

IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellant,

v.

RITA RODDY

Defendant-Appellee

CASE No. 2007-1640

On Appeal from the Cuyahoga County  
Court of Appeals for the Eighth  
Appellate District, Case No. 88759

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STATE'S MOTION FOR RECONSIDERATION  
PURSUANT TO S. CT. R. P. XI, § 2

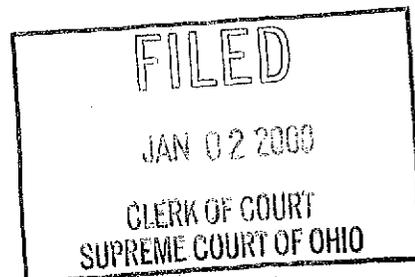
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STATE'S MOTION FOR  
RECONSIDERATION PURSUANT  
TO S. CT. R. P. XI, § 2

Now comes Cuyahoga County Prosecuting Attorney William D. Mason on behalf of the State of Ohio, by and through his undersigned assistant, and respectfully submits the State's Motion for Reconsideration pursuant to S. Ct. P. R. XI, § 2, requesting that this Honorable Court reconsider its December 26, 2007 judgment refusing to grant jurisdiction to hear a discretionary appeal.

This case boils down to a straightforward legal question that is worthy of Supreme Court review: can prosecutors actually mount an appeal pursuant to *State v. Bistricky* (1990), 51 Ohio St.3d 157, 159, 555 N.E.2d 644 without violating a criminal defendant's Double Jeopardy rights? Following the Eighth District Court of Appeals judgment in this case, the answer is clearly no. The State is effectively barred from bringing a so-called "rule of law" post-acquittal appeal under the Eighth District's application of the Fifth Amendment Double Jeopardy Clause.

By declining to hear this case on its merits, this Honorable Court allows the Eighth District's opinion to become controlling precedent in Cuyahoga County and persuasive precedent throughout Ohio. The *Roddy* precedent will be acutely felt in Cuyahoga County because it sends a tacit message to 34 Court of Common Pleas judges that the State has no effective way to challenge erroneous legal rulings that result in acquittal. The *Roddy* precedent

will likewise telegraph a similar message throughout Ohio as persuasive authority due to the relative dearth of cases dealing with this particular legal principle.

The reasons compelling the prosecution of this case past the point of acquittal are significant and worthwhile. Serious errors that are capable of repetition while evading review have a cumulative impact on the quality of the legal system. Specifically, a legal ruling that causes an arbitrary dismissal of a serious criminal case demands scrutiny.<sup>1</sup> Here, the trial court granted a Crim. R. 29(C) motion based solely on the credibility of the complaining witness, after having previously denied identical Crim. R. 29(A) and Crim. R. 29(B) motions. Without any means for a prosecutor to mount a *Bistricky* “rule of law” appeal, the trial court’s power to acquit may be freely used, even when clearly erroneous.

In sum, the Eighth District’s holding in this case is clearly at odds with *Bistricky, supra*. Should this Honorable Court maintain its judgment that this case is not worthy of Supreme Court review, the State alternatively requests that this Honorable Court summarily reverse the Eighth District’s judgment dismissing the State’s appeal and remand this case to the Eighth District with instructions to consider this case squarely on its merits.

Respectfully submitted,

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Cuyahoga County Prosecuting Attorney

  
Matthew E. Meyer (0075253)  
Assistant Prosecuting Attorney

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<sup>1</sup> This Court recently addressed a similar problem in *State v. Craig*, 116 Ohio St.3d 135, 2007-Ohio-5752. In *Craig*, as in this case, the State has attempted to seek appellate review of an erroneous trial court decision resulting in the dismissal of a serious criminal case. Although this case, unlike *Craig*, hinges on whether Double Jeopardy bars appeal, the underlying concern remains the same from the State’s perspective: whether adequate remedies exist to challenge arbitrary dismissals.

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CERTIFICATE OF SERVICE

A copy of the foregoing Motion for Reconsideration Pursuant to S. Ct. P. R. XI, § 2 was sent by regular U.S. mail this 27<sup>th</sup> day of December, 2007, to George L. Forbes, Esq., and Dennis N. LoConti, Esq., 700 Rockefeller Building, 614 W. Superior Ave., Cleveland, Ohio 44113-1318.

  
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