

# In the Indiana Supreme Court

State Of Indiana,  
Appellant(s),

v.

Jeffrey Tyree,  
Appellee(s).

Court of Appeals Case No.  
23A-CR-02153

Trial Court Case No.  
49D07-2207-F5-19170



## Published Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 12/17/2024.

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush

Chief Justice of Indiana

Rush, C.J., Massa, Goff, and Molter, JJ., concur.

Slaughter, J., dissents from the denial of transfer with separate opinion.

## **Slaughter, J., dissenting from the denial of transfer.**

I respectfully dissent from the Court's denial of transfer. I would grant transfer not because I dispute how the court of appeals decided the merits, but because the appellate panel never should have reached the merits. The State mooted its own appeal when it dismissed all criminal charges against the defendant, Jeffrey Tyree. Given the State's dismissal of criminal charges, the panel should have dismissed the State's appeal as moot.

### A

The State charged Tyree with one count of criminal confinement as a Level 5 felony and two counts of sexual battery as a Level 6 felony. To prepare his defense, Tyree sought to depose his alleged victim. After she ignored three subpoenas, Tyree moved to bar her from testifying at trial. The trial court granted Tyree's motion over the State's objection. Apparently concluding that the exclusion of victim testimony was fatal to its case, the State appealed the trial court's order. By statute, the State can appeal as of right "[f]rom an order granting a motion to suppress evidence, if the ultimate effect of the order is to preclude further prosecution of one (1) or more counts of an information or indictment." Ind. Code § 35-38-4-2(a)(5).

On appeal, Tyree sought to dismiss the appeal on the ground that the State was appealing from what he called a discovery sanction, not from "an order granting a motion to suppress evidence." The court of appeals disagreed. It denied the motion to dismiss and, on the merits, reversed the trial court, holding that the court abused its discretion in granting Tyree's motion to exclude the testimony. *State v. Tyree*, 237 N.E.3d 685, 687 (Ind. Ct. App. 2024). Tyree seeks transfer.

### B

I agree with Tyree that transfer is warranted but not for the reason he asserts. Unlike Tyree, I take no issue with the panel's broad construction of section 2(a)(5). As the panel held, how the court denominates its order does not matter. What counts is not the order's label but its substance. The substance of the disputed order is, as the panel notes, to "prevent[] the State from presenting evidence necessary to prove its case." *Id.* at 691

(citation omitted). This effect is sufficient to authorize a state’s appeal under section 2(a)(5).

If this were the only issue before us, I would join my colleagues in denying transfer. But it is not. After the trial court excluded the witness’s testimony, the State appealed, presumably because it believed “the ultimate effect of the order [would be] to preclude further prosecution of” Tyree. I.C. § 35-38-4-2(a)(5). So far, so good. But the State did more than appeal the adverse order. It took the further—and fatal—step of dismissing all criminal charges against Tyree. This act rendered the appeal moot. “A case becomes moot ‘when the controversy at issue has been ended, settled, or otherwise disposed of so that the court can give the parties no effective relief.’” *Spells v. State*, 225 N.E.3d 767, 777 (Ind. 2024) (quoting *E.F. v. St. Vincent Hosp. & Health Care Ctr., Inc.*, 188 N.E.3d 464, 466 (Ind. 2022)). By the State’s own hand, there is no longer “effective relief” a court can provide.

The irony in the State’s approach is that its dismissal was presumably meant to show that the disputed order fulfilled the statutory prerequisite of “preclud[ing] further prosecution” of Tyree. I.C. § 35-38-4-2(a)(5). In fact, what precludes further prosecution of Tyree is not the trial court’s order but the State’s dismissal of all charges against him. This problem is reflected in the panel’s decree reversing the trial court’s order and remanding “for further proceedings.” *Tyree*, 237 N.E.3d at 693. What further proceedings? There are no pending charges against Tyree, so preventing a proposed witness from testifying against him means nothing.

For future reference, the State need not—and should not—dismiss criminal charges to bring an appeal under section 2(a)(5). I am content to accept a representation by the State that it must appeal an adverse ruling to proceed with a criminal prosecution. “[B]y initiating an appeal from a motion to suppress evidence, the State necessarily represents to the trial and appellate courts that it cannot prosecute the defendant without the suppressed evidence.” *State v. Aynes*, 715 N.E.2d 945, 948 (Ind. Ct. App. 1999); see also *State v. Wroe*, 16 N.E.3d 462, 465 (Ind. Ct. App. 2014) (reasoning “[t]he strategic decision of whether to pursue a prosecution

belongs to the attorneys representing the State, and it is not within our purview to second-guess that determination”).

Section 2(a)(5) supplies all the authority the State needs to appeal from an order suppressing evidence and essentially barring further prosecution. Not content to rely on this authority, the State took the further step of dismissing all criminal charges against Tyree, leaving a shell of a case against him in the trial court. Rather than reach the merits of the State’s appeal, the appellate panel should have dismissed the appeal as moot.

\* \* \*

For these reasons, I would grant transfer and respectfully dissent from the Court’s order denying it.