

**IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO**

<b>STATE OF OHIO,</b>	:	<b>CASE NO. 11-CR-00025</b>
<b>Plaintiff</b>	:	
<b>vs.</b>	:	<b>Jonathan P. Hein, Judge</b>
<b>STEPHANIE A. KOLB</b>	:	
<b>Defendant.</b>	:	<b><u>JUDGMENT ENTRY</u> - Dismissal of Indictment</b>

This matter came before the Court for pretrial conference pursuant to notice. The State of Ohio was represented by R. Kelly Ormsby, III, the Prosecuting Attorney. The defendant appeared and was represented by Theodore O. Finnarn, Esq.

On May 16, 2011, the Defendant filed a motion to dismiss for violations of speedy trial provisions. The Court heard testimony and arguments regarding the motion and articulated to counsel that it would also consider whether it would be appropriate to dismiss this matter pursuant to Criminal Rule 48(B), which provides as follows:

**(B) Dismissal by the court.** If the court over objection of the state dismisses an indictment, information, or complaint, it shall state on the record its findings of fact and reasons for the dismissal.

As announced in open Court, the Court determines that dismissal of the indictment should occur for the following reasons. **First**, the alleged conduct occurred on January 29, 2009; MVRCL drug analysis was completed on February 11, 2009 but the

indictment was not presented until January 27, 2011. There is no reasonable explanation for the delay. **Second**, the Court is not convinced with the Prosecutor's argument that protecting the identity of the confidential informant justifies the delay. The informant ceased working on indicted cases by January 29, 2009. Allegedly protecting the (now unutilized) informant's identity decreases as a valid justification for delay as more time passes. **Third**, while the Defendant could not prove actual prejudice for purposes of a speedy trial dismissal, the practical reality is that several years delay does result in decreased memory of details of particular events, including possible alibi information and details of circumstances surrounding the conduct; all this results in less practical ability to present a defense or evidence of mitigating circumstances. As time passes, the Court opines that greater justification for the delay should exist. **Fourth**, the Defendant has but one prior misdemeanor offense in 2005 which resulted in a suspended jail sentence; she has no criminal history since then. [Her co-defendant husband's circumstances are markedly different with regard to prior conduct.] Further, she has lost her employment while this case was pending and has suffered economic consequences resulting therefrom. **Fifth**, the attorneys have agreed that this case would likely result in a community control sanction; it is not the worse form of the offense. While under pre-trial supervision, the Defendant has performed more than satisfactorily and behavior modification for this Defendant has likely already occurred. The consequences of a conviction likely serves little more benefit. What additional deterrence or punishment will be obtained by further prosecution of this old charge? **Sixth**, the Court possesses an expectation that the prosecution and investigative agencies of the state should more efficiently process its caseload. How could cases ready for indictment merely sit in suspended animation – regardless of which governmental entity caused the animation? Good governance would be served by prompt decisions to prosecute cases. If the Court fails to raise expectations,

would not even lesser efficiency occur? [The Court admits that its prior experience in the Office of the Prosecuting Attorney shades its heightened expectation of prosecution and law enforcement practices.] **Finally**, National District Attorneys Association Standard 1.3 and former Ohio Ethical consideration 7-13 are incorporated herein. See text in footnote below.<sup>1</sup>

And as this Court previously stated in *State v. Rodriguez*, Darke No. 07CR13898 <sup>2</sup>:

“...as stated by Montgomery County Prosecutor Mathias Heck when he was the president of the National District Attorney’s Association: ‘The recent case [of the lacrosse players from Duke University] has affirmed the importance of the ethical standards of America’s prosecutors and serves as a reminder that the primary ethical duty of a prosecutor is to seek justice, not merely to convict.’ The Court strongly believes that more than the elements of a case should be considered when deciding whether resources should be spent to prosecute a case.

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<sup>1</sup> 1.3 The prosecutor should at all times be zealous in the need to protect the rights of individuals, but must place the rights of society in a paramount position in exercising prosecutorial discretion in individual cases and in the approach to the larger issues of improving the law and making the law conform to the needs of society.

7-13: The responsibility of a public prosecutor differs from that of the usual advocate; his duty is to seek justice, not merely to convict. This special duty exists because: (1) the prosecutor represents the sovereign and therefor should use restraint in the discretionary exercise of governmental powers, such as the selection of cases to prosecute; (2) [intentionally omitted]; and (3) in our system of criminal justice the accused is to be given the benefit of all reasonable doubts....

<sup>2</sup>Affirmed at 2008 Ohio 3377, Darke App. 07CA1722

### **Conclusion**

On its own motion, following an articulation of these principles and reasons in open court before all parties, and pursuant to Criminal Rule 48(B), the Court finds that insufficient reasons exist for the prosecution of the Defendant. While deference is usually given to the charging decisions of the prosecutor, such deference is not unlimited. The Court possesses a duty to measure and administer justice equally as to all parties.

**IT IS THEREFORE ORDERED AND DECREED** that the Indictment herein is dismissed with costs taxed to the State. FINAL APPEALABLE ORDER.

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**JONATHAN P. HEIN, Judge**

cc: Prosecuting Attorney's Office  
Theodore O. Finnarn, Attorney for Defendant (via fax)  
DCSO, Detective Section (via fax)

jph/research/criminal/dismiss48(B)