

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Supreme Court #: 07-2030
 PLAINTIFF-APPELLANT, : On Appeal from the Crawford
 vs. : County Court of Appeals, Third
 : Appellate District
 KIRK SESSLER, : Court of Appeals Case #: 3-06-0023
 DEFENDANT-APPELLANT. :

 NOTICE OF APPEAL OF THE STATE OF OHIO

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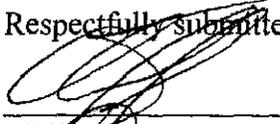
COUNSEL FOR APPELLEE, KIRK SESSLER

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 SUPREME COURT OF OHIO

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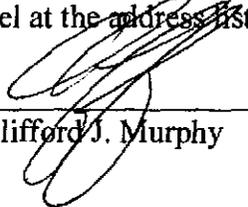
Appellant, the State of Ohio, hereby gives notice of Appeal to the Supreme Court of Ohio from the Judgement of the Third District Court of Appeals rendered September 24, 2007 which over-ruled Appellee's Trial Conviction for Two Counts of Intimidation of a Witness, both Felonies of the Third Degree pursuant to Ohio Revised Code Section 2921.04(B) and instead changed the convictions and Offenses to first degree Misdemeanor Offenses under different offense elements contained in R.C. 2921.04(A). The Third District Court of Appeals ruled that **State v. Pelfrey**, 112 Ohio St.3d 422, decided after Appellee's Jury Trial Conviction, allows a defendant to be convicted of the least offense level within a Statute, irrespective of whether such a change alters the very nature of the conduct alleged to have occurred. The State has requested that the Third District Court of Appeals certify their decision as conflicting with the Tenth District Court of Appeals decision of **State v. Kepiro** 2007 Ohio 4593 in which the Tenth District limited **Pelfrey's** application to General Charging Statutes. This issue raises a substantial Constitutional question and is of public or great general concern as the application by the Third District Court of Appeals of **Pelfrey** changes the actual Felony charge indicted upon as opposed to the actual level of the Offense. The State has also filed a motion to certify a conflict with decisions rendered from the Tenth District. No decision has yet been rendered on this application to certify a conflict.

Respectfully submitted,


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(COUNSEL OF RECORD)
COUNSEL FOR APPELLANT, STATE OF
OHIO

CERTIFICATE OF SERVICE

The undersigned certifies that true copies of the foregoing Notice of Appeal to the Supreme Court of Ohio has been served via Ordinary U.S. Mail, postage pre-paid, this 29th day of October 2007 upon Appellee's Counsel John Spiegel at the address listed in the cover page.


Clifford J. Murphy