[Cite as *State v. Cochran*, 2010-Ohio-559.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

STATE OF OHIO	:	
	:	Appellate Case No. 23260
Plaintiff-Appellee	:	
	:	Trial Court Case No. 90-CR-3248
v.	:	
	:	(Criminal Appeal from
WILLIAM L. COCHRAN	:	Common Pleas Court)
	:	
Defendant-Appellant	:	
	:	

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O P I N I O N

Rendered on the 19th day of February, 2010.

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MATHIAS H. HECK, JR., by MELISSA M. FORD, Atty. Reg. #0084215, Montgomery County Prosecutor's Office, Appellate Division, Montgomery County Courts Building, P.O. Box 972, 301 West Third Street, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

WILLIAM L. COCHRAN, #238-971, Madison Correctional Institution, 1851 State Route 56, P.O. Box 740, London, Ohio 43140-0740
Defendant-Appellant, *pro se*

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FAIN, J.

{¶ 1} Defendant-appellant William Cochran appeals from an order overruling various motions he filed for post-conviction relief in 2008. All of these motions relied upon the holdings in *State v. Colon*, 118 Ohio St.3d 26, 2008-Ohio-1624 (*Colon I*), and *State v. Colon*, 119 Ohio St.3d 204, 2008-Ohio-3749 (*Colon II*), that a Robbery

indictment requires a specification of recklessness as the default culpable mental state. Cochran was convicted of Aggravated Robbery, not Robbery, and the deadly-weapon element of Aggravated Robbery does not require a specific mental culpability state. Furthermore, *Colon II* clarified that the holdings in *Colon I* and *Colon II*, apply only to future cases and to cases that had not yet resulted in final judgments not subject to pending, direct appeals when *Colon I* was decided. Cochran was convicted and sentenced in 1991, and he had no direct appeal pending when *Colon I* was decided. Therefore, the holdings in *Colon I* and *Colon II* do not apply to him.

{¶ 2} Accordingly, we conclude that the trial court did not err in overruling Cochran's motions, and the order from which this appeal is taken is Affirmed.

I

{¶ 3} Cochran was convicted in 1991 of Aggravated Murder and of Aggravated Robbery, and was sentenced accordingly. His conviction was affirmed on direct appeal. *State v. Cochran* (August 19, 1992), Montgomery App. No. 12763. In 2008, Cochran filed a motion to vacate his indictment, a motion for a new trial, a motion to void judgment, and a motion for summary judgment. Each of these motions was grounded upon Cochran's contention that his indictment for Aggravated Robbery did not include reference to the mens rea, or culpable mental state, required for that offense.

{¶ 4} The trial court overruled Cochran's motions. From the order overruling his 2008 motions, Cochran appeals.

II

{¶ 5} Cochran's assignments of error are as follows:

{¶ 6} "THE COURT OF COMMON PLEA'S [sic] ERRORED [sic] IN DENYING

DEFENDANT'S MOTION TO VACATE, WHEN SAID CONVICTION IS THE RESULT OF A DEFECTIVE INDICTMENT WHICH IS A CLEAR CONSTITUTIONAL VIOLATION OF DEFENDANT'S RIGHT TO DUE PROCESS AS GUARANTEED BY ARTICLE I, SECTION 10 OF THE OHIO CONSTITUTION AND THE 14TH AMENDMENT OF THE UNITED STATES CONSTITUTION.

{¶ 7} "THE TRIAL COURT ERRED COMMITTING EXTREME PREJUDICE TO THE DEFENDANT, WHEN IT DENIED DEFENDANT-APPELLANT RELIEF BASED ON THE OPINION IN COLON II, SUPRA. SEE STATE V. COLON, 119 OHIO ST. 3D 204, 2008-OHIO-3749 ('COLON II'). DEFENDANT ASSERTS HE SUFFERED EXTREME PREJUDICE BY THE TRIAL COURT VIOLATING DEFENDANT[']S OHIO AND U.S. CONST. RIGHTS, IN APPLYING COLON II, SUPRA RETROACTIVE TO DEFENDANT'S CASE."

{¶ 8} Cochran's argument is grounded in the *Colon I* and *Colon II* cases. Specifically, his argument is based upon the holding, in the *Colon* cases, that a failure to apply the default mens rea element of recklessness throughout the entire prosecution of a Robbery charge, from the indictment through the jury instructions, constitutes a permeating, structural error requiring reversal.

{¶ 9} There are two fatal flaws in Cochran's argument. One is that he was indicted and convicted of Aggravated Robbery, not Robbery, and the deadly-weapon element of Aggravated Robbery does not require any mens rea – it is a strict-liability offense as to that element. *State v. Wharf*, 86 Ohio St.3d 375, 380, 1999-Ohio-112; *State v. Williamson*, Montgomery App. No. 22878, 2008-Ohio-6246, ¶¶ 21-22.

{¶ 10} Another fatal flaw is that *Colon II* specifically declared the holding in that

case to apply prospectively, only. That is, it only applies to future cases, or to cases that were pending in the trial court, or on direct appeal, when *Colon I* was decided. *Colon II*, ¶¶ 3-5.

{¶ 11} By his Second Assignment of Error, Cochran appears to be trying to get around the prospective-only rule announced in *Colon II*, by contending that that rule, itself, applies only to future cases. We are underwhelmed by this argument. To apply the prospective-only rule announced in ¶¶ 3-5 of *Colon II* only to future cases would be to read that part of *Colon II*, which has its own heading, completely out of the opinion. Obviously, if the prospective-only rule does not apply to completed cases, then all cases – past, pending, and future – would be subject to the holdings of the *Colon* cases, and the announcement of the prospective-only rule in Part I, ¶¶ 3-5, of *Colon II*, would be meaningless.

{¶ 12} The holding concerning mens rea in the *Colon* cases does not apply to Cochran. Cochran's assignments of error are overruled.

III

{¶ 13} Cochran's assignments of error having been overruled, the order of the trial court from which this appeal is taken is Affirmed.

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DONOVAN, P.J., and GRADY, J., concur.

Copies mailed to:

Mathias H. Heck, Jr.

Melissa M. Ford
William L. Cochran
Hon. Connie S. Price