

[Cite as *State v. Dicks*, 2012-Ohio-2621.]

COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

STATE OF OHIO

Plaintiff-Appellee

-vs-

DAVID T. DICKS

Defendant-Appellant

JUDGES:

Hon. W. Scott Gwin, P.J.  
Hon. William B. Hoffman, J.  
Hon. John W. Wise, J.

Case No. CT2011-0059

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Muskingum County Court  
of Common Pleas, Case No. CR2011-0112

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

June 11, 2012

APPEARANCES:

For Plaintiff-Appellee

For Defendant-Appellant

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*Hoffman, J.*

{¶1} Defendant-appellant David T. Dicks appeals the October 4, 2011 Judgment Entry entered by the Muskingum County Court of Common Pleas which granted the Plaintiff-appellee state of Ohio's Motion to Amend the Indictment.

STATEMENT OF THE CASE<sup>1</sup>

{¶2} Appellant was indicted on 20 counts of gross sexual imposition, violations of R.C. 2907.05(A)(4), all involving the same victim. The case proceeded to trial by jury.

{¶3} At the close of the state's case, Appellant moved for acquittal pursuant to Crim. R. 29, arguing although the evidence may have been sufficient to support a certain nature of the charged offense, it was not sufficient to support the nature of the offense as charged in the Indictment.

{¶4} In response, the state moved to amend the Indictment to include additional language which comported to the evidence adduced at trial and denied Appellant's motion for acquittal. Appellant then requested the jury be discharged pursuant to Crim. R. 7D. Via Judgment Entry filed October 4, 2011, that request was granted and the jury was ordered dismissed without prejudice with a new trial to be scheduled.

{¶5} It is from that judgment entry Appellant prosecutes this appeal, assigning as error:

{¶6} "I. THE TRIAL COURT ERRED IN PERMITTING THE STATE OF OHIO TO AMEND ITS INDICTMENT AND DENYING THE DEFENDANT'S MOTION FOR

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<sup>1</sup> A rendition of the facts is unnecessary for our disposition of this appeal.

ACQUITTAL FOLLOWING THE CONCLUSION OF THE STATE OF OHIO'S CASE IN CHIEF AT TRIAL."

{¶7} Because Appellant is awaiting a new trial and has yet to be found guilty and/or sentenced, we find no final appealable order exists under R.C. 2505.02. As such, this Court is without jurisdiction and orders Appellant's appeal dismissed.

By: Hoffman, J.

Gwin, P.J. and

Wise, J. concur

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

s/ W. Scott Gwin  
HON. W. SCOTT GWIN

s/ John W. Wise  
HON. JOHN W. WISE

