

IN THE
SUPREME COURT OF OHIO

STATE OF OHIO	:	NO. 2008-0971
Plaintiff-Appellee	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District
vs.	:	
ROBIN SCHAEFER-KRAFT	:	Court of Appeals Case Number C060979
Defendant-Appellant	:	

MEMORANDUM IN RESPONSE

Joseph T. Deters (0012084P)
Prosecuting Attorney

Scott M. Heenan (0075734P)
Assistant Prosecuting Attorney
Counsel of Record

230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3227
Fax No. (513) 946-3021

COUNSEL FOR PLAINTIFF-APPELLEE, STATE OF OHIO

Ravert J. Clark
Attorney at Law
114 East 8th Street
Cincinnati, Ohio 45202
(513) 587-2887

COUNSEL FOR DEFENDANT-APPELLANT, ROBIN SCHAEFER-KRAFT

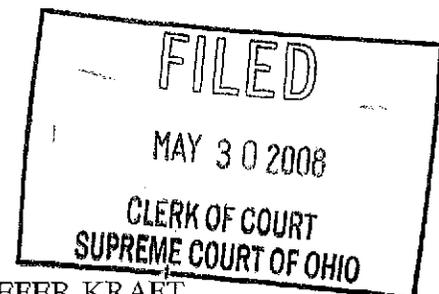


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Defendant-Appellant :

Explanation of why this case is not a case of public or great general interest and does not involve a substantial constitutional question

The issues raised in Robin Schaefer-Kraft's propositions of law are all readily addressed using settled case law. She argues that her counsel was ineffective for not pursuing a not guilty by reason of insanity plea, that her plea was not voluntary because she was not competent, and that her sentence was generally unconstitutional. But the medical reports and Kraft's own statements show that she was restored to competency and that she appreciated the wrongfulness of her acts. Her guilty plea waived her arguments on her counsel's effectiveness and, even if it hadn't, the record shows that her counsel was effective. And the trial court imposed a legal sentence.

All of these issues are addressed using settled law. Thus, there is nothing new for this Court to decide in this case and jurisdiction should be declined.

Statement of the Case and Facts

Robin Schaefer-Kraft, along with her husband, had sex with their children. The vile details of these crimes do not need to be detailed for the purposes of this appeal. Briefly, as it relates to the crimes she was found guilty of, Kraft had anal sex with her five-year-old son on multiple occasions and she created a substantial risk to the health and safety of all of her children.

Kraft was initially charged with six counts of rape, three counts of attempted rape, four counts of assault, and four counts of endangering children. She was found incompetent to stand trial and ordered hospitalized. The hospitalization restored her to competency and she was ordered to remain in the hospital to preserve her competency.

After she was restored to competency, her motion to suppress was denied. She then entered guilty pleas to two counts of rape and all four counts of endangering children. She was sentenced to 40 years in prison for her crimes and was found a sexual predator.

First Proposition of Law: When a defendant enters a guilty plea they waive any error related to the effective assistance of their trial counsel.

Kraft is arguing that her trial counsel was ineffective for failing to request an evaluation to see if she qualified for being found not guilty by reason of insanity.

“When a defendant enters a plea of guilty as a part of a plea bargain he waives all appealable errors which may have occurred at trial, unless such errors are show to have precluded the defendant from entering a knowing and voluntary plea. . . . a plea of guilty waives the right to claim that the accused was prejudiced by constitutionally ineffective counsel, except to the extent that the defects complained of caused the plea to be less than knowing and voluntary.”¹

Kraft is not arguing that the failure to pursue a plea of not guilty by reason of insanity rendered her plea unknowing and involuntary. This argument was waived when she entered her guilty plea.

Yet even if this were not the state of the law, Kraft’s allegations are meritless. “A person is ‘not guilty by reason of insanity’ relative to a charge of an offense only if the person proves . . . that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person’s acts.”² A review of Kraft’s statement to the police shows that she was quite aware of the wrongfulness of her actions.

Kraft discussed the first time she claimed her children saw her and her husband having sex: “The first time I remember the kids ever being exposed to sex was when we still lived at 318 Locust. We got a little bold and had sex in the living room. And then here comes the kids They

¹*State v. Barnett* (1991), 73 Ohio App. 3d 244, 248, 596 N.E.2d 1101, citing *State v. Kelley* (1991), 57, Ohio St. 3d 127, 566 N.E.2d 658.

²R.C. 2901.01(A)(14).

couldn't talk or walk or anything yet. So we stopped. You know, I treated it like let's just go back to bed. I didn't want to make a big deal out of it. I figured what kid hasn't walked in on their parents. And I didn't want to make a big deal about it because I didn't want them to dwell on it. I wanted them to basically forget. . . . He [her husband] was angry with me because I stopped having sex with him. He told me it doesn't matter who was in the room. . . . So I just looked at him and I was just dumbfounded, like, not in front of the kids."³ So, even before she started having sex with her children she realized that even having sex in front of your children was wrong.

She then talked about the first time her oldest child would jump on top of her while she was having sex with her husband: "He would jump on my back Sometimes [wearing] underwear sometimes nothing."⁴ When he was on top of her the child "moved his hips like he was trying to have sex." Kraft claimed that this "shocked me and I was concerned about getting off. . ."⁵ When this happened, Kraft claimed that she "would yell at them, the kids, to leave, and Paul didn't care. Paul would tell me to shut up."⁶

Kraft also talked about the first time her second oldest son came into the bedroom while she was having sex with her husband. The boy came into the room, found his parents having sex, and climbed on top of his father's back and "[f]rom what I could see move his hips."⁷ Kraft claims that she "flipped out. Paul got off me, and I basically just told the kids Mommy and daddy's wrestling."⁸

³State's Exhibit 6.

⁴State's Exhibit 6.

⁵State's Exhibit 6.

⁶State's Exhibit 6.

⁷State's Exhibit 6.

⁸State's Exhibit 6.

Eventually, climbing on his father's back turned into having vaginal intercourse with Kraft. Kraft claimed that intercourse never fully occurred and that the boy "tried and I would panic."⁹ Kraft claimed that she would keep him from completing the act by closing her legs.¹⁰

Kraft even claimed that after the first time her oldest showed up with his naked sister claiming that she wanted to have sex that she started separating the older boys from the other children at bath time.¹¹

Kraft even tried to explain that, despite having her arms bound to the bed by straps, that her legs were free and "I would try to kick."¹² And, repeatedly, throughout her statement she claimed that she wanted to tell someone about what was going on but she was too afraid to talk.¹³

A person who does not understand the wrongfulness of having sex with children would not try to stop having sex in front of them; would not try to stop children from climbing on top of them while they were having sex; would not panic; would not flip out; would not separate children at bath time; would not kick; and would not be afraid to talk to the police about what was happening.

Kraft may have mental problems. But it takes a more than just a mental illness to qualify for being found not guilty by reason of insanity. It requires a mental illness that makes the person fail to understand what they are doing is wrong. Kraft knew what was going on was wrong. Thus, she did not qualify for being found not guilty by reason of insanity.

⁹State's Exhibit 6.

¹⁰State's Exhibit 6.

¹¹State's Exhibit 6.

¹²State's Exhibit 6.

¹³State's Exhibit 6.

Second Proposition of Law: A defendant's plea is voluntary even if they suffer from mental health issues so long as the mental illness does not render them incapable of understanding what they was doing.

Kraft argues that her plea was not knowingly, intelligently, or voluntarily entered into because she was incompetent, suffered from mental health disorders, and was required to be hospitalized to maintain her competency at the time of her plea. A review of the record shows nothing wrong with her plea.

The medical reports in this matter show that Kraft had been restored to competency when she entered her plea. Kraft was not only competent, she was also actively participating in various groups at the hospital and was even in charge of a patient empowerment group.

Kraft's arguments that she was incompetent are based solely off of the fact that the reports indicate that she suffered from mental illness. But a "defendant may be emotionally disturbed or even psychotic and still be capable of understanding the charges against him and of assisting his counsel."¹⁴

The plea hearing in this matter shows that Kraft was fully aware of what was going on. She properly answered all of the trial court's questions. She understood the rights she was giving up. She knew that she was entering a guilty plea. She knew what that meant. Nothing in the record indicates that the plea was anything but voluntary. And nothing indicates that her mental illness had any impact whatsoever on her plea.

Kraft's plea was entered into knowingly, intelligently, and voluntarily. Her mental illness did not impact her ability to properly enter into her plea.

¹⁴*State v. Bock*, (1986), 28 Ohio St. 3d 108, 110, 502 N.E.2d 1016.

Third Proposition of Law: Trial courts have discretion to impose any sentence allowed by law (addressing Kraft's third, fourth, and fifth propositions of law).

Kraft argues that her sentence is unconstitutional. But under *State v. Foster*, the trial court was free to impose any sentence allowed by law.¹⁵ Kraft's sentence is allowed by law and is constitutional.

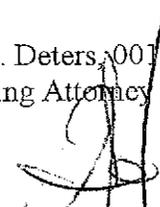
¹⁵*State v. Foster*, 109 Ohio St. 3d 1, 2006-Ohio-856, 845 N.E.2d 740. See also *State v. Bruce*, 170 Ohio App. 3d 92, 2007-Ohio-175, 866 N.E.2d 44.

Conclusion

Each of Kraft's propositions of law are readily addressed using settled law. Thus, there is nothing new for this Court to decide and jurisdiction over the matter should be declined.

Respectfully,

Joseph T. Deters, 0012084P
Prosecuting Attorney



Scott M. Heenan, 0075734P
Assistant Prosecuting Attorney
230 East Ninth Street, Suite 4000
Cincinnati, Ohio 45202
Phone: 946-3227
Attorneys for Plaintiff-Appellee

Certificate of Service

I hereby certify that I have sent a copy of the foregoing Memorandum in Response, by United States mail, addressed to Raverri J. Clark, 114 East 8th Street, Cincinnati, Ohio 45202, counsel of record, this 29th day of May, 2008.



Scott M. Heenan, 0075734P
Assistant Prosecuting Attorney