

NO. 06-1568

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IN THE SUPREME COURT OF OHIO

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APPEAL FROM  
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO  
NO. 88313

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STATE OF OHIO,  
Plaintiff-Appellant

-vs-

NORMAN A. CRAIG,  
Defendant-Appellee

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**REPLY BRIEF OF APPELLANT**

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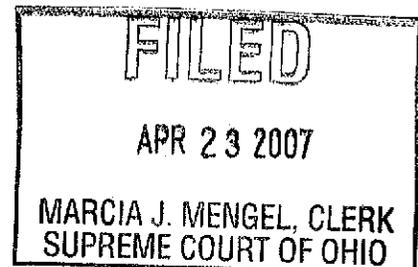
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*I. Introduction*

In the case at bar, defendant was charged with rape and the trial court dismissed the entire case prior to trial. When the State attempted to appeal to the Eighth District, the appellate court dismissed the State's appeal because the trial court did not dismiss the case, "with prejudice." The State then appealed to this Court which accepted jurisdiction over the sole proposition of law presented by the State:

**The State May Appeal as a Matter Of Right Any Decision by a Trial Court that Dismisses a Criminal Indictment Regardless of Whether the Dismissal is With or Without Prejudice.**

The State filed its brief and argued that the trial court should not be able to arbitrarily choose what decisions the State can and cannot appeal. Specifically, the State's brief claimed that the decision of the Eighth District was erroneous and should not be adopted as the law for this State for the following reasons:

- It ignores the clear language of both R.C. §2945.67 and R.C. §2505.02;
- It oversimplifies the State's ability to "re-indict" a criminal case;
- It denies the State due process by preventing arbitrary dismissals from appellate scrutiny; and,
- The Eighth District is the only jurisdiction to erect this hurdle to the State appeal of a dismissed criminal case.

On the same date, Appellee and Amicus Curiae, Cuyahoga County Public Defender (hereinafter referred to as "Amicus") filed their respective briefs arguing that the State had no right to appeal the dismissal of this rape case. Below is the State's response to the arguments made by Appellee and Amicus.

## *II. Response to the Arguments Made by Appellee and Amicus*

### *A. R.C. §2505.02 is relevant to the State's appeal.*

In its brief, Amicus, without citing any caselaw to support the point, argues that Ohio's final appealable order statute, R.C. §2505.02 does not apply to the analysis of this issue because the State is not a "person." Aside from the lack of authority to support this position, this argument ignores this Court's recent application of R.C. §2505.02 to an appeal by the State in a criminal case. *In re S.J.*, 106 Ohio St.3d 11, 2005-Ohio-3215. In *In re S.J.*, *supra*, this Court discussed the State's appeal of dismissed charges against a juvenile and stated, "[s]uch an order is final, as it affects a substantial right and prevented a judgment on the murder charges. R.C. 2505.02(B)." *Id.* at ¶ 13. Obviously, because this Court cited R.C. 2505.02 recently when determining the parameters of what and when the State may appeal, that statute is relevant to the issue at hand and Amicus' argument that it does not apply because the State is not a "person" should be rejected.

- B. R. C. §2945.67 provides the State with an immediate right of appeal when a trial court dismisses a criminal case.

Ignoring the clear language of the statute, Amicus and appellee next argue that R.C. §2945.67 does not provide an appeal of right for dismissals without prejudice. The State disagrees. The language of R.C. §2945.67 cannot be clearer. It provides a distinct right of appeal to the State when a criminal case is dismissed without *any* limitation as to whether the dismissal is with or without prejudice. R.C. §2945.67 provides in pertinent part:

- (A) A prosecuting attorney \*\*\* may appeal as a matter of right any decision of a trial court in a criminal case \*\*\* which decision grants a motion to dismiss all or any part of an indictment \*\*\*.

The State's right to appeal is contingent on *whether there is a dismissal, not what type of dismissal it is*. Nowhere in R.C. §2945.67 is there any support for the position espoused by Amicus. While Amicus may not like it, the simple fact is that R.C. §2945.67 does not require the prerequisite that a dismissal be "with prejudice" before the State has a right to appeal. Indeed it well settled that just as words may not be deleted when interpreting statutes, so also must words not be added. *Cline v. Ohio Bur. Of Motor Vehicles* (1991), 61 Ohio St. 3d 93, 97.

- C. This Court should not alter Ohio law to suite the desires of Amicus.

The remainder of the Amicus' brief strays from the issue at hand, taking a position different from that of Appellee and the Eighth District. Amicus argues, not what Ohio law is, but what Ohio law should be. Amicus argues that the State should have to seek *leave to appeal* a dismissal of a criminal case as opposed to having an appeal as of right. Amicus presents basically a number of policy arguments of why it desires this change in the law.

This Court should not accept Amicus' invitation to change Ohio law. R.C. §2945.67 allows the State an appeal of right for a dismissed criminal case. Nowhere does Ohio law require that the dismissal be "with prejudice" or that the State seek leave before appealing.

Merely because Amicus does not like the fact that R.C.2945.67 allows an immediate appeal of right does not mean it does not exist.

Respectfully submitted,

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*Service*

A copy of the foregoing Reply Brief of Appellant has been mailed this 23<sup>rd</sup> day of April, 2007 to counsel for Appellee, Rufus Sims, 75 Public Square #333, Cleveland, Ohio 44113 as well as counsel for Amicus Curiae, Assistant Public Defender, John T. Martin, 310 Lakeside Ave., Suite 200, Cleveland, Ohio 44113.

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