

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

<b>STATE OF OHIO</b>	)	<b>CASE NO. CR 11 557638</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE JOHN P. O'DONNELL</b>
	)	
<b>vs.</b>	)	
	)	
<b>JAMES PAWLAK</b>	)	<b><u>JOURNAL ENTRY</u></b>
	)	
<b>Defendant.</b>	)	

*John P. O'Donnell, J.:*

Defendant James Pawlak was charged by indictment on December 22, 2011 with 26 counts of gross sexual imposition and related offenses. A jury trial began on August 13, 2012 and resulted in guilty verdicts on six counts of gross sexual imposition and one count of kidnapping; seven other counts were dismissed and the jury found the defendant not guilty of the rest of the charges.

On August 16, while the jury was deliberating, a hearing was held on the defendant's oral motion for a mistrial. The basis for the motion was the prosecutor's alleged misconduct in failing to disclose exculpatory information. The defendant claimed that the prosecutor was aware before the start of trial that one of the complaining witnesses, Melissa Harte, had made a recent false allegation of rape against another man. The defendant asserted, among other things, that the Cuyahoga County Department of Children and Family Services had investigated Melissa Harte's rape claim and found it to be false, and that the prosecutor knew about the department's investigation and findings and was required to disclose them to the defendant as exculpatory evidence admissible to impeach Melissa Harte under Rule 608(B) of

the Ohio Rules of Evidence and the Ohio Supreme Court's decision in *State v. Boggs*, 63 Ohio St. 3d 418 (1992).

The oral motion was denied and the jury returned its verdicts the next day.

The defendant has since been granted a leave until November 7, 2012 to file a motion for a new trial pursuant to Rule 33 of the Ohio Rules of Criminal Procedure. In connection with that anticipated motion, the defendant on August 23 served subpoena number DS 854359 on the CCDCFS. The subpoena sought the production of "any and all documents relative to investigations of Patty Banks, Carrie Hart, Samantha Guy, Melissa Harte, Jesika Hobbs, Alexis Hobbs, Arianna Harness and Juanita Osorio."<sup>1</sup> Concurrent with the subpoena the defendant, recognizing that the records are statutorily privileged, filed a motion seeking the court's *in camera* inspection of the records, arguing that they might show the plaintiff's knowledge of, and failure to disclose, Melissa Harte's prior false rape allegation.

In response, the CCDCFS on August 27 moved to quash the subpoena based on the confidentiality provided to the records by statute, but did produce the records for the court's *in camera* inspection as directed by the subpoena.

The court has now received and reviewed those records. Initially, the court notes that many CCDCFS records were reviewed *in camera* during discovery after a pre-trial subpoena by the defendant and a claim of privilege by the agency. Some documents were ordered to be produced as a result of that review, which was done on April 27. In reviewing the current set of records, but without comparing them page by page to the records examined in April, the court finds that many, if not all, of them are redundant to the documents previously examined. To that extent, anything in the current records that was already ordered turned over to the defendant should be in the defendant's possession and the agency need not produce those

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<sup>1</sup> The complaining witnesses and their mothers.

again. As to the remainder of the files, the court finds nothing in the recently submitted records that must be produced to the defendant as material to his defense at trial, his pre-verdict motion for a mistrial, or his expected Rule 33 motion.

Therefore, the CCDCFS's August 27, 2012 motion to quash and for a protective order is granted.

All of the records produced to the court *in camera* – in five large manila envelopes – will be maintained under seal by the clerk of courts for possible eventual appellate review.

**IT IS SO ORDERED:**

\_\_\_\_\_  
Judge John P. O'Donnell

Date: \_\_\_\_\_

**SERVICE**

A copy of this journal entry was sent by email, this 22d day of October, 2012, to the following:

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Judge John P. O'Donnell