

**IN THE  
SUPREME COURT OF OHIO**

STATE OF OHIO : NO. 2007-0268  
  
Plaintiff-Appellee, :  
  
vs. : On Appeal from the Hamilton County  
Court of Appeals, First Appellate  
DANIELLE SMITH : District  
  
Defendant-Appellant. : Court of Appeals  
: Case Number C060077

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**MOTION FOR RECONSIDERATION**

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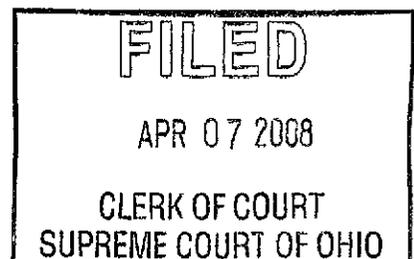
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DANIELLE SMITH	:	
Defendant-Appellant.	:	
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Now comes Defendant-Appellant, Danielle Smith (“Appellant“), by and through counsel, and pursuant to S.Ct. Prac. R. XI, sec. 2, she hereby moves this Court to reconsider its Decision on the merits entered herein on March 26, 2008.

Appellant so moves this Court on the basis that the Court’s decision flies in the face of its own established precedent in the area of lesser included offenses and specifically, the issue in this case, ie, whether Theft is a lesser included offense of Robbery. That issue had been clearly resolved in *State v. Carter* (2000), 89 O.St.3d 593, 734 N.E.2d 345; it now appears that this Court has overruled *Carter* by this decision since this case, otherwise, fell squarely within the holding of *Carter*.

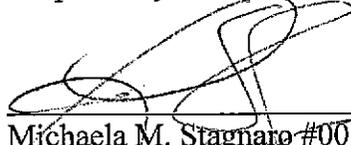
Not only did this Court overrule *Carter*, but has essentially rewritten the well-established test set forth in *State v. Deem* (1988), 40 O.St.3d 205, 533 N.E.2d 294, concerning lesser included offenses, which has been precedent in this Court, and all other

courts in the State of Ohio, for the past twenty years. In addition, as more eloquently stated by Justice Pfeifer in his dissent, this Court has effectively rewritten the Ohio Revised Code, which certainly raises the issue of whether this Court has usurped the legislative branch, thus causing a separation of powers problem.

Appellant further states that this Court's statement of law in paragraph 31 of its Decision is not inaccurate. In determining whether a Theft offense has occurred, value is most certainly an essential element that must be proven by the State. In addition, Appellant was not permitted to brief this issue, as this Court did not accept jurisdiction to hear that issue which was raised in her Memorandum of Jurisdiction, Proposition of Law II, and as such, it was not proper for this Court to make any such ruling regarding the value issue.

WHEREFORE, Defendant-Appellant, Danielle Smith, respectfully moves this Court to reconsider its Decision of March 26, 2008 which affirmed the judgments of the lower courts in this case. Appellant instead moves this Court to follow its precedent, and its decision in *Carter*, and reverse the First District Court of Appeals and discharge Appellant from any further criminal liability in this case.

Respectfully submitted,

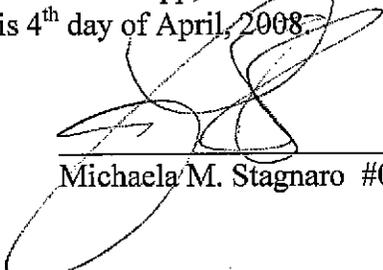


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**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing Motion for Reconsideration was served upon Joseph T. Deters, Prosecuting Attorney for Hamilton County, Ohio, by and through his Assistant Prosecuting Attorney, Judith Anton Lapp, 230 East Ninth Street, Cincinnati, OH 45202, by regular U.S. Mail, this 4<sup>th</sup> day of April, 2008.



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