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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FILED

THE STATE OF OHIO
Plaintiff

BERNICE JACKSON
Defendant

Case No: CR-18-628846-A

Judge: JOHN P O'DONNELL

2018 JUL 25 P 1:21

CLERK OF COURTS
CUYAHOGA COUNTY

INDICT: 2903.11 FELONIOUS ASSAULT
2919.22 ENDANGERING CHILDREN
2919.22 ENDANGERING CHILDREN
ADDITIONAL COUNTS...

JOURNAL ENTRY

JUDGMENT ENTRY STRIKING THE DEFENDANT'S JUNE 14, 2018, MOTION FOR AN IN CAMERA INSPECTION.

O.S.J.

07/25/2018
CPJPO 07/25/2018 12:41:45

Judge Signature

Date

7/25/2018

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO)	CASE NO. CR 18 628846
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	<u>JUDGMENT ENTRY STRIKING</u>
)	<u>THE DEFENDANT'S JUNE 14, 2018</u>
BERNICE JACKSON)	<u>MOTION FOR AN <i>IN CAMERA</i></u>
)	<u>INSPECTION</u>
Defendant.)	

John P. O'Donnell, J.:

Bernice Jackson is charged with felonious assault and two counts of child endangering. The named victims are a fifteen-year-old named in counts one and two of the indictment as Jane Doe I and a thirteen-year-old identified in count three as Jane Doe II. The fourth count in the indictment alleges vandalism.

Jackson was arraigned on June 7, 2018, by which time she had already requested discovery from the prosecutor under Rule 16 of the Ohio Rules of Criminal Procedure. The prosecutor responded to the discovery request on June 8. The list of the state's prospective witnesses does not include any agents of the Cuyahoga County Department of Children and Family and Services, nor did the prosecutor indicate in his discovery that he is in possession of any records of the CCDCFS.

On June 14 the defendant filed a motion for an *in camera* inspection by the court of records created and kept by the CCDCFS. As grounds, she asserts “there is a possibility that [the records] contain exculpatory information.”¹ The record reveals neither an attempt by the defendant to subpoena the agency’s records nor an assertion by the agency that its records are not discoverable because of privilege.

Coincidentally, on June 14 an envelope arrived in my office with a label attached describing the contents as “confidential CCDCFS records for *in camera* inspection” on case number 628846.

The defendant’s motion, however, is procedurally deficient. Criminal Rule 16 contemplates that discovery will be conducted between the litigants without the court’s involvement. Discovery is meant to be self-governed with the court’s role limited to refereeing disputes between the parties about whether they are complying with their reciprocal obligations under the rule. Here there is no dispute for me to decide. If the defendant had requested these particular materials in discovery and then the plaintiff resisted on the basis that they are privileged, then either side could seek the court’s involvement either through a motion to compel by the defendant or a motion for a protective order by the plaintiff. If the defendant subpoenaed the records directly from the agency and then the agency responded with either a motion for a protective order or a refusal to produce on the basis of privilege, then the court would get involved. But here the CCDCFS just plopped the potentially discoverable materials onto my desk and the defendant, aware that I have a copy of the records, wants me to decide which of them, if any, he is entitled to without any input from the agency. Yet these records are statutorily privileged from discovery under sections 5101.13, 5153.17 and 2151.421(I) of the Ohio Revised Code, raising the

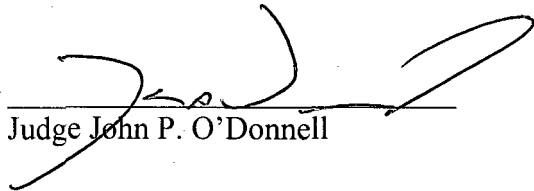
¹ Defendant’s motion for *in camera* inspection, page 3.

question of whether the agency has waived the privilege by supplying the records to the court, unbidden. But that question, and the issue of the discoverability of the records, will not be decided by me until the parties demonstrate the existence of a discovery dispute that may be decided under Criminal Rule 16(L), Criminal Rule 17 or Rule 45 of the Ohio Rules of Civil Procedure.

Accordingly, the June 14 motion for an *in camera* inspection is stricken as not justiciable.

In the event the defendant's request to get the records is ever brought to the court in a procedurally correct manner I have retained the envelope of records so that it need not be produced again and I will examine them *in camera* at the appropriate time. If the issue is not raised by the time the litigation is over I will preserve the records produced to me as part of the trial court's record on appeal, but under seal given the statutory privileges.

IT IS SO ORDERED:



Judge John P. O'Donnell

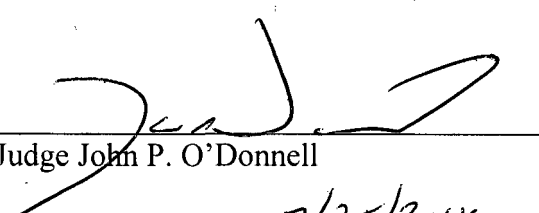
July 25, 2018

SERVICE

A copy of this judgment entry was emailed to the following on July 25, 2018:

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Judge John P. O'Donnell

7/25/2018