) statement, absent an intelligent basis in fact, affected his substantial rights, including the constitutional rights to due process and a fair appeal.

### **CONCLUSION**

Substantial errors of law, including an error in the exercise of jurisdiction, infect the accuracy and integrity of Appellant Hunt's trial and appellate process. See e.g., *Green*; *Polk*, *supra*.

### **RELIEF SOUGHT**

Appellant Hunt seeks reversal and dismissal of his conviction for capital murder, with specifications, under the insufficiency of evidence demonstrated. Alternatively, Appellant Hunt

seeks reversal of his conviction for capital murder, with specifications, and remand for plea anew per *Green, supra*.

Based on the remaining claims, Appellant Hunt seeks reversal of each conviction and a remand for new trials.

In substantial interests of justice, it is requested.

Respectfully Submitted,

/s/ William Norman

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#### **CERTIFICATE OF SERVICE**

A copy of the foregoing was electronically filed with the Clerk of Courts for the Eighth District Court of Appeals on February 20, 2018, and will be served electronically to all parties.

/s/ William Norman

William Norman, Esq.  
Counsel for JEIMIL HUNT

APPENDIX A

**IN THE EIGHTH DISTRICT COURT OF APPEALS  
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO,

Plaintiff,

v.

CASE NO. 17CA105769

C.P. Case Nos. CR-91-273936-C  
CR-93-300402-D  
CR-94-305667-D  
CR-94-307512-B

**STATEMENT OF THE EVIDENCE OR  
PROCEEDING**

JEIMIL HUNT,

Defendant.

**JURISDICTION**

Before this Court remains Appellant Hunt's direct appeal of his criminal conviction and sentence.

This Court possesses authority to accept and employ this statement of evidence under Ohio App. R. 9(C).

**NATURE OF CAUSE**

A. On March 11, 1992, Appellant Hunt pled guilty, in Case No. CR-91-273936-C, to Attempted Aggravated Burglary, in violation of O.R.C. 2923.02, 2911.11.

Honorable Judge Patricia Anne Gaughan presided. Prosecutor Tony Kellon represented the State of Ohio. Attorney David Kraus, of the Public Defender's Office, represented Appellant Hunt.

On April 13, 1992, Appellant Hunt suffered a suspended term of 4-15 years imprisonment for this conviction, conditioned upon successful completion of a three-year term of probation.

B. On May 31, 1994, Appellant Hunt pled guilty, in Case No. CR-94-307512-B, to Aggravated Robbery, in violation of 2911.01.

Honorable Judge Kathleen Ann Sutula presided over the case. Prosecutor Richard

Bombik represented the State of Ohio. Attorneys Donald Butler and Alan Rossman represented Appellant Hunt.

On June 14, 1994, Appellant Hunt suffered an indefinite term of 15-25 years imprisonment for this offense.

C. On May 31, 1994, Appellant Hunt also pled guilty, in Case No. CR-94-305667-B, to Capital Murder, with specifications, in violation of 2903.01.

Honorable Judges Kathleen Ann Sutula, Patricia A. Cleary, and Administrative Judge James Sweeney presided over Hunt's guilty plea proceeding. Prosecutor Richard Bombik represented the State of Ohio. Attorneys Donald Butler and Alan Rossman represented Appellant Hunt.

On June 14, 1994, Appellant Hunt suffered an indefinite term of Life, with parole eligibility after 30 years, consecutive to the mandatory three year term which attached to the firearm specification included.

D. Before this Court remains Appellant Hunt's direct appeal towards each of these proceedings.

E. As verified through the attached affidavit, undersigned counsel and previous Appellate Counsel Francisco Luttecke have attempted to contact all sources possible to obtain a verified copy, or sworn recollection, of Appellant Hunt's plea and sentencing proceedings, (including, but not limited to, Appellant Hunt; Appellant Hunt's family and community members who remain available and attended specific proceedings; Office of the Clerk, Cuyahoga County Court of Common Pleas; Office of the Court Reporter, Cuyahoga County Court of Common Pleas; Office of the Prosecutor, Cuyahoga County; Office of the Public Defender, Cuyahoga County; Office of the Public Defender, Columbus Office; defense counsel for each case, (i.e., Donald Butler, Alan Rossman, and the Office of the Public Defender)). See Exhibits A and B Affidavits from



Attorneys Luttecke and Norman.

F. The Cuyahoga County Office of the Court Reporter reports that no transcripts exists for either of the three cases being appealed. *Id.*

G. Due to the age of each case, defense counsel has no recollection of the plea or sentencing proceedings in either case. *Id.*

H. With regard to Case Nos. CR-94-305667 and CR-94-307512, Appellant Hunt and Ms. Teona Latten were sworn and deposed and provided undersigned counsel the following statement of events:

1. Appellant Hunt pled guilty during a single proceeding to both cases;
2. Present for the proceeding, on behalf of Appellant Hunt, were Ms. Teona Latten, (Mother to Appellant Hunt's children), Melvin Hunt, Sr., (Grandfather of Appellant Hunt), Renee Hunt, (Aunt of Appellant Hunt);
3. Appellant Hunt was not informed of the elements of either offense charged;
4. The Court did not require the prosecution to establish a factual basis;
5. No stipulation of facts or evidence was agreed to or joined in by defense counsel; and no stipulation of facts or evidence was provided to the Court;
6. Appellant Hunt's plea of guilty was the only evidence of guilt presented;
7. It was part of Appellant Hunt's plea, (acknowledged in open court), that the sentences for Case Nos. CR-94-305667 and CR-94-307512 would run concurrent;
8. Appellant Hunt was not informed that the firearm specification included in the count to which he pled subjected him to a mandatory three-year term of imprisonment which was required to be ran consecutive to every other term, including the term imposed for capital murder;

9. Appellant Hunt was not informed whether he was being prosecuted as a principle or under a complicity theory, notwithstanding defense counsel's oral and written motion requesting notice of such;

10. During the open court plea proceeding, Appellant Hunt stated that he did not kill Inger Dawson, help kill Dawson, or know in advance that Dawson and his co-defendant had issues and that his co-defendant was carrying a firearm; that the "ridiculous dumb shit" which occurred was not planned; and that he did not know Dawson had been shot and died (from his wound) until the next day;

11. Without requiring elaboration, Judge Sutula told Appellant Hunt that "murder/robberies are horrible," and that he should "choose [his] paths better" and feel "lucky" that his plea called for "concurrent sentences;"

12. Appellant Hunt was informed of his constitutional right to trial by jury, confront witnesses, and privilege against self-incrimination;

13. At the May 14, 1994 sentencing hearing, the Court orally pronounced a sentence of 33 years to life, for Case No. 94-CR-305667, and a sentence of 5 to 25 years for Case No. 94-CR-307512, to be served concurrent.

1. With regard to Case No. CR-91-273936, Appellant Hunt was sworn and deposed and provided counsel the following statement of events:

1. Appellant Hunt was not informed of the elements of the offense;
2. The Court did not require the prosecution to establish a factual basis;
3. Through open court agreement of the parties, the charge of aggravated burglary, predicated on a firearm specification, was reduced to a charge of aggravated burglary, (without the firearm specification);

4. Prior to pleading guilty, Appellant Hunt was informed of his constitutional rights to a jury trial, confront his accusers, and the privilege against self-incrimination;

J. Under these facts and good faith efforts, and App. R. 9(C), Appellant Hunt offers this statement of evidence and proceeding as the record for this appellate proceeding.

K. In compliance with Ohio App.R. 10, this App.R. 9(C) statement of evidence and proceeding is being served on Appellee concurrent to this filing, (i.e., at least 20 days prior to the time for transmission of record).

Respectfully Submitted,

*/s/ William B. Norman*

William B. Norman (0088113)  
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E:WillNorman@DefendingCleveland.com

### **CERTIFICATE OF SERVICE**

I have this day served a copy of this Appellate Rule 9(c) Notice of Appearance and Motion to Extend Time upon the attorney for the government via the electronic filing system On this seventh (30<sup>th</sup>) day of August, 2017.

Michael C. O'Malley  
Cuyahoga County Prosecutor  
1200 Ontario Street, JC 9<sup>th</sup> Floor  
Cleveland, OH 44113  
PH: 216-443-7800

/s/ William B. Norman  
William B. Norman (0088113)  
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*Counsel for Jeimil Hunt*

**EXHIBIT A**

**IN THE COURT OF APPEALS  
EIGHTH APPELLATE DISTRICT  
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO,	:	
	:	
Plaintiff-Appellee,	:	Case No. CA 17 105769
	:	
v.	:	
	:	C.P. Case Nos. CR-91-273936-C
JEIMIL HUNT,	:	CR-93-300402-D
	:	CR-94-305667-D
Defendant-Appellant.	:	CR-94-307512-B

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**AFFIDAVIT OF ATTORNEY FRANCISCO E. LÜTTECKE**

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STATE OF OHIO	)	
	)	ss:
COUNTY OF FRANKLIN	)	

I, Francisco E. Lüttecke, being first duly sworn according to law, state the following:

1. I am the assistant state public defender assigned to represent Jeimil Hunt in his ongoing appeal.
2. On June 16, 2017, I contacted Nancy Nunes at the court reporter's office inquiring about the transcripts in the above-captioned cases. Ms. Nunes indicated that all of the court reporters who worked on these cases remained at the office, but that their retention policy kept transcriptions for only 12 years.
3. Ms. Nunes stated that she would contact all of the court reporters involved in the cases and determine whether any transcriptions existed.
4. The following week, Ms. Nunes confirmed that none of the court reporters possessed any transcriptions or recordings from which to transcribe the proceedings in the above cases.
5. During that time, I also reached out to the attorneys involved in Mr. Hunt's trial cases to determine what their recollection of the cases might be, and whether they had retained files in those cases. I spoke with one of the attorneys, and am currently awaiting for a return call from lead trial counsel. One of the listed attorneys had passed away in the interim of the conclusion of the trial cases and the reopened appeal.
6. I also contacted the Clerk of Courts office where I was directed to the Certified Copy/Microfiche office where the case filings may be available. In that office,


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Electronically Filed 02/20/2018 16:24 / FILING OTHER THAN MOTION / CA 17 105769 / Confirmation Nbr. 1307277 / CLAXY

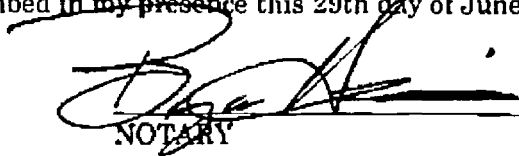
Candace was able to locate 36 pages of filings in the above-captioned cases. She also forwarded my inquiries regarding transcripts to Legal Account Clerk Rita Bird to further search for transcriptions.

7. Ms. Bird replied to my inquiry a few days later, indicating that she was unable to locate any transcripts related to the above cases.
8. I have contacted Mr. Hunt regarding the above efforts and issues.
9. At this time pending a return call from lead trial counsel, I must also verify how to transmit the microfiched paperwork to the court of appeals, and determine whether Mr. Hunt can avail himself of App.R. 9 procedures for transcriptions.
10. I will require additional time to secure and confirm these actions.

Further affiant sayeth naught.

  
FRANCISCO E. LUTTECKE

Sworn to, or affirmed, and subscribed in my presence this 29th day of June, 2017.

  
NOTARY

#485114



BRYAN D. HARRIS  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES AUGUST 5, 2020

**EXHIBIT B**

**IN THE EIGHTH DISTRICT COURT OF APPEALS  
CUYAHOGA COUNTY, OHIO**

STATE OF OHIO,

Plaintiff,

v.

CASE NO. 17CA105769

C.P. Case Nos. CR-91-273936-C  
CR-93-300402-D  
CR-94-305667-D  
CR-94-307512-B

JEIMIL HUNT,

Defendant.

---

**AFFIDAVIT OF ATTORNEY WILLIAM NORMAN**

---

STATE OF OHIO

COUNTY OF CUYAHOGA

I, William B. Norman, being first duly sworn according to law, state the following:

1. I am the attorney representing Jeimil Hunt in his ongoing appeal.
2. On or about August 7, 2017, I contacted Assistant State Public Defender, Francisco E. Luttecke, and confirmed that he had previously contacted several persons involved in the above cases, including former counsel on the cases, and was informed that they had no substantive recollection of the proceedings, or case files to share.
3. On or about August 30, 2017, I contacted the previous attorneys on the cases, the Court reporters office for Cuyahoga County, to determine if any transcripts, or case documents were available, or if anyone had a sworn recollection to relay in preparation of our Ohio App. R. 9(C) Statement. While I am awaiting return calls from former lead counsel Butler, all other contacted parties indicated that there were no transcripts, case files, nor any substantive recollection as to the proceedings.
4. I have received the Certified Copy/Microfiche which were previously transmitted to Attorney Luttecke, and have incorporated all relevant information into this statement. I am transmitting the same to the Court of Appeals to give the most complete record available.



5. Having no transcript, case files, or sworn recollection from any of the individuals participating in the proceedings, I have constructed the above Rule 9(c) Statement of Evidence or Proceedings from sworn statements from Appellant, and the mother of his children, Teona Latten who attended the proceedings.
6. I do hereby swear that the above information is truthful to the best of my knowledge, and to the assertions and averments in the attached statement of proceedings are accurate to the best of my knowledge.

Further Affiant sayeth naught.

---

William B. Norman

Sworn to, or affirmed, and subscribed in my presence this 30<sup>th</sup> day of August, 2017.

---

**EXHIBIT C**

08/29/2017 TUE 10:28 FAX

001/001

STATE OF OHIO } CUYAHOGA COUNTY }	SS.	IN THE COURT OF COMMON PLEAS
STATE OF OHIO VS. JEIMIL HUNT	PLAINTIFF } DEFENDANT	TO-WIT: <u>MAY</u> 31 <u>MAY</u> TERM, 19 <u>94</u> NO <u>CR-305667</u> . 19 <u>94</u> INDICTMENT KIDNAPPING W/VS. ACGR. MURDER-CAPITAL CASE, AGG. ROB W/SPECS. HAV WPN UNDER DISABILITY

JOURNAL ENTRY

NOW COMES THE PROSECUTING ATTORNEY ON BEHALF OF THE STATE OF OHIO AND THE DEFENDANT, JEIMIL HUNT, IN OPEN COURT WITH HIS/HER COUNSEL PRESENT AND WAS FULLY ADVISED OF HIS/HER CONSTITUTIONAL RIGHTS.

THEREUPON, SAID DEFENDANT RETRACTS HIS/HER FORMER PLEA OF NOT GUILTY HERETOFORE ENTERED, AND FOR PLEA TO SAID INDICTMENT SAYS HE/SHE IS GUILTY OF AGGRAVATED MURDER, CAPITAL CASE, RC. 2903.01 AS CHARGED IN COUNT THREE OF THE INDICTMENT, WHICH PLEA/PLEAS, ON THE RECOMMENDATION OF THE PROSECUTING ATTORNEY IS/ARE ACCEPTED BY THE COURT. NON PROBATIONABLE OFFENSE.

ON THE RECOMMENDATION OF THE PROSECUTOR REMAINING COUNTS ARE DISMISSED. IT IS FURTHER ORDERED THAT SAID DEFENDANT BE REFERRED TO THE PROBATION DEPARTMENT FOR PRE-SENTENCE INVESTIGATION AND REPORT.

PRE SENTENCE INVESTIGATION TO BE ASSIGNED TO JOANNA HAIRSTON. (MANDATORY TIME IS THREE YEARS ACTUAL.)

SENTENCING IS SET FOR JUNE 14, 1994 AT 2:30 P. M.

PLEA TAKEN BY A THREE JUDGE PANEL CONSISTING OF JUDGE KATHLEEN ANN SUTULA, JUDGE PATRICIA A. CLEARY, AND JUDGE JAMES J. SWENEY.

PATRICIA A. CLEARY, JUDGE *Patricia A. Cleary* JUDGE  
 JAMES J. SWENEY, ADM. JUDGE *James J. Sweny* ADM. JUDGE  
 KATHLEEN A. SUTULA, JUDGE *Kathleen A. Sutula* JUDGE

FILED

JUN 16 1994

GERALD E. FUERST  
CLERK OF COURTS  
CUYAHOGA COUNTY, OHIO

PAK 06/06/94 09:19

COPIES SENT TO  
 Sheriff  
 Defendant