

IN THE COURT OF COMMON PLEAS FOR GREENE COUNTY, OHIO

State of Ohio	*	Case No. 2008CR0176
	*	
Plaintiff	*	
	*	
v.	*	Motion to Suppress
	*	
Tara L. Whitacre	*	
	*	
Defendant	*	

TARA L. WHITACRE, by and through her undersigned Counsel, moves the Court to suppress the statement she gave to the Greene County Prosecutor, which was provided to Counsel at the final pre-trial on August 8, 2008. As grounds for this motion she files the attached memorandum.

Respectfully submitted,

Kermit F. Lowery (033002)
Attorney for Defendant
PO Box 933
Dayton, Ohio 45401
Tel.: 937-865-1812
Fax: 937-865-1211
Kermit.Lowery@lexisnexis.com

MEMORANDUM

In a case that already has one allegation of prosecutorial misconduct (an apparent ex-parte communication between the prosecutor and the judge to deny the defendant her Sixth Amendment right to counsel of her choice), another charge of misconduct can now be added.

The State failed to provide a copy of a statement made by Tara Whitacre, contradictory to her grand jury testimony. They did this despite a lengthy request for discovery that was served on them by her prior counsel, Ken Sheets.

In determining what sanctions to impose upon the State for failure to provide requested discovery, the Court must look at several factors. Among them is the impact of the failure to provide

discovery upon the defendant's ability to prepare her case¹.

In this case, the impact upon Tara Whitacre's ability to prepare her case is exteme. Until the date of the final pre-trial, barely a week prior to trial, the focus of her efforts in mounting a defense has been upon the statements she made to the grand jury and their truthfulness. In fact, since a conviction for perjury is not even possible under the statute (see the Defendant's Motion to Dismiss, filed concurrently with this motion), little effort has been expended to examine the various out of court statements in an effort to prove their falsity.

Now, at this late date, the State provides additional evidence that it wishes to use to change the entire basis of the charges. No longer are we to focus upon the testimony given before the grand jury. Instead, the focus is on the out of court, unsworn statement, given to the prosecutor's office. That statement was not mentioned in the indictment, bill of particulars or provided in discovery.

Since the impact upon the ability of the defendant to prepare her defense is severe, a sanction supressing the evidence is warranted.

Respectfully submitted,

Kermit F. Lowery (033002)
Attorney for Defendant
PO Box 933
Dayton, Ohio 45401
Tel.: 937-865-1812
Fax: 937-865-1211
Kermit.Lowery@lexisnexis.com

CERTIFICATE OF SERVICE

This certifies that a true copy of the foregoing was served upon the Greene County Prosecutor by fax to number 937-562-5647 and by mail to their office at 61 Greene Street, 2nd Floor, Xenia, Ohio 45385, this 11th day of August, 2008.

Kermit F. Lowery

¹ *State v. Crespo*, 2004 Ohio 1576, 2004 Ohio App. LEXIS 1410 (2004).