

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio, :
 : Case No. 2011-212
 :
 Plaintiff-Appellee, :
 :
 v. : On Appeal from the
 : Holmes County Court of Appeals,
 : Fifth Appellate District,
 Wesley Lloyd, : Case No. 09CA12
 :
 :
 Defendant-Appellant. :

**Appellant Wesley Lloyd's
Notice of Successful Transmission of Stipulated Extension**

Office of the Ohio Public Defender

By: Stephen P. Hardwick (0062932)
Assistant Public Defender

250 East Broad Street, Suite 1400
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 – Fax
stephen.hardwick@opd.ohio.gov

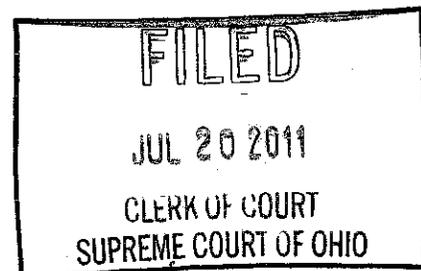
Counsel for Appellant, Wesley Lloyd

Steve Knowling (0030974)
Holmes County Prosecuting Attorney

Sean Mathew Warner (0075110)
Assistant Prosecuting Attorney
Counsel of Record

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164 East Jackson Street
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swarner@co.holmes.oh.us

Counsel for Appellee, State of Ohio



**Appellant Wesley Lloyd's
Notice of Successful Transmission of Stipulated Extension**

Appellant Wesley Lloyd submits the attached documents to demonstrate that he timely tendered a stipulated extension to the Clerk. The brief in this case was due on July 18, 2011. On July 15, 2011 at approximately 3:14 p.m., counsel's office submitted via fax the attached stipulated extension. The receipt from counsel's fax machine shows that three pages were successfully transmitted to the fax number in this Court's rules at beginning at "15:27" and ending at "15:28" on "JUL-15[.]" Exhibit 1. When counsel checked his fax machine on the morning of July 19, the time stamp was approximately 13 minutes fast, so the fax was sent to the clerk at approximately 3:14 p.m. on July 15, 2011.¹ Justin Kudela from the Clerk's office has confirmed that the Clerk's fax machine received a three-page fax received at 3:13 p.m. on July 15, 2011. Exhibit 2. So the three-page stipulation was faxed to the Clerk at precisely the time the Clerk received a three-page fax, demonstrating that the stipulation was timely submitted to the Clerk, timely received by the Clerk, but then misplaced in the Clerk's office.

Counsel did not wait until the last minute to file the extension. On Monday, July 11, 2011, one week before the deadline, counsel emailed the assistant prosecuting attorney on the case. Counsel called opposing counsel on Wednesday, and learned that the assistant prosecuting attorney was out of the office until after the deadline. Further, the only other attorney who could

¹ Counsel informed the Clerk's office of the 13 minute discrepancy in writing at about 8:25 a.m. on July 19, 2011. Exhibit 1. Counsel did not learn that the Clerk had a record of receiving the fax until almost 11:00 a.m. on July 19, 2011. Exhibit 2 (email from Justin Kudela).

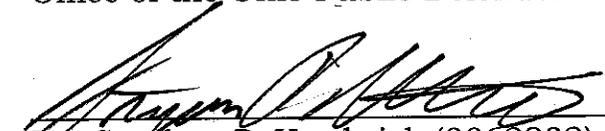
approve the stipulation was unavailable until Thursday, July 14, 2011.

Counsel was at a hearing out of town that day when he received a voicemail authorizing the stipulation. The next morning, counsel drafted and signed the stipulation, and his staff faxed it to this Court—one full business day before the deadline.

Counsel acknowledges that he should have checked the docket and called the clerk on July 18, 2011, the day of the deadline, and he apologizes for failing to do that. The Clerk's office accurately processes thousands of documents a year, and counsel greatly appreciates their professionalism and courtesy. Further, the staff was gracious, diligent, and quick in checking their files and fax records to look for information related to the faxed stipulation in this case. That said, counsel respectfully suggests that given that the fax receipt shows that the three-page stipulation was timely faxed at precisely the time the Clerk received a three-page fax shows that the fax was misplaced after arriving in the Clerk's office.

Finally, this Court saw sufficient strength to this case that it granted a stay pending appeal. My Lloyd has used that time to maintain employment to support his family. If this case is dismissed, Mr. Lloyd will spend three years in prison for something that might not even be a crime simply because of a facsimile error that his lawyer did not catch in time.

Office of the Ohio Public Defender

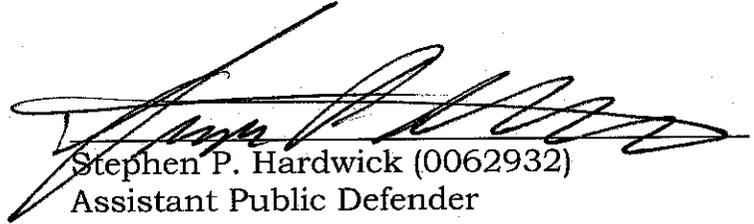

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Counsel for Appellant, Wesley Lloyd

Certificate of Service

I certify that on July 20, 2011, a copy of the foregoing was sent via e-mail to Sean Mathew Warner, Assistant Prosecuting Attorney, Holmes County Prosecutor's Office, 164 East Jackson Street, Millersburg, OH 44654 at swarner@exchange.co.holmes.oh.us.



Stephen P. Hardwick (0062932)
Assistant Public Defender

Counsel for Wesley Lloyd

#348007

MODE = MEMORY TRANSMISSION

START=JUL-19 08:38

END=JUL-19 08:40

FILE NO.= 124

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK	2	93879539	005/005	00:01'09"

***** - ***** - *****



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Fax (614) 752-5167

TIMOTHY YOUNG
State Public Defender

**FAX HEADER
CAUTION - CONFIDENTIAL**

This document which follows is only intended for the person to whom it is addressed. If you are not the intended recipient or authorized agent, then this is notice to you that dissemination, distribution or copying of this document is prohibited. If this document is received in error, please call the sender at once and destroy the document.

DATE: July 19, 2011

TO: Clerk, Ohio Supreme Court
Attn: Joella

NO: 387-9539

RE: *State v. Lloyd*, Case No. 2011-212

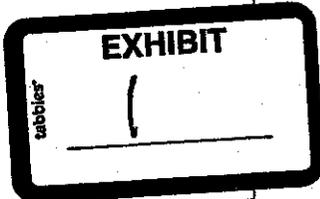
NUMBER OF PAGES (including header): 6

Here is the fax receipt for the extension. I checked the accuracy of our fax time stamp, and it is approximately 13 minutes fast, so the fax went through at about 3:15 p.m. on Friday, July 15, 2011. I hope this information helps you to check your records.

Thank you for your time.

Sincerely,

Stephen P. Hardwick
Assistant Public Defender





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Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen P. Hardwick", is written over a horizontal line.

Stephen P. Hardwick
Assistant Public Defender

MODE = MEMORY TRANSMISSION

START=JUL-15 15:27

END=JUL-15 15:28

FILE NO.= 103

STN NO.	COM	ABBR NO.	STATION NAME/TEL.NO.	PAGES	DURATION
001	OK		93879539	003/003	00:00'43"

***** - ***** - *****



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TO: Clerk, Ohio Supreme Court - 387-9539

FROM: Stephen P. Hardwick, Assistant Public Defender

TOTAL NUMBER OF PAGES BEING FAXED (INCLUDING HEADER): _____

CONFIRM FAX RECEIVED TO: _____

RE: State of Ohio vs. Wesley Lloyd, Case No. 2011-212

Dear Clerk: _____

Attached please find a Stipulated Extension of Time to File Brief of Appellant Wesley Lloyd to be filed in the above-captioned case. Thank you for your assistance.



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State of Ohio,

Plaintiff-Appellee,

v.

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: Case No. 2011-212

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: Case No. 09CA12

Stipulated Extension of Time to File Brief of Appellant Wesley Lloyd

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Assistant Public Defender

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Counsel for Appellant, Wesley Lloyd

Steve Knowling (0030974)
Holmes County Prosecuting Attorney

Sean Mathew Warner (0075110)
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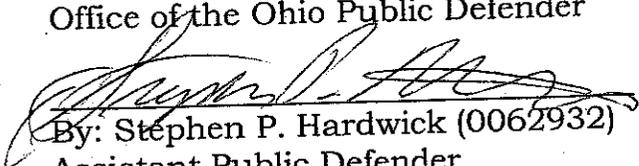
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swarner@co.holmes.oh.us

Counsel for Appellee, State of Ohio

Stipulated Extension of Time to File Brief of Appellant Wesley Lloyd

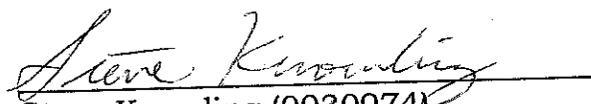
The parties hereby stipulate that the time for filing the brief of Appellant Wesley Lloyd is hereby extended by 20 days, from July 18, 2011 until August 15, 2011.

Office of the Ohio Public Defender


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Steve Knowling (0030974)
Holmes County Prosecuting Attorney
By SPH per authority

Sean Mathew Warner (0075110)
Assistant Prosecuting Attorney
Counsel of Record

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Counsel for Appellee, State of Ohio

Stephen Hardwick

From: Kudela, Justin <Justin.Kudela@sc.ohio.gov>
Sent: Tuesday, July 19, 2011 11:03 AM
To: Stephen Hardwick
Subject: RE: Fax

My apologies the 6 pages was the number of pages for today's fax to her. 3 would have been correct then for Friday. We still have no physical copy of the receipt of the document, and also as indicated there is no indication on our journal as to what number the fax came from, but you may use this email as an attachment to anything you file to show a record of what our fax log showed.

From: Stephen Hardwick [mailto:Stephen.Hardwick@OPD.Ohio.gov]
Sent: Tuesday, July 19, 2011 10:56 AM
To: Kudela, Justin
Subject: RE: Fax

3:13 is probably when it went. As I said in the fax I sent to Joella, our fax machine was 13 minutes fast when I checked it this morning. Our fax receipt shows 3 pages transmitted between 3:27 and 3:28. Take 13 minutes off that, and you have 3:14.

From: Kudela, Justin [mailto:Justin.Kudela@sc.ohio.gov]
Sent: Tuesday, July 19, 2011 10:55 AM
To: Stephen Hardwick
Subject: RE: Fax

We were able to reprint the fax journal with the number of pages of each document received listed and the only afternoon faxes were 3:13 p.m and 4:08 p.m. on Friday the 3:13 p.m. was 3 pages and the 4:08 was 1 page. Based on the cover page and fax you sent earlier to JoElla indicating your fax on Friday was 6 pages it appears that the fax was not even received by our fax machine.

From: Stephen Hardwick [mailto:Stephen.Hardwick@OPD.Ohio.gov]
Sent: Tuesday, July 19, 2011 10:24 AM
To: Kudela, Justin
Subject: RE: Fax

Thank you for the time you put into this. I know you have a lot on your plate.

From: Kudela, Justin [mailto:Justin.Kudela@sc.ohio.gov]
Sent: Tuesday, July 19, 2011 10:24 AM
To: Stephen Hardwick
Subject: Fax

Steve,
The fax machine is unable to print past received faxes.
Justin

Justin T. Kudela
Case Management Counsel
The Supreme Court of Ohio
Office of the Clerk



65 South Front Street, 8th Floor

Columbus OH 43215-3431

Phone: 614-387-9530

Fax: 614-387-9539

Justin.Kudela@sc.ohio.gov

 Please consider the environment before printing this e-mail.