[Cite as *State v. Kilis*, 2011-Ohio-4739.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
OTTAWA COUNTY

State of Ohio — Court of Appeals No. OT-11-007

Appellant — Trial Court No. 09CR186

v.

Mark Kilis — **DECISION AND JUDGMENT**

Appellee — Decided: September 2, 2011

* * * * *

Mark E. Mulligan, Ottawa County Prosecuting Attorney, and
Andrew Bigler, Assistant Prosecuting Attorney, for appellant.

Michael Sandwisch, for appellee.

* * * * *

SINGER. J.

{¶ 1} This is a state's appeal from a judgment of the Ottawa County Court of Common Pleas, dismissing three of 12 counts in a criminal indictment. For the reasons that follow, we reverse.

{¶ 2} On December 18, 2009, the Ottawa County Grand Jury handed down a twelve- count indictment, charging appellee, Mark M. Kilis, with seven counts of rape, four counts of gross sexual imposition and one count of improper firearm discharge. Three of the four counts of gross sexual imposition were alleged to have occurred in Sandusky County, "* * * as part of a continuing course of criminal conduct involving Ottawa County * * *." On arraignment, appellant pled not guilty.

{¶ 3} On November 5, 2010, appellee filed a motion to dismiss "* * * Counts #3, #4, and #5 of the Indictment for a lack of the court having jurisdiction over the alleged criminal acts which both the Indictment and the Bill of Particulars represent that these alleged crimes occurred in Sandusky County, not Ottawa County."

{¶ 4} Following a February 17, 2011 hearing , the court dismissed counts three, four and five for want of venue, because "* * * no evidence [of venue] was presented by the state." It is from this judgment that the state brings this appeal. The state sets forth a single assignment of error:

{¶ 5} "The trial court erred in dismissing three counts of the indictment because the state did not present evidence of venue."

{¶ 6} "[A] motion to dismiss charges in an indictment tests the sufficiency of the indictment, without regard to the quantity or quality of evidence that may be produced by either the state or the defendant. In order to test the sufficiency of the indictment or complaint, the proper query is whether the allegations contained in the indictment or

complaint make out offenses under Ohio criminal law. If they do, it is premature for the trial court to determine, in advance of trial, whether the State could satisfy its burden of proof with respect to those charges. A motion to dismiss an indictment cannot properly be granted where the indictment is valid on its face." *State v. Eppinger*, 162 Ohio App.3d 795, 2005-Ohio-4155, ¶ 37. (Citations omitted.)

{¶ 7} In a criminal case, venue is as defined by law. Crim.R. 18(A). R.C. 2901.12(A) provides, "[t]he trial of a criminal case in this state shall be held in a court having jurisdiction of the subject matter, and in the territory of which the offense or any element of the offense was committed."

{¶ 8} "When an offender, as part of a course of criminal conduct, commits offenses in different jurisdictions, the offender may be tried for all of those offenses in any jurisdiction in which one of those offenses or any element of one of those offenses occurred. Without limitation on the evidence that may be used to establish the course of criminal conduct, any of the following is prima-facie evidence of a course of criminal conduct:

{¶ 9} "(1) The offenses involved the same victim, or victims of the same type or from the same group.

{¶ 10} "* * *

{¶ 11} "(3) The offenses were committed as part of the same transaction or chain of events, or in furtherance of the same purpose or objective.

{¶ 12} "* * *

{¶ 13} "(5) The offenses involved the same or a similar modus operandi." R.C. 2901.12(H).

{¶ 14} Each of the counts of the indictment at issue alleged that appellee committed the offenses charged as part of a continuing course of criminal conduct. In its amended bill of particulars, the state asserted that the victim in the Sandusky County counts, "* * * was of a similar age and type to the victim of the alleged incidents occurring in Ottawa County over the same period of time." These assertions are sufficient to allege venue pursuant to R.C. 2901.12(H)(1), (3) and/or (5). Since venue is the only element appellee suggests has been omitted in the indictment counts at issue and we have determined that venue was properly alleged, it was erroneous for the trial court to dismiss these counts. Accordingly, the state's sole assignment of error is well-taken.

{¶ 15} On consideration whereof, the judgment of the Ottawa County Court of Common Pleas is reversed. This matter is remanded to said court for further proceedings consistent with this decision. Appellee is ordered to pay court costs of this appeal pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J. _____
JUDGE

Arlene Singer, J. _____
JUDGE

Thomas J. Osowik, J. _____
CONCUR.
JUDGE