

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

<b>STATE OF OHIO</b>	)	<b>CASE NO. CR 12 566449</b>
	)	
<b>Plaintiff,</b>	)	<b>JUDGE JOHN P. O'DONNELL</b>
	)	
<b>vs.</b>	)	
	)	
<b>LONNIE CAGE</b>	)	<b><u>JOURNAL ENTRY</u></b>
	)	
<b>Defendant.</b>	)	

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

**STATEMENT OF THE CASE**

On October 22, 2012, defendant Lonnie Cage filed a motion to dismiss the indictment. The State opposed that motion with a brief filed November 1 and this entry follows.

**STATEMENT OF THE FACTS**

Defendant Lonnie Cage is currently under indictment in three pending case numbers: 544738, 560406 and 566449. Each indictment pertains to the alleged rape or killing, or both, of Lakesha L. Williams.

In case number 544738, a grand jury returned an eight-count indictment on December 10, 2010. That indictment charges Cage with the rape and kidnapping of Lakesha Williams.<sup>1</sup> Cage is also accused of felonious assault and domestic violence against Williams. The indictment includes three additional charges naming Patrick Cage as the victim: felonious assault, domestic violence and endangering children. All eight crimes in case number 544738 are alleged to have been committed on October 28, 2010.

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<sup>1</sup> Williams is identified in counts one, two, three, four and six as Jane Doe.

On May 18, 2012, another grand jury returned a seven-count indictment in case number 560406. Cage is charged there with the aggravated murder, kidnapping, aggravated robbery, retaliation against, and intimidation of Williams. All of the offenses are alleged to have been committed on January 8, 2012. The three aggravated murder charges carry separate death penalty specifications alleging murder to escape, felony murder, and retaliation for testimony.<sup>2</sup>

The third indictment was returned as case number 566449 on August 31, 2012.<sup>3</sup> That indictment is a combination of every charge from the first two indictments. Counts one through eight duplicate the indictment in case number 544738 and counts nine through fifteen parrot counts one through seven of case number 560406.<sup>4</sup>

Cage was arraigned in case number 544738 on January 10, 2012. The case was assigned by random draw to the docket of Judge John P. O'Donnell. After arraignment, the defendant was referred at his request for an evaluation by the court's psychiatric clinic to determine his eligibility for the mental health docket established under Local Rule 30.1 of the Cuyahoga County Common Pleas Court. That evaluation found him eligible for the mental health docket and case number 544738 was randomly reassigned to the mental health docket of Judge Michael P. Donnelly on March 6, 2012.

In the meantime, the defendant was indicted in case number 560406 and arraigned on May 23, 2012. That case was randomly assigned, under the court's procedures for the assignment of a capital case, to Judge John P. O'Donnell and remains pending before Judge O'Donnell.

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<sup>2</sup> See, generally, section 2929.04(A)(1) - (10) of the Ohio Revised Code.

<sup>3</sup> Judging by the fact that the same foreperson signed the indictments in 560406 and 566449, it can be inferred, as asserted by the plaintiff in the brief in opposition to the motion to dismiss, that both cases were presented to the same grand jury.

<sup>4</sup> The combined indictment refers to Williams as Jane Doe and Patrick Cage as John Doe.

Finally, the defendant was arraigned in the combined case, 566449, on September 5, 2012. The arraigning judge recognized it as including a re-indictment of the charges in the capital case and, according to Rule 36(D) of the Rules of Superintendence for the Courts of Ohio, assigned it directly to Judge O'Donnell.

On July 11 -- after the first two indictments but before the combined indictment -- the plaintiff filed in case number 560406 a motion "to transfer case and for joinder of indictments." Because the motion implicated two cases pending before two different judges, the motion was considered and decided by the court's administrative judge. In the motion, the State argued that the rape case should be transferred to Judge O'Donnell's docket and then joined for trial with the capital case.

The administrative judge denied the motion on July 30, 2012, primarily because no rule of procedure or rule of superintendence exists to accomplish the requested transfer of the first-filed case to the docket of the judge presiding over the second-filed case.

### **LAW AND ANALYSIS**

The defendant's motion to dismiss the combined indictment in this case rests on the assertion that the defendant would be prejudiced by having the combined case tried by Judge O'Donnell. Specifically, the defendant claims that the re-indictment in the combined case "was a direct attempt by the State to ignore this court's ruling [on the motion to transfer and for joinder] and achieve the State's desired result without following the proper procedure."<sup>5</sup> The defendant describes this as "forum shopping."<sup>6</sup>

The essence of the State's opposition to the motion to dismiss is that no law or rule of court was violated by obtaining the indictment in the combined case.

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<sup>5</sup> Motion to dismiss indictment, page 3.

<sup>6</sup> *Id.*

### *Transfer and joinder*

Although this court did not rule on the motion to transfer and join indictments, an understanding of why that motion was denied is needed before addressing the defendant's motion to dismiss since the motion to dismiss argues that the re-indictment is intended to avoid the court's ruling on the transfer and joinder.

Under Sup. R. 36(C)(2) and Local Rule 30.0(B) criminal cases are assigned by random draw to a judge of the court. When a defendant has a pending case and a new indictment is filed, the judge handling the pending case is assigned the new case under Local Rule 30.0(E)(2). But an exception to that is when a defendant is indicted in a capital case. Then, Local Rule 30.0(A) requires that a judge be assigned by a "red ticket." A red ticket is a random draw system separate from the random draw used for all other criminal cases. Because the court's rules require a separate random draw to assign a judge for the capital case instead of assigning it directly to a judge handling a pending non-capital felony, Cage wound up with two felony cases pending before two different judges.

At that point, the State sought to 1) transfer the rape case to Judge O'Donnell and 2) join it for trial with the capital case. Rule 13 of the Ohio Rules of Criminal Procedure does allow a "court," which this court takes to mean an individual judge, to order two indictments to be joined for a single trial. Yet neither Criminal Rule 13 nor any other rule of criminal procedure or rule of superintendence provides for the transfer of a pending case from one judge to another for the purpose of joinder.

In the absence of any applicable criminal rule of procedure, Criminal Rule 57(B) requires the court to look to the civil rules for support for any proposed action as long as the action is not contrary to law or inconsistent with the criminal rules. Rule 42 of the Ohio Rules

of Civil Procedure and Local Rule 15.0(H) do allow the consolidation before one judge of two or more pending civil cases involving common questions of law or fact. But the consolidation is not mandatory and, if granted, would result in the first assigned judge handling the cases. Here, the State asked for something that no rule provides: transfer of the first case to the second assigned judge.

Since there was no rule authority to provide for the transfer of the first of two criminal cases to the second assigned judge, the administrative judge denied the motion by an entry concluding that “no court policy exists to grant this transfer” and did not even have to reach the question of joinder.

### ***Re-indictment***

The issue for this court on the motion to dismiss is thus not whether the State’s pursuit of a combined indictment is an affront to the administrative judge’s decision denying the motion to transfer. Instead, the question is whether the State is permitted to seek the combined indictment with both the cases pending for trial.

Criminal Rule 48 allows the State, with leave of court, to dismiss an indictment. Unless noted otherwise, a Criminal Rule 48 dismissal is without prejudice to re-filing the indictment. See, e.g., *State v. Morgan*, 2d Dist. No. 2012-CA-06, 2012-Ohio-4750, ¶8. Since a dismissal by the State is without prejudice, the criminal rules clearly contemplate, and impliedly permit, the re-presentation of evidence to a grand jury under the Fifth Amendment to the United States Constitution and Criminal Rules 6 and 7 to obtain a second indictment on the same charges as the dismissed case. While that process should logically happen after a dismissal of the first indictment(s), this court can find no rule, statute or case law that prohibits the re-indictment of undismitted charges. Indeed, without condoning the practice, the court is aware, and defense

counsel must be, that such a procedure is commonplace in Cuyahoga County and has not been found contrary to law.

Since the re-indictment of all pending charges into this case is not prohibited by law, and because the court's own rules require that a re-filed capital case be returned to the judge originally assigned by red ticket, there is no basis for the defendant's motion to dismiss and it is denied.

**IT IS SO ORDERED:**

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

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

**SERVICE**

A copy of this journal entry was sent by email this 21<sup>st</sup> day of November, 2012, to the following:

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Judge John P. O'Donnell