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IN THE COURT OF COMMON PLEAS FILED
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO
Plaintiff

LEWIS HOWARD
Defendant

Case No: CR-18-627724-A

2018 JUL 25 P 1:21

Judge: JOHN P O'DONNELL

CLERK OF COURTS
CUYAHOGA COUNTY

INDICT: 2907.05 GROSS SEXUAL IMPOSITION /SVPS
2907.07 IMPORTUNING
2907.05 GROSS SEXUAL IMPOSITION /SVPS
ADDITIONAL COUNTS...

JOURNAL ENTRY

JUDGMENT ENTRY STRIKING THE DEFENDANT'S JUNE 19, 2018, MOTION FOR AN IN CAMERA INSPECTION.

O.S.J.

07/25/2018
CPJPO 07/25/2018 12:18:40

Judge Signature

Date

[Handwritten Signature]
7/25/2018

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

THE STATE OF OHIO)	CASE NO. CR 18 627724
)	
Plaintiff,)	JUDGE JOHN P. O'DONNELL
)	
vs.)	<u>JUDGMENT ENTRY STRIKING</u>
)	<u>THE DEFENDANT'S JUNE 19, 2018</u>
LEWIS HOWARD)	<u>MOTION FOR AN <i>IN CAMERA</i></u>
)	<u>INSPECTION</u>
Defendant.)	

John P. O'Donnell, J.:

Lewis Howard is charged with two counts of gross sexual imposition and two counts of importuning against a seven-year-old named in the indictment as John Doe. The fifth count in the indictment alleges public indecency.

Howard was arraigned on June 12, 2018, and requested discovery from the prosecutor under Rule 16 of the Ohio Rules of Criminal Procedure that same day. The prosecutor responded to the discovery request on June 18. The list of the state's prospective witnesses on that response identifies Yandeh Joh of the Cuyahoga County Department of Children and Family and Services as a trial witness. The prosecutor, however, does not indicate in his discovery that he is in possession of any records of the CCDCFS.

On June 19 the defendant filed a motion for an *in camera* inspection by the court of records created and kept by the CCDCFS. As grounds, he asserts "that the materials at issue may contain

exculpatory information that he is entitled to for purposes of his defense in this matter.”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. Instead, the defendant, in his motion, simply asserts that “upon information and belief these records are presently in the possession of the court.”²

Coincidentally enough, on June 19 an envelope arrived in my office with a label attached describing the contents as “confidential CCDCFS records for *in camera* inspection” on case number 627724.

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

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

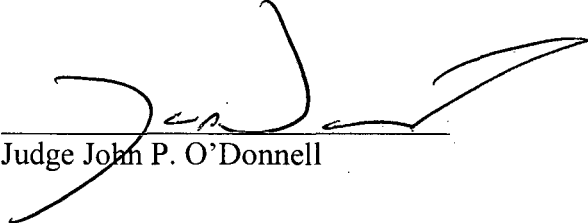
² *ID.*

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 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.

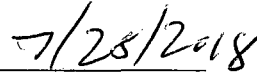
Accordingly, the June 19 motion for an *in camera* inspection is stricken as not justiciable.

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