

**ORIGINAL**

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellant,

v.

DANIEL GINLEY

Defendant-Appellee

Case No. 10-1925

On Appeal from the Eighth  
District Court of Appeals for  
Cuyahoga County, Case No. CA  
95593

---

MOTION TO STAY COURT OF APPEALS JUDGMENT PENDING APPEAL,  
FILED PURSUANT TO S.Ct. R. P. XIV, § 4(A)

---

**WILLIAM D. MASON**

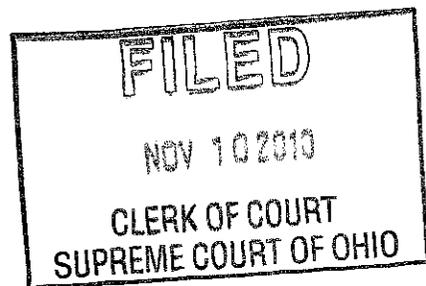
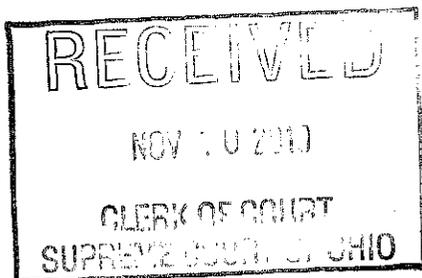
Cuyahoga County Prosecuting Attorney

**MATTHEW E. MEYER (#0075253)**

Assistant Prosecuting Attorney  
Cuyahoga County Prosecutor's Office  
The Justice Center, 9<sup>th</sup> Floor  
1200 Ontario St.  
Cleveland, Ohio 44113  
(216) 443-7821  
(216) 443-7602 *fax*  
*mmeyer@cuyahogacounty.us email*

Attorney for Defendant-Appellee

**Susan J. Moran, Esq.**  
55 Public Square, Suite 1616  
Cleveland, Ohio 44113



## MEMORANDUM IN SUPPORT

The State has filed the instant motion to stay in order to suspend trial proceedings against defendant Daniel Ginley while this Honorable Court considers whether to accept jurisdiction over the State's appeal. As more fully explained in the State's Memorandum in Support filed on November 8, 2010, the State has raised meritorious and worthwhile legal grounds for this Honorable Court to consider exercising its jurisdiction.

**1. State's appeal raises meritorious grounds for acceptance of jurisdiction.**

This case concerns whether adequate legal tools exist under Ohio law to maintain a domestic violence prosecution when, prior to trial, a victim recants or minimizes his or her statement to police. In the majority of domestic violence cases prosecuted in Cuyahoga County, victims minimize or recant their statements to police before trial. Until the decisions of the United States Supreme Court in *Crawford v. Washington* (2004), 541, U.S. 36, 124 S.Ct. 1354, and *Davis v. Washington* (2006), 547 U.S. 813, 821, 126 S.Ct. 2266, prosecutors had some latitude to introduce hearsay in accordance with the applicable evidentiary rules. In the aftermath of those decisions, it is nearly impossible to prove a domestic violence case when the complaining witness recants before trial. Faced with the all-too-frequent cycle of victims returning to their abusers, prosecutors have very few effective legal tools to help them prove these domestic violence cases following victim recantation.

Evid. R. 614(A) offers some hope. The rule allows the court to call the victim

as its witness, affording the prosecutor the ability to cross-examine the victim on his or her prior statement and subsequent recantation. As the facts of this case demonstrate, however, trial judges who are unaccustomed or openly hostile to the rule can place it out of reach, foreclosing any reasonable hope for proving a recanting-victim domestic violence case.

Supreme Court review in this case therefore will serve not only to salvage the criminal prosecution in this case, which is effectively impossible due to the trial court's arbitrary, unreasonable and unconscionable refusal to call the recanting victim as a court's witness, but also to instruct Ohio's many common pleas and municipal court judges on the availability and importance of Evid. R. 614(A) in domestic violence cases.

**2. A stay will ensure that the State does not violate the defendant's right to a speedy trial or unnecessarily prejudice defendant.**

The State is also mindful of the fact that the defendant must be brought to trial within a constitutionally reasonable period of time. The State sought leave to file an interlocutory appeal in this case pursuant to R.C. 2945.67(A), which the Eighth District denied without opinion or analysis on September 24, 2010. While the Eighth District appeal was pending, the trial court stayed pretrial proceedings. In *State v. Hull*, 110 Ohio St.3d 183, 2006-Ohio-4252, at ¶ 20, this Honorable Court explained:

In *Barker v. Wingo* (1972), 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101, the court identified four factors to be assessed in determining whether an accused had been constitutionally denied a speedy trial: (1) the length of the delay, (2) the reason for the delay, (3) the defendant's

assertion of his right to a speedy trial, and (4) the prejudice to the defendant. Id. at 530, 92 S.Ct. 2182, 33 L.Ed.2d 101.

Thus, the State submits that a stay pending review is an appropriate mechanism to justify any delay at the trial level that is occasioned by the State seeking to lawfully obtain appellate review of the trial court's unreasonable refusal to call the recanting domestic violence victim in this case as a court's witness. Without the ability to call the victim as a court's witness, prosecution of the underlying indictment in this case is effectively impossible following the victim's recantation. Indeed, the victim has retained counsel, sought to dissolve the temporary protection order, and refused to communicate with the prosecutor without counsel present.

**3. Defendant has a reasonable bond and is not incarcerated while awaiting trial.**

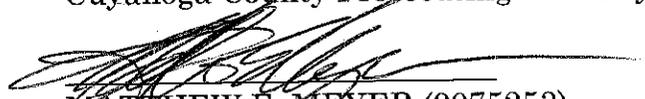
The defendant in this case is also not incarcerated while awaiting trial. On April 23, 2010, the defendant posted a \$20,000.00 real estate bond which remains in effect.

**4. Conclusion: a stay is warrant pending decision on discretionary jurisdiction.**

Based on the foregoing, the State respectfully requests, pursuant to to S.Ct. R. P. XIV, § 4(A), that this Honorable Court grant a stay of the Eighth District Court of Appeals judgment in this case in order to stay any trial proceedings while this Honorable Court considers whether to accept this appeal on its merits.

Respectfully submitted,

WILLIAM D. MASON  
Cuyahoga County Prosecuting Attorney



MATTHEW E. MEYER (0075253)  
Assistant Prosecuting Attorney  
Cuyahoga County Prosecutor's Office  
The Justice Center, Courts Tower  
1200 Ontario St.  
Cleveland, Ohio 44113  
(216) 443-7821  
(216) 698-2270 *fax*  
*mmeyer@cuyahogacounty.us email*

## CERTIFICATE OF SERVICE

A copy of the foregoing Motion to Stay Court of Appeals Judgment Pending Appeal was sent by regular U.S. Mail this 9<sup>th</sup> day of November, 2010 to Susan J. Moran, Esq., 55 Public Square, Suite 1616, Cleveland, Ohio 44113..



MATTHEW E. MEYER (0075253)  
Assistant Prosecuting Attorney

# Court of Appeals of Ohio, Eighth District

County of Cuyahoga  
Gerald E. Fuerst, Clerk of Courts

STATE OF OHIO

Appellant

COA NO.  
95593

LOWER COURT NO.  
CP.CR-536494

COMMON PLEAS COURT

-vs-

DANIEL GINLEY

Appellee

MOTION NO. 436865

Date 09/24/2010

---

Journal Entry

---

MOTION BY APPELLANT FOR LEAVE TO APPEAL IS DENIED AS MOOT.

RECEIVED FOR FILING

SEP 24 2010

GERALD E. FUERST  
CLERK OF THE COURT OF APPEALS  
BY [Signature] DEP.

Judge MARY EILEEN KILBANE, Concur

---

[Signature]  
Administrative Judge  
SEAN C. GALLAGHER



VOL 0713 #0690