

CASE NO. 06-1568

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IN THE SUPREME COURT OF OHIO

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CUYAHOGA COUNTY, OHIO  
COURT OF APPEALS NO. 88313, Motion No. 385415

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STATE OF OHIO,

Plaintiff-Appellant

vs.

NORMAN CRAIG,

Defendant-Appellee

---

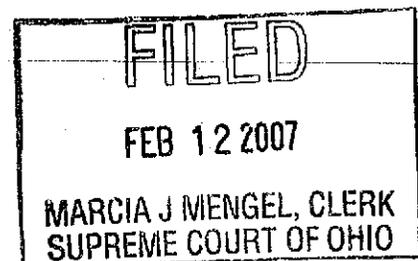
PLAINTIFF-APPELLANT'S MOTION TO SUPPLEMENT THE RECORD WITH  
RECORD INSTANTER

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CUYAHOGA COUNTY PROSECUTOR

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IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	)	
Plaintiff-Appellant	)	State's Motion to Supplement the
vs.	)	Record with Transcript Instanter
NORMAN CRAIG,	)	
Defendant-Appellee	)	

Now comes the State of Ohio, Plaintiff-Appellant, and moves this Honorable Court to supplement the record in the above-captioned matter for the reasons in the attached brief, which is incorporated herewith by reference.

Respectfully submitted,

WILLIAM D. MASON,  
CUYAHOGA COUNTY PROSECUTOR

  
\_\_\_\_\_  
JON W. OEBKER (0064255)  
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## Brief

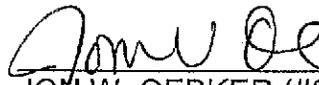
The State of Ohio respectfully moves this Honorable Court to supplement the record in this matter with the copy of a transcript of a hearing held before the trial court on June 12, 2006. The reason for this motion is that the Eighth District Court of Appeals dismissed the State's appeal before the transcript was due for filing in the Appellate Court. This Court has already accepted jurisdiction of this case and the State's merit brief is filed contemporaneously herewith. *State v. Craig*, Cuy. App.No. 88313, Motion No. 385415, jurisdiction accepted 111 Ohio St.3d 1491, 2006-Ohio-6171. This transcript is relevant to the issue of which this Court has accepted jurisdiction.

In *State v. Craig*, the trial court dismissed the State's rape indictment without prejudice. The State appealed the dismissal to the Eighth District Court of Appeals on June 15, 2006 in CA 88313. On July 7, 2006, twenty-two days after the notice of appeal was filed, but before the original papers from the trial court, including the transcript, were due to be filed in the Eighth District, the Appellate Court dismissed the appeal. The record, not including the transcript, because it was not yet due, was filed with the Eighth District on July 6, 2006. Thereafter, the original papers were returned to the trial court. See Docket in CA 88313, attached hereto as Exhibit "A", [http://cpdocket.cpcuyahoga.cc/p\\_CV\\_Docket.aspx](http://cpdocket.cpcuyahoga.cc/p_CV_Docket.aspx), last checked February 12, 2007. Because the transcript was due to be filed after the original papers were filed and because the appeal was dismissed, the relevant transcript from the trial court was never filed.

The June 12, 2006 transcript contains relevant material necessary to the appeal in this matter. The State has cited to said transcript in its merit brief.

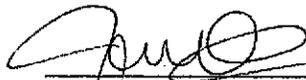
For all of these reasons, the State respectfully moves this Court to supplement the record with the transcript attached to this Motion.

Respectfully submitted,  
WILLIAM D. MASON,  
CUYAHOGA COUNTY PROSECUTOR

  
\_\_\_\_\_  
JON W. OEBKER (#0041468)  
Assistant Prosecuting Attorney

**SERVICE**

A copy of the foregoing Notice of Appeal has been mailed this 12<sup>th</sup> day of February, 2007, to Rufus Sims, 16104 Chagrin Boulevard #209, Shaker Heights, Ohio 44120.

  
\_\_\_\_\_  
Assistant Prosecuting Attorney



**Gerald E. Fuerst, Clerk of Courts**  
**Court of Common Pleas - Cuyahoga County, Ohio**



Case Number Case Title Court Service All Form News/Reports Miscellaneous

**DOCKET INFORMATION**

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Case Number: CA-06-088313

Case Title: STATE OF OHIO vs. NORMAN A. CRAIG

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Date	Side	Type	Description	Image
12/14/2006	A1	SF	CERTIFIED MAIL RECEIPT NO: 7003 2260 0006 0367 8309 RETURNED BY U.S. POSTAL DEPT. ON DECEMBER 14, 2006 MAIL RECEIVED BY ADDRESSEE THE SUPREME COURT OF OHIO, CLERK'S OFFICE, C/O NW, ON DECEMBER 12, 2006 . POSTAGE AMOUNT \$22.40	
12/07/2006	A1	EV	RECORD SENT TO THE OHIO SUPREME COURT.	
12/04/2006	N/A	JE	SUPREME COURT OF OHIO SUPREME COURT NO. 06-1568. ORDER TO CERTIFY RECORD TO THE SUPREME COURT OF OHIO GRANTED. VOL. 625 PG. 328. NOTICE ISSUED.	
12/04/2006	N/A	JE	SUPREME COURT OF OHIO SUPREME COURT NO. 06-1568 - UPON CONSIDERATION OF THE JURISDICTIONAL MEMORANDA FILED IN THIS CASE, THE COURT ACCEPTS THE APPEAL. THE CLERK SHALL ISSUE AN ORDER FOR THE TRANSMITTAL OF THE RECORD FROM THE COURT OF APPEALS FOR CUYAHOGA COUNTY, AND THE PARTIES SHALL BRIEF THIS CASE IN ACCORDANCE WITH THE RULES OF PRACTICE OF THE SUPREME COURT OF OHIO. VOL. 625 PG. 327. NOTICE ISSUED.	
08/21/2006	N/A	EV	OHIO SUPREME COURT CASE NO. 06-1568--NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO FILED BY APPELLANT IN THE OSC ON AUGUST 17, 2006	
07/19/2006	N/A	EV	ORIGINAL PAPERS RETURNED TO TRIAL COURT.	
07/07/2006	N/A	SF	CERTIFIED COPY OF JOURNAL ENTRY BOOK 615 PAGE 865 ISSUED TO CRIMINAL DIVISION.	
07/06/2006	N/A	EV	ORIGINAL PAPERS FILED BY TRIAL COURT.	
07/06/2006	N/A	NT	RECORD ON APPEAL FILED AND NOTICE ISSUED TO ALL PARTIES.	
07/03/2006	N/A	BL	July 3, 2006: SUA SPONTE, THE APPEAL IS DISMISSED FOR LACK OF A FINAL APPEALABLE ORDER PER R.C. 2505.02. THE CASE WAS "DISMISSED FOR WANT OF PROSECUTION." WHEN A TRIAL COURT DOES NOT SPECIFY WHETHER A DISMISSAL IS WITH OR WITHOUT PREJUDICE, WE PRESUME IT WAS INTENDED TO BE WITHOUT PREJUDICE. A DISMISSAL WITHOUT PREJUDICE IS NOT A FINAL APPEALABLE ORDER. STATE V. BROWN, CUYAHOGA APP.NO. 84229, 2004-OHIO-5587. VOL. 615 PG. 865. NOTICE ISSUED.	

**STATE'S EXHIBIT "A"**

07/03/2006 N/A JE July 3, 2006: SUA SPONTE, THE APPEAL IS DISMISSED FOR LACK OF A FINAL APPEALABLE ORDER PER R.C. 2505.02. THE CASE WAS "DISMISSED FOR WANT OF PROSECUTION." WHEN A TRIAL COURT DOES NOT SPECIFY WHETHER A DISMISSAL IS WITH OR WITHOUT PREJUDICE, WE PRESUME IT WAS INTENDED TO BE WITHOUT PREJUDICE. A DISMISSAL WITHOUT PREJUDICE IS NOT A FINAL APPEALABLE ORDER. STATE V. BROWN, CUYAHOGA APP.NO. 84229, 2004-OHIO-5587. VOL. 615 PG. 865. NOTICE ISSUED.

06/21/2006 N/A SR ANNOUNCEMENT OF COURT'S DECISION FILED (SEE APPELLATE RULE 26). COPIES MAILED COST TAXED

06/15/2006 A1 SF LEGAL RESEARCH

06/15/2006 A1 SF LEGAL NEWS

06/15/2006 A1 SF COMPUTER FEE

06/15/2006 A1 SF CLERK'S FEE

06/15/2006 A1 SF COURT OF APPEALS SPECIAL PROJECTS

06/15/2006 N/A SF CASE INITIATED

06/15/2006 A1 EV. NOTICE OF APPEAL FILED FROM COMMON PLEAS, CRIMINAL DIVISION COURT , CASE # CR-470055 WITH JOURNAL ENTRY, PRAECIPE, DOCKETING STATEMENT AND COPY OF DOCKET SHEET.

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1 MONDAY MORNING SESSION

2 JUNE 12, 2006

3 (Thereupon, the following discussion  
4 was had between Court and counsel in  
5 chambers.)

6 THE COURT: We're on the record in  
7 Case Number 477055, State of Ohio versus  
8 Norman Allen Craig. We're in chambers with  
9 counsel.

10 The Defense has raised an issue as to  
11 whether or not he can cross-examine on prior  
12 unsubstantiated claims of sexual abuse and has  
13 provided to the Court documentation which the  
14 Court has also had an opportunity to review in  
15 camera, records from the Cuyahoga County  
16 Department of Children and Family Services  
17 with respect to this particular child, who, in  
18 the past had made reports to the Rocky River  
19 Police Department with respect to  
20 inappropriate sexual behavior on behalf of --  
21 perpetrated by her father against her.

22 Ultimately, the Department of  
23 Children and Family Services investigated and  
24 ultimately determined in a report, summary  
25 investigation dated March 1, 2003 by Sally

1 McQue, (Phonetic), the worker, the social  
2 worker and signed off by her supervisor, whose  
3 name is illegible on March 23, 2003.

4 Their findings are, "At this time the  
5 allegations of sexual abuse have been  
6 unsubstantiated." There appears to be some  
7 teenage-parent conflict. The family was  
8 referred to counseling to deal with the  
9 conflict and Rocky River police is involved  
10 with the child in their diversion program.

11 "At this time the case is recommended  
12 to be closed due to no evidence of abuse or  
13 neglect of the children in the family."

14 We are, therefore, going to conduct  
15 an in camera hearing with the alleged victim  
16 in this case, Morgan Love, right?

17 MR. SCHNEIDER: Yes.

18 THE COURT: Do you want to bring her  
19 in, Mr. Schneider, please?

20 Mark Schneider for the State of Ohio,  
21 Rufus Sims for the Defense.

22 The Court believes that this is a  
23 critical stage of the proceedings. The  
24 Defendant is entitled to be present.

25 Therefore, Mr. Sims is going to retrieve him

1 from the courtroom.

2 MR. SCHNEIDER: Judge, if that's the  
3 case, is it all right if we bring in Lindsey  
4 Foley, (Phonetic) Sharp, who has been working  
5 with Rape Crisis?

6 THE COURT: No, she's not entitled.  
7 Would you raise your hand, please.

8 (Thereupon, the witness was sworn.)

9 EXAMINATION

10 BY THE COURT:

11 Q. My name is Judge Eileen Gallagher, and I'm  
12 going to be handling this case.

13 Will you tell us for the record your name and  
14 spell your last name, please?

15 A. My name is Morgan Love. My last name is  
16 L O V E.

17 Q. How old are you, Morgan?

18 A. Sixteen.

19 Q. We're here. We're going to go to trial today.  
20 Do you understand that now?

21 A. Yes, ma'am.

22 Q. Norman Allen Craig has been charged with the  
23 rape of you at some prior time.

24 And we have to go through a proceeding right  
25 now to make a determination about some evidence that

1 may or may not come into the trial.

2 At some point in the past, you had made a  
3 report to the Rocky River Police Department about  
4 your father inappropriately touching you. You have  
5 to talk out loud.

6 A. Oh, yes, yes.

7 Q. Because she has to take down your answer.  
8 Did that happen?

9 A. Yes.

10 Q. But you know the police and welfare said it  
11 was unsubstantiated. Do you understand that, right?

12 A. Yes.

13 Q. What happened?

14 A. I was in a fight with my mother, and I went  
15 upstairs to my mom's room, and my dad pulled me in,  
16 and he closed the door. And he sat me down, and he  
17 started talking about having arguments with my  
18 mother. And I was just really upset. He sat me down  
19 on his lap, and he started touching my leg, and he  
20 started rubbing my leg, and I felt that was  
21 inappropriate, and I got up, and I left the room.

22 But there have been other incidents in the  
23 morning where I would get out the shower in the  
24 morning, and he would open my door. And because I  
25 had a cat at the time, and he thought that the cat

1 needed to roam around the house, he would make up an  
2 excuse just to open my door, but I kept feeling that  
3 it was inappropriate, and I had to say something, is  
4 what I had felt.

5 Q. But it went beyond that. You made some  
6 suggestions that he may have touched you in your  
7 genital area. Do you know what that means?

8 A. Yes.

9 Q. Okay. You said that, too, correct?

10 A. Yes.

11 Q. And did that happen?

12 A. Yes.

13 THE COURT: Okay. All right. You  
14 can step out.

15 THE WITNESS: Thank you.

16 THE COURT: You're stuck with her  
17 responses. She won't recant.

18 MR. SIMS: Judge, all that happened,  
19 we think the State has prepped her to come in  
20 here and say what she said.

21 THE COURT: Whether they did or not,  
22 she said it.

23 MR. SIMS: Judge, I think the records  
24 indicate there was no evidence of any -- of  
25 that activity happening. There was no

1 evidence of any abuse, sexual or physical  
2 abuse of her. That's what the records  
3 indicate.

4 And my reading of the law, your  
5 Honor, if there is no evidence of any sexual  
6 contact, sexual touching, then rape shield  
7 does not apply.

8 THE COURT: But the evidence is her  
9 own words, right? I mean, that's the  
10 evidence, her own testimony.

11 MR. SIMS: I thought, your Honor, the  
12 evidence was also part of the investigation,  
13 should be part of the evidence as well.

14 THE COURT: But I don't think that's  
15 how the rape shield law reads.

16 MR. SIMS: Your Honor, the way it's  
17 stated now, the Defendant would never have an  
18 opportunity to cross-examine a witness. All  
19 the witness has to say is that yes, it  
20 happened, and the Defendant is shut out.

21 What rights -- how does that protect  
22 the Defendant? That doesn't make any sense,  
23 Judge.

24 THE COURT: I didn't write the law,  
25 Rufus.

1 MR. SIMS: You're saying, Judge, I  
2 can't use any of the evidence in the --

3 THE COURT: No, because she is --

4 MR. SIMS: -- in the Children and  
5 Family Services --

6 THE COURT: Well --

7 MR. SIMS: -- any of the evidence, or  
8 any of the evidence of a sexual nature?

9 THE COURT: Of a sexual nature.

10 MR. SIMS: So, your Honor, there is  
11 evidence of him peeping through the door  
12 allegedly. And that's not of a sexual --  
13 there was no touching. There was no sexual  
14 contact, sexual touching.

15 THE COURT: What are you saying to  
16 that?

17 MR. SCHNEIDER: Judge, that is part  
18 of the context of this entire incident, what  
19 led her to believe that the touching was in a  
20 sexual manner because of the ways he had  
21 previously looked at her. It's all one  
22 incident. It was part of one CFS report.

23 MR. SIMS: Your Honor, the State  
24 cannot have it both ways. That does not  
25 constitute contact, sexual touching, looking

1 at someone. It's not by definition 2903.07.

2 THE COURT: I agree.

3 MR. SIMS: I think that comes in, as  
4 well as the allegation, your Honor, that she  
5 indicated to her mother that her father wanted  
6 a divorce. Her mother became very upset.  
7 Found that that was not true.

8 THE COURT: Sure, you can go into  
9 that.

10 MR. SIMS: That comes in as well.

11 MR. SCHNEIDER: Judge, there's  
12 specific instances used to impeach credibility  
13 of a witness. The Rules of Evidence do not  
14 allow any of that in. And that's laid out in  
15 Boggs as well, use of extrinsic evidence in  
16 this kind of nature or proceeding.

17 You can't bring in specific instances  
18 of what you deem untruthfulness, wherein  
19 actuality that's how she perceived things.

20 MR. SIMS: No, she didn't -- no, it  
21 was untruthful. That statement about her  
22 father wanting a divorce was not true.

23 MR. SCHNEIDER: You can't bring in  
24 specific instances.

25 THE COURT: Well, it --

1 MR. SCHNEIDER: You have to use  
2 extrinsic evidence to do so. You can bring in  
3 reputation evidence. If you want to bring in  
4 someone who is known as a liar, you can do  
5 that.

6 MR. SIMS: Her mother did say she was  
7 a liar in the records, as well.

8 THE COURT: Yeah.

9 MR. SIMS: If you want mother to  
10 testify --

11 THE COURT: Her mother has already  
12 said she's a liar.

13 MR. SIMS: If you want --

14 MR. SCHNEIDER: If you want to call  
15 mother or ask mother on the stand.

16 MR. SIMS: She's on my witness list.

17 MR. SCHNEIDER: Reputation evidence,  
18 you can do that. You can't bring in specific  
19 instances, though, and cannot use extrinsic  
20 evidence.

21 MR. SIMS: That's not extrinsic.

22 MR. SCHNEIDER: You can use a police  
23 report or other witnesses. That's extrinsic  
24 evidence. You can ask her about reputation.

25 THE COURT: If that's the case, but

1 he's not talking about necessarily bringing in  
2 extrinsic evidence, Mark. We'll cross the  
3 individual cross-examination bridge when we  
4 come to each question, but the way -- what  
5 Rufus is saying, I'm not taking that he's  
6 going to necessarily bring in extrinsic  
7 evidence. He wants to ask this kid certain  
8 questions, and I don't think at this juncture  
9 that it's out of line, but we'll see what  
10 happens.

11 MR. SIMS: On the Rules of Evidence,  
12 this has to do with her credibility as fair  
13 game for cross-examination.

14 MR. SCHNEIDER: Only certain matters  
15 for impeachment are permitted.

16 THE COURT: I understand that.

17 MR. SIMS: Just so I'm clear, I can  
18 bring in any matter that -- of a nonsexual  
19 nature. No sexual contact?

20 THE COURT: Yes.

21 MR. SIMS: Sexual contact, for  
22 purposes of cross-examination.

23 MR. SCHNEIDER: What specific  
24 instances do you want to use because they're  
25 so inflammatory I think we need to lay them

1 out right now so it --

2 MR. SIMS: It depends on your direct  
3 examination. It depends on how you direct. I  
4 can't sit here and say how I'm going to cross  
5 her.

6 MR. SCHNEIDER: Do you want to bring  
7 out the time she perceived her dad as looking  
8 at her inappropriately?

9 MR. SIMS: Perceived, it was her  
10 statement.

11 MR. SCHNEIDER: Correct.

12 MR. SIMS: It's what she said.

13 MR. SCHNEIDER: You want to introduce  
14 that? What bearing does that have on whether  
15 or not this man raped her at the age of nine  
16 years old?

17 MR. SIMS: It affects her  
18 credibility.

19 MR. SCHNEIDER: That has nothing to  
20 do with that.

21 MR. SIMS: It has everything to do  
22 with this case. It has everything to do with  
23 this case.

24 MR. SCHNEIDER: It's inflammatory.

25 THE COURT: The entire case rests

1 upon her word. There's no physical evidence  
2 that I've seen or that you've talked about  
3 that's going to come into play here, correct?

4 MR. SCHNEIDER: Is he going to be  
5 permitted to say, "And CFS investigated that  
6 case. As a result of that investigation, the  
7 family was ordered to seek counseling."? CFS  
8 did take action. He's going to be able to  
9 bring in the fact.

10 MR. SIMS: That's not the issue.

11 THE COURT: Not because of the issue  
12 of sexual abuse. They ordered him to seek  
13 counseling because there was a myriad of  
14 problems with this family.

15 MR. SCHNEIDER: And he's going to be  
16 allowed to introduce that?

17 THE COURT: I don't know what he's  
18 going to try to do, Mark, at this point, but I  
19 don't think Rufus wants to lay out his whole  
20 defense in this room right now.

21 MR. SCHNEIDER: I would make a Motion  
22 in Limine to bar that.

23 THE COURT: We'll cross that bridge,  
24 like I said, when we come to it.

25 MR. SIMS: Fine.

1 THE COURT: Let's go.

2 (Thereupon, a recess was taken.)

3 THE COURT: We're on the record in  
4 Case 470055, State of Ohio versus Norman  
5 Craig. Present for the Defendant is Rufus  
6 Sims and Mark Schneider for the State of Ohio.

7 Mr. Schneider, I think you want to  
8 make a record here, correct?

9 MR. SCHNEIDER: Yes, your Honor.

10 Your Honor, throughout all of my  
11 discussions with Mr. Sims, through the  
12 pendency of this case, it's been my  
13 understanding his client sought a jury trial.  
14 When asked repeatedly if that were ever to  
15 change, it was always indicated to me that he  
16 would be seeking a jury trial.

17 Moments ago Defense counsel indicated  
18 to me that it intended to waive its right to a  
19 jury trial and try this case to the bench.

20 Judge, given that intention at this  
21 time and the change in circumstances, it's  
22 with the ultimate respect for this Court and  
23 yourself both professionally and personally  
24 that I make the following motion:

25 Your Honor, the laws under the U.S.

1 Supreme Court and all of the State of Ohio  
2 make it clear that where a defendant is tried  
3 to a jurist, or a jurist is deciding on a  
4 material aspect of a case such as sanity,  
5 competency, and a jurist has expressed an  
6 opinion as to that ultimate matter of fact,  
7 recusal is the appropriate remedy to protect  
8 the integrity for both the Defense and the  
9 State of Ohio.

10 Your Honor, this Court has conducted  
11 an independent investigation in connection  
12 with an in camera review necessitated by law  
13 into the CFS records involved in this case,  
14 both of this incident and a prior incident  
15 involving the victim.

16 At the time of the in camera  
17 inspection the Court called both parties in,  
18 both myself and Mr. Sims, to its chambers and  
19 made a decision to release the CFS records to  
20 Mr. Sims as exculpatory material.

21 At that time the Court expressed an  
22 opinion as to the credibility of the victim  
23 indicating that the Court found that the  
24 victim had credibility problems and would,  
25 therefore, be handing over these records.

1 Mr. Sims then memorialized those statements as  
2 to the veracity of the victim, the credibility  
3 of the victim and filed them in a motion that  
4 he filed February 13th, 2006.

5 THE COURT: Which motion would that  
6 be?

7 MR. SCHNEIDER: That would be  
8 response to Cuyahoga County Department of  
9 Children and Family Service's motion for  
10 protective order and notice of intent to use  
11 records at trial.

12 It appears on Page 2 under what he  
13 has captioned the facts of the case involving  
14 the CFS records, where he makes reference to  
15 those comments that the Court made as to the  
16 credibility of the victim.

17 My understanding all along is that he  
18 sought a jury trial, but now that he is  
19 seeking a bench trial I believe this becomes  
20 relevant to protect the process and the  
21 integrity of the proceedings both for the  
22 Defense and the State.

23 In ultimate respect to this Court,  
24 given that expression of opinion of  
25 credibility that has been documented and filed

1 by the Defense, that I was present for and do  
2 recall with clarity, I respectfully request  
3 that this Court recuse itself and have this  
4 case assigned by the administrative Judge to a  
5 new judge.

6 THE COURT: I'm looking at this  
7 motion and the response that Mr. Sims filed.  
8 What specifically are you making reference to?

9 MR. SCHNEIDER: The first sentence  
10 under the memorandum in support captioned  
11 facts.

12 THE COURT: Yes.

13 MR. SCHNEIDER: In response to  
14 Defendant's motion for in camera review of  
15 records.

16 THE COURT: Oh, I see it at the top.  
17 I thought you meant the second paragraph.

18 Do you want to respond?

19 MR. SIMS: Absolutely your Honor.  
20 Thank you. Your Honor, first of all, you have  
21 never rendered, gave an opinion regarding the  
22 ultimate decision in this case. You have  
23 shown no bias against this Defendant pro or  
24 con.

25 Your Honor, this Defendant has a

1 constitutional right to waive his right to a  
2 jury trial.

3 In every criminal proceeding, your  
4 Honor, credibility is an issue, every case  
5 that we have. Your Honor, this Court had to  
6 have some basis to release these records to  
7 me.

8 So what the State of Ohio is trying  
9 to come up with now is a response to a  
10 situation in which we have decided, the  
11 Defendant has decided to waive his right to a  
12 jury trial.

13 Your Honor, you have indicated no  
14 bias, no prejudice towards, or opinion  
15 regarding the ultimate issue in this case.

16 This Defendant's life is in jeopardy.  
17 You have been neutral regarding this  
18 particular Defendant.

19 And I'm saying to the Court, and I'm  
20 willing to brief this if you'd like, Judge,  
21 that, again, this Defendant has a right to  
22 waive his right to a jury trial.

23 You made no comments to prejudice the  
24 rights of the Defendant, and I think that the  
25 State of Ohio is really grasping for straws to

1           come in at the last minute to say now there's  
2           something wrong with the Defendant waiving a  
3           jury trial.

4                         Also, I want to say, your Honor, the  
5           State could have raised this issue before  
6           today.

7                         They could have said before today,  
8           you know, We ask you to recuse yourself based  
9           on certain things that they interpret, that  
10          they tend to interpret being biased one way or  
11          another.

12                        But they wait until the Defendant  
13          decides to waive a jury trial before raising  
14          that issue. This issue is again untimely on  
15          their part. They could have raised it a long,  
16          long, long before.

17                        The records have been served. You  
18          cited some brief I filed in February. Yet,  
19          again, you just bring that before the Court's  
20          attention today.

21                        We think, your Honor, again, you've  
22          been, again, neutral to both sides in this  
23          case, impartial towards the Defendant. We're  
24          asking that this Defendant be permitted to  
25          waive his jury trial and proceed to trial.

1 THE COURT: In fact, the Defendant's  
2 decision to waive a jury this morning comes on  
3 the heels of an adverse ruling to the Defense  
4 that was made in chambers at the conclusion of  
5 an in camera hearing with the alleged victim,  
6 Morgan Love, in this case.

7 The fact of the matter is whatever  
8 was said by the Court that Mr. Sims related in  
9 his response to the motion for protective  
10 order are, and I don't recall what was said,  
11 but I take the word of both of you as officers  
12 of the Court.

13 The Court had an independent  
14 responsibility to conduct an in camera review  
15 of the records of the Cuyahoga County  
16 Department of Children and Family Services.

17 The fact is the records were given to  
18 counsel after the Court reviewed those because  
19 the records are replete with inconsistencies  
20 from a number of members of this family.

21 And whatever the Court said was, I'm  
22 giving you these records based upon the fact  
23 that there are, or may be credibility issues  
24 with this child in order to justify the  
25 release of the records which certainly should

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be, and in most cases do remain under seal.

The Court denies the State's motion.

We'll proceed to trial at 1:00.

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C E R T I F I C A T E

I, Ilene Grace, Official Court Reporter for the Court of Common Pleas, Cuyahoga County, Ohio, do hereby certify that as such reporter I took down in stenotype all of the proceedings had in said Court of Common Pleas in the above-entitled cause; that I have transcribed my said stenotype notes into typewritten form, as appears in the foregoing Transcript of Proceedings; that said transcript is a partial record of the proceedings had in the trial of said cause and constitutes a true and correct Transcript of Proceedings had therein.

*Ilene Grace*-----

Ilene Grace, RMR/CRR  
Official Court Reporter  
Cuyahoga County, Ohio