

M



99298079

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

FILED

THE STATE OF OHIO
Plaintiff

2017 JUN 15 P 4: 28

Case No: CR-16-605802-A

Judge: MICHAEL J RUSSO

RUFUS JACKSON
Defendant

CLERK OF COURTS
CUYAHOGA COUNTY

INDICT: 2903.02 MURDER /FRM1 /FRM3
2903.02 MURDER /FRM1 /FRM3

JOURNAL ENTRY

HEARING HELD ON DEFENDANT'S MOTION TO DISMISS. COURT REPORTER LISA HROVAT PRESENT; ATTORNEY CHRISTOPHER SCHROEDER PRESENT FOR THE STATE, ATTORNEY THOMAS SHAUGHNESSY PRESENT FOR THE DEFENDANT. THE COURT HEARD ARGUMENT FROM THE PARTIES. MOTION TO DISMISS, FILED 05/25/2017, IS GRANTED. DEFENDANT IS RELEASED AS TO THIS CASE ONLY. DEFENDANT IS REMANDED TO FINISH HIS SENTENCE AS TO CASES CR-06-478104 AND CR-06-480135. OSJ.

06/15/2017
CPMR2 06/15/2017 10:59:18

Michael J Russo 6-15-17
Judge Signature Date

STATE OF OHIO)
) SS: IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY) FILED CASE NO. CR 605802-A

STATE OF OHIO 2017 JUN 15) P 4: 28
)
Plaintiff CLERK OF COURT JUDGMENT ENTRY
CUYAHOGA COUNTY)
vs.)
)
RUFUS JACKSON)
)
Defendant)

MICHAEL J. RUSSO, JUDGE:

This matter comes before the court on the motion to dismiss of Rufus Jackson filed on May 25, 2017 and the brief in opposition filed by the state of Ohio on June 6, 2017. An evidentiary hearing was held on June 15, 2017. For the following reasons, defendant's motion to dismiss is granted.

On March 3, 2006, Jackson shot 57-year-old Roy Moorer multiple times, resulting in Moorer's paralyzation from the waist down. On March 15, 2006, Jackson was indicted for two counts of felonious assault with one- and three-year firearm specifications in CR-06-478104. While awaiting the disposition of the case, Jackson was indicted for assault on a police officer and vandalism in CR-06-480135. On June 22, 2006 Jackson negotiated a plea to resolve both cases and pled guilty as follows: 1) In CR-06-478104 to one count of felonious assault and a three year firearm specification; and 2) in CR-06-480135 to attempted assault on a police officer. The state dismissed the remaining counts in exchange for the plea. On July 13, 2006, Jackson was sentenced to eleven-and-a-half years for the three crimes. Moorer died on February 8, 2016 due to complications from bed sores he received as a result of his paralysis.

On June 7, 2016, the grand jury indicted Jackson in this case on two counts of murder with firearm specifications for Moorer's death.

Jackson argues that after a negotiated plea to a lesser included offense has been accepted by the court, the state of Ohio may only indict a defendant for murder when the state expressly reserves the right to file additional charges at the time of the plea. *State v. Carpenter*, 68 Ohio St.3d 59 (1993); and, *State v. Dye*, 127 Ohio St.3d 357, 2010-Ohio-5728. The June 22, 2006 transcript of the plea agreement does not indicate that the state reserved such a right, and there is no other evidence regarding the plea agreement.

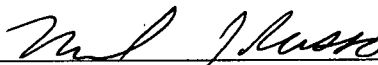
The state objects to Jackson's application of *Carpenter*, arguing that because this condition was never discussed by the parties, Jackson is essentially requesting that the court improperly enforce an implied term in the contract between the parties. Additionally, the state suggests that because there was no evidence that the victim was likely to die from his injuries at the time of the plea, the state should not be required to expressly have reserved its right to try Jackson for murder in the event of Moorer's death. Finally, the state argues that should the court determine that a breach of the plea agreement occurred, then the only remedies available are to allow Jackson to withdraw the plea or to order specific performance. The state adds that vacating the plea could benefit Jackson, because he could be freed on bond; in addition, if he is found not guilty at a murder trial, he would be able to sue the state and seek compensation for wrongful imprisonment.

The court is unable to disregard the binding case law of *Carpenter* and *Dye*, and therefore has no need to address the state's arguments regarding the potential benefits that Jackson could receive from being tried for murder. In this instance, the victim was severely

injured by Jackson during the commission of the felonious assault and it was not unlikely that he could die at a later time as a result of the gunshot wounds at issue in CR-06-478104. The state could have, but did not, expressly reserve the right to file additional charges against Jackson as a condition of the plea agreement in 2006. In accordance with *Carpenter and Dye*, the state cannot now bring against Jackson an additional charge of murder arising out of the shooting incident on March 3, 2006.

Jackson's motion to dismiss is granted.

IT IS SO ORDERED.



MICHAEL J. RUSSO, JUDGE

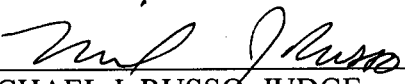
CERTIFICATE OF SERVICE

A copy of the foregoing **Judgment Entry** was sent by ordinary U.S. Mail this 15th

day of June, 2017 to:

Christopher D. Schroeder, Esq.
Maxwell M. Martin, Esq.
Assistant Prosecuting Attorneys
The Justice Center, 8th Floor
1200 Ontario Street
Cleveland, OH 44113

Thomas M. Shaughnessy, Esq.
11510 Buckeye Road
Cleveland, OH 44104
Attorney for Defendant



MICHAEL J. RUSSO, JUDGE