

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Appellee,

vs.

JAMES J. FILIAGGI,

Appellant.

* Supreme Court Case No. 98-0287
*
* On Appeal from the
* Lorain County Court of
* Appeals, Ninth Appellate
* District
*
* Court of Appeals
* Case No. 97CA006964
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DEATH PENALTY CASE

REPLY MEMORANDUM IN SUPPORT OF
JAMES J. FILIAGGI'S EMERGENCY MOTION FOR STAY
OF EXECUTION SET FOR APRIL 24, 2007

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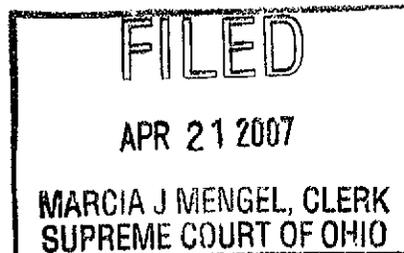
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According to the State, it's all about motivation.

According to the State, Filiaggi's request for a stay so that he may intervene in the lawsuit regarding the constitutionality of lethal injection "is an unjustifiable, eleventh-hour attempt to delay his execution." (State's Opposition at 4 & 5). Putting aside for the moment the question of whether the request is "unjustifiable," one is left to wonder at the State's ability to read Mr. Filiaggi's mind - and to marvel at the total lack of coherence in their explanation of why his goal must simply be to stall.

He did not, the State observes, oppose the effort to set an execution date. He did not, the State observes, either file his own litigation regarding lethal injection or attempt to intervene in Mr. Cooney's at an earlier time. He did not exhaust his administrative remedies, the State observes. He did not (though the State doesn't mention this) petition the Governor for clemency. He must, therefore, well It's just not very clear what follows from all that. Perhaps he was scheming all along to do nothing that would prevent or delay his execution so that when he filed this late he would have the pleasure of defending against what is, in essence, a claim of laches and would increase the chances that he would be denied participation in the lawsuit in which he seeks to intervene.

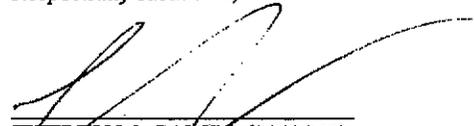
Ultimately, the State's position is that Filiaggi did everything he could to reduce the chances of getting a stay because he is so wily that he figured that was his best hope of getting one.

Far more likely is just what Filiaggi said. As he learned more about how lethal injection works, he concluded that lethal injection in Ohio really might be torture and, while accepting the fact that the State would kill him, he hoped that it might be effected in a less horrific manner than the

protocol it currently uses.

So the State is wrong about Filiaggi's motivation. It is also wrong when it asserts that his effort to get a stay at this point is "unjustifiable." The justification is simple. Filiaggi doesn't want to be tortured to death. Let the State come forward with a less horrific lethal injection protocol and the matter will be resolved. In the alternative, give him an opportunity to try and prevent his execution by means that would amount to cruel and unusual protocol.

Respectfully submitted,



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**COUNSEL FOR APPELLANT,
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CERTIFICATION

This is to certify that copies of the foregoing memorandum were served by e-mail memorandum upon Anthony D. Cillo, Heather L. Gosselin, and Daniel R. Ranke, all counsel for the State of Ohio, this 21st day of April, 2007.


JEFFREY M. GAMSO (0043869)