

NO. 2007-1640

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 88759

STATE OF OHIO,

Plaintiff-Appellant

-vs-

RITA RODDY,

Defendant-Appellee

MEMORANDUM IN OPPOSITION TO JURISDICTION

FORBES, FIELDS & ASSOCIATES Co., L.P.A.
DENNIS N. LoCONTI, ESQ. #0019348
700 Rockefeller Building
614 W. Superior Avenue
Cleveland, Ohio 44113-1318
(216) 696-7170
(216) 696-8076 (telecopier)
dloconti@forbes-fields.com
Counsel for Defendant-Appellee

WILLIAM D. MASON
Cuyahoga County Prosecuting Attorney
Matthew E. Meyer, #0075253
Assistant Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street; 8th Floor
Cleveland, Ohio 44113
(216) 443-7821
(216) 443-7806 (telecopier)
p4mm4@cuyahogacounty.us
Counsel for Plaintiff-Appellant

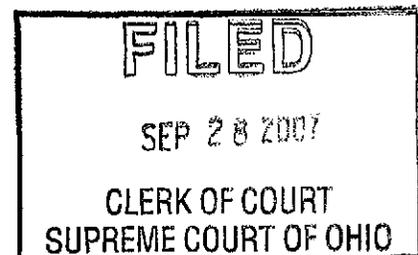


TABLE OF CONTENTS

	<u>Page</u>
I. PLAINTIFF-APPELLANT’S CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION OR ISSUE OF GREAT PUBLIC INTEREST.....	1
II. STATEMENT OF THE CASE AND RELEVANT FACTS.....	2
III. LAW AND ARGUMENT.....	3
A. THE COURT OF APPEALS CORRECTLY DISMISSED THE APPELLANT’S APPEAL AFTER DETERMINING THAT APPELLANT WAS ATTEMPTING TO APPEAL THE FINAL RESOLUTION OF TRIAL COURT’S VERDICT.....	3
IV. CONCLUSION.....	5
CERTIFICATE OF SERVICE.....	6

I. PLAINTIFF-APPELLANT'S CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION OR ISSUE OF GREAT PUBLIC INTEREST

Appellee respectfully submits that despite the attempt by Appellant to portray the issue in this matter as one of substantial constitutional magnitude and/or great public interest, this matter is really just an exercise by the prosecution to seek appellate review of a routine trial court ruling pursuant to Rule 29(C) of the Ohio Rules of Criminal Procedure.

Trial courts throughout the State of Ohio routinely decide motions for acquittal brought under the various provisions of Rule 29. A motion brought pursuant to Rule 29(C) is no less routine simply because it is made "post verdict". Ohio law is quite clear and unambiguous regarding the criteria under which a trial judge must decide Rule 29 motions, and the occurrence of a trial court actually granting such a motion for the defense does not, in and of itself, raise the matter to the level of a substantial constitutional question or a matter of great public interest. What the Appellant is attempting to do is to couch its appeal of the trial judge's acquittal under a cloak of "evidentiary ruling" or some other substantive law ruling in order to avoid the application of the double jeopardy clause and try to obtain a rebuke or outright reversal of the trial judge's decision to acquit the Appellee. Appellant respectfully submits that as a result of this single instance of a trial court granting a Rule 29(C) motion, the Ohio Supreme Court is not presented with a need to clarify either the application of Rule 29, O.R.C. 2945.67(A), nor any constitutional questions. Appellee respectfully submits that Appellant's proposed exercise is better suited for a law review article.

II. STATEMENT OF CASE AND RELEVANT FACTS

On November 2, 2005 Appellee Rita Roddy was charged with one count of Kidnapping in violation of R.C. 2905.01, and a second count of Felonious Assault in violation of R.C. 2903.11. The case proceeded to trial on July 14, 2006. The trial court overruled Appellee's Rule 29 motion for acquittal made at the close of the State's case, and again at the close of the Appellee's case. On July 19, 2006 the jury returned a verdict of not guilty on the Felonious Assault count and guilty on the Kidnapping count. On August 2, 2006, Appellee filed a "Motion for Judgment of Acquittal or, in the Alternative, for a New Trial". The trial court heard the motion on August 29, 2006, and granted Appellee's motion for judgment of acquittal on the Kidnapping count pursuant to Crim R. 29(C).

Appellee's motion contained several arguments concerning the State's evidence. However, contrary to the State's purported version of events, Appellee moved for judgment of acquittal pursuant to Crim R. 29(C) on the basis that the State's evidence submitted in support of the kidnapping charge was insufficient as a matter of law to support a conviction for the offense. The State of Ohio failed to file a brief in opposition to Appellee's motion, and then failed to appear at the Hearing held by the Court on August 29, 2006.

The trial court agreed with defense counsel's arguments and granted acquittal on the kidnapping charge.

On September 18, 2006, the State of Ohio sought leave to appeal the trial court's ruling and filed a notice of appeal. The Court of Appeals granted the State's leave to

appeal on October 18, 2006. Appellant filed its Assignments of Error and Brief on or about March 7, 2007. Appellee Rita Roddy now files her Answer Brief with this Honorable Court. Oral arguments were heard and on August 9, 2007 the Court of Appeals issued its decision wherein it concluded that the Appellant was not seeking review of an evidentiary ruling and was actually seeking an appeal from the final resolution of the matter, which the Court of Appeals determined was not permitted by the Double Jeopardy Clause. As a result, the Court of Appeals dismissed the appeal. This action is akin to a determination that the original leave to appeal should not have been granted in the first place.

III. LAW AND ARGUMENT

A. THE COURT OF APPEALS CORRECTLY DISMISSED THE APPELLANT'S APPEAL AFTER DETERMINING THAT APPELLANT WAS ATTEMPTING TO APPEAL THE FINAL RESOLUTION OF TRIAL COURT'S VERDICT

The Appellee respectfully submits that the Eighth District Court of Appeals was correct in determining that the State was not seeking to review an evidentiary matter under O.R.C. 2945.67 but, instead, was seeking review of the ultimate resolution. In that regard, the Court of Appeals was correct to dismiss the appeal.

The Court of Appeals did not disagree with the State's contention that R.C. 2945.67 and the decision in State v. Bistricky, 51 Ohio St.3d 157, 555 N.E.2d 644 (1990) allow for discretionary appeals in appropriate cases. The distinction lies in the court's determination of precisely what it is that the State was seeking to review. Despite clever

appeal the dismissal by the Eighth District Court of Appeals lacks authority and jurisdiction.

IV. CONCLUSION

Appellee submits that this Honorable Court should deny the Appellant's Notice and Memorandum and decline to grant jurisdiction to appeal.

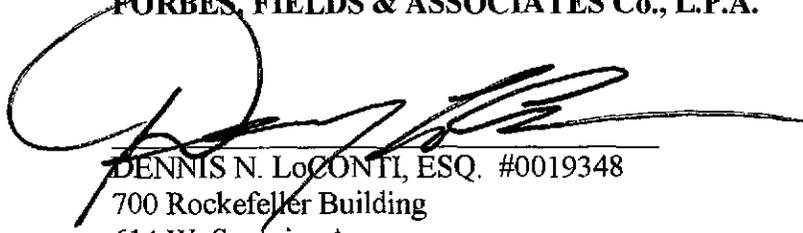
The Appellant continues to seek redress from a final acquittal that it disagrees with, and nothing more. There is nothing about this routine handling of a Rule 29 motion for acquittal by a trial court that contains any substantial constitutional question, or does it present an issue of great public interest. At best it presents an attempt to gain reversal of a routine trial court matter that does not warrant Supreme Court review.

The Appellant further submits that since leave to appeal pursuant to R.C. 2945.67 is discretionary by the Court of Appeals in cases that are appropriate for such a review, the State lacks authority and jurisdiction to appeal a denial of that leave by the Eighth District Court of Appeals in this case. The dismissal of the State's appeals was nothing more than a rethinking of the matter and a denial of leave.

For all of these reasons, Appellee respectfully requests that this Honorable Court overrule Appellant's Memorandum in Support of Jurisdiction and dismiss the appeal.

Respectfully submitted,

FORBES, FIELDS & ASSOCIATES Co., L.P.A.



DENNIS N. LoCONTI, ESQ. #0019348
700 Rockefeller Building
614 W. Superior Avenue
Cleveland, Ohio 44113-1318
(216) 696-7170
(216) 696-8076 (telecopier)
dloconti@forbes-fields.com

Counsel for Defendant-Appellee

CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Opposition to Jurisdiction was served upon the following on this 27th day of September 2007:

1. WILLIAM D. MASON
Cuyahoga County Prosecuting Attorney
Matthew E. Meyer, #0075253
Assistant Prosecuting Attorney
The Justice Center, Courts Tower
1200 Ontario Street; 8th Floor
Cleveland, Ohio 44113

Counsel for Plaintiff-Appellant



DENNIS N. LoCONTI, ESQ. #0019348

Counsel for Defendant-Appellee