

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,)	CASE NO. 2007-1478
Plaintiff-Appellant,)	On Appeal from the
-vs-)	Lake County Court of
JENNIFER L. JEFFRIES,)	Appeals, Eleventh
Defendant-Appellee.)	Appellate District
		Court of Appeals
		Case No. 2005-L-057

MERIT BRIEF OF APPELLEE JENNIFER L. JEFFRIES

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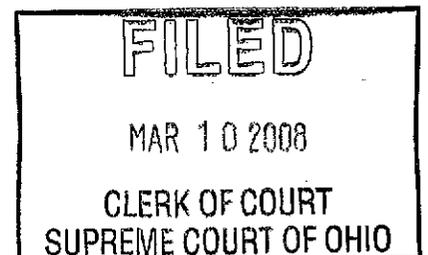


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STATEMENT OF THE CASE AND FACTS

Justin Spaller and Jennifer Jeffries had been friends for years. (State's Ex. 43; Trial T.p. 1440) On December 3, 2001, the two ran into each other at a bar in Painesville, where Spaller gave her a hug and kissed her on the cheek and told her he wanted to buy \$100 worth of crack cocaine. Id. Ms. Jeffries's estranged husband, Tyrone Jeffries, also was in the bar. (State's Ex. 43; Trial T.p. 1441) She approached him for the drugs and arrangements ultimately were made to do the exchange at a nearby park. (State's Ex. 43; Trial T.p. 1441-44)

After driving to the park, Ms. Jeffries was startled when the passenger door flew open and Tyrone struck Spaller in the face. (State's Ex. 43; Trial T.p. 1446-47) The two men ended up standing on the passenger side of the car, fighting, punching and wrestling on the ground. (State's Ex. 43; Trial T.p. 1447) Ms. Jeffries yelled at Tyrone, asking him what was going on. Id. Within a few minutes, she saw a gun in Tyrone's hand and watched as he and Spaller struggled for control of the gun. Id. The struggle continued until Ms. Jeffries heard a gun shot. (State's Ex. 43; Trial T.p. 1448) Tyrone then jumped up and yelled that the gun went off, while Spaller screamed, "Oh my God." Id. A panicked Ms. Jeffries jumped in her car and fled the park. Id.

After leaving the park, Ms. Jeffries drove around in a state of confusion. Id. She eventually drove to the nearby home of Monica Griswald, where she was upset and crying and told Griswald that "some really crazy shit *** went down." (State's Ex. 43; Trial T.p. 1448-52) In a panic, she grabbed a rag and tried to wash the blood off her car. (State's Ex. 43; Trial T.p. 1452) Griswald then drove her to meet one of Spaller's friends.

(State's Ex. 43; Trial T.p. 1453) Ms. Jeffries asked Spaller's friend to go with her to look for Spaller, explaining to him that Spaller was in a fight and might be hurt. (State's Ex. 43; Trial T.p. 1454) She also tried to get him to go to the police station with her, but he refused. Id.

The women then drove back to the park, where they saw Spaller lying on the edge of the road. (State's Ex. 43; Trial T.p. 1455) Neither woman got out of the car to check on Spaller, although Ms. Jeffries told Griswald they should take him to the hospital, but Griswald refused. Id.

The women then drove to another home in Painesville where they picked up a man who later would testify that Ms. Jeffries offered him money to move a body. (State's Ex. 43; Trial T.p. 1456) A jail house snitch also would eventually testify about facts Ms. Jeffries allegedly told her to support the State's theory of robbery. (Trial T.p. 1577-93) However, many of the facts relayed by the jailhouse snitch were hugely inaccurate with one glaring error – the snitch said Spaller was robbed of his money, which was not the case. (Trial T.p. 1592-93) Spaller's money was found in his wallet in the pocket of his jeans. (Trial T.p. 890-92)

Eventually, Griswald returned Ms. Jeffries to her car, and Ms. Jeffries drove home to her grandmother's house, where she spoke with her grandmother and called the police, who by then had discovered Spaller's body. (T.p. 1456-57; Trial T.p. 889)

Ms. Jeffries acknowledged that she initially lied to the police about what had happened because she was scared, did not know what to do, did not want the police to know about the drugs and did not want to tell them that Tyrone was involved. (State's

Ex. 43; Trial T.p. 1440-57) Defense witnesses testified that Tyrone had physically and mentally abused Ms. Jeffries and threatened her life during the years they had been together. Over the years, Tyrone had been observed kicking and beating Ms. Jeffries and tearing up, damaging and destroying her apartment, her grandparents' home, and her car. (Trial T.p. 1679-87) He also had viciously attacked her in a truck when she was returning home with friends after a night out at a bar and ran over her in the truck. (Trial T.p. 1737) As a result of the beatings, Ms. Jeffries had black eyes, blood in the whites of her eyes, missing patches of hair and bloody lips. (Trial T.p. 1723)

Ms. Jeffries's grandmother testified that at one point, Ms. Jeffries told her that if she told the truth about who killed Spaller, the family would have to move because she was afraid for their lives. (Trial T.p. 1690) The grandmother also testified that she feared for Ms. Jeffries's life for many years because Tyrone had told her that if she called the police about his beatings of Ms. Jeffries, he would kill Ms. Jeffries. (Trial T.p. 1703) Thus, Ms. Jeffries and her family lived in a perpetual state of fear of what Tyrone might do. Id.

Prior to trial, Ms. Jeffries moved to suppress several statements, including one she had made as part of a defense lie detector test which was turned over to the State at the State's request as part of plea negotiations and one she made to the investigating officer as a result of plea negotiations. (T.d. 91) The trial court suppressed the later statement, but not the first. (Supp. T.p. 344-50) As a result of the trial court's refusal to suppress the initial statement to the polygraphist, defense counsel withdrew their objections to the suppressed statement, since the damage already had been done with

the admission of the first statement and the admission of the second statement might be of assistance in the defense of Ms. Jeffries. (Trial T.p. 1191)

Ms. Jeffries ultimately was convicted of Trafficking in Cocaine, Tampering with Evidence, Murder, Involuntary Manslaughter and Complicity to Robbery with firearm specifications. (T.d. 194-95) She was sentenced to a total prison sentence of 22 years to life. (T.d. 198)

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: A statement made by a defendant to a polygraphist as part of defense counsel's preparation for plea bargaining, which later is requested by the State for review as part of the plea bargaining process, is protected under Evid.R. 410 and is not admissible in a criminal proceeding.

The Eleventh District Court of Appeals correctly reasoned that when the State requests a statement from the defense which it would not otherwise be privy to as part of the plea negotiation process, such a statement cannot be used against the defendant. *State v. Jeffries*, Lake App. No. 2005-L-057, 2007-Ohio-3366. As noted by the appellate court, "But for the state's request for the statement and polygraphist's report, they would not have been 'made in the course of plea discussions,' because these documents are privileged and constitutionally protected under Jeffries' Fourth and Fifth Amendment privileges and would not have been provided for the prosecution otherwise." *Jeffries* at ¶73.

Evid.R. 410 precludes statements made during negotiations from being used at trial. The rule reads, in pertinent part:

- (A) [***] evidence of the following is not admissible in any civil or criminal proceeding against the defendant

[***] who was a participant personally or through counsel in the plea discussions:

- (5) any statement made in the course of plea discussions in which counsel for the prosecuting authority or for the defendant was a participant and that do not result in a plea of guilty [***].

The State erroneously contends that the statement at issue should not fall under the auspices of Evid. R. 410 because:

- (1) The statement was made by Ms. Jeffries to a “third party” six months before the “formal” plea negotiations began and Ms. Jeffries had no expectation a plea was being negotiated.
- (2) The statement was not required to be turned over to the State as part of the Cooperation Agreement.
- (3) Defense counsel put no restrictions on the State’s use of the statement.
- (4) By turning over the statement with “no strings attached,” defense counsel waived the protections of Evid. R. 410.
- (5) Defense counsels’ decision to withdraw its objections to the second, properly suppressed statement was mere trial strategy.

However, as asserted below, each of the arguments put forth by the State are either factually or legally incorrect.

(1) **The statement was taken in furtherance of plea negotiations**

The State first argues that because Ms. Jeffries made the statement to a “third party” and had no expectation of plea negotiations, the statement does not fall under

Evid. R. 410. However, by making this argument, the State mischaracterizes the “third party” involved and the intent of Ms. Jeffries’ defense attorneys in allowing the statement to be taken and later releasing it to the State. It also misinterprets the amendments to Evid. R. 410 which were designed to limit the overbroad application of the rule.

In *State v. Frazier* (1995), 73 Ohio St.3d 323, 652 N.E.2d 1000, this Court analyzed Evid.R. 410 and determined that “[t]he test whether an accused’s statements were made during plea discussions is to be determined on a case-by-case basis in light of all the facts. In determining admissibility of statements made during alleged plea discussions, the trial court must first determine whether, at the time of the statements, the accused had a subjective expectation that a plea was being negotiated. The trial court must then determine whether such an expectation was reasonable under the circumstances.” *Id.* at 337.

The State argues that the statement should be excluded under the “black letter meaning of the rule.” However, as this Court noted in *Frazier*, a more thorough examination is needed on a “case-by-case basis in light of all the facts.” Certainly, reams of paper have been consumed by courts interpreting the “black letter” or “plain” meaning of statutes and rules. After all, that is what courts do. Evid. R. 410 and established precedent does not prevent a Court from interpreting the effect of the rule in any given case.

In the case at bar, incriminating and inconsistent statements regarding the events that led to Spaller’s death were made by Ms. Jeffries. In October 2002, Ms. Jeffries’

defense attorney arranged for her to take a polygraph test, which she ultimately passed. As part of that test, Ms. Jeffries gave a written statement. In the statement, Ms. Jeffries stated that she was present when Spaller was shot by her estranged husband. This statement was different from the original statement given to police in which Ms. Jeffries stated that she and Spaller had been robbed by three men.

The State argues that this statement does not fall under Evid. R. 410 because it was made to a “third party” and not the defense attorney or prosecutor. However, by making this assertion, the State ignores that (1) the defense attorney set up the lie detector test and statement which took place at the attorney’s office and (2) the polygrapher was hired by the defense attorney and acted as an agent of the defense. (Supp. T.p. 161-162) Thus, the statement essential was given to the defense attorney.

The State argues that Evid. R. 410 was amended in 1991 to limit an “unintended and overbroad application.” It notes that prior to the amendment, the rule was used to suppress voluntary statements **to police officers** made by defendants who claimed they were plea bargaining. The State also cites cases where the defendant’s independent letters **to judges** were not barred by Evid. R. 410. *State v. Prunty*, 8th Dist. No. 88778, 2007-Ohio-4290; *State v. Dehler* (July 14, 1994), 8th Dist. No. 65716.

The 1991 Staff Notes to Evid. R. 410 explain that federal cases had read the federal rule broadly to cover some statements made during “plea bargain” discussions between defendants and **law enforcement officers**. As a result, the federal drafters became concerned “that an otherwise voluntary admission to law enforcement officials

[might be] rendered inadmissible merely because it was made in the hope of obtaining leniency by a plea." Fed. R. Evid. 410, Advisory Committee Note (1980).

The 1991 Staff Notes detail that the amendment incorporates the same limitation into the Ohio rule. It further notes that statements made by an accused **to the police** are not covered by this rationale.

However, such reasoning would not apply in the instant case since Ms. Jeffries's statement was not made to either a judge or a police officer independent of her defense counsel's involvement, but rather to an expert hired by her defense counsel acting as an agent of counsel. Thus, to characterize the defense expert as a "third party" outside of the scope of Evid. R. 410 is an overbroad and unfair characterization.

The State also argues that there was no expectation that the statement was being taken for plea negotiations. It implies that the delay in time from the contested statement until the fruition of plea negotiations is significant to its argument. It also asserts that the attorney who was representing Ms. Jeffries at the time "admitted" that the "sole purpose" of the statement was to "test [Ms. Jeffries] on the new story." (State's Brief at 15) However, the defense attorney never said the "sole purpose" for the polygraph was to test out a new story. (Supp. T.p. 201) By making such an argument, the State conveniently ignores standard defense methods of negotiating a plea through the use of a positive polygraph, as well as what the defense attorney testified to at the suppression hearing.

Ms. Jeffries' defense attorney testified that he questioned the believability of Ms. Jeffries' initial claim of being robbed by three men, so he arranged for a polygraph to test that claim. (Supp. T.p. 200-01) After that happened, he then was able to deal with a different issue with Ms. Jeffries that was key to the charges she could possibly face -- whether she knew that Tyrone was going to rob or assault Spaller. (Supp. T.p. 210-11) She then passed the second polygraph related to the specific issue of robbery. (T.p. 202-03)

The defense attorney testified that he did not share with the State the negative results of the first polygraph. (Supp. T.p. 180) Obviously, to do so would have achieved nothing. However, he did share the positive results of the second polygraph, which ultimately resulted in the cooperation agreement. (Supp. T.p. 195-96) Per standard defense tactics and common practice, the defense attorney specifically arranged for the second polygraph so that he could use it in plea negotiations to demonstrate to the State that Ms. Jeffries was not involved with a felony murder. The State overlooks that the only reason for the attorney to arrange for the second polygraph was so that he could take the positive results to the State. And that is what he did. Armed with the news that Ms. Jeffries had passed the lie detector and that his client was in fact innocent of murder, the defense attorney then approached the State for a plea bargain.

Further, the State ignores that the experienced defense attorney, who had worked as a public defender for twenty-one years and had arranged for numerous polygraphs, knew that presenting the State with a passed polygraph would assist him in obtaining a

plea agreement with the State. In fact, both the defense attorney **and** the prosecuting attorney in charge of the case acknowledged during the suppression hearing that Ms. Jeffries's positive results on the polygraph "**was a large inducement** for this cooperation agreement." (Supp. T.p. 195-96) The State now asserts that "[i]t is **likely** that this statement and polygraph put counsel for Jennifer Jeffries in a position to approach the State***." (State's Brief at 13) Suddenly, the large inducement to offer a plea has been reduced merely to a likely status.

Of course, obtaining the actual cooperation agreement took some months of negotiating. However, the amount of time between when the statement was made for the polygraph and when the cooperation agreement was reached is unimportant. What is important is the reason for the taking of the polygraph and the statement – which was that they could and did result in a positive plea agreement.

The State references the court's decision in *State v. Beach*, 6th Dist. No. L-02-1087, 2004-Ohio-5232, in support of its argument. In *Beach*, the defendant's statements were made directly to police with the last two being made to the police with the defense attorney present. The defense attorney indicated that he was trying to put his client in a better position for plea negotiations, although specific plea negotiations did not take place until several days later. The court thus could not find that the appellant had a subjective expectation that a plea was being negotiated.

What removes the instant case from the *Beach* analysis goes far beyond the factual differences. Rather, it goes to how the State obtained the privileged statement in the case at bar. It is undisputed that the only reason the State obtained Ms. Jeffries'

statement was because **the State specifically requested the statement as part of plea negotiations**. But for the request from the State, it never would have seen the privileged statement. Likewise, it never could have used the statement against Ms. Jeffries at trial. To allow the State to use against Ms. Jeffries a statement that was provided to it by the defense in the spirit of plea negotiations undermines the very essence of Evid.R. 410.

(2) The statement was released to the State, at the State's request, as part of the plea bargaining process.

The State further argues that the statement was not required pursuant to the cooperation agreement. However, such an argument ignores facts in the record and that the plea negotiations extended beyond what was ultimately recorded as the official Cooperation Agreement.

The State fails to recognize that the only reason it had the statement in its arsenal to use against Ms. Jeffries at trial was because the State itself requested the statement as part of the plea negotiation process. The defense attorneys, in good faith and in their client's best interest, handed the statement over – **at the State's request** – in order to obtain a plea bargain. The State may call such an act voluntary, but to do so ignores the pressures inherent in the plea negotiations process.

As part of the discussions surrounding the plea bargain and to facilitate the cooperation agreement, which required that Ms. Jeffries submit to and pass a polygraph conducted by the State's examiner, Assistant Prosecuting Attorney Karen Sheppert specifically requested that the defense attorneys provide the statement to the State.

One of the assistant public defenders assigned to the case testified:

I didn't give this [the statement] to her initially. Karen [Sheppert] requested this blurb from Ms. Jeffries so that Mr. Evans [the State's examiner] could use it to help formulate his questions, so I turned this over because it was part of the agreement with the next polygraph, that she take the next polygraph. And Mr. Evans wanted to see everything that she had written down.

I, I gave it to her cause she asked for it so that Mr. Evans could polygraph Jennifer as part of the cooperation agreement.

(Supp. T.p. 218-19)

During cross examination of the defense attorney, Ms. Sheppert agrees in her questioning that she requested the statement from the defense. (Supp. T.p. 238-39) No other questions were presented during cross by the State to challenge the defense attorney's assertion that the statement was turned over as part of plea negotiations.

For the State to now argue that the turning over of the statement was not part of plea negotiations belies the facts in the record. It is clear that in order to accomplish the polygraph required in the cooperation agreement, the State specifically requested the defense to turn over the privileged statement – a statement it never would have been privy to but for the plea negotiations process.

The Eleventh District Court of Appeals correctly saw this interaction between the State and defense attorneys as part of the plea negotiations:

Even though the parties were not engaged in active plea negotiations in October 2002, we conclude that when the state requested a copy of the October 28, 2002 statement and polygraphist's report, and when Jeffries complied with that request, those documents were in furtherance of verifying the validity of Jeffries' statements for the purpose

of offering her a deal in exchange for her testimony, i.e. a plea negotiation.

But for the state's request for the statement and polygraphist's report, they would not have been "made in the course of plea negotiations," because these documents are privileged and constitutionally protected under Jeffries' Fourth and Fifth Amendment privileges and would not have been provided to the prosecutor otherwise.

The October 28, 2002 statement and report were integral to the "course of plea negotiations***."

Jeffries at ¶72-74.

(3) The defense put no restrictions on the State's use of the statement because it was understood that the statement was being turned over as part of plea negotiations and protected under Evid. R. 410.

The State further argues that Ms. Jeffries' attorneys should have imposed restrictions upon the use of the statement. It is true that the defense attorneys placed no restrictions on the use of the statement. However, it also is true that the attorneys believed they were involved with plea negotiations with the State when they released the privileged documents **at the State's request**. It is clear from the assistant public defender's testimony detailed above that she understood the purpose of the release of the statement was to further the negotiations and resulting cooperation agreement. (Supp. T.p. 218-19) That testimony was not challenged by the State at the Suppression Hearing.

Never would Ms. Jeffries' attorneys have dreamed that they needed to put "qualifiers" on a statement turned over during plea negotiations for they never would

have suspected that the State would subvert the plea negotiation process and the evidentiary rules by using the statement against her.

The statement to the defense polygraphist was given to the prosecution only for Cooperation Agreement purposes. There is absolutely no doubt that the statement was handed over with the expectation of reaching some sort of plea deal. The very reason Ms. Jeffries's attorney had the polygraph conducted was to gain leverage for plea bargaining purposes. It was a reasonable expectation that when the State requested the statement, it did so as part of plea negotiations. Therefore, the statement should have been suppressed pursuant to Evid.R. 410.

(4) Neither Ms. Jeffries or her attorneys waived the protections of Evid. R. 410.

The State also asserts that Ms. Jeffries and her attorneys waived the protections provided by Evid. R. 410. Such an argument inherently admits those protections were available to her to waive, thus acknowledging that the statement fell under Evid. R. 410. However, no such waiver occurred.

The State and the dissenting judge below cites *United States v. Mezzanatto* (1995), 513 U.S. 196, for support of its argument that Ms. Jeffries waived the protections of Evid. R. 410 by allowing counsel to provide the State with her privileged statement. However, *Mezzanatto* differs significantly from the case at bar in that Mezzanatto and his attorney entered into an agreement with the prosecutor that any statements made by Mezzanatto during a meeting to discuss Mezzanatto's cooperation with the government could be used to impeach any contradictory testimony he might

give at trial, if the case went that far. *Mezzanatto* at 198. The United States Supreme Court refers repeatedly in its decision to the “enforcement of waiver agreements.” *Id.* at 206-07, 209-10. It also writes that such a waiver would be negotiated between the parties and that defendants could be asked to accept waiver as the price of entering into plea discussions. *Id.* at 209. The Court ultimately held that “absent some affirmative indication that the agreement was entered unknowingly or involuntarily, an agreement to waive the exclusionary provisions of the plea-statement Rules is valid and enforceable.” *Id.* at 210.

Likewise, in *State v. Miller* (1997), Montgomery App. No. 15552, which the dissenting judge cites as support for waiver in the instant case, Miller signed a waiver permitting statements he made during a bargaining session with prosecutors to be used against him. The waiver specifically detailed that if Miller breached a cooperation agreement with the State, he waived any claim regarding the admissibility of statements made to law enforcement officials. It was signed by Miller and his attorney.

No such “waiver agreement” is present in the case at bar. There exists no oral or written agreement. It was never broached by either party, and certainly not by the defense attorneys who expected the statement to be covered under Evid. R. 410. The State argues that it was up to the defense to place limitations on the use of the statement obtained by the State during plea negotiations; however, it appears from the cases cited by the State and the dissent that it is normally the State who makes waiver part of its agreement to enter into plea negotiation. The onus was on the State to initiate the waiver agreement since the rules of evidence precluded the admission of the statement.

It failed to do so in this case. Thus, since no waiver agreement as contemplated by the Court in *Mezzanatto* exists in the current case, the concept of waiver cannot apply.

(5) **Defense counsel was “forced” into withdrawing its objection to a properly suppressed second statement due to trial court error in admitting the first statement.**

The State concludes that it was an exercise of mere trial tactics when Ms. Jeffries’ defense attorneys permitted the admission of a properly suppressed statement. As part of the cooperation agreement, Ms. Jeffries made a separate statement to the chief investigating officer. This second statement was ultimately suppressed by the trial court as being excluded under Evid. R. 410. (Supp. T. 344-50)

However, due to the trial court’s error in admitting Ms. Jeffries’ prior statement to the defense polygraphist, defense counsel was forced into withdrawing his objections to the properly suppressed statement and permitting its admission in order to explain statements made in the first statement. (Trial T.p. 1191) The damage had been done and the defense was forced into trying to salvage something.

As noted by the Eleventh District Court of Appeals:

Moreover, we find merit to Jeffries’ argument that the admission of her October 28, 2002 statement to Feathers “forced” defense counsel to waive the properly suppressed statement made to the police on June 2, 2003. This latter statement had previously been suppressed by the court. While it is well-settled that the exclusionary provisions of Evid.R. 410 are subject to waiver, such waiver must be knowing and voluntary. *United States v. Mezzanatto* (1995), 513 U.S. 196, 210; *State v. Miller* (Oct. 31, 1997), 2nd Dist. No. 15552, 1997 Ohio App. LEXIS 4774, at 7-8.

A review of both statements (October 28, 2002 and June 2, 2003) reveals that there were substantial additional details in the June 2, 2003 statement which were not part of the

statement Jeffries previously made to Feathers. Significantly, the thrust of the June 2, 2003 statement, which was properly suppressed by the trial court as a statement subject to exclusion under Evid.R. 410, was that the shooting was accidental. Therefore, defense counsel, as part of the theory of the case, waived suppression of the June 2, 2003 statement in order to let in additional evidence that the shooting was accidental, in an effort to explain facts improperly put into evidence from the October 28, 2002 statement.

Based upon the trial court's ruling in regard to the statement given to Feathers on October 28, 2002, the defense was left with no other viable alternative after Feathers' statement was admitted. The trial court, in effect, let the cat out of the bag by allowing Feathers' statement into evidence, but then suppressed any explanation of how it escaped.

Jeffries at ¶77.

Although not pertinent to this appeal, the State repeatedly notes in its brief that Ms. Jeffries did not complete the terms of the cooperation agreement which would have resulted in her pleading to a fifth-degree felony and obtaining a community control recommendation from the State. It notes that she failed the polygraph. However, to be fair, the following must be addressed.

Ms. Jeffries maintains that it was the State who breached that agreement. During the polygraph and in lengthy discussions that followed, a disagreement occurred regarding whether Ms. Jeffries was being truthful about whether Spaller's body had been moved. (Supp. T.p. 115, 215-224, 248, 255) At the time, the chief investigating officer believed it had been, although Ms. Jeffries denied that. (Supp. T.p. 115, 163, 220) Emotions grew tense during a six-hour session where the officer, the prosecutor, the polygrapher and Ms. Jeffries' own defense attorney attempted to get her to say the body

had been moved. (Supp. T.p. 215-16) The session ended when Ms. Jeffries left in frustration. (Supp. T.p. 222) She then went on the run for eight months.

A special task force that later formed to take over the investigation disagreed with the chief investigating officer and did not believe the body had been moved. (Supp. T.p. 224, 264) So, ironically, Ms. Jeffries was unable to “pass” the lie detector test to the State’s satisfaction because she was being truthful. Thus, she ultimately lost her cooperation agreement and its resulting community control offer and was prosecuted and incarcerated for life for a murder she did not commit. The killer remains free.

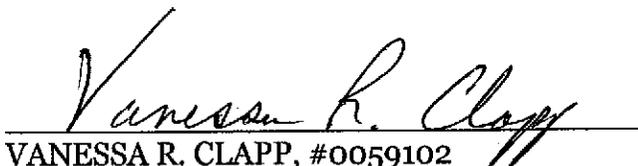
CONCLUSION

For the reasons discussed above, the Appellee respectfully request that this Court affirm the decision of the appellate court and remand this case for a new trial.

Respectfully submitted,



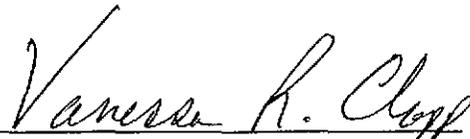
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A copy of the foregoing Merit Brief of Appellee, Jennifer Jeffries, is on this 7th day of March, 2008, mailed by inter-office mail to Charles Coulson, Lake County Prosecutor, and Karen A. Sheppert, Assistant Prosecuting Attorney, at 105 Main Street, Painesville, Ohio 44077.


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