

[Cite as *State v. Schoolcraft*, 126 Ohio Misc.2d 31, 2002-Ohio-7483.]

**The State of Ohio**

**v.**

**Schoolcraft.**

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Court of Common Pleas, Ohio,

Washington County.

No. O1 CR 212.

Decided Sept. 10, 2002.

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Kevin Rings, Washington County Prosecuting Attorney, for plaintiff.

Janet Fogle McKim, Ohio Public Defender, for defendant.

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ED LANE, Judge.

{¶1} The above-styled action came before the court for evidentiary hearing on September 6, 2002, on the defendant's motion to dismiss. The defendant, Robert Schoolcraft, orally made his motion immediately prior to the start of his jury trial on June 4, 2002. The matter was then continued to August 22, 2002, for jury trial. The defendant obtained a subsequent continuance to September 17, 2002, and filed a motion to dismiss with supporting documentation and memorandum on September 5, 2002. The defendant appeared at the hearing with his attorney of record, Janet McKim. The state was represented by Kevin Rings. Both sides presented evidence.

{¶2} This defendant was indicted by the Washington County Grand Jury on October 11, 2001. He was charged in Count I with possession of drugs and in Count II with illegal manufacture of drugs, both of which allegedly occurred on or about March 17, 2001. After the date of his arrest, he was contacted by one Miller A. Bushong III, Assistant United States Attorney from Charleston, West Virginia. Bushong sent Schoolcraft a letter in care of his public defender in Painesville, Ohio, dated May 29, 2001, advising Schoolcraft and his attorney that he was the target of an investigation. At that point, Schoolcraft was facing criminal charges in Lake County, Ohio. He was represented in those matters by Agustin Ponce de Leon. He subsequently obtained a federal public defender, Mary Lou Newberger. Bushong sent both Newberger and Ponce de Leon a letter dated May 29, 2001, advising them of the terms of a tentative agreement to be entered into between this defendant and the United States Department of Justice. This letter is very disturbing to all who are involved in this case. Bushong, without any discussion with or authorization by the Washington County Prosecutor's Office, or any of other law enforcement in Washington County, Ohio, falsely represented to Ponce de Leon and Newberger that "the United State has secured the dismissal of pending state charges in Lake County, Ohio, Washington County, Ohio and Wood County, West Virginia." This was not true. Bushong has refused to cooperate with the Washington County Prosecutor's Office to resolve the pending motion. Bushong, at worst, is unethical and, at best, is negligent. In any event, these are very dangerous qualities for an attorney with his responsibilities. Thereafter, the defendant entered into a signed agreement to cooperate with the United States Department of Justice. A signed copy of that agreement was not supplied to the defendant, but was provided to his attorneys. Defendant's Exhibit 2 is an unsigned copy of the agreement that was entered into.

{¶3} It is clear to this court that at no time were officials from Washington County consulted nor made a party to this agreement. Both attorneys have acknowledged that there is very little case law on point

governing this situation. However, it has been held:

{¶4} “One county’s Prosecutor cannot prevent indictment in a second county, absent the consent of the second county’s prosecutor.” *State v. Barnett*, 124 Ohio App.3d 746, 756, 707 N.E.2d 564; App.R. 12(A)(1)(C).

{¶5} The defendant testified at the hearing for the purposes of this motion only. He acknowledged in his testimony that he had an obligation to cooperate. He also acknowledged that Washington County never told him that the charges in Washington County had been dismissed. He testified that he was to cooperate with the Task Force in Wood County and Washington County and with the “Feds” for one year. He testified that he has had two arrests since his release from Lake County, Ohio. The charges in Lake County were dropped. One arrest was in Athens County, and the other was in Meigs County. He was never indicted or formally charged in Athens County. The charges in Meigs County were subsequently dismissed by the court. He acknowledged that his obligation was to cooperate. He outlined in detail his version of his contact with the Washington and Wood County Task Forces since signing the agreement.

{¶6} The defendant’s testimony of his cooperation varies distinctly from the two witnesses called by the state. Officer Sturm of the Violent Crime and Narcotics Task Force for Washington and Wood Counties testified first. Officer Sturm is a police officer with the Parkersburg, West Virginia, Police Department. However, he works with officials from Washington County, the DEA, and the IRS. He testified about his office receiving a phone call from the defendant while he was in the Lake County Jail. He further testified that he traveled with another officer to Lake County and interviewed the defendant in the Lake County Jail. It was apparent to him that “the Defendant had a lot of information” and knew “a lot of cooks.” It was apparent to Officer Sturm that the defendant knew a lot of people involved in the preparation

and sale of crystal methamphetamines in Wood County, West Virginia, and Washington County. Officer Sturm stated that his understanding of the deal with the defendant was that the defendant would plead guilty to a one count felony charge in federal court. However, the defendant failed to appear on three occasions to enter a plea. This understanding is not reflected in the orders of the federal court in West Virginia. He testified that he told the defendant that he would give him one to two weeks to get reintegrated into the Parkersburg area and then would be meeting with him on a daily basis. After one week, the defendant dropped out of sight and offered no cooperation to the officers. He made contact with them only when he was subsequently arrested. The information he offered was not specific and was information that the Task Force had available to them from other sources. Captain Chris Woodyard of the Wood County Sheriff's Office, who is also a Task Force member, testified that he had advised the federal officials in Charleston that there was no deal with the defendant because he was not cooperating. Officer Woodyard also testified that he had concerns about the defendant because he believed him to be manipulative.

{¶7} The defense correctly points out that in enforcing these agreements, the court should generally follow the principals of contract law. These parties had a written contract. That contract provided that this defendant was to answer the officers' questions truthfully. They also both testified under oath as to what their understanding of that contract meant. Both the defendant and Officer Sturm believed that the defendant was to cooperate with the Washington and Wood County Task Force in investigating crystal methamphetamine production in the Mid-Ohio Valley. The only time that the defendant was in touch with the police officers was when he was subsequently arrested for additional charges. He disappeared shortly after his release from Lake County and made himself unavailable. In fact, Officer Sturm contacted the defendant's mother in an attempt to locate the defendant. There is no way that this can be construed as cooperation. The officers could not ask the defendant questions if they could not find him. Availability is an

implied condition of virtually every contract. It would appear to this court that the defendant breached the contract by failing to make himself available for questioning. Additionally, Washington County was never made a party to this contract. The defendant testified that he was advised by McKim prior to entering into an agreement with Bushong not to do so because the “feds lie and are not trustworthy.” This is apparently true as to Bushong.

{¶8} For all the reasons set forth hereinabove, the defendant’s motion to dismiss is not well taken and the same is denied.

Motion denied.