

**ORIGINAL**

NO. 2010-1925

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IN THE SUPREME COURT OF OHIO

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APPEAL FROM  
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO  
NO. 95593

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STATE OF OHIO,

Plaintiff-Appellant

-vs-

DANIEL GINLEY,

Defendant-Appellee

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**MERIT BRIEF OF APPELLANT**

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## INTRODUCTION AND SUMMARY

The State requests that this Honorable Court hold that a trial court may not arbitrarily require the showing of a threat before calling a recanting domestic violence victim as a court's witness under Evid. R. 614(A).

The unfortunate facts of this case stand out as typical of domestic violence prosecutions throughout Ohio. In these cases, prosecutors routinely encounter victims before trial who minimize or recant their statements to police. When this happens, prosecutors have few tools to prove their case. 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.

No one in Ohio can reasonably dispute the compelling need for government to prosecute serious domestic violence cases in the face of victim recantation:

[T]here may clearly be times that the prosecution should be permitted to move forward despite the victims' objections, especially when a pattern of abuse continues and all the pressures previously mentioned weaken the victims' resolve to pursue their abusers, or if the victims fear even greater retaliation if the case is pursued by the victims themselves. Society would never tolerate such assaults against total strangers. Such conduct should not be excusable or somehow less egregious because one is in a marriage or partnership. In these circumstances, the court must provide the forum to call abusers to account for their actions.

*State v. Busch* (1996), 75 Ohio St.3d 613, 669 N.E.2d 1125 (Stratton, J., concurring),

To achieve the significant government interest described by Justice Stratton in *Busch*, trial judges must exercise sound discretion by applying Evid. R. 614(A) towards the goal of finding the truth. For this reason, the State requests that this Honorable Court hold that proof of a threat is unnecessary and an improper prerequisite to application of Evid. R. 614(A).

### **STATEMENT OF THE CASE AND RELEVANT FACTS**

On April 27, 2010, the Cuyahoga County Grand Jury indicted defendant-appellee Daniel Ginley with nine counts. All nine counts involved the same victim, Ginley's live-in girlfriend, Melissa Mathis. The first, second, fifth, sixth, seventh and ninth counts charged defendant with domestic violence in violation of R.C. 2919.25(A) for incidents that occurred on December 31, 2009, January 25, 2010, February 26, 2010, March 22, 2010, March 23, 2010, and April 14, 2010, respectively. Count three charged Ginley with kidnapping in violation of R.C. 2905.01(A)(3), count four charged Ginley with felonious assault in violation of R.C. 2903.11(A)(1), count seven charged Ginley with disrupting public services in violation of R.C. 2909.04(A)(1).

The charges arose after Ms. Mathis was hospitalized on April 14, 2010 for injuries that she alleged that the defendant inflicted upon her. The Complaint Summary and Bond Report, filed on April 16, 2010, provided a synopsis of the offenses, stating in relevant part:

On 04/14/10 the complainant met with the WPD in regards to a domestic violence that took place during the early morning hours of 04/14/10. The victim also reported an incident of felonious assault that took place on 02/12/10 involving the same suspect. The victim also

detailed that after both incidents, the suspect did not allow her to leave the residence and took her cell phone away from her so that she could not call for help. The suspect was arrested for domestic violence, abduction and felonious assault. \* \* \* The victim was transported to the SJWMC for treatment of her injuries that she sustained on 02/12/10.

Mathis provided Westlake Police with a detailed, written statement and also made oral statements to law enforcement personnel, in which she alleged that defendant had violently assaulted her on several separate occasions beginning on December 31, 2009 and continuing through the day of her hospitalization on April 14, 2010. At the same time, Ms. Mathis sought and obtained a Motion for Criminal Protection order against the defendant.

In her written statement to police, Ms. Mathis provided extremely detailed and specific allegations of several acts of serious violence, including having her hair pulled out in patches, her eyes gouged with fingernails, and being punched so hard that it left a bruise that had yet to subside after two months. Within her statement, Ms. Mathis also alleged that Ginley had kept her a prisoner in her own home, confiscating her cell phone and making false reports to her workplace to excuse her absence. (See generally, Tr. p. 4, Exhibit 2, attached to State's August 23, 2010 Motion for Leave to Appeal).

Following the commencement of the underlying prosecution, however, Ms. Mathis independently retained a lawyer to represent herself and sought to dissolve

the temporary protection order. (Aug. 11, 2010 Hearing Transcript, “Tr,” at p. 13).<sup>1</sup> Counsel for Ms. Mathis informed the prosecutor that if she were called upon to testify, she would deny all of her previous statements and would testify that she “made up” all allegations that the defendant abused and/or assaulted her. In addition, Ms. Mathis refused to allow the prosecutor to communicate with her, requiring instead that any communications be made through or in the presence of her lawyer.

As a result, the State orally notified the trial court and defense counsel of its intention to call a court’s witness on July 29, 2010. In response, the trial court indicated that “I don’t think I granted a motion to call a court’s witness in ten years. Why would I grant this one?” (Tr. P. 12).

The State then filed a written motion to call Ms. Mathis as a court’s witness on August 4, 2010, restating the above information and requesting that the trial court allow the State to call Ms. Mathis as a Court’s Witness pursuant to Evid. R. 614(A). Within an extremely short period of time, and before the defendant had time to respond, the trial court announced in chambers that same day that it would deny the State’s motion. (Tr. p. 13). Upon learning of the Court’s position, defendant sought leave to file a written response to the State’s motion, which the Court granted. Defendant filed a memorandum in opposition on August 10, 2010.

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<sup>1</sup>Throughout the transcript, defense counsel and the trial court referred to the victim as “Miss Mather.” (Tr., *passim*). The victim’s last name, however, is “Mathis.”

The State subsequently filed a written objection to preliminary ruling in which it objected to the trial court's statement on August 4, 2010 that it would deny the State's motion.

The trial court held a hearing on the State's Motion on August 11, 2010, in which it allowed defense counsel to articulate Ms. Mathis' wish to repudiate her allegations of domestic violence:

So what we have in this particular instance is that Miss Mather has said all of the allegations she's made were completely false, and she has provided her attorneys with the actual truth of what happened on each date that she alleged Mr. Ginley had assaulted her, which is different than any recantation I've ever experienced in my 14 or so years of practicing.

She's basically said her allegations are completely false, and she went so far as to retain counsel because she fully expects and anticipates that she's going to be prosecuted for making a false police report. That's the position she's taking, and that's why she will not talk directly to the prosecution, because she feels at this point she has an issue with criminal liability. And she's, you know, she's maintaining that, you know she has a full version of what she says really happened, and that's available to the State, should they want, through attorney John Powers. And that's why in this particular instance calling her as a court's witness would only serve to read into the record this statement that she made to the Westlake Police Department prior to hiring John Powers, because she, of course, I believe, would come in, and she may testify to the old facts, she may testify to her new story, and she may, you know, basically plead the Fifth and not say anything. We don't know what she's going to do because she's only talking through her counsel.

(Tr. pp. 8-9).

The trial court acknowledged having commented about never having granted a request to call a court's witness during its ten years on the bench, then stated that it would decide each motion on a case by case basis. (Tr. pp. 11-12). The trial court

also acknowledged denying the State's motion to call a court's witness the same day it was filed, then granting defense counsel an opportunity to file a subsequent written response to the State's motion. (Tr. p. 13). The trial court also stated that it did not have a "blanket policy regarding Evid. R. 614(A) or any other issue that comes before it." (Tr. p. 14).

In rejecting the State's motion to call Ms. Mathis as a Court's witness, the trial court reasoned:

The State has produced no evidence of threats from the defendant to the alleged victim or her family. In addition, the alleged victim is not making herself unavailable. In fact, she with her lawyer present, has simply and clearly indicated that she would testify under oath that her previous statements to police were not true and that she would be willing to do so despite the risk of criminal prosecution from your office.

(Tr. p. 16).

The trial court journalized its ruling denying the State's Motion to Call a Court's Witness on August 16, 2010. On August 23, 2010, the State filed a notice of appeal of right pursuant to Crim. R. 12(K) as well as a notice of appeal by leave of court and motion for leave to file appeal pursuant to R.C. 2945.67(A), appealing the trial court's August 16, 2010 judgment.

On September 24, 2010, the Eighth District Court of Appeals denied the State's Crim. R. 12(K) appeal in Cuyahoga County Court of Appeals Case No. CA 95592, which the State had filed on the theory that the trial court's judgment amounted to an exclusion of evidence. The Court of Appeals held that the State

had not complied with the mandatory requirement of Crim. R. 12(K). The State has not elected to appeal that judgment to this Honorable Court.

That same day, the Eighth District denied the State's discretionary appeal in Cuyahoga County Court of Appeals Case No. CA 95593 without opinion or analysis. The Eighth District's judgment stated only that the State's "motion for leave to appeal is denied as moot." The State filed a motion for reconsideration on October 4, 2010, and the Eighth District denied the State's motion two days later on October 6, 2010.

### **LAW AND ARGUMENT**

*PROPOSITION OF LAW: WHEN A DOMESTIC VIOLENCE VICTIM RECANTS HIS OR HER STATEMENT TO POLICE PRIOR TO TRIAL, EVID. R. 614(A) DOES NOT REQUIRE SPECIFIC PROOF OF A THREAT IN ORDER FOR THE TRIAL COURT TO CALL THE VICTIM AS A COURT'S WITNESS.*

The State submits that regardless of whether a recanting domestic violence victim has been threatened, Evid. R. 614(A) should allow a trial court to call that person as its own witness. Allowing the prosecutor the ability to cross-examine the victim on his or her prior statement and subsequent recantation furthers the important goal of prosecuting domestic violence in Ohio *despite victim recantation*. As the facts of this case demonstrate, however, Ohio 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.

It is undisputed that the domestic violence victim in this case has repudiated her statement to police and will not cooperate in the domestic violence prosecution

of her live-in boyfriend, the defendant. Although the trial court did indicate that it felt there was no “bright line” test or “particular type of proof necessary,” the trial court went on to deny the State’s motion to call the victim as a court’s witness under Evid. R. 614(A) because it felt the State had not proven “evidence of threats from the defendant to the alleged victim or her family.” (Tr. p. 16). Based on the foregoing, the State submits that the trial court misapplied Ohio law when it required the prosecutor to show evidence of a specific threat in order to invoke Evid. R. 614(A). Thus, the trial court imposed an onerous and improper legal burden that does not exist within the rule itself.

**1. Purpose of Evid. R. 614(A): to find the truth.**

The State submits that Ohio law gives trial courts discretion to apply Evid. R. 614(A) in order to further the truth-finding goal of the criminal justice system. The rule states in relevant part:

**(A) Calling by court**

The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

In *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 514 N.E.2d 394, this Honorable Court held that “a trial court possesses the authority in the exercise of sound discretion to call individuals as witnesses of the court.” *Id.*, at 22, quoting *State v. Adams* (1980), 62 Ohio St.2d 151, 404 N.E.2d 144, paragraph four of the syllabus. “Evid.R. 614 also provides that a court may call witnesses on its own motion and allow each party to then cross-examine those witnesses. The state need not

demonstrate surprise in order to cross-examine such a witness.” *Apanovitch, supra*, citing *State v. Dacons* (1982), 5 Ohio App.3d 112, 449 N.E.2d 507.

“The court’s authority to call a witness pursuant to Evid. R. 614(A) is within its inherent authority, and should be exercised in fulfillment of its fundamental duty to arrive at the truth.” *State v. Sealey*, Lake App. No. 2003-Ohio-6697, at ¶ 27, citing Evid. R. 614(A), staff notes. Further, “[i]t is well-established that a trial court does not abuse its discretion in calling a witness as a court’s witness when the witness’s testimony would be beneficial to ascertaining the truth of the matter and there is some indication that the witness’s trial testimony will contradict a prior statement made to police.” *State v. Arnold*, 189 Ohio App.3d 507, 2010-Ohio-5379, 939 N.E.2d 218, at ¶ 44, quoting *State v. Schultz*, Lake App. No. 2003-L-156, 2005-Ohio-345, 2005 WL 238153, ¶ 29.

Here, the trial court superimposed a legal requirement upon Evid. R. 614(A) that does not—and should not—exist under Ohio law: proof of a threat. Without any legal basis for adding proof of a threat as a criterion to Evid. R. 614(A), the trial court’s decision therefore fell into the class of arbitrary rulings that amount to an “abuse of discretion.” *Apanovitch, supra*, at 22 (applying abuse of discretion standard to trial court’s Evid. R. 614(A) judgment).

The State has found no other court that requires specific proof of a threat as a prerequisite to applying Evid. R. 614(A). The Eighth District’s refusal to even hear the instant appeal stands in marked contrast with its own prior decisions in the area. In *State v. Wesley*, Cuyahoga App. No. 80684, 2002-Ohio-4429, the Eighth

District held that the domestic violence victim's "refusal to testify to the physical harm aspect of the domestic violence charge was an obvious change from her prior story that Wesley had struck her. On that basis alone, the court would have been justified in calling her under Evid. R. 614(A)." *Id.*, at ¶10. Likewise, in *State v. Becerra*, Cuyahoga App. No. 87374, 2006-Ohio-5245, the Eighth District held:

Evid.R. 614(A) gives the trial court the authority to call its own witnesses for questioning. It also allows for the parties to cross-examine the witness after the court has concluded its questioning. Knowing that Dalton's recollections and actions were contradictory and that her testimony was essential to the case, the trial court decided it would be best to have her testify as a witness of the court. Throughout its questioning of Dalton, there was no indication that the trial court questioned the victim in a fashion that would confuse issues or detract from the crux of the case. Quite to the contrary, the court's examination of Dalton directly addressed her conflicting testimony and cleared up any confusion. In addition, both the state and the defense were given ample opportunity to question Dalton after the trial court's examination.

*Id.*, at ¶11. In another case, *State v. Beasley*, Cuyahoga App. No. 88989, 2007-Ohio-5432, at ¶¶45-50, the Eighth District again upheld the use of Evid. R. 614(A) to call a recanting domestic violence victim as a court's witness, reasoning:

Here, the court properly identified the victim as a court's witness. At the time of trial, the victim was married to appellant and pregnant with his child. She informed the doctor at the hospital that her boyfriend was her attacker. She made a statement to the police on April 28, 2006, in which she identified her boyfriend as her attacker. On August 16, 2006, the victim wrote the judge a letter in which she recanted the entire story (making it clear that her testimony would conflict with her previous statement). At trial, she recanted her story, telling the court that someone else had assaulted her, and she indicated that her mother (who disliked appellant) had made her file a police report. Because the victim was properly identified as a court's witness, the prosecutor was permitted to impeach her. Accordingly, appellant's fifth assignment of error is overruled.

*Id.*, at ¶50.

Indeed, if the trial court refuses to allow the State the ability to call a domestic violence victim as a court's witness when the State has prior knowledge of the victim's recantation, then how can the State then prove the victim's allegation? The Eighth District has also explained that there is no other proper way for the State to examine a recanting domestic violence victim:

The credibility of a witness may be attacked by any party except that the credibility of a witness may be attacked by the party calling the witness by means of a prior inconsistent statement only upon a showing of surprise and affirmative damage. This exception does not apply to statements admitted pursuant to Evid. R. 801(D)(1)(a), 801(D)(2), or 803.

[The victim's] conduct affirmatively damaged the state's case, but the rule also requires surprise. It is clear from the record that the prosecutor was aware of Hamann's change of heart prior to trial. Therefore, surprise was not evident; thus, Evid.R. 607(A) was not available to the state.

*State v. Clay*, 181 Ohio App.3d 563, 569-70, 2009-Ohio-1235, at ¶¶13-14 (holding that the prosecutor improperly used prior statement to impeach domestic violence victim without the court declaring victim a court's witness pursuant to Evid. R. 614(A)).

The trial court's conclusion that the State needed to show a threat, which is not required by Evid. R. 614(A), is further evidence that its ruling was unreasonable. The trial court cited to the Eighth District's decision in *State v. Curry*, Cuyahoga App. No. 89075, 2007-Ohio-5721, in support of its view that the State had to introduce evidence of threats from the defendant to the alleged victim or her family. (Tr. p. 16). In fact, *Curry* does not stand for the proposition that a

threat is the key determining factor for a court to call a court's witness under Evid. R. 614(A). *Curry* involved a victim who refused to testify unless he received a benefit from the court. *Id.*, at ¶17. In response to these facts, the *Curry* Court held:

At that point, the state's hands were tied, and it requested that the court call McPherson as the court's witness, pursuant to Evid.R. 614, since the state could no longer vouch for the witness' credibility. Once McPherson testified as the court's witness, counsel for both parties were able to cross-examine him, and the jury was able to determine his credibility.

The trial court did not abuse its discretion in calling McPherson as the court's witness. Faced with a situation where the victim refused to testify unless he received a benefit from the court, the state had little choice but to ask for the court's assistance. **This circumstance is precisely one for which Evid.R. 614(A) exists: to bring about the proper determination of a case.** A witness whose appearance is important to the proper determination of the case, but who appears to be favorable to the other party, is a principal candidate for application of Evid.R. 614(A). *State v. Brewer* (Feb. 25, 1986), Franklin App. No. 84AP-852. McPherson, as the victim and an eyewitness, was a principal candidate for the application of Evid.R. 614(A) when he would not otherwise cooperate with the party originally planning to call him.

*Curry, supra*, at ¶¶17-18 (Emphasis added). *Curry* therefore supports the State's argument that when a victim who is the sole eyewitness to the alleged criminal behavior refuses to testify *against* the defendant, the State's only recourse is Evid. R. 614(A). Without it, the State has no viable means to prove its charges and there can be no "proper determination of case." *Curry, supra*.

In *State v. Marshall*, Lorain App. No. 01CA007773, 2001-Ohio-7015, the Ninth District held that the trial court acted within its discretion by calling a domestic violence victim as a court's witness where (1) the victim recanted her earlier statements, (2) abuse is "in terms of physical evidence and consistent

disclosures by [the victim] to medical personnel and police” and (3) nevertheless, the victim ends up bailing her abuser out of jail and resumes living with him. *Id.*, at \*2. *Marshall* stands in marked contrast to what happened in this case. Just as in *Marshall*, the victim in this case recanted her statements before trial. The police also observed injuries at the time of the initial report that corroborated the victim’s account. Finally, the victim in this case resumed her live-in relationship with her abuser. The only discernible difference between *Marshall* and this case is the trial court’s arbitrary decision to require proof of a threat before calling the victim as a court’s witness.

In sum, the trial court’s refusal to allow the State to call the only eyewitness in this case as a court’s witness due to the lack of a proven threat is arbitrary and unreasonable because it holds the State to a burden that does not—and should not—exist under Ohio law.

**2. Without Evid. R. 614(A), a prosecutor who knows that a domestic violence victim has recanted has little recourse.**

The unfortunate facts of this case stand out as typical of domestic violence prosecutions throughout Ohio. “It is not unusual for victims to become reluctant to proceed with their domestic violence cases, particularly with the passage of time.” Adrine & Ruden, *Ohio Domestic Violence Law*, 2010 Ed., § 16:21, p. 1254. This reluctance may exist because “[t]he abuser in a domestic violence situation has on-going access to the victim. Thus, domestic violence is not an isolated event, but a pattern of repeated events and multiple tactics.” *Id.*, at §1:1, p. 4. “[A] victim who recants or is reluctant or refuses to testify may believe that cooperation or

testimony would put him/her at greater risk from the perpetrator and may hope that recanting will be seen by the abuser as compliance.” *Id.*, at p. 6.

When a prosecutor knows before trial that a domestic violence victim plans to recant his or her initial statement to police, the prosecutor has few legal tools left to salvage the case. Where the prosecution rests heavily on the victim’s testimony, it is unlikely that the prosecutor can prove the case with circumstantial evidence alone. Nor is it viable for prosecutors to seek to admit the victim’s police statements as substantive evidence. See generally, *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; but see *Michigan v. Bryant* (2011), 562 U.S. ---- (Slip Opinion) (holding that “[s]tatements are nontestimonial when made in the course of ... interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to ... meet an ongoing emergency”).

In this case, the State did not have the option of impeaching its own witness under Evid. R. 607, which allows a party to impeach its own witness through a prior inconsistent statement only upon a showing of surprise and affirmative damage. *State v. Darkenwald*, Cuyahoga App. No. 83440, 2004-Ohio-2693, at ¶ 28. To show surprise, the party must show that the witnesses' testimony is inconsistent with prior statements and that the party did not have reason to believe that the witness would recant when called to testify. *Id.* Affirmative damage can be established only if the witness testifies to facts which contradict, deny, or harm the calling party’s trial position. *Dayton v. Combs* (1993), 94 Ohio App.3d 291, 299, 640 N.E.2d

863. Since the prosecutor had advance warning that the victim would recant at trial, the State could not show the surprise requisite to impeach the victim at trial under Evid. R. 607.

Nor can the State simply resort to Evid. R. 611(C), which allows some latitude for leading questions on direct examination “as may be necessary to develop the witness’ testimony” and where “a party calls a hostile witness, an adverse party, or a witness identified with an adverse party[.]” Even with leading questions, Evid.R. 607 still prohibits the use of prior inconsistent statements to impeach one's own witness absent a showing of surprise and affirmative damage. *Dayton v. Combs, supra*, at 299.

Ultimately, the State cannot use the victim’s prior inconsistent statement as substantive evidence by itself. *State v. Tesfagiorgis* (Aug. 12, 1999), Franklin App. No. 98AP-1215, 1999 WL 604118. Evid. R. 614(A) does, however, give the State the ability to subject the recanting domestic violence victim to the crucible of cross-examination, which is “the greatest legal engine ever invented for the discovery of truth.” *California v. Green* (1970), 399 U.S. 149, 158, 90 S.Ct. 1930, 1935, quoting 5 Wigmore, *Evidence* (3 Ed.1940), Section 1367.

When Ohio trial judges, however, arbitrarily impose a legal threat requirement that does not—and should not—exist under Ohio law, Evid. R. 614(A) becomes illusory and ineffective. The State therefore submits that this Honorable Court should clearly define that a trial court may not impose a threat criterion

before calling a recanting domestic violence victim as a court's witness under Evid. R. 614(A).

**CONCLUSION**

The State requests that this Honorable Court hold that a trial court may not arbitrarily require the showing of a threat before calling a recanting domestic violence victim as a court's witness under Evid. R. 614(A).

Respectfully submitted,

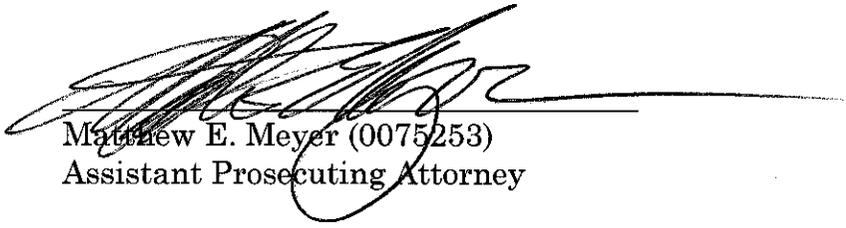
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**CERTIFICATE OF SERVICE**

A copy of the foregoing Brief of Appellant was sent by regular U.S. Mail this 31<sup>st</sup> day of March, 2011 to Susan J. Moran, Esq., 55 Public Square, Suite 1616, Cleveland, Ohio 44113.



Matthew E. Meyer (0075253)  
Assistant Prosecuting Attorney

ORIGINAL

NO. 10-1925

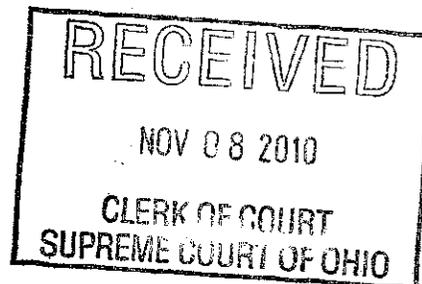
IN THE SUPREME COURT OF OHIO

APPEAL FROM  
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO  
NO. 95593

STATE OF OHIO,  
Plaintiff-Appellant

-vs-

DANIEL GINLEY,  
Defendant-Appellee



NOTICE OF APPEAL TO THE SUPREME COURT OF OHIO

Counsel for Plaintiff-Appellant

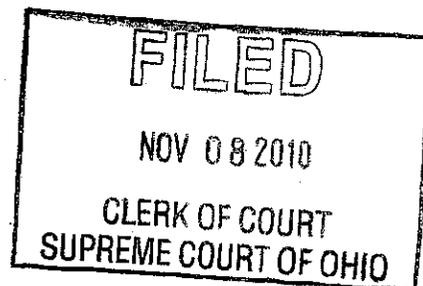
**WILLIAM D. MASON**  
Cuyahoga County Prosecutor

**MATTHEW E. MEYER (0075253)**  
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Cleveland, Ohio 44113

**OFFICE OF THE OHIO PUBLIC DEFENDER**  
250 East Broad Street, 14<sup>th</sup> Floor  
Columbus, Ohio 43215



**NOTICE OF APPEAL OF APPELLANT STATE OF OHIO**

Appellant, State of Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered in *State v. Ginley*, Appeals Case No. 95593, on September 24, 2010.

This appeal raises a substantial constitutional question, involves a felony, or a question of public or great general interest and invokes this Court's discretionary authority under Art. IV, § 2(B)(2)(e) and S.Ct. R. II Section 1 (A)(2) and (3).

Respectfully submitted,

WILLIAM D. MASON (0037540)  
CUYAHOGA COUNTY PROSECUTOR



MATTHEW E. MEYER (0075253)  
Assistant Prosecuting Attorney  
1200 Ontario Street, 8<sup>th</sup> Floor  
Cleveland, Ohio 44113  
216.443.7800

**CERTIFICATE OF SERVICE**

A copy of the foregoing Notice of Appeal was sent by regular U.S. mail this 5<sup>th</sup> day of November, 2010, to Daryl T. Dennie, 75 Public Square #1414, Cleveland, Ohio 44113 and to the Office of the Ohio Public Defender, 250 East Broad Street, 14<sup>th</sup> Floor, Columbus, Ohio 43215.



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

-vs-

DANIEL GINLEY

COMMON PLEAS COURT

Appellee

MOTION NO. 436865

Date 09/24/2010

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Journal Entry

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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



**C**

Baldwin's Ohio Revised Code Annotated Currentness

Ohio Rules of Evidence (Refs & Annos)

▣ Article VI. Witnesses

→ **Evid R 614 Calling and interrogation of witnesses by court**

**(A) Calling by court**

The court may, on its own motion or at the suggestion of a party, call witnesses, and all parties are entitled to cross-examine witnesses thus called.

**(B) Interrogation by court**

The court may interrogate witnesses, in an impartial manner, whether called by itself or by a party.

**(C) Objections**

Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity when the jury is not present.

CREDIT(S)

(Adopted eff. 7-1-80)

Current with amendments received through 2/1/11.

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