

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO  
PLAINTIFF-APPELLEE,

CASE NO.

13-1691

VS.

ON APPEAL FROM THE  
CRAWFORD COUNTY  
COURT OF APPEALS  
THIRD APPELLATE  
DISTRICT.

MICHAEL R. WEESE  
DEFENDANT-APPELLANT.

CASE NO. 3-10-0013

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MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT, MICHAEL R.  
WEESE

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MICHAEL R. WEESE 583018  
LORAIN CORRECTIONAL INST.  
2075 S.AVON-BELDEN ROAD.  
GRAFTON, OHIO 44044

DEFENDANT-APPELLANT, PRO-SE

CRAWFORD COUNTY PROSECUTOR  
112 EAST MANSFIELD STREET  
BUCYRUS, OHIO 44820

COUNSEL FOR APPELLEE, STATE OF OHIO

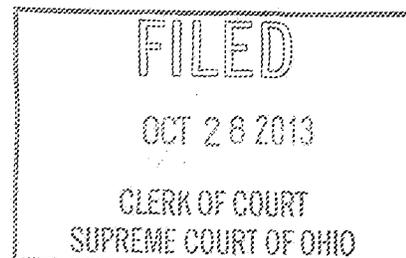
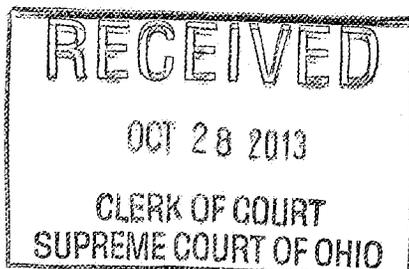


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JUDGEMENT ENTRY AND OPINION, COURT OF APPEALS  
CRAWFORD COUNTY THIRD DISTRICT, SEPTEMBER 13, 2013.

EXPLANATION OF WHY THIS CASE IS A CASE  
OF PUBLIC OR GREAT GENERAL INTEREST AND  
INVOLVES A SUBSTANTIAL CONSTITUTION QUESTION

THIS CAUSE PRESENT'S TWO CRITICAL ISSUES FOR THE FUTURE OF PUBLIC OR GREAT GENERAL INTEREST FOR THE CITIZENS OF THE UNITED STATES:

(1) WHETHER EFFECTIVE ASSISTANCE OF COUNSEL IS TRULY GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION;; AND (2) WHETHER EFFECTIVE ASSISTANCE OF COUNSEL IS TRULY GUARANTEED ALSO ON APPEAL?

THIS CAUSE IS TAKEN FROM THE THRID DISTRICT COURT OF APPEALS, ON AN APPLICATION FOR REOPENING ON THE GROUNDS THAT THE APPELLANT WAS DENIED BOTH AT TRIAL AND ON APPEAL, THE EFFECTIVE ASSISTANCE OF COUNSEL.

THE SIX AND FOURTEENTH AMENDMENT RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL, EXTENDS TO COUNSEL ON APPEAL AS WELL.

STRICKLAND V. WASHINGTON, 466 U.S. INDEED, THE UNITED STATES SUPREME COURT DETERMIND THAT NOMINAL REPRESENTATION ON APPEAL AS OF RIGHT-LIKE NOMINAL REPRESENTATION AT TRIAL-DOES NOT SUFFICE TO RENDER THE PROCEEDING CONSTITUTIONALLY ADEQUATE'. EVITTS V. LUCEY (1985), 469 U.S. 387, 396.

PROPER APPELLATE REVIEW MUST BE HAD TO ENSURE THAT A CRIMINAL CONVICTION HAS BEEN OBTAINED THROUGH A RELIABLE PROCESS. ID. AT. 399,400. APP.R.26(B) PROVIDES A REMEDY TO DEFENDANT'S WHO HAVE BEEN DEPRIVED OF THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL.

IN THIS CASE, DEFENDANT MICHAEL R. WEESE FILED A DELAYED APP.R.26 (B) MOTION TO THE THIRD DISTRICT COURT OF APPEALS, ESSENTIALLY ASSERTING THAT HE WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. THE THIRD DISTRICT APPELLATE COURT DISAGREED AND DETERMINED THAT WEESE'S APPELLATE COUNSEL EXERCISED PROFESSIONAL JUDGEMENT, THAT WEESE'S FAILED TO SHOW GOOD CAUSE FOR UNTIMELY FILING, AND THEREFORE DENIED THE APPLICATION TO REOPEN WEESE'S DIRECT APPEAL. (SEE JOURNAL ENTRY ATTACHED IN THE APPENDIX).

A CONVICTED CRIMINAL DEFENDANT IS ENTITLED TO THE EFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON A FIRST APPEAL AS OF RIGHT.

DOUGLAS V. CALIFORNIA, 372 U.S. 353, 83 S.CT. 814, 9 L.ED.2d.811. APPELLATE COUNSEL IS INEFFECTIVE IF APPELLATE COUNSEL'S PERFORMANCE IS OBJECTIVELY UNREASONABLE, AND IF APPELLATE COUNSEL'S DEFICIENT PERFORMANCE SUBSTANTIALLY PREJUDICES THE DEFENDANT'S APPEAL. STRICKLAND V. WASHINGTON, 466 U.S. 688, 687, 104 S.Ct. 2052, 80L.ED.2d 674 (1984).

IN MR.WEESE'S DIRECT APPEAL, APPELLATE COUNSEL GEOFFREY L. STOLL FAILED TO RAISE REASONABLE ASSIGNMENTS OF ERROR RELEVANT TO HIS CASE. MR.STOLL ALSO INFORMED MR.WEESE THAT HIS CASE HAS BEEN CONSOLIDATED WITH HIS CO-DEFENDANT'S ROBERT J. LEE, AND MALCOM STALL UNDER ONE CASE NUMBER. THE CASE NUMBER THAT ALL OF THE THEREFORE CASES WERE CONSOLIDATED UNDER WAS ROBERT J. LEE'S, (SEE ATTACHMENT 1). MR. STOLL ALSO INFORMED MR.WEESE THAT HE WOULD RECEIVE A COPY OF "STATE'S BRIEF IN RESPONSE" AND IF HE HAD "ANY QUESTION'S WITH REGARDS TO THE FOREGOING/ENCLOSED", TO CONTACT HIS OFFICE. WHICH MR.WEESE RESPOND'S AND ASKS FOR SUCH DOCUMENTS AND ALL INFORMATION ON THE APPEAL AT HAND. (SEE ATTACHMENT 2

"CODE OF PROFESSIONAL RESPONSIBILITY"). AFTER REVIEW IT WAS UNDERSTOOD BY MR.WEESE AND MR.STOLL THAT WEESE DID NOT UNDERSTAND ANY OF THE INFORMATION GIVEN TO HIM AND LETTER'S FROM HIM TO HIS ATTORNEY WERE ABSENT. IN THE MEANWHILE WAITING ON ATTORNEY STOLL FOR MORE DOCUMENT'S AND ADVICE WITH THE APPEAL PROCESS. ON REVIEW OF CASE COURT DOCKET'S MR. WEESE WAS UNDER THE IMPRESSION THAT HIS APPEAL WAS STILL PENDING. IT IS MAY 30,2013 WHEN MR. WEESE RECEIVE'S A RESPONSE FROM ATTORNEY STOLL AND STOLL INFORM'S HIM THE APPEAL IS OVER AND DENIED. SO MR.WEESE HAD TO LEARN ABOUT LAW AND RULES ON HIS OWN AND DID NOT RELY ON A "JAILHOUSE LAWYER" FOR HIS APP.26(B). IN WHICH HE CONTEND'S THAT HE RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ON APPEAL AS OF RIGHT. DOUGLAS V. CALIFORNIA, 372 U.S.

APPELLATE COUNSEL IS INEFFECTIVE IF APPELLATE COUNSEL'S PERFORMANCE IS OBJECTIVELY UNREASONABLE, AND IF APPELLATE COUNSEL'S DEFICIENT PERFORMANCE SUBSTANTIALLY PERJUDICE THE DEFENDANT'S APPEAL. STRICKLAND V. WASHINGTON, 466 U.S. A DEFENDANT BEARS THE BURDEN TO JUSTIFY REOPENING HIS APPEAL WITH RESPECT TO INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL. A DEFENDANT MUST ESTABLISH THAT THERE IS A GENUINE ISSUE AS TO WHETHER HE HAS A COLORABLE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL ON APPEAL. STATE V. LANGFORD, OHIO APP.3d.2003 OHIO 4173 N.E.2d.2003 OHIO APP. LEXIS 3701 (AUG 6,2003).

HERE, MR.WEESE ESTABLISHED THAT THERE IS A GENUINE ISSUE AS TO WHETHER A COLORABLE CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL OCCURRED ON APPEAL, AND AS SUCH, THE THIRD DISTRICT COURT OF APPEALS SHOULD HAVE GRANTED THE REOPENING OF WEESE'S DIRECT APPEAL.

MOREOVER, HAD APPELLATE COUNSEL RAISED THE FACT THAT TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING TO ASK FOR RELIEF FROM PREJUDICIAL JOINDER PURSUANT TO OHIO CRIM. R.14; AND, FAILED TO RAISE THAT THE AGGRAVATED ROBBERY, AND AGGRAVATED BURGLARY CHARGES ARE ALLIED OFFENSES OF SIMILAR IMPORT WITHIN THE CONTEMPLATION OF O.R.C. § 2941.25, AND THE SEPARATE CONVICTIONS VIOLATED MR. WEESE'S CONSTITUTIONAL RIGHT'S AGAINST DOUBLE JEOPARDY GUARANTEED BY ART. 1 SEC. 10 OF THE OHIO CONSTITUTION AND 5TH & 14TH AMEN. TO THE U.S. CONSTITUTION AND 5TH & 14TH AMEN. TO THE U.S. CONSTITUTION. THERE IS A REASONABLE PROBABILITY THAT BUT FOR COUNSEL'S UNPROFESSIONAL ERROR'S, THE RESULT WOULD HAVE BEEN DIFFERENT. STATE V. BRADLEY, 42 OHIO st.3d. 136, (1989), PARAGRAPH THREE OF THE SYLLABUS. INDEED A MANIFEST INJUSTICE HAS BEEN DEFINED AS A CLEAR OR OPENLY UNJUST ACT. STATE V. EX REL., SCHNRIDER V. KREINER, (1998), 83 OHIO st.3d. 203, 208, 699 N.E.2d.83.

IT IS HERE WITH THAT REGARD THAT WEESE NOW ASKS THIS HONORABLE SUPREME COURT TO ACCEPT JURISDICTION AND GRANT REVIEW OF HIS CASE.

#### STATEMENT OF THE CASE AND FACT'S

ON NOVEMBER 9, 2009, THE CRAWFORD COUNTY GRAND JURY ISSUED MULTIPLE COUNT INDICTMENTS AGAINST APPELLANT'S, ROBERT LEE, MALCOM STALL, AND MICHAEL R. WEESE. THESE INDICTMENT'S ALLEGED THAT APPELLANT'S HAD COMMITTED AGG. BURGLARY, AGG. ROBBERY, FELONIOUS ASSAULT, AND AS TO STALL ALONE, KIDNAPPING. APPELLANTS WERE ARRAIGNED ON THESE CHARGES BEFORE THE CRAWFORD COUNTY COMMON PLEAS COURT ON NOVEMBER 16, 2009. THEREAFTER, ON JANUARY 21, 2010, APPELLANT APPEARED BEFORE THE COURT AND ENTERED A "NO CONTEST" PLEA TO THE CHARGES SET FORTH IN THE INDICTMENT RESERVING THE RIGHT TO ARGUE THE ISSUE OF MERGER

AT SENTENCING. A JOURNAL ENTRY MEMORIALIZING SAID PLEA CHANGE WAS FILED IN THE TRIAL COURT ON FEBRUARY 1, 2010.

A HEARING WAS HELD IN THE TRIAL COURT ON MARCH 5, 2010, ON THE MERGER ISSUE. TESTIMONY WAS PRESENTED BY, KATHLEEN SICLAIR, AND APPELLANTS PRESENTED TO THE COURT A REQUEST THAT THE COURT ISSUE AN ORDER PRECLUDING CONVICTIONS ON THE COUNTS OF, AGG. ROBBERY, FELONIOUS ASSAULT, AND KIDNAPPING (KIDNAPPING ONLY PERTAINS TO APPELLANT STALL ALONE). THE BASIS FOR SAID REQUEST BEING THAT, PURSUANT TO O.R.C. 2941.25, THE COUNTS OF FELONIOUS ASSAULT AND KIDNAPPING WERE ALLIED OFFENSES TO THE CHARGE OF AGG. ROBBERY. APPELLANTS AND THE STATE FILED THEIR FINAL BRIEFS ON THE ISSUE OF MARCH 15, 2010. ON MARCH 31, 2010, THE TRIAL COURT ISSUED IT'S RULING ON THE MERGER ISSUE, DENYING THE MOTION TO MERGE BY APPELLANTS. APPELLANTS APPEARED BEFORE THE TRIAL COURT FOR THE PURPOSE OF SENTENCING ON APRIL 5, 2010. AT THE CONCLUSION OF SAID HEARING, THE TRIAL COURT IMPOSED UPON APPELLANTS THE MAXIMUM SENTENCE ON EACH COUNT. A JUDGEMENT ENTRY MEMORIALIZING THE TRIAL COURT'S RULING WAS FILED THE SAME DAY, THEREAFTER, SENTENCING. APPELLANTS FILED THEIR NOTICE OF APPEAL ON APRIL 27, 2010, AND THAT APPEAL WAS DENIED ON NOVEMBER 22 2010. APPELLANT FILED AN APPLICATION FOR RECONSIDERATION-APP.R.26 (A)-ON DECEMBER 3, 2010 AND SAID APPLICATION WAS DENIED ON DECEMBER 27, 2010.

## II. STATEMENT OF THE FACTS

LATE IN THE EVENING OF OCTOBER 18, 2009, DEFENDANTS, MALCOM STALL, ROBERT LEE, AND MICHAEL R. WEESE, WENT TO THE HOME OF KATHLEEN AND SAM SICLAIR ON HOSFORD RD. IN THE GALION, OHIO AREA. (TRAN. OF MARCH 5, 2010 HEARING, ID. AT PG. 10, LINES 23-25, PG. 11, LINES 3-7)

DEFENDANTS WENT TO SICLAIR HOME WITH THE PLAN AND PURPOSE TO STEAL FROM THE HOME APPROXIMATELY \$40,000.00 IN CASH THAT PHILLIP "RED" ZANER HAD INFORMED DEFENDANT LEE, WAS HIDDEN IN A FREEZER IN THE SICLAIR BASEMENT. (TRAN. OF MARCH 5,2010 HEARING, ID. AT PG. 9 LINES 2-11) AFTER ARRIVING AT THE SICLAIR HOME, DEFENDANTS TRIED FOR APPROXIMATELY ONE (1) HOUR TO COVERTLY GAIN ENTRY INTO THE HOME, ONLY TO FIND ALL DOORS AND WINDOWS LOCKED. (TRANS. OF MARCH 5,2010 HEARING, ID. AT PG. 11, LINES 11-16, PG. 2, LINES 1-25, PG. 33, LINES 1-5 & 11-14) DEFENDANT LEE PEERED INTO THE HOME FINDING MR. SICLAIR ASLEEP. (TRANS. OF MARCH 5,2010 HEARING, ID. AT PG. 14, LINES 2-5) WITH NO OTHER WAY TO GAIN ENTRANCE INTO THE HOME, THE DECISION WAS MADE TO KNOCK ON THE BACK DOOR AND FORCE THEIR WAY INTO THE HOME. (TRAN. OF MARCH 5,2010 HEARING, ID. AT PG. 34, LINES 7-8)

AT APPROXIMATELY 11:00 PM, DEFENDANT WEESE WENT TO THE BACK DOOR AND KNOCKED. (TRANS. OF MARCH 5,2010 HEARING, ID. AT PG. 35, LINES 1-4) KATHLEEN SICLAIR GOT UP OFF THE LIVING ROOM FLOOR AND WENT TO ANSWER THE BACK DOOR. (TRANS. OF MARCH 5,2010 HEARING, ID. AT PG. 14, LINES 16-20) WEESE STATED TO MRS. SICLAIR THAT HE HAD A QUESTION FOR HER. (TRANS. OF MARCH 5,2010 HEARING, ID. AT PG. 45, LINES 4-10) WEESE AND STALL THEN PUSHED/PUNCHED MRS.SICLAIR, CAUSING HER TO FALL TO THE FLOOR ON HER BACK, HITTING THE EDGE OF THE COFFEE TABLE WITH HER HEAD ON THE WAY DOWN. (TRANS. OF MARCH 5,2010 HEARING, ID. AT PG. 47, LINES 4-19) AS A RESULT OF BEING PUNCHED/HITTING HER HEAD, MRS.SICLAIR SUSTAINED A CONCUSSION AND A CUT TO HER FOREHEAD THAT REQUIRED SEVEN (7) STITCHES. (TRANS. OF MARCH 5,2010 HEARING, ID. AT PG. 47, LINES 12-15, PG. 48, LINES 12-18).

UPON GAINING ENTRY TO THE HOME, DEFENDANTS MOVED MRS. SICLAIR INTO THE KITCHEN. (TRANS. OF MARCH 5, 2010 HEARING, ID. AT PG. 49, LINES 1-3) ONE OF THE DEFENDANTS REMAINED WITH MRS. SICLAIR WHILE THE OTHER TWO SEARCHED THE HOUSE FOR THE MONEY. (TRANS. OF MARCH 5, 2010 HEARING, ID. AT PG. 58, LINES 7-13) WHILE SEARCHING THE HOME, DEFENDANTS REPEATEDLY DEMANDED THAT MRS. SICLAIR DISCLOSED THE LOCATION OF THE MONEY AND DRUGS, STRIKING HER WHEN SHE DID NOT COMPLY. (TRANS. OF MARCH 5, 2010 HEARING, ID. AT PG. 54, LINES 10-13, PG. 55, LINES 1-12). AFTER APPROXIMATELY SIX (6) MINUTES OF SEARCHING THE SICLAIR HOME FOR THE \$40,000.00 WITHOUT SUCCESS, DEFENDANTS LEFT THE HOME. (TRANS. OF MARCH 5, 2010 HEARING, ID. AT PG. 17, LINES 20-25, PG. 20, LINES 21-25) AT 11:25PM ON OCTOBER 18, 2009, A 911 CALL CAME INTO CRAWFORD COUNTY SHERIFF'S OFFICE FROM THE SICLAIR HOME WITH REGARD TO THE EVENTS THAT HAD JUST OCCURRED. (TRANS. OF MARCH 5, 2010 HEARING, ID. AT PG. 84, LINES 23-25).

**PROPOSITION OF LAW: ONE**

APPELLANT COUNSEL WAS INEFFECTIVE FOR NOT RAISING INEFFECTIVE ASSISTANCE OF COUNSEL UNDER THE 6TH AMENDMENT OF THE U.S. CONSTITUTION AND ARTICLE 1, SEC. 10, OF THE OHIO CONSTITUTION.

APPELLATE COUNSEL WAS INEFFECTIVE FOR NOT RAISING INEFFECTIVE ASSISTANCE OF COUNSEL FOR TWO OF THE FOLLOWING ERRORS: **ERROR ONE**, THE TRIAL COUNSEL'S PERFORMANCE WAS DEFICIENT DUE TO MR. ANDREW MOTTER NOT ASKING THE COURT FOR "RELIEF FROM PREJUDICIAL JOINDER" PURSUANT TO OHIO CRIM.R.14. MR. WEESE, THE APPELLANT IN THIS MATTER, CAN SHOW AND WAS PREJUDICE IN THIS MATTER BY MR. MOTTER NOT FILING A MOTION TO SEVER THE CASE FROM THE CO-DEFENDANTS, RISING TO THE LEVEL OF INEFFECTIVENESS DUE TO THE FACT THAT CO-DEFENDANTS, LEE,

AND STALL MADE PREJUDICIAL STATEMENTS INCLUDING MR. WEESE IN THE CRIME THAT TOOK PLACE THAT NIGHT AT THE SICLAIR HOME. THE PROSECUTOR ALSO USED STATEMENTS/CONFESSIONS FROM CO-DEFENDANTS LEE AND STALL AGAINST MR. WEESE IN COURT PROCEEDINGS AND INTENDED TO USE THE STATEMENTS/CONFESSIONS INCLUDING MR.WEESE IN THE CRIME. IF THAT HAPPENS, AN EFFECTIVE COUNSEL WILL FILE FOR A SEVERANCE PURSUANT TO OHIO CRIM.R.14 REQUESTING RELIEF AS JUSTICE REQUIRES. HIS ASSISTANCE FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS, AMOUNTING TO INEFFECTIVE ASSISTANCE OF COUNSEL, DUE TO UNPROFESSIONAL PERFORMANCE AS TRIAL COUNSEL. IN VIOLATION OF THE U.S. CONSTITUTION OHIO CONSTITUTION, O.R.C. §2945.13, CRIM.R.14, AND 18 USCS §3363, §3364.

ERROR TWO, APPELLANT COUNSEL WAS INEFFECTIVE FOR NOT RAISING INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL. MR. ANDREW MOTTER, IN THIS CASE, FAILED TO RAISE THAT THE OFFENSES OF AGG. ROBBERY, AND AGG. BURGLARY ARE ALLIED OFFENSES OF SIMILAR IMPORT WITHIN THE CONTEMPLATION OF O.R.C.§2941.25, AND THE SEPARATE CONVICTIONS VIOLATED MR. WEESE'S CONSTITUTIONAL RIGHTS AGAINST DOUBLE JEOPARDY GUARANTEED BY ART. 1, SEC. 10 OF THE OHIO CONSTITUTION AND 5TH, 14TH AMEN. TO THE U.S. CONSTITUTION AND 5TH & 14TH AMEN. TO THE U.S. CONSTITUTION. ALSO, AGG. ROBBERY AND AGG. BURGLARY IN THIS CASE ARE ALLIED OFFENSES OF SIMILAR IMPORT. BOTH OFFENSES ARE SET FORTH IN THE SAME CHAPTER AND BOTH REFER TO A THEFT OFFENSE AS DEFINED IN O.R.C.§2913.01. (SEE ATTACHMENTS 6, "TESTIMONY OF MS. SICLAIR").

PROPOSITION OF LAW: TWO

IN THIS CASE, THE OFFENSES OF AGG. ROBBERY AND AGG. BURGLARY ARE ALLIED OFFENSES OF SIMILAR IMPORT WITHIN THE CONTEMPLATION OF R.C.

§2941.25, AND THE SEPARATE COVICTIONS VIOLATED APPELLANT'S CONSTITUTIONAL RIGHTS AGAINST DOUBLE JEOPARDY GUARANTEED BY ART. 1, SEC.10, OF THE OHIO CONSTITUTION AND 5TH & 14TH AMENDMENTS TO THE U.S. CONSTITUTION. UPON REVIEWING THE TRANSCRIPTS OF THE MARCH 5,2010 EVIDENTARY HEARING, (SEE ATTACHMENT 6) IT IS CLEAR THAT, IN THIS CASE, THE OFFENSES AGG. ROBBERY AND AGG. BURGLARY ARE ALLIED OFFENSES OF SIMILAR IMPORT WITHIN THE CONTEMPLATION OF O.R.C.

§2941.25. WEESE WOULD ALSO LIKE THIS HONORABLE SUPREME COURT TO NOTE THAT MR. MALCOM STALL MR. WEESE'S CO-DEFENDANT WAS SUCCESSFUL ON APPEAL WERE MR. STALL RAISED ALLIED OFFENSES ON HIS AGG. ROBBERY AND KIDNAPPING CHARGES AND ARGUED THAT THEY WERE SIMILAR IMPORT. STATE V. STALL,2011-OHIO 5733 (THRID DIST.APP.). MR. STALL ALSO RELIED ON STATE V. JOHNSON, 128 OHIO st., 3d. 153, ID. AT(49). TO SET THE GUIDELINES FOR HIS ARGUMENT ON ALLIED OFFENSES.

IN THE INSTANT CASE MR. WEESE IS RELYING ON STATE V. JOHNSON,. ALSO TO UPHOLD THE GUIDELINES OF ALLIED OFFENSES TO APPLY TO HIS AGG. ROBBERY AND AGG. BURGLARY CHARGES JUST AS HIS CO-DEFENDANT MR.STALL RELIED ON STATE V. JOHNSON, AS WELL. IN STATE V. WALKER,1993 OHIO APP.(8TH DIST. APP.). WALKER CITES THAT " IT IS CLEAR THAT THE CIRCUMSTANCES SURROUNDING THE INSTANT ARREST, AND THE EVIDENCE RECOVERED ARE IDENTICAL TO THE CIRCUMSTANCES AND EVIDENCE OF WALKER I THIS COURT IS THEREFORE COMPELLED AND EVIDENCE IN THIS MATTER, WAS THE SAME EVIDENCE WHICH WAS SUPPRESSED IN WALKER I. ACCORDINGLY, IT IS CLEAR NOT ONLY THAT COUNSEL SHOULD HAVE PURSUED THE SUPPRES- SION ISSUE, BUT THAT IN ALL PROBABILITY THE EVIDENCE WOULD HAVE BEEN SUPPRESSED, HAD A MOTION TO SUPPRESS BEEN PROPERLY SPECIFIED AND ARGUED IN THIS INSTANCE." STATE V. WALKER, 1993 OHIO.APP.(8TH DIST.APP.).

CONCLUSION

FOR ALL OF THE REASONS STATED ABOVE, WEESE ASKS THIS HONORABLE SUPREME COURT TO REVERSE THE DECISION OF THE THIRD DISTRICT COURT OF APPEALS AND REMAND THE CASE FOR FURTHER PROCEEDINGS.

RESPECTFULLY SUBMITTED,

Michael R. Weese 583018

MICHAEL R. WEESE 583018  
LORAIN CORRECTIONAL INST.  
2075 S. AVON-BELDEN ROAD.  
GRAFTON, OHIO 44044

DEFENDANT-APPELLANT, PRO-SE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT A TRUE COPY OF THE FOREGOING MEMORADUM IN SUPPORT OF JURISDICTION WAS MAILED BY REGULAR U.S. MAIL TO THE CRAWFORD COUNTY PROSECUTOR'S OFFICE AT 112 EAST MANSFIELD STREET BUCYUS, OHIO 44820 ON THIS 23 DAY OF OCTOBER, 2013.

Michael R. Weese 583018

IN THE SUPREME COURT OF OHIO

STATE OF OHIO  
PLAINTIFF-APPELLEE,

CASE NO.

VS.

ON APPEAL FROM THE  
CRAWFORD COUNTY COURT  
OF APPEALS THIRD  
APPELLATE DISTRICT.

MICHAEL R. WEESE  
DEFENDANT-APPELLANT.

CASE NO. 3-10-0013

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APPENDIX TO MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT,  
MICHAEL R. WEESE

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IN THE COURT OF APPEALS OF OHIO  
THIRD APPELLATE DISTRICT  
CRAWFORD COUNTY

FILED IN THE COURT OF APPEALS

SEP 13 2013

STELLA LEWIS  
CRAWFORD COUNTY CLERK

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STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 3-10-13

v.

MICHAEL R. WEESE,

JUDGMENT  
ENTRY

DEFENDANT-APPELLANT.

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This cause comes before the Court on Appellant's "delayed application for reopening" direct appeal pursuant to App.R. 26(B), and Appellee's motion to dismiss.

Upon consideration the Court finds that the Appellate judgment in this matter was filed on November 22, 2010. The August 26, 2013, application is not filed within ninety days of the appellate judgment, as required by App.R. 26(B)(1). Moreover, Appellant fails to show good cause for the application being filed untimely. See App.R. 26(B)(1) and 26(B)(2)(b).

The Court further finds that the three additional assignments of error raised in the application do not set forth any genuine issue as to whether Appellant was deprived of the effective assistance of counsel on appeal. App.R. 26(B)(5). See *State v. Reed*, 74 Ohio St.3d 534 (1996), applying the analysis of *Strickland v. Washington*, 466 U.S. 668 (1984). Accordingly, for these reasons, the application should be denied.

It is therefore **ORDERED** that Appellant's delayed application for reopening the direct appeal be, and the same hereby is, **DENIED** at the costs of the Appellant for which judgment is hereby rendered.

  
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\_\_\_\_\_  
JUDGES

DATED: SEPTEMBER 12, 2013

/hlo

ATTACHMENTS 1

**STARKEY & STOLL** Ltd.  
ATTORNEYS AT LAW

208 South Walnut Street  
Bucyrus, Ohio 44820

Geoffrey L. Stoll  
Brad S. Starkey

(419) 562-4529  
(Fax) 562-7626

E-Mail Address: [geoff@starkeyandstoll.com](mailto:geoff@starkeyandstoll.com)

July 1, 2010

**Michael R. Weese Inmate #A583018**  
Lorain Correctional Institution  
2075 South Avon-Belden Road  
Grafton, Ohio 44044

**Re: State of Ohio v. Michael R. Weese**  
Appellate Court Case No. 3-10-0013

Dear Mr. Weese:

Enclosed herewith find a copy of the brief that I have filed in your case. Prior to filing this brief I made a motion before the Appellate Court to consolidate your case with that of Mr. Lee and Mr. Stall for purposes of filing brief and oral argument. When the Court consolidated the cases they did so under the lowest appellate case number, to-wit: Mr. Lee's case. When I receive a copy of the State's brief in response I will provide you with a copy.

On another matter, I did receive your recent correspondence asking that I attempt to delay your appeal as you had indicated that you had another attorney looking at your case. Unfortunately, when I spoke with the Appellate Court regarding this matter, the person that I spoke to (Magistrate Miller) indicated that such a request was not one that would be granted. Magistrate Miller further told me to file my brief with the understanding that, if you do retain independent counsel to represent you in this appeal, the Court would agree to allow this new counsel to file a supplemental/amended brief to include any additional matters that you may wish to raise on appeal.

If you should have any questions with regard to the foregoing/enclosed, please do not hesitate to contact my office.

Sincerely,

**STARKEY & STOLL, Ltd.**

\_\_\_\_\_  
Geoffrey L. Stoll

GLS/ajr

Encl.



Grafton, Oh 44044

RE : A request made pursuant to your dutys in accordance with "CODE OF PROFESSIONAL RESPONSIBILITY".

To : Geoffrey Stoll  
208 Walnut Street  
Bucyrus, Ohio  
44820

To Whom it May Concern:

Please acknowledge my request to obtain any and all information directly or indirectly pertanining to my Appeal County Criminal Case, No. 09-CR-0179. This is to include, but is not limited to, all statements, police reports, physician statements, i.e., All "Records" in your possession that are related to my case.

This request is made pursuant to your duty in accordance with the "CODE OF PROFESSIONAL Responsibility, Rule 1.16 (D) ,Rule 1.4, Rule 1.7, with respect to this request and for the return now thereof of said property.

Thus, it is hereby requested of you and your associates to send me, at your earliest convenience, all the aforsaid records, memorandum, memoir, notes, Hole case File/ Discovery file, and/or all letters, filings, ect., pertaining to my case that you hold in your possession.

Thank you in advance for your time and assistance in this matter.

Sincerely,

Michael Weese, No. 583-018

Lorain Corr. Inst.  
2075 S.Avon-Belden Rd  
Grafton, Ohio 44044

CC/FILE  
CC/Ohio

# STARKEY & STOLL Ltd.

ATTORNEYS AT LAW

208 South Walnut Street  
Bucyrus, Ohio 44820

E-Mail Address: [geoff@starkeyandstoll.com](mailto:geoff@starkeyandstoll.com)

Geoffrey L. Stoll  
Brad S. Starkey

(419) 562-4529  
(Fax) 562-7626

May 8, 2013

**Michael R. Weese Inmate #A583018**

Lorain Correctional Institution  
2075 South Avon-Belden Road  
Grafton, Ohio 44044

Re: State of Ohio v. Michael R. Weese  
Appellate Court Case No. 3-10-0013

Dear Mr. Weese:

Upon your request of April 30, 2013, enclosed herewith please find a copy of the transcript from the hearing on March 5, 2010, Journal Entry dated March 31, 2010, transcript from hearing on April 5, 2010 and Judgment Entry dated April 5, 2010, Motion for appointment of counsel for purpose of filing of appeal and Judgment Entry regarding your case #09-CR-0179. You will need to request any all discovery/pleadings prior to this to your Court-appointed Attorney John Andrew Motter.

Also, enclosed herewith please find a copy of the Notice of Appeal, Statement and Praeipce and Criminal Appeal Docket Statement on case #09-CR-0179 and Judgment Entry consolidating cases to case #3-10-11. You will also find the remaining pleadings filed in the Court of Appeals of Crawford County, Ohio, Third Judicial District of Ohio.

I have also enclosed copies of the pleadings submitted to the Supreme Court of Ohio.

Sincerely,

STARKEY & STOLL, Ltd.

Geoffrey L. Stoll

GLS/ajr  
Enclosure



Mr. Stoll,

May 29, 2013.

I am writing this letter to you in regards to receiving the appeals transcripts, and motions that you filed on my behalf during the proceedings of my appeal.

I thank you for providing me with the paperwork as I requested for, but I have not received copy's of any of the correspondence letters I've sent you since the beginning of my appeal, including the letter I just sent you on April 30, 2013?

Mr. Stoll, I am confused as to what the status of my appeal is currently at? In all of the appeals court motions and transcripts you have sent me on May 17, 2013, it implies that I was being referenced in the District Court of Appeals? But then after a decision was made on November 22, 2010? I was referenced also in the Ohio Supreme Court? I am very confused about how this all worked? Mr. Stoll, my Co-defendant, is the only one that accepted jurisdiction by the Ohio Supreme Court, but then again? There are parts where I was also implied?

Back in July 2010, I received a letter from you with a copy of my Direct appeal's Brief, you stated in the letter attached here, that when you received a ~~copy~~ response from the State's Brief? you would then provide me with a copy of that for further remedies?

at your earliest convenience? Will you please respond to this letter enclosing clarity to what the status of my appeal is? Also with copies of all correspondence letters?

Thank You!  
Sincerely,  
Michael Weese

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS 28TH DAY OF MAY, 2013.

*Allan S Hlebovy*  
**Allan S Hlebovy**  
Notary Public - State of Ohio  
My Commission Expires March 6, 2017

*Allan S Hlebovy*  
**Allan S Hlebovy**  
Notary Public - State of Ohio  
My Commission Expires March 6, 2017



**STARKEY & STOLL** Ltd.  
ATTORNEYS AT LAW

208 South Walnut Street  
Bucyrus, Ohio 44820

Geoffrey L. Stoll  
Brad S. Starkey

(419) 562-4529  
(Fax) 562-7626

E-Mail Address: [geoff@starkeyandstoll.com](mailto:geoff@starkeyandstoll.com)

May 30, 2013

**Michael R. Weese Inmate #A583018**  
Lorain Correctional Institution  
2075 South Avon-Belden Road  
Grafton, Ohio 44044

Re: State of Ohio v. Michael R. Weese  
Appellate Court Case No. 3-10-0013

Dear Mr. Weese:

This correspondence will serve to acknowledge yours of May 28, 2013. I am uncertain where your confusion lies with regard to the status of your appeal, as the materials provided to you were most succinct. Simplifying the matter as much as I can - the appellate process is completed at this time. The Court of Appeals declined to grant you any relief from the judgment of the trial court. The Supreme Court declined to accept your appeal of the decision of the Court of Appeals (thereby ending the appellate process). As a consequence of these two decisions, and absent early release by the Parole Board, you will be required to serve the sentence that was handed out to you by the trial court.

As to Mr. Stall, Mr. Stall was the only one of the three of you that did receive any relief. However, that relief was minimal, and dealt only with an error of law that was committed by the trial Court regarding Mr. Stall's kidnapping charge. The Appellate Court concluded that, by operation of law, the crime of kidnapping merged into the crime of robbery. Therefore, it concluded that Mr. Stall could not be sentenced on both crimes. As Mr. Stall was the only one of the three of you that was charged with kidnapping, only his sentence was affected by this decision.

Regarding your request that I send you copies of the letters that you had sent to me, I respectfully decline this request. The file in question is very large. The letters that you are requesting copies of were your letters - you should have kept copies of them. I am not inclined to waste my secretary's time searching through this file for correspondence that you sent and which you should have kept copies.

Sincerely,

**STARKEY & STOLL**, Ltd.

\_\_\_\_\_  
Geoffrey L. Stoll

GLS/ajr

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## Docket

Basic Case Data

## STATE OF OHIO vs. STALL, MALCOLM

Party/Service Record Data

Case Number 10 AP 0012 Case Kind Appeals Cas

Docket

Sentence / Judgment

Date Docket Code

Docket Entry

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1st Docket Page

4/ 27/ 10

Notice of appeal filed CPC

Next Docket Page

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Criminal appeal docketing statement filed CPC

Previous Docket

4/ 27/ 10

Statement &amp; precipe filed in CPC

4/ 27/ 10

Notice of appeal filed in C of A

EXIT / HOME

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Criminal appeal docketing statement filed C of A

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Statement &amp; precipe filed in C of A

NEXT PAGE

4/ 28/ 10

Copy Pros Atty Stoll C of A Judge Wiseman

6/ 02/ 10

Transcript of sentencing hearing filed

6/ 07/ 10

Transcript of docket &amp; journal entries filed

6/ 07/ 10

Notice of filing transcript filed

6/ 07/ 10

Copy C of A Pros Atty Stoll Judge Wiseman

6/ 24/ 10

MOTION TO CONSOLIDATE W/3-10-0011 &amp; 3-10-0013

6/ 24/ 10

COPY FAXED TO C OF A

6/ 25/ 10 MDO MAGISTRATES ORDER JOL VOL 452 pg 2279 motion g

**Docket***Basic Case Data**Party/Service Record Data*Docket*Sentence / Judgment***STATE OF OHIO vs. STALL, MALCOLM**

<b>Case Number</b>	<b>10 AP 0012</b>	<b>Case Kind</b>	<b>Appeals C</b>
<b>Date</b>	<b>Docket Code</b>	<b>Docket Entry</b>	
6/ 25/ 10		Copy Pros and Atty Stoll filings in 3-10-11	
7/ 19/ 10		C of A called for the case	
7/ 21/ 10		Mailed case to C of A	
11/ 22/ 10	JENS	Non-specific Judgment JOL VOL 454 pg 1088	
11/ 22/ 10	AOP	APPEAL OPINION JOL VOL 454 PG 1063	
11/ 22/ 10		Copy Pros Atty Stoll Judge Wiseman	
5/ 16/ 11		COPY OF SUPREME COURT JE-CAUSE REMANDED	
5/ 31/ 11		COPY OF SUPREME COURT ENTRY-STOLL COUNS.	
8/ 08/ 11	JE	JE, JOL VOL 456 PG 4326 APPEAL REINSTATED BY	
8/ 25/ 11	REMO	REMANDED FROM OSC	
8/ 29/ 11		CASE MAILED TO COURT OF APPEALS	
11/ 07/ 11	JERV	JUDGM. REVERSED JOL VOL 457 PG 3784	
11/ 07/ 11	AOP	APPEAL OPINION JOL VOL 457 PG 3771	
11/ 07/ 11		COPY TO JUDGE WISEMAN, STOLL, PROSECUTOR	

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## Docket

Basic Case Data

STATE OF OHIO vs. WEESE, MICHAEL R

Party/Service Record Data

Case Number

10 AP 0013

Case Kind

Appeals Case

Docket

Sentence / Judgment

Date Docket  
Code

Docket Entry

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4/ 27/ 10

Notice of appeal filed in CPC

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Criminal appeal docketing statement filed CPC

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Statement &amp; precipe filed in CPC

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Notice of appeal filed in C of A

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Criminal appeal docketing statement filed C of A

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Statement &amp; precipe filed C of A

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Transcript of sentencing hearing filed

6/ 07/ 10

Transcript of docketing &amp; journal entries filed

6/ 07/ 10

Notice of filing transcript filed

6/ 07/ 10

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6/ 24/ 10

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, 6/ 25/ 10 MDO MAGISTRATES ORDER JOL VOL 452 pg 2280 motion granted

## Docket

Basic Case Data

## STATE OF OHIO vs. WEESE, MICHAEL R

Party/Service Record Data

Case Number 10 AP 0013 Case Kind Appeals Case Case

Docket

Sentence / Judgment

Date Docket  
Code

Docket Entry

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-----	6/ 25/ 10		Copy Pros and Atty Stoll filings in 3-10-11
1st Docket Page	7/ 19/ 10		C of A called for the case
Next Docket Page	7/ 21/ 10		Mailed case to C of A
Previous Docket	11/ 22/ 10	JEAF	JUDGM. AFFIRMED JOL VOL 454 PG 1089
-----	11/ 22/ 10	AOP	APPEAL OPINION JOL VOL 454 PG 1063
<u>EXIT / HOME</u>	11/ 22/ 10		Copy Pros Atty Stoll Judge Wiseman
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## Docket

Basic Case Data

STATE OF OHIO vs. LEE, ROBERT J

Party/Service Record Data

Case Number

10 AP 0011

Case Kind

Appeals Cas

Docket

Sentence / Judgment

Date Docket  
Code

Docket Entry

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Notice of appeal filed in CPC

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Criminal appeal docketing statement filed in CPC

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Statement &amp; precipe filed in CPC

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Notice of appeal filed in C of A

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Criminal appeal docketing statement filed in C of A

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6/ 02/ 10

Transcript of sentencing hearing filed

6/ 07/ 10

Transcript of docket &amp; journal entries filed

6/ 07/ 10

Notice of filing transcript filed

6/ 07/ 10

Copy to C of A Pros Atty Stoll Judge Wiseman

6/ 24/ 10

MOTION TO CONSOLIDATE W/3-10-0012 &amp; 3-10-0013

6/ 24/ 10

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6/ 25/ 10 MDO MAGISTRATES ORDER JOL VOL 452 pg 2278 motion g

## Docket

*Basic Case Data***STATE OF OHIO vs. LEE, ROBERT J***Party/Service Record Data***Case Number****10 AP 0011****Case Kind**

Appeal

Docket*Sentence / Judgment***Date Docket  
Code****Docket Entry***1st Docket Page**Next Docket Page**Previous Docket*EXIT / HOMERETURN TO SEARCHNEXT PAGE

5/ 16/ 11	DSF	COPY FAXED TO COURT OF APPEALS
5/ 16/ 11	DSB	COPY PLACED IN BOX TO PROSECUTOR, STOLL
6/ 10/ 11	ACJ	JE, APPOINTED COUNSEL JOL VOL 456 PG 1566 FRO COURT
6/ 10/ 11		COPY TO G STOLL
8/ 08/ 11	JE	JE, JOL VOL PG REINSTATE APPEAL UPON REMANI BY SUPREME COURT
8/ 08/ 11	DSB	COPY PLACED IN BOX TO JUDGE WISEMAN, STOLL
8/ 08/ 11	REMO	REMANDED FROM OSC
8/ 24/ 11		SUPPLEMENTAL BRIEF OF APPELLANT STALL
8/ 24/ 11	DSM	COPY MAILED TO COURT OF APPEALS
8/ 25/ 11		SUPPLEMENTAL BRIEF OF APPELLEE STATE OF OH



IN THE COMMON PLEAS COURT  
CRAWFORD COUNTY, OHIO

FILED CLERKS OFFICE  
2010 MAR 15 AM 9:33

SUE SEEVERS  
CRAWFORD COUNTY  
ORIGINAL

State of Ohio,  
Plaintiff,

vs.

Robert J. Lee, Malcom  
Stall, and Michael Weese,  
Defendants.

Case Nos.: 09-CR-0169  
09-CR-0170  
09-CR-0179

The above-entitled case came on for Hearing before  
the Honorable Russell B. Wiseman, Judge, pursuant to  
Notice.

Crawford County Courthouse  
112 East Mansfield Street  
2nd Floor  
Bucyrus, Ohio 44820  
March 5, 2010  
Friday, 1:27 p.m.

APPEARANCES:

CLIFFORD J. MURPHY, ASSISTANT PROSECUTOR  
On behalf of the State.

ROBERT WHITNEY, ESQUIRE  
On behalf of Defendant Lee.

GEOFFREY L. STOLL, ESQUIRE  
On behalf of Defendant Stall.

JOHN ANDREW MOTTER, ESQUIRE  
On behalf of Defendant Weese.