IN THE SUPREME COURT OF OHIO

STATE EX REL.
LEWIS LEROY MCINTYRE,JR.,

Relator,

vs.

SUMMIT COUNTY
COURT OF COMMON PLEAS
c/o Administrative Judge:
Tammy O'Brien
and

JUDGE WILLIAM H. VICTOR
(retired) (deceased)
c/o Administrative Judge:
Tammy O'Brien
and

JUDGE MARY SPICER (retired)
c/o Administrative Judge:
Tammy o'Brien
and

JUDGE THOMAS TEODOSIO

Respondents.

CASE NO. 2015-0080

RELATOR'S MOTION TO SHOW CAUSE AND TO COMPELL RESPONDENT'S TO DISPOSE OF ALL CHARGES AND PROVIDE RELATOR MCINTYRE WITH A FINAL, APPEALABLE ORDER

ORIGINAL ACTION IN PROHIBITION , MANDAMUS, AND PROCEDENDO

RELATOR'S DECLARATION PURSUANT TO 28 U.S.C. 1746

Now comes Lewis Leroy McIntyre,Jr., hereinafter (Relator) in Propria Persona and hereby presents his "Motion To Show Cause And To Compell Respondent's To Dispose Of All Charges And Provide Relator McIntyre With A Final, Appealable Order."

Peremptory Writ Of Mandamus Granted

Previously in the instant case, this Court issued a peremptory writ pursuant to S.Ct. Prac.R. 12.04(C) directing the Summit County Court of Common Pleas to "issue a final, appealable order disposing of all (charges) against relator McIntyre, and to provide him with a

final, appealable order.However, on February 3, 2016,Respondent Judge Thomas A. Teodosio had presumed that he had followed this Courts writ of mandamus remand and directive by disposing of all (charges) and providing relator McIntyre with a "Final, Appealable Order," but not due to an overlooked and still pending charge to:wit "Attempted Felonious Assault As Amended To Add A Second Victim (i.e., Denise Harrison" to which the jury hung on said charge six to six, and the trial court had discharged the jury as to said offense and declared a "Mistrial."

The facts are more fully developed in the attached memorandum in support.

Respectfully submitted

Lewis Leroy McIntyre,Jr.,
Prisoner's No. A571710
Madison Correctional Institution
P.O. Box 740
London, Ohio 43140

Counsel for (Relator)
In Propria Peresona

MEMORANDUM IN SUPPORT

LAW AND ARGUMENT:

1. On February 3, 2016, respondents Summit County Court of Common Pleas had presumed that it had obeyed this Courts writ remand and disposed of all (charges) and provided relator with a final, appealable order, but not. The attached presumed "Final, Appealable Order" (App.1), in fact (DOES NOT) address and/or

dispose of the hanging/pending charge to:wit "Attempted Felonious Assault As Amended To Add A Second Victim (i.e., Denise Harrison)."

The Record

2. That according to the trial courts record (i.e., Transcript Of Trial proceedings).(Tr.219), the State prior to trial had motioned the court to amend "Supplement One Indictment Felonious Assault To Add A Second Victim (i.e.,Denise Harrison), however, relator's trial counsel Vincent R. Modugno had objected to the State's Attempted Amendment. See (Tr.220:4-10) (App.2), however, the trial court overruled counsels objection to the amendment. Tr.220:7-8.

3. However, in an abrupt turn arround, the trial court upon its own inclination had found that no victim was actually (harmed) physically, so instead of the trial court granting the state's motion to amend Supplement One Felonious Assault to Add A Second Victim (i.e., Denise Harrison), the court had amended Supplement One Felonious Assault to "Attempted Felonious Assault, thus, Adding (Denise Harrison) as a Second Victim. See (App.3-TR.221:1-10), whereas, the trial court well informed the jury as to the "Attempted Felonious Assault As Amended, and once again the trial court informed the jury that the "second charge" was in fact attempted felonious assault. See (App.4.Tr.226: 8-16).

4. As to the "Attempted Felonious Assault As Amended By The Trial Court", the trial court had instructed the jury

as to the elements of "Attempted Felonious Assault". See (App.5 -Tr. 229:2-25).

5. At (Tr.233:8-25) (App.6), the court specifically instructed the jury as to "Attempted Felonious Assault As Amended To Add A Second Victim (i.e., Denise Harrison). In Addition, the trial court had specifically reminded the jury that the offense was in fact "Attempted Felonious Assault And the Victims was Robert Taylor and Denise Harrison. The transcript reads in pertinent part as follows:

(Tr.233:21-25) "REMEMBER, its attempted felonious assault and the words "Robert Taylor" and Denise Harrison." are above so there is no question about. On the back are signatures lines for all 12 of your members."

6 The record reflects at (Tr.247:10-21)(App.7), that the jury was "hung" six -six on the "Attempted Felonious Assault."

7. That due to the jury was hung six to six on the "Attempted Felonious Assaut As Amended," the trial court accepted the jury's indication that they could not render a verdict as to the attempted felonious assault as amended, and the trial court discharged the jury as to the attempted felonious assault. See (App.8- Tr.248 3-12), and declared a mistrial as to that offense as amended.

No Judgment Entry Disposing Of Attempted Felonious Assault As Amended To Add A Second Victim Due To Mistrial

8. There has been no judgment entry in relator's criminal case in State v. McIntyre, Summit County Court of Common Pleas Case No. CR-91-01-0135, that dispose of the "Attempted Felonious assault As Amended." It appears that the courts ORDER in (1) amending Supplement One Felonious Assault to "Attempted Felonious Assault To Add A Second Victim (i.e., Denise Harrison) was never journaized; and (2) the trial courts "Mistrial" on the "Attempted Felonious Assault" was also not journalized. Therefore, relator McIntyre has not been provided with a final, appealable order disposing of all (charges) while the "Attempted Felonious Assault" remains (pending).

A. LAW:

9. In State v. Craig, Slip Opinion No. 2020-Ohio-455, at ¶ 21, this court held:

> "We adhere to the text of the jurisdictional statute, our preeedent, and our general rule disfavoring picemeal appeals. We therefore answer the proposition of law in the negative and hold that a conviction on one count of a multicount indictment is not a final, appealble order when other counts remain pending after a mistrial."

10. In the instant case, the trial court had declared a mistrial on "Attempted Felonious Assault As Amended To Add A Second Victim. (Tr.248), and this charge was a part of a "Multicount Indictment" to which todate, has not been disposed of in any judgment entry and still pending, and to which render's the purported attempted February 3, 2016, Final, Appealable Order, in fact not final,

appealable order, in accordance with this courts December 23, 2015, order of the issuance of the peremptory writ of mandamus directing the Summit County Court of common pleas to dispose of all charges and to provide McIntyre with a final, appelable order. Todate, respondent's has not carried out this courts Order into full execution for its failure and neglect to acknowledge, address, and dispose of the "Attempted Felonious Assault As Amended To Add A Second Victim," and to which the trial court had in fact declared a mistrial as to that specific offense as amended and no other.

Previous Attempts By Relator Informing The Trial Court That There is No Final, Appealable Order Due To The Pending Attempted Felonious Assault As Amended

11. On many occasions, relator McIntyre has attempted in pro se to inform the trial court that there still is not a final, appelable order due to the mistrial on "Attempted Felonious Assault As Amended." For example, on August 16, 2021, relator McIntyre filed with the Summit County Court of Common Pleas "Defendant's Notice To The Court That There Is No Final, Appealable Order," and on August 16, 2021, relator McIntyre had filed with the Summit County Court Of Common Pleas "defendant's Motion For Trial Court To Schedule Trial Date Upon Undisposed Charge Due To Mistrial, And To Provied Defendant With A Final, Appealable Order Disposing Of The Entire Action Pursuant To R.C. 2505.02(B)(1).State v. Craig, Slip Opinion No. 2020-Ohio-455, ¶¶ 9,21.

12. Relator well informed the trial court that the record actually refelected that the trial court had amnded Supplement One Felonious Assault to "Attempted Felonious Assault As Amended," and that the jury hung on attempted felonious assault as amended and the trial court had declared a mistrial as to such, but that offense nor the mistrial as to that offense was ever journalized and merely overlooked. However, the trial court and the state has refused to acknoweledge the transcriptive of proceedings clearly establishing that "Attempted Felonious Assault As Amended" is still pending.

13. The above stated pleadings and notice has been pending for over two (2) years before the Summit County Court of Common Pleas, and the court has not rulled or in any way resolved the matter in disposing of the mistrial Attempted Felonious assault As Amended, and in order to comply with this courts issuance of peremptory writ of mandamus directing respondents to dispose of all (charges) and provide relator with a final, appealable order.

Conclusions

Based upon the above stated facts and supported by the trial courts transcripts of the trial proceedings, thus, establishing (1) that the trial court had amended Supplement One Indictment Felonious Assault to "Attempted Felonious Assault As Amended To Add A Second Victim; (2) Trial Court Instructed the Jury as to Attempted Felonious Assault as Amended;(3) The jury hung six-six on Attempted Felonious Assault As Amended;

(4) the trial court declared a "Mistrial" as to Attempted Felonious Assault As Amended; (5) the attempted felonious assault as amended was never journalized in any entry; and (6) Attempted Felonious Assault As Amended was not disposed of as so ordered by this court through its granting of the peremptory writ of mandamus.

For the court to penalize respondents for its failure to dispose of all charges (i.e., Attempted Felonious Assault As Amended To Add A Second Victim Denise Harrison), and to provide relator McIntyre with a final, appealable order. However, relator asks the court to waive any penalty against respondents in the event that they fully comply with this courts writ remand and (1) dispose of the pending Attempted Felonious Assault As Amended in open court, and in the presence of relator pursuant to Crim.R.43; (2) conduct de novo sentencing hearing once all charges has been finally disposed of; and (3) provide relator McIntyre with a first time Final, Appealable Order for purpose of Direct Appeal as of right the verdict of conviction and sentence in State v. McIntyre, Summit County Court Of Common Pleas Case No. CR1991-01-0135.

For the court to determine that all subsequent purported appeals in McIntyre's criminal case, was in fact not final and appealable due to the pending attempted felonious assault as amended, thus, rendering those appeals all legal nullities and void. See STATE V. CRAIG, 2020-Ohio-455 at ¶21.

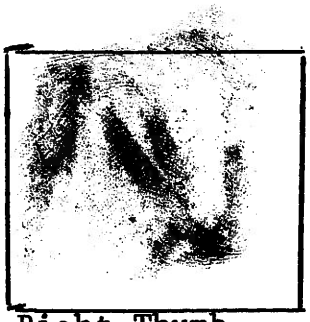
For any further relief the court deems just and appropriate.

DECLARATION

I, Lewis Leroy McIntyre,Jr., hereinafter (Relator) hereby declare, state, and attest that I am an adult over the age of eighteen (18) years and I am competent to testify to the same and as to all statements of facts contained herein and above. All statements made above in the foregoing are in fact true and correct to the best of my knowledge, understanding and belief, and all statments are made under 28 U.S.C. 1746, and under the strict penalty of perjury under the Law/Laws of the United States and I affix my signature and (right thumb print) as positive identification of declarant McIntyre to the facts contained in this instrument. I further sayeth naught.

Respectfully submitted

Declarant Relator:



Right Thumb
Print Of
Lewis Leroy McIntyre,Jr.,
For Positive Identification
Attesting To This Instrument
Under 28 U.S.C. 1746

Lewis Leroy McIntyre,Jr.
Prisoner's No. A571710
Madison Correctional Institution
P.O. Box 740
London, Ohio 43140

Counsel for (Relator)
In Propria Persona

Declarant

CERTIFICATE OF SERVICE

I, hereby certify that a true copy of the foregoing was forwarded to respondents at Summit County Court of Common Pleas Courthouse at 209 South High Street Akron, Ohio 44308 and their counsel Sherri Bevan Walsh, Summit County Prosecutor at 53 University Avenue 6th Floor Akron, Ohio 44308. By regular U.S. Postal Service on this 20th day of Sept Year 2023.

Respectfully submitted

Lewis Leroy McIntyre, Jr.,

Counsel for (Relator)
In Propria Persona

APPENDIX

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[1], 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 (2nd) degree;

SPECIFICATION ONE TO COUNT TWO OF SUPPLEMENT SIX[2], 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 (4th) 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.

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[1] 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.

[2] 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.

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 (1st) 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 (2nd) 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 (1st) 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.

COPY

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 (2nd) 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.[3]

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.[4] 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

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[3] 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.

[4] 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.

THE COURT: Where are they?

MS. HARDY: They are certified copies that would come in pursuant to 2317.42.

MR. MODUGNO: I would indicate for the record, Your Honor, that I would oppose the motion to amend.

THE COURT: Yes. Your objection is overruled.

MR. MODUGNO: Note my continuing objection to that amendment.

I'd move for a defense verdict.

THE COURT: It's overruled.

(Whereupon, a recess was taken.)

THE COURT: Please be seated.

Well, folks, you have heard the evidence in this case and what the lawyers had to say. Now it becomes my function to tell you what I think the law is in this case which you must accept as I give it to you, regardless of what you think the law is or what it ought to be.

In any case there are two parts: the facts and the law. It's my job to tell you what I think the law is. It's your job to determine what the facts are from all of the evidence in the light of these instructions that I am about to give you.

Now, this case was started, as I indicated to you at the beginning, by an indictment, these sheets of paper. The Grand Jury heard some testimony about this incident and they returned charges against him: felonious assault, attempted felonious assault and aggravated burglary.

Now, to the charges, the three charges contained in this indictment, the defendant has entered a plea of not guilty and he thereby denies each of those charges.

Now, I said to you before, and I repeat it once more, that this indictment is not any evidence against this defendant, it's not to be considered by you as evidence, and it in no way reflects upon the guilt or the innocence of this defendant. That is for to you determine. This is only the formal means whereby this case is brought before you ladies and gentlemen for trial.

I think I told you at the outset that this defendant, Leroy McIntyre, when he came into this court and throughout this trial, under our system of law is presumed innocent and not guilty of any offense, not one of the three charges contained in this indictment, until such time as the State of Ohio proves each and every essential element of the

In the first count here, the defendant is charged with the felonious assault upon one Galen L. Thompson on or about the 30th day of December, 1990 in Summit County, Ohio, and further it's charged in the count that the felonious assault, there was a deadly weapon used in the course of that act.

The second charge is directly related to the first one in which the Grand Jury charges that on or about that date, the 30th day of December 1990, in Summit County, Ohio, that the defendant, Leroy McIntyre, attempted to physically assault Robert Taylor and Denisa Harrison with a deadly weapon, and that he also is charged with having a firearm specification, namely, that the attempted felonious assault was carried out with a deadly weapon.

The third charge is that on the 30th day of December, 1990, in Summit County, Ohio, this defendant, Leroy McIntyre, trespassed -- I will define these terms for you in a minute -- trespassed in 680 Bellevue Avenue, an occupied structure, and that he had a deadly weapon when he entered in that house and that he entered by force and that it was an occupied structure, at which time it is alleged that Robert Taylor and/or

doubt, it's your sworn duty to acquit.

Now, the next count with reference to attempt. In that count the State simply claims that on or about that same date, in Summit County, Ohio, that the defendant attempted to inflict physical harm upon Robert Taylor and Denise Harrison. All the elements actually are the same except that the act did not actually culminate in physical harm to those people but that an attempt was made to do it.

And what do I mean by a criminal attempt? A criminal attempt is where one purposely does any act constituting a substantial step in the course of conduct which is planned to culminate in that person's commission of the actual crime, namely, felonious assault.

To constitute a substantial step, the conduct must be strongly corroborative of the actor's criminal purpose.

Now, did the state prove by proof beyond a reasonable doubt that on that date, in Summit County, Ohio, the Defendant McIntyre by his actions at 680 Bellevue attempt to inflict physical harm upon Robert Taylor and Denise Harrison. If he did, you so find by proof beyond a reasonable doubt,

signatures of those agreeing. All 12 of you must agree upon a verdict.

"And we do so render our verdict upon the concurrence of 12 members of said jury. Each of us said jurors concurring in said verdict signs his name hereto this blank day of 1991."

The next one is an indictment for attempted felonious assault.

"We the jury in this case being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant, Leroy McIntyre, do find the defendant..." and there is a blank line to insert either the word "guilty" or the words "not guilty" "...of the offense of attempted felonious assault." That pertains to Robert Taylor and Denise Harrison.

"We further find that Leroy McIntyre did or did not have firearm on or about his person or under his control while committing the said attempted felonious assault."

Remember, it's attempted felonious assault And the words "Robert Taylor" and "Denise Harrison" are above so there is no question about. On the back are signature lines for all 12 of your members.

upon the count of felonious assault which pertains to the attempted infliction of physical harm or the weapon; is that correct?

JUROR FISHER: That is correct, Your Honor.

THE COURT: And you have, as I understand it, reached a decision on two counts, the other two counts. I don't want you to tell me what they are, but you have?

JUROR FISHER: That is correct.

THE COURT: All right. Now, do you think that further deliberations would be of any value as far as the count on which you have not been able to agree?

JUROR FISHER: Right now we are at six-six on the attempted felonious assault. They don't understand that there was felonious and attempt. You said that was the same, didn't you, so long as the deadly weapon was used?

THE COURT: Yes. But you are --

JUROR FISHER: They were confused about the gun, attempted felonious assault.

THE COURT: Well, in any event, I realize, apparently, there is some confusion.

Now, do you feel that further deliberations

would be of any value as far as that count is concerned?

How many think further deliberations would be of some value? Hold up your hand.

How many feel that further deliberations would be of no value? Hold up your hand.

Very well. Mr. Wellemeyer, the Court will accept the jury's indication that apparently it's overwhelming that further deliberations as far as that count is concerned would be of no value, so the Court will accept the verdicts that you have arrived at.

"State of Ohio versus Leroy McIntyre, indictment for felonious assault, in violation of Revised Code Section 2903.11(A)(2) with reference to Galen Thompson.

"We the jury in this case being duly impaneled and sworn to well and truly try and true deliverance make between the State of Ohio and the defendant, Leroy McIntyre, do find the defendant guilty of the offense of felonious assault.

"We further find that Leroy L. McIntyre did have a firearm on or about his person or under his control while committing the said felonious assault, and we do so render our verdict upon the