

IN THE SUPREME COURT OF OHIO

JEFFREY L. PRICE, : CASE NO. 06-1689  
Defendant-Appellant, :  
 :  
v. : On Appeal from the  
STATE OF OHIO : Montgomery County Court  
 : of Appeals, Second  
Plaintiff-Appellee. : Appellate District  
 :  
 : Court of Appeals  
 : Case No. 21370

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APPELLANT'S RESPONSE TO APPELLEE'S MOTION TO STRIKE

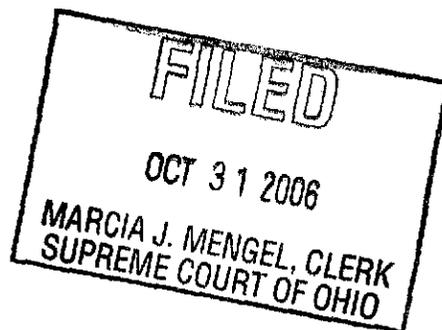
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COUNSEL FOR APPELLANT, JEFFREY L. PRICE

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Montgomery County Prosecutor's Office  
Appellate Division  
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P.O. Box 972  
Dayton, Ohio 45422  
(937) 225-4117

COUNSEL FOR APPELLEE, STATE OF OHIO



## MEMORANDUM

The Appellant requests that the State's Motion to Strike be overruled on the grounds that despite the fact that the initial filing of the notice of appeal and memorandum in support of jurisdiction in the above cited case indicated an improper address for counsel of record, service was achieved thereafter.

On the afternoon of October 13, 2006, the administrative assistant to Johnna M. Shia contacted my offices. The assistant indicated to me that no copy of the aforementioned documents had been received by the State's offices. The assistant directed me to transmit the documents at my earliest convenience via facsimile at the number (937) 496-6555. I responded immediately to this request and the successful facsimile transmission sheets are attached for the court's review as Appellant's Exhibits 1 and 2. The transmission that afternoon took two calls to complete and the associated sheets, Exhibits 1 and 2, show the "Result" of such transmissions to be "OK." In the regular practice of our business and in past transmissions, this "OK" notation means that the facsimile was successfully transmitted to the other party.

Pursuant to Ohio S.Ct Rule of Practice XIV, Section 2(B)(1), the service requirement may be successfully fulfilled via service "by personal, by mail, or by facsimile transmission." Further, the same aforementioned section states that "service by facsimile transmission is effected upon the successful electronic transmission of the copy by facsimile process." The attached Exhibits show that the facsimile transmission of the aforementioned documents was successful. Thus, the requirements of service upon counsel for the State were met.

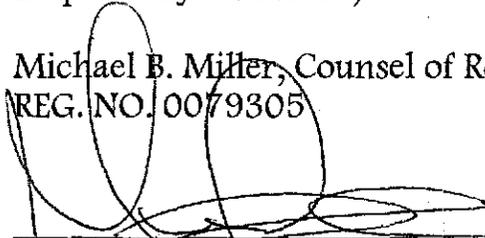
Finally, counsel for the State supports her Motion by claiming that she did not receive the documents. However, the reasoning set forth for the alleged failure of receipt is based on an incorrect street address listed for the State – “3011 W. Third Street” as opposed to “301 W. Third Street. If counsel for the State did not receive the documents, she could not possibly have seen an incorrect address on the very documents themselves.

**CONCLUSION**

Because the State was properly served in this appeal, the Appellant respectfully requests this Court to overrule the State’s Motion to Strike.

Respectfully submitted,

Michael B. Miller, Counsel of Record  
REG. NO. 0079305



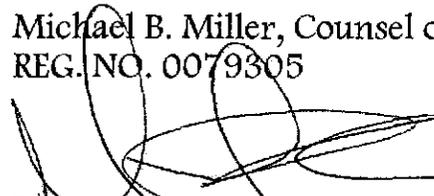
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COUNSEL FOR APPELLANT,  
JEFFREY L. PRICE

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Response to Appellee’s Motion to Strike was sent by regular mail on October 27, 2006 to: Johnna Shia, Counsel for Appellee, 301 W. Third Street, Fifth Floor, Dayton, Ohio 45422.

Michael B. Miller, Counsel of Record  
REG. NO. 0079305



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COUNSEL FOR APPELLANT,  
JEFFREY L. PRICE

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FACSIMILIE TRANSMISSION SHEET

DATE: OCT. 13, 2006

TO: MONTGOMERY COUNTY PROSECUTOR'S OFFICE  
ATTENTION: MS. JOHANNA M. SHIA  
FAX NUMBER: 496-6555  
FROM: Michael B. Miller  
RE: State of Ohio v. JEFFREY PRICE

MESSAGE: \_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

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THANK YOU!!

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Fax History Report for  
Joseph Walker  
434-8439  
Oct 13 2006 4:51pm

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Last Fax

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
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Result:

OK - black and white fax

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Fax History Report for  
Joseph Walker  
434-8439  
Oct 13 2006 5:03pm

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Last Fax

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Result:

OK - black and white fax