

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Appellee,

vs.

T. CRAIG ESCHRICH

Appellant

: Supreme Court
: Case No.: 08-1528

: Court of Appeals
: Case No.: OT-06-045

: Trial Court
: Case No.: CRB-0600202A

Appeal from the Ottawa County Common Pleas and
The Sixth District Court of Appeals, County of Ottawa,
State of Ohio

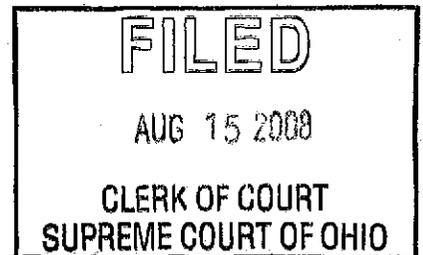
**APPELLEE'S MEMORANDUM IN RESPONSE TO
APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION**

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I. **EXPLANATION OF WHY THIS CASE IS NOT A CASE OF
PUBLIC OR GREAT GENERAL INTERST**

This case is not a case of great public or general interest. This case merely involves a violation of a civil stalking protection order and subsequent punishment. The law is well established and effective, and accordingly, need not be changed.

This case does not involve a substantial constitutional question. If an attorney files an entry of appearance stating that he is acting as attorney for himself, he inherently does not waive counsel. Accordingly, no issues regarding knowing, intelligent and voluntary waiver of counsel are even asserted.

II. STATEMENT OF FACTS

The State of Ohio accepts appellant's statement of case and facts.

III. ARGUMENT IN OPPOSITION OF PROPOSITIONS OF LAW

Response to Appellant's Proposition of Law No. 1:

A final civil stalking protection order issued purportedly under R.C. 2903.214 where the court has failed to give notice of the full hearing to respondent in violation of both the local rules and R.C. 2903.214(D)(2)(a), deprives the respondent of fundamental due process as guaranteed under the Fourteenth Amendment of the United States Constitution and Section 16, Article I of the Ohio Constitution and is thus transparently invalid and void, such that the respondent may not be criminally convicted of recklessly violating it under R.C. 2919.27(A)(2).

At the time that appellant violated the protection order in the present case, it had not yet been declared invalid by order of the Court of Appeal for the Sixth District of Ohio. See *Fahey v. Eschrich*, 6th Dist. No. OT-06-012, 2006-Ohio-5619, ¶ 13. An order of a court must be followed until it is reversed by orderly and proper proceedings. *Id.*; citing *State v. Sutts*, 12th Dist. No. CA2003-07-074, 2004-Ohio-3541. "Accordingly, his reckless violation of that order was a crime and the trial court did not err in denying his motion to vacate or in proceeding to sentence him." *Fahey v. Eschrich*, at ¶ 13. The Court of Appeals for the Sixth Appellate District's sound reasoning should not be disturbed.

Response to Appellant's Proposition of Law No. II:

The Sixth Amendment of the United States Constitution, along with Section 10, Article I of the Ohio Constitution and Ohio Crim. Rule 44 require that a criminal defendant may not be permitted to represent himself at trial unless the trial court ensures that the defendant has knowingly, voluntarily, and intelligently waived his right to counsel, in an on-the-record exchange of some sort, even if the criminal defendant is an attorney.

The appellant argument lacks merit. Respondent is an attorney licensed to practice in the State of Ohio. The Court of Appeals for the Sixth Appellate District soundly reasoned:

In the present case, appellant, as counsel, filed an entry of appearance stating that he was the attorney for the defendant, himself. As counsel, he then signed a waiver of arraignment and, as such, waived his right to be informed of his constitutional rights as set forth in Crim.Rs. 5, 10 and 44. We further note that appellant was represented by counsel, albeit himself. Accordingly, his assertion that he did not knowingly, intelligently and voluntarily waive his right to counsel is disingenuous because he did not in fact waive his right to counsel.

Fahey v. Eschrich, at ¶ 22. Accordingly, because appellant did not waive his right to counsel, no on-the-record exchange is necessary.

IV. CONCLUSION

For the reasons asserted above, it is submitted that this Court should decline jurisdiction.

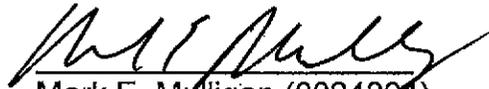
Respectfully submitted,



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Prosecuting Attorney
Attorney for Appellee

PROOF OF SERVICE

This is to certify that a copy of the foregoing Brief of Appellee was sent by regular U.S. mail this 14th day of August, 2008 to Sandra J. Finucane, Attorney for Defendant-Appellant, 711 Waybaugh Drive, Gahanna, Ohio, 43230.



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