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FILED  
LUCAS COUNTY

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LUCAS COUNTY

2005 DEC 29 P 3 16  
IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO

COMMON PLEAS COURT  
SERVING JUSTICE No. CR04-1915  
CLERK OF COURTS

STATE OF OHIO

Plaintiff,

\* Hon. Thomas J. Osowik

-vs-

MOTION TO AMEND  
INDICTMENT

GERALD ROBINSON

Defendant

\* Dean P. Mandross, #0016641  
Assistant Prosecuting Attorney  
\* Lucas County Courthouse  
Toledo, Ohio 43624  
\* Phone: (419) 213-4700  
Fax: (419) 213-4595

Now comes the State of Ohio, by and through Assistant Prosecuting Attorney Dean P. Mandross, and moves this Court to amend the indictment against the Defendant to delete reference to Defendant acting "with prior calculation and design."

Crim. R. 7(D) provides in relevant part:

"The court may at any time before, during, or after a trial amend the indictment, information, complaint, or bill of particulars, in respect to any defect, imperfection, or omission in form or substance, or of any variance with the evidence, provided no change is made in the name or identity of the crime charged."

Crim. R. 7 (D) also allows that if the amendment changes the identity of the crime charged—as herein from aggravated murder to murder—the Defendant would be entitled to discharge a

sitting jury and request a reasonable continuance. Such measures are obviously not required here where the trial is still four months away.

Additionally the Ohio Supreme Court has ruled that the original indictment may be amended even during the trial if the amended charge is a lesser included offense of the original charge. *State v. Briscoe* (1992), 84 Ohio App.3d 569, 617. Such is the case here where the amended charge, murder, is a lesser included offense of the original charge, aggravated murder.

As such, the State of Ohio moves to amend the subject indictment in case no. CR04-1915 to read as follows:


"The jurors of the grand jury of the State of Ohio, within and for Lucas County, Ohio, on their oaths, in the name and by the authority of the State of Ohio, do find and present that GERALD ROBINSON, on or about the 5<sup>th</sup> day of April, 1980, in Lucas County, Ohio, did purposely cause the death of another, in violation of § 2903.02(A) of the Ohio Revised Code, Murder, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the State of Ohio."

For the foregoing reasons, the State respectfully requests that this Court grant the State's motion to amend the current indictment to delete reference to Defendant acting with prior calculation and design.

Respectfully submitted,

JULIA R. BATES, PROSECUTING ATTORNEY  
LUCAS COUNTY, OHIO

By: \_\_\_\_\_

  
Dean P. Mandross, # 0016641  
Assistant Prosecuting Attorney

CERTIFICATION

This is to certify that a copy of the foregoing was sent via ordinary U.S. Mail this 2<sup>nd</sup> day of December, 2005, to John B. Thebes and Alan S. Konop, Attorneys at Law, 413 N. Michigan St., Toledo, OH 43624 and John J. Callahan, Attorney at Law, 5580 Monroe St., Sylvania, OH 43560.

A handwritten signature in black ink, appearing to read 'D. Mandross', is written over a horizontal line.

Dean P. Mandross, # 0016641  
Assistant Prosecuting Attorney