

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO,

Appellant/Cross-Appellee,

Vs.

DENNIS D. MUTTART,

Appellee/Cross-Appellant.

Supreme Court  
Case No. 06-1293

On Appeal from the  
Hancock County Court of  
Appeals, Third Appellant  
District

Court of Appeals  
Case No. 5-05-08

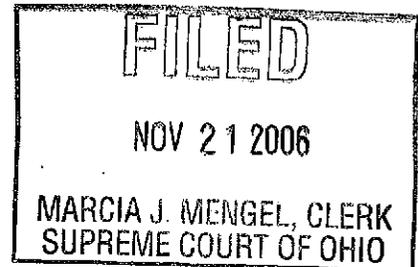
---

JOINT MOTION TO CLARIFY THE COURT'S ORDER  
ACCEPTING JURISDICTION AND TO  
ESTABLISH A NEW BRIEFING SCHEDULE

---

**MARIA SANTO**

Attorney Reg. No. 0039762  
124 South Metcalf Street  
Lima, Ohio 45801  
(419) 225-5706  
FAX (419) 225-6003



COUNSEL FOR APPELLEE/CROSS-APPELLANT, DENNIS D. MUTTART

**MARK C. MILLER**

Attorney Reg. No. 0055702  
Assistant Prosecuting Attorney  
Hancock County, Ohio  
222 Broadway, Rm. 104  
Findlay, Ohio 45840  
(419) 424-7089  
Fax (419) 424-7889

COUNSEL FOR APPELLANT/CROSS-APPELLEE, STATE OF OHIO

**JOINT MOTION TO CLARIFY THE COURT'S ORDER ACCEPTING JURISDICTION AND TO ESTABLISH A NEW BRIEFING SCHEDULE.**

Now come the parties to this action through their respective counsel and pursuant to S.Ct.Prac.R. XIV §4, jointly move the Court for an order staying the briefing schedule and clarifying the Court's prior order dated October 4, 2006 and establishing a new briefing schedule. In this order the Court accepted jurisdiction, but did not specify on what grounds jurisdiction was granted. Both parties filed notices of appeal. The State of Ohio was designated Appellant-Cross Appellee and Dennis Muttart was designated as Appellee-Cross Appellant. The Court's order does not indicate which notice of appeal was accepted for consideration. It is unclear whether the issue raised by the State of Ohio or the issue presented by Dennis Muttart, or both issues are to be briefed by the parties. To further complicate the issue, the Court's order also consolidated this appeal with Case No. 06-1488 which is a certified conflict case filed by the State of Ohio.

A stay of the briefing schedule is also requested until the Court clarifies its October 4, 2006 order. Counsel have discussed this matter and, without clarification from the Court as to its order accepting jurisdiction, are unable to determine the issues the Court wants briefed or the priority of the briefing schedule as set forth in S.Ct.Prac.R. VI. It is

requested that the Court clarify its order and establish a new briefing schedule.

Additional basis and explanation in support of this motion are contained in the attached memorandum.

Respectfully submitted,



MARK C. MILLER  
Assistant Prosecuting Attorney  
Hancock County, Ohio  
222 Broadway, Rm. 104  
Findlay, Ohio 45840  
(419) 424-7089

Counsel for Appellant/  
Cross-Appellee



Telephone Approval 11/20/06  
MARIA SANTO  
124 South Metcalf Street  
Lima, Ohio 45801

Counsel for Appellee/  
Cross-Appellant

#### MEMORANDUM

On July 6, 2006 the State of Ohio filed its notice of appeal, jurisdictional memorandum and notice of pending motion to certify a conflict. The State raised the following proposition of law: "A child victim's out-of-court statements to medical personnel made for the purpose of diagnosis and treatment are admissible under Evidence Rule 803(4) regardless

of the competency of the child." Counsel for Dennis Muttart attempted to also file a notice of appeal. However, learning that this was the second notice of appeal in the case, the clerk did not accept the filing. Thereafter on August 4, 2006 counsel for Dennis Muttart filed a notice of cross-appeal responding to the State's jurisdictional memorandum and raising an additional proposition of law as follows: "Contrary to Crawford v. Washington (2004), 541 U.S. 36, 124 S.Ct. 1354, the trial court admitted hearsay statements in violation of the Confrontation Clause of the Sixth Amendment." Each party's status as either Appellant/Cross-Appellee and Appellee/Cross-Appellant is unclear.

On August 7, 2006 the State of Ohio filed a Notice of Certified Conflict indicating the court of appeals found its decision to be in conflict with that of several other appellate courts. This matter was assigned Case No. 06-1488.

On October 4, 2006 this Court filed journal entries in Case No. 06-1293 and in Case No. 06-1488. In the instant case, the Court accepted the appeal. However, there is no indication whether the issue raised by the State of Ohio, the separate issue raised by Dennis Muttart or both issues have been accepted for consideration. Presumably, the issue raised by the State of Ohio was accepted, as the Court determined a conflict exists in Case No. 06-1488 which contained a similar issue as that

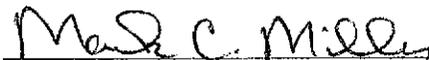
presented by the State in its jurisdictional memorandum.

However it is unclear whether both proposition of law have been accepted for review.

Until the Court clarifies the October 4, 2006 entry, the briefing schedule cannot be properly determined. Without knowing the grounds on which the Court accepted jurisdiction, the parties are unable to determine the priority of briefing as required by S.Ct.Prac.R. VI §5. It is requested that the Court clarify its order and establish a new briefing schedule.

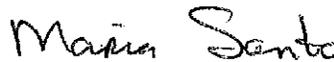
Wherefore, for the foregoing reasons, the parties jointly move the Court for an order clarifying its journal entry of October 4, 2006 and establishing a new briefing schedule.

Respectfully submitted,



MARK C. MILLER  
Assistant Prosecuting Attorney  
Hancock County, Ohio  
222 Broadway, Rm. 104  
Findlay, Ohio 45840

Counsel for Appellant/  
Cross-Appellee



Telephone Approval 11/20/06  
MARIA SANTO  
124 South Metcalf Street  
Lima, Ohio 45801

Counsel for Appellee/  
Cross-Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20<sup>th</sup> day of November, 2006 a true and exact copy of the foregoing Joint Motion to Clarify the Court's Order Accepting Jurisdiction and to Establish a New Briefing Schedule was served upon Maria Santo, Counsel for Appellee/Cross-Appellant, at 124 South Metcalf Street, Lima, Ohio 45801 by regular U.S. Mail.

Mark C. Miller  
MARK C. MILLER  
Assistant Prosecuting Attorney  
Hancock County, Ohio

Counsel for Appellant/  
Cross-Appellee