

[Cite as *State v. Robertson*, 2010-Ohio-6185.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 94883**

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**STATE OF OHIO**

PLAINTIFF-APPELLANT

vs.

**MELVIN ROBERTSON**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Criminal Appeal from the  
Cuyahoga County Court of Common Pleas  
Case No. CR-525798

**BEFORE:** Boyle, J., Rocco, P.J., and Celebrezze, J.

**RELEASED AND JOURNALIZED:** December 16, 2010

**ATTORNEYS FOR APPELLANT**

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**FOR APPELLEE**

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MARY J. BOYLE, J.:

{¶ 1} Plaintiff-appellant, state of Ohio, appeals the trial court's decision dismissing the indictment against defendant-appellee, Melvin Robertson, on speedy-trial grounds. The state raises the following sole assignment of error:

{¶ 2} "A trial court lacks authority to grant a defendant's motion to dismiss the indictment absent any infringement of a defendant's fundamental constitutional right."

{¶ 3} Finding no merit to the appeal, we affirm.

#### Procedural History and Facts

{¶ 4} This case involves a unique procedural posture, which is dispositive of the issue raised on appeal.

{¶ 5} Initially, we note that, although the trial court held a hearing on Robertson's motion to dismiss the instant case on speedy-trial grounds, the state has failed to provide this court with a transcript of the proceeding. The following facts are gleaned from the parties' briefs, the trial court's decision, and Robertson's prior appeal.

{¶ 6} On September 23, 2008, the police arrived at Robertson's home to investigate a reported rape against "S.S.," the victim. While at Robertson's home, the police discovered, "B.S.," who was sixteen years old and four months pregnant. A few days later, the police executed a search warrant on the premises, wherein B.S.'s journal was taken as evidence. The journal entries revealed that Robertson was the suspected father of B.S.'s child and further state how Robertson hit her, punched her, and caused her physical harm.

{¶ 7} On October 3, 2008, Robertson was indicted in Case No. CR-516228 for the alleged rape and kidnapping of S.S. The case ultimately proceeded to trial where Robertson was acquitted of the kidnapping count but found guilty of the rape and attached repeat violent offender and notice of prior

conviction specifications. On December 17, 2009, the trial court sentenced Robertson to 18 years to life in prison.

{¶ 8} While Case No. CR-516228 was pending, Robertson was subsequently indicted on March 6, 2009 in Case No. CR-521706 for the alleged rape and kidnapping of S.S., as well as one count of unlawful sexual conduct with a minor, namely, B.S., and having a weapon while under disability. On May 8, 2009, the trial court granted Robertson's motion to dismiss counts three and four, stating that "[t]he state was aware of the alleged offense on 9/21/2008 and, therefore, 'when new and additional charges arise from the same facts as did the original charge and the state knew of such facts at the time of the initial indictment, the time within which trial is to begin on the additional charge is subject to the same statutory limitations period that is applied to the original charge.'" (Internal citation and quotation omitted.)<sup>1</sup>

{¶ 9} The state subsequently appealed this decision, and this court affirmed in *State v. Robertson*, 8th Dist. No. 93396, 2010-Ohio-2892 ("*Robertson I*"). In affirming the trial court's dismissal of the counts on speedy-trial grounds, this court agreed "with the trial court's conclusion that the state knew additional facts and circumstances warranting additional charges when the initial indictment in Case No. CR-516228 was filed." *Id.* at ¶22. We therefore affirmed "the trial

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<sup>1</sup> After the trial in Case No. CR-516228, the trial court dismissed counts one and two with prejudice.

court's determination that the delay in bringing the additional charges was not justifiable and that the speedy-trial time began to run from the time of the indictment for the original charges." *Id.* The state never appealed this court's decision to the Ohio Supreme Court.

{¶ 10} While the above appeal was pending, and after the trial court dismissed the two counts in Case No. CR-521706, Robertson was indicted for a third time on June 25, 2009 in Case No. CR-525798 — the underlying case of the instant appeal. This time he was indicted on 12 counts: one count of felonious assault; four counts of domestic violence; one count of kidnapping; and six counts of unlawful sexual conduct with a minor. B.S. was the alleged victim in all of the counts.

{¶ 11} Robertson again moved to dismiss all of these counts on the same grounds that he moved to dismiss the two counts in the second case, i.e., that they arose out of the same set of facts of the original indictment, which the state was aware of in its first investigation, and therefore were subject to the same speedy-trial timetable as the first indictment. On February 25, 2010, the trial court granted Robertson's motion to dismiss. From this decision, the state appeals.

#### Multiple Indictments and Speedy-trial Time

{¶ 12} The state contends in its sole assignment of error that the trial court erred in granting Robertson's motion to dismiss because neither his constitutional

nor statutory speedy-trial rights were violated. Specifically, the state contends that the underlying charges in this case did not arise out of the same facts as the original indictment.

{¶ 13} It is well settled that “when new and additional charges arise from the same facts as did the original charge and the state knew of such facts at the time of the initial indictment, the time within which trial is to begin on the additional charge is subject to the same statutory limitations period that is applied to the original charge.” (Internal quotations and citation omitted.) *State v. Baker*, 78 Ohio St.3d 108, 111, 1997-Ohio-229, 676 N.E.2d 883. Conversely, “in issuing a subsequent indictment, the state is not subject to the speedy-trial timetable of the initial indictment, when additional criminal charges arise from facts different from the original charges, or the state did not know of these facts at the time of the initial indictment.” *Id.* at 110.

{¶ 14} The state argues that the third indictment is not subject to the same speedy-trial timetable as the first indictment in Case No. CR-516228 because this case involves a different victim and different dates. But the state fails to acknowledge that we have already addressed and rejected this exact argument in *Robertson I*. Indeed, after we decided *Robertson I*, the state’s remedy would have been to file an appeal to the Ohio Supreme Court — not to simply reindict *Robertson* for a third time and hope that this court would reconsider its earlier

decision. Based on our decision in *Robertson I*, we are constrained to uphold the trial court's dismissal of the indictment in this case.

{¶ 15} And while this case involves additional charges, as opposed to the single charge of unlawful sexual conduct with a minor at issue in *Robertson I*, the charges were or should have been known to the state at the time of the second indictment.<sup>2</sup> Therefore, given that this court has already decided that the additional charge related to B.S. was properly dismissed in *Robertson I* due to a speedy-trial violation, we cannot say that the trial court erred in dismissing the third indictment on the same grounds.

{¶ 16} The state's sole assignment of error is overruled.

Judgment affirmed.

It is ordered that appellee recover of appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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<sup>2</sup>We glean from the record that the evidence in support of the charges stem from the police discovering and seizing B.S.'s journal in September 2008 as part of its investigation in the first case.

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MARY J. BOYLE, JUDGE

KENNETH A. ROCCO, P.J., and  
FRANK D. CELEBREZZE, JR., J., CONCUR