No.

In The Supreme Court of the United States

CHRISTOPHER GIES,

Petitioner,

v.

THE STATE OF OHIO,

Respondent.

On Petition For A Writ Of Certiorari to
the Ohio First Appellate District, Hamilton County Court of Appeals

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-180597 TRIAL NO. B-1802799-A
Plaintiff-Appellee,	:	
vs.	:	*JUDGMENT ENTRY.*
CHRISTOPHER GIES,	:	
Defendant-Appellant.	:	

This cause was heard upon the appeal, the record, the briefs, and arguments.

The judgment of the trial court is affirmed for the reasons set forth in the Opinion filed this date.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs are taxed under App. R. 24.

The court further orders that 1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and 2) the mandate be sent to the trial court for execution under App. R. 27.

To The Clerk:

Enter upon the Journal of the Court on October 16, 2019 per Order of the Court.

By: _____
Presiding Judge

ENTERED
OCT 16 2019

D126928153

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-180597 TRIAL NO. B-1802799-A
Plaintiff-Appellee,	:	
vs.	:	*OPINION.*
CHRISTOPHER GIES,	:	
Defendant-Appellant.	:	

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: October 16, 2019

Joseph T. Deters, Hamilton County Prosecuting Attorney, and *Ronald W. Springman,* Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Raymond T. Faller, Hamilton County Public Defender, and *David Hoffmann,* Assistant Public Defender, for Defendant-Appellant.

BERGERON, Judge.

{¶1} The roots of this case stretch back over a decade, to defendant-appellant Christopher Gies's 2007 misdemeanor conviction that resulted in a community control sentence. Had he reported, we probably wouldn't be considering this question today, but he instead absconded, resulting in an open arrest warrant. That set the stage for his 2018 arrest, and when officers finally apprehended him, they discovered a house full of contraband. Armed with that evidence, the state convicted him of much more serious drug and weapons charges. Mr. Gies now appeals, seeking to unravel the conviction based on the alleged improper seizure of the evidence (the officers had no search warrant). For the reasons discussed below, we affirm, finding the search and seizures appropriate under the plain view exception and the good faith exception.

I.

{¶2} Tipped off by an informant that Mr. Gies might be selling drugs from his residence, officers discovered a long-dormant arrest warrant related to his refusal to report to probation in 2007. Two probation officers, Officers Schad and Miyagawa, descended upon the residence to execute the arrest warrant, accompanied by Cincinnati Police Officer Butler. Upon arrival, the officers confirmed with someone standing outside that Mr. Gies was indeed in the house. They then called out through the screen door for him, announced their presence, and entered the residence into the kitchen. Drug paraphernalia and weapons scattered around the kitchen greeted them. Mr. Gies then ascended from the basement and the probation officers promptly arrested him, taking him outside the house to be secured by Officer Butler. Upon searching Mr. Gies, the officers discovered over $4,500 in cash.

{¶3} Based on the weapons and drug paraphernalia viewed in plain sight, the officers asked Mr. Gies if anyone else was in the house. Nodding towards the front of the

house, he indicated that his girlfriend, Allison Vilas (who also had a warrant out for her arrest) was in "our bedroom." Leaving Mr. Gies outside, the officers re-entered the house to arrest Ms. Vilas. On their way to the bedroom, the officers observed yet more drug paraphernalia, including drug powder lines and residue, credit cards, and straws strewn across a coffee table. The officers then arrived at the bedroom, finding Ms. Vilas, and once again, viewing additional evidence in plain view—more contraband, weapons, and drug paraphernalia.

{¶4} At this point, after arresting Ms. Vilas, the probation officers and the police searched the entire house (without a warrant). This search uncovered more of the same, multiple firearms and more contraband. In the wake of Mr. Gies's arrest and the search of his residence, the state indicted Mr. Gies for nine counts of various drug and firearm-related offenses. Subsequently, Mr. Gies moved to suppress all items seized from the residence, arguing that the probation officers conducted a warrantless search since, by the fortuity of his failure to report, he never received written notice of the possibility of warrantless searches that a defendant sentenced to community control is supposed to receive pursuant to R.C. 2951.02(A). Nevertheless, the trial court deemed the search permissible, denied the motion to suppress, and the case proceeded to a jury trial.

{¶5} Not surprisingly, the state's case at trial focused on the items found as a result of Mr. Gies's arrest and the search of his residence, including, amongst other evidence, various bags of drugs—cocaine, methamphetamine, amphetamine pills—stacks of empty plastic baggies, a digital scale, a notebook detailing drug prices, the $4,500 found on Mr. Gies, and multiple firearms. Probation Officer Miyagawa testified as to Mr. Gies's and Ms. Vilas's arrests, the search of the home, and the drug paraphernalia, weapons, and contraband observed in plain view. Additionally, Officer Butler described the firearms

discovered during the search and the post-seizure test firing he conducted. In Mr. Gies's defense, he maintained that the residence searched was not his, claiming he was only a mere visitor, and thus many of the items listed above could not be connected to him. His mother testified to that effect at trial, asserting that he lived with her in Kentucky at the time of the search.

{¶6} Ultimately, the jury acquitted Mr. Gies of trafficking in cocaine and one count of aggravated trafficking, but found him guilty of possession of cocaine, two counts of aggravated trafficking in drugs (one count including a major drug offender specification), three counts of aggravated possession of drugs, and having weapons while under a disability. Accordingly, the court sentenced him to 22 years in prison. From these convictions, Mr. Gies now raises two assignments of error, asserting that the trial court erred in denying his motion to suppress and challenging the weight and sufficiency of the evidence supporting his convictions.

II.

{¶7} In challenging the trial court's denial of his motion to suppress, Mr. Gies targets the reasonableness of the probation officers' search of his residence. "Appellate review of a motion to suppress presents a mixed question of law and fact." *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, 797 N.E.2d 71, ¶ 8. We defer to the trial court's factual findings if they are supported by competent and credible evidence, but we review de novo the court's application of the law to those facts. *Id.*

{¶8} We begin with the framework of the Fourth Amendment, which protects individuals against "unreasonable searches and seizures." With nearly identical language, Article 1, Section 14 of the Ohio Constitution affords these same protections. *State v. Hoffman*, 141 Ohio St.3d 428, 2014-Ohio-4795, 25 N.E.3d 993, ¶ 11 ("[W]e have interpreted

Article I, Section 14 as affording the same protection as the Fourth Amendment."). And like so many courts before us, we recognize that the "touchstone of the Fourth Amendment is reasonableness." *State v. Leak*, 145 Ohio St.3d 165, 2016-Ohio-154, 47 N.E.3d 821, ¶ 14, quoting *Florida v. Jimeno*, 500 U.S. 248, 250, 111 S.Ct. 1801, 114 L.Ed.2d 297 (1991). In evaluating the reasonableness of a search and seizure, we review the facts and circumstances of each case, all the while recognizing reasonableness is "measured in objective terms by examining the totality of the circumstances." *Id.*, quoting *Ohio v. Robinette,* 519 U.S. 33, 39, 117 S.Ct. 417, 136 L.Ed.2d 347 (1996). Generally, under the Fourth Amendment, warrantless searches are per se unreasonable, triggering the applicability of the exclusionary rule. *State v. Adams*, 144 Ohio St.3d 429, 2015-Ohio-3954, 45 N.E.3d 127, ¶ 181, citing *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967). Yet certain well-delineated exceptions exist, a few of which are pertinent to our review today.

{¶9} Notably, Mr. Gies's motion to suppress focuses on the controlled substances and firearms seized as a result of the probation officers' search. While Mr. Gies does not contest the validity of the arrest warrant, he insists that the officers did not have a right under R.C. 2951.02(A) (discussed more in-depth below) to search his home nor did the officers' search fall within any of the exceptions to the warrant requirement. But we are not persuaded.

{¶10} With respect to the plain view exception, officers may seize evidence in plain view during a lawful search if (1) the seizing officer is lawfully located in a place from which the evidence can be plainly viewed; (2) the seizing officer has a lawful right of access to the object itself; and (3) the object's incriminating character is "immediately apparent." *Horton v. California*, 496 U.S. 128, 136-137, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990); *State v.*

Buzzard, 112 Ohio St.3d 451, 2007-Ohio-373, 860 N.E.2d 1006, ¶ 16 ("[I]f a police officer is lawfully on a person's property and observes objects in plain or open view, no warrant is required to look at them."). Generally, we must be mindful in our application of this exception to ensure that it does not swallow the rule. Or, as the Supreme Court put it, " 'the 'plain view' doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.' " *Horton* at 136, quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 466, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971).

{¶11} With this backdrop in mind, we now turn to our plain view analysis. As to the first requirement, the probation officers had a right to be in Mr. Gies's residence, properly executing the arrest warrant for him, and later for Ms. Vilas. *See State v. Worley*, 11th Dist. Trumbull No. 2001-T-0048, 2002-Ohio-4516, ¶ 195 ("[I]t is clear from the record that the police officers * * * had a right to be in the residence as they were seeking to arrest appellant pursuant to an arrest warrant for grand theft of a motor vehicle."). Indeed, Mr. Gies does not quibble with this point. From the kitchen, where the officers executed the arrest warrant for Mr. Gies, through the living room, and all the way to the back bedroom where the officers arrested Ms. Vilas, the officers observed a parade of drug paraphernalia, weapons, and contraband. And thus not only were the officers lawfully present with a right to access the many pieces of contraband strewn throughout the house, but the incriminating character of those objects leapt out. Therefore, the evidence in plain view as the officers effectuated both arrests fits comfortably inside the plain view exception.

{¶12} While Mr. Gies is correct that not all relevant contraband and firearms seized fall within the purview of the plain view exception, nevertheless, the good faith exception to the exclusionary rule saves the remaining evidence seized (although the demarcation between these two categories of evidence is not altogether clear from the record). Under

this doctrine, despite the unlawful seizure of evidence, when "an officer acts with an objectively reasonable, good-faith belief that his or her conduct is lawful, the deterrence rationale for the exclusionary rule loses force," and thus does not support the exclusion of the unlawfully seized evidence. *State v. Banks-Harvey*, 152 Ohio St.3d 368, 2018-Ohio-201, 96 N.E.3d 262, ¶ 33. As pertinent to our case, the good faith exception may apply when an officer conducts an unlawful search or seizure laboring under a mistake of law. *State v. Stadelman*, 1st Dist. Hamilton No. C-130138, 2013-Ohio-5035, ¶ 10 (holding that because the officer had a good faith belief that the defendant's turn violated the relevant traffic law, the court properly denied his motion to suppress despite the officer's mistake of law); *State v. Gunzenhauser*, 5th Dist. Ashland No. 09-CA-21, 2010-Ohio-761, ¶ 16 ("Under limited circumstances, courts have held that the exclusionary rule may be avoided with respect to evidence obtained in a stop based on conduct that a police officer reasonably, but mistakenly, believes is a violation of the law."); *Heien v. North Carolina*, 574 U.S. 54, 135 S.Ct. 530, 540, 190 L.Ed.2d 475 (2014) (denial of defendant's motion to suppress was proper because officer's mistaken belief that the law required two operating headlights, instead of one, was objectively reasonable based on the circumstances).

{¶13} "To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection.' " *Heien* at 536 quoting *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949). However, " '[b]ecause courts must be cautious in overlooking a police officer's mistakes of law, the mistake must be objectively reasonable.' " *State v. Reedy*, 5th Dist. Perry No. 12-CA-1, 2012-Ohio-4899, ¶ 18, quoting *Gunzenhauser* at ¶ 16; *see Heien* at 539 ("The Fourth Amendment tolerates only *reasonable* mistakes, and those mistakes—whether of fact or of law—must be *objectively* reasonable.").

(Emphasis sic.) To determine this, Ohio appellate courts, including us, review first the relevant statute the officer mistakenly interpreted to evaluate any vagueness or ambiguity inherent in the statute, or if it "requires judicial construction to determine its scope of meaning." *Stadelman* at ¶ 4, quoting *Reedy* at ¶ 19.

{¶14} Accordingly, we turn our attention to R.C. 2951.02(A), which the probation officers pointed to in order to justify the search, which provides:

> [P]robation officers * * * may search, with or without a warrant * * * the place of residence of the offender * * * in which the offender has a right * * * if the probation officers have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of the misdemeanor offender's community control sanction[.] * * * The court that places the misdemeanor offender under a community control sanction * * * shall provide the offender with a written notice that informs the offender that authorized probation officers * * * may conduct those types of searches during the period of community control sanction[.]

Because Mr. Gies never reported to probation back in 2007, the court issued a warrant for his failure to report, thereby sufficiently tolling the probationary period. *See* R.C. 2951.07 ("If the offender under community control absconds * * * the period of community control ceases to run until the time that the offender is brought before the court for its further action."). He thus qualifies as an "offender" within the meaning of this statute.

{¶15} But, with that premise in mind, the statute does not definitely resolve how the first and final sentences are to interrelate—in other words, is the right in the first sentence

conditioned on the notice in the final? No Ohio court has yet shed light on this question.[1] And we decline to answer it today because the play in the joints of the statute gives enough latitude to the officers to render their search within the ambit of the good faith exception. As in *Stadelman* and *Reedy*, the statute at issue in this case "is not free from ambiguity." *Reedy* at ¶ 19.

{¶16} We thus find the officers' belief that the statute enabled them to execute a warrantless search sufficiently reasonable to trigger the protection of the good faith exception on the facts at hand, even were we to ultimately conclude that their reading of the statute was flawed. *See United States v. Knights*, 534 U.S. 112, 119, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001), quoting *Griffin v. Wisconsin*, 483 U.S. 868, 874, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987) ("Inherent in the very nature of probation is that probationers 'do not enjoy the absolute liberty to which every citizen is entitled.' ").

{¶17} Therefore, because the probation officers relied in good faith upon R.C. 2951.02(A) in conducting their warrantless search of Mr. Gies's residence, the exclusionary rule does not apply to the remaining evidence beyond the scope of the plain view exception. Accordingly, we cannot say the trial court erred in denying Mr. Gies's motion to suppress under these particular circumstances, and we accordingly overrule Mr. Gies's first assignment of error.

III.

{¶18} We next address Mr. Gies's challenge to the weight and sufficiency of the evidence supporting his convictions. In reviewing the sufficiency of the evidence to support

[1] Ohio courts have interpreted the first sentence, but they have not wrestled with the impact of the final on the first. *See State v. Nelson*, 1st Dist. Hamilton No. C-150650, 2016-Ohio-5344, ¶ 10 ("R.C. 2951.02(A) authorizes a probation officer to search the probationer and his residence if the probation officer has 'reasonable grounds to believe that the offender is not abiding by the law[.]' "); *State v. Helmbright*, 2013-Ohio-1143, 990 N.E.2d 154, ¶ 20 (10th Dist.) ("Thus, a warrantless search, pursuant to R.C. 2951.02(A), complies with the Fourth Amendment if the officer who conducts the search possesses 'reasonable grounds' to believe that the probationer has failed to comply with the terms of their probation.").

a criminal conviction, "the question is whether after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found all the essential elements of the crime beyond a reasonable doubt." *State v. Pettus*, 1st Dist. Hamilton No. C-170712, 2019-Ohio-2023, ¶ 52, citing *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus. On the other hand, when reviewing the weight of the evidence, we must "examine the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether, in resolving conflicts in the evidence, the court clearly lost its way and created a manifest miscarriage of justice." *Pettus* at ¶ 52, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997).

{¶19} As to the sufficiency argument, Mr. Gies challenges both his conviction for having weapons while under a disability pursuant to R.C. 2923.13(A)(2) and his aggravated trafficking conviction pursuant to R.C. 2925.03(A)(2). Turning to the former, R.C. 2923.13(A)(2) requires that the offender have a firearm, as defined by R.C. 2923.11(B), and that the firearm be "operable," meaning "capable of expelling or propelling one or more projectiles by the action of an explosive or combustible propellant." *See* R.C. 2923.11(B)(1). In determining this capability, "the trier of fact may rely upon circumstantial evidence, including, but not limited to, the representations and actions of the individual exercising control over the firearm." *See* R.C. 2923.11(B)(2). Importantly, "[e]vidence of postseizure test firing may prove operability of a firearm." *State v. Jackson*, 169 Ohio App.3d 440, 2006-Ohio-6059, 863 N.E.2d 223, ¶ 28 (6th Dist.).

{¶20} At trial, contrary to Mr. Gies's assertions, the state offered testimony concerning the firearms found at the residence and their capability of expelling a projectile. Officer Butler not only thoroughly explained his procedure for test-firing the guns, but also

explicitly testified that, based off his test firing, the guns were indeed operable. As a result, sufficient evidence existed to enable the jury to find beyond a reasonable doubt that the discovered guns qualified as "operable" firearms within the meaning of the statute.

{¶21} Mr. Gies's sufficiency argument as to his aggravated trafficking in drugs conviction also lacks merit. In relevant part, R.C. 2925.03(A)(2) prohibits a person from knowingly "prepar[ing] for distribution, or distribut[ing] a controlled substance * * * when the offender knows or has reasonable cause to believe that the controlled substance * * * is intended for sale or resale by the offender or another person." Relying on *State v. Edwards*, 8th Dist. Cuyahoga No. 91841, 2009-Ohio-4365, Mr. Gies suggests the state did not provide sufficient evidence that he packaged the baggie of 24 amphetamine tablets (found in the bedroom nightstand). In *Edwards,* the court found insufficient evidence of trafficking because the state, to show the defendant intended to sell the drugs, only provided evidence of a scale and baggies found in the house, failing to provide sufficient evidence that the defendant, and not the other cohabitant of the house, was the trafficker. *Id.* at ¶ 22.

{¶22} Contrastingly, the state here provided much more than a scale and some empty baggies. At trial, the officers testified about the items found in the bedroom: the bag of amphetamine tablets discovered with other large bags of narcotics all similarly packaged, the digital scale, the notebook listing the price for a pound of methamphetamine that correlated with the amount of cash (over $4,500) found on Mr. Gies during arrest, and stacks of additional empty baggies—all located near two loaded guns. Notably, the officers discovered all these items in the bedroom Mr. Gies indicated was "our bedroom" in response to the officer's question about Ms. Vilas's location. The same bedroom that had a sign on the wall that read "Chris" and a mirror with "Allison loves Chris" written on it. And

thus, based on the above evidence, the jury could find beyond a reasonable doubt that Mr. Gies prepared the amphetamine tablets with intent to sell them.

{¶23} As to his weight of the evidence challenge, Mr. Gies asserts more of the same, suggesting that he was merely a visitor at the residence and that the state failed to show the drugs were his. Yet, based upon the evidence already discussed above—his reference to "our bedroom," his first name written on the wall, the drugs and firearms found within his bedroom correlating to the cash found on his person—and in light of the entire record and credibility of the witnesses, we cannot say that the fact finder clearly lost its way and created a manifest miscarriage of justice. Therefore, we must overrule Mr. Gies's second assignment of error.

IV.

{¶24} For the foregoing reasons, we find that Mr. Gies's two assignments of error lack merit and are accordingly overruled. The judgment of the trial court is affirmed.

Judgment affirmed.

MYERS, P. J., and **WINKLER, J.**, concur.

Please note:

The court has recorded its entry on the date of the release of this opinion

The Supreme Court of Ohio

State of Ohio

v.

Christopher Gies

Case No. 2019-1654

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Hamilton County Court of Appeals; No. C-180597)

Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at http://www.supremecourt.ohio.gov/ROD/docs/

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

JUDGE ROBERT P. RUEHLMAN
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

ENTERED:
AUG 29 2018

STATE OF OHIO

Plaintiff,

vs.

CHRISTOPHER GIES

AND

ERIC SESTER

Defendants.

CASE NO. A1802799 A-B

JUDGE ROBERT P. RUEHLMAN

ENTRY OVERRULING DEFENDANT'S MOTION TO SUPPRESS

This matter is before the Court on Defendants' motion to suppress. The Court, having read the submitted briefs and in full consideration of the arguments finds said motions not well taken and **DENIES** the same. The evidence seized in the aforementioned case is hereby admissible.

IT IS SO ORDERED.

_____
Date

_____
JUDGE ROBERT P. RUEHLMAN

D123028914

THE STATE OF OHIO, HAMILTON COUNTY
COURT OF COMMON PLEAS

ENTERED
OCT 18 2018

date: **10/11/2018**
code: **GJEI**
judge: **141**

Judge: **ROBERT P RUEHLMAN**

NO: **B 1802799-A**

STATE OF OHIO
VS.
CHRISTOPHER GIES

JUDGMENT ENTRY: SENTENCE: INCARCERATION

Defendant was present in open Court with Counsel **DANIEL E WHITELEY JR** on the **11th** day of **October 2018** for sentence.
The court informed the defendant that, as the defendant well knew, after defendant entering a plea of not guilty and after trial by jury, the defendant has been found guilty of the offense(s) of:

count 2: POSSESSION OF COCAINE, 2925-11A/ORCN,F2

count 3: AGGRAVATED TRAFFICKING IN DRUGS, 2925-03A2/ORCN,F4

count 5: AGGRAVATED TRAFFICKING IN DRUGS WITH SPECIFICATION #1, 2925-03A2/ORCN,F1

count 8: AGGRAVATED POSSESSION OF DRUGS, 2925-11A/ORCN,F5

count 9: HAVING WEAPONS WHILE UNDER DISABILITY, 2923-13A2/ORCN,F3

count 1: TRAFFICKING IN COCAINE, 2925-03A2/ORCN,F2, JUDGMENT ENTRY OF ACQUITTAL

count 4: AGGRAVATED POSSESSION OF DRUGS, 2925-11A/ORCN,F5, MERGED WITH COUNT #3 FOR THE PURPOSE OF SENTENCING.

count 6: AGGRAVATED POSSESSION OF DRUGS, 2925-11A/ORCN,F1, MERGED WITH COUNT #5 FOR THE PURPOSE OF SENTENCING.

count 7: AGGRAVATED TRAFFICKING IN DRUGS, 2925-03A2/ORCN,F4, JUDGMENT ENTRY OF ACQUITTAL

The Court afforded defendant's counsel an opportunity to speak on behalf of the defendant. The Court addressed the defendant personally and asked if the defendant wished to make a statement in the defendant's behalf, or present any information in mitigation of punishment.

D123456434

VERIFY RECORD

APPENDIX D **A-16**

date: 10/11/2018
code: GJEI
judge: 141

Defendant is sentenced to be imprisoned as follows:
count 2: CONFINEMENT: 8 Yrs DEPARTMENT OF CORRECTIONS
count 3: CONFINEMENT: 18 Mos DEPARTMENT OF CORRECTIONS
count 5: CONFINEMENT: 11 Yrs DEPARTMENT OF CORRECTIONS
count 8: CONFINEMENT: 1 Yrs DEPARTMENT OF CORRECTIONS
count 9: CONFINEMENT: 3 Yrs DEPARTMENT OF CORRECTIONS

THE SENTENCES IN COUNTS #2, #5 AND #9 ARE TO BE SERVED CONSECUTIVELY TO EACH OTHER.

THE SENTENCES IN COUNTS #3 AND #8 ARE TO BE SERVED CONCURRENTLY WITH EACH OTHER AND TO COUNTS #2, #5 AND #9.

COUNT #4 IS MERGED WITH COUNT #3.

COUNT #6 IS MERGED WITH COUNT #5.

THE TOTAL SENTENCE IS TWENTY TWO (22) YEARS IN THE DEPARTMENT OF CORRECTIONS.

THE DEFENDANT IS TO RECEIVE CREDIT FOR ONE HUNDRED FIFTY (150) DAYS TIME SERVED.

MANDATORY FINES WAIVED ON COUNTS #2 AND #5.

COSTS AND FINES REMITTED.

THE INDICTMENT CONTAINED A FORFEITURE UNDER 2941.1417, STATING THAT DEFENDANT POSSESSED A M1800726 USED IN THE COMMISSION OF COUNT #9. THE DEFENDANT PLED GUILTY TO COUNTS #9 TO THE FORFEITURE SPECIFICATIONS. THE STATE HAS COMPLIED WITH THE STATUTORY REQUIREMENTS FOR FORFEITURE OF THE M1800726 THE OFFENDER EXPRESSLY CONSENTED TO FORFEITURE AND WAIVED ANY ISSUE AS TO PROPORTIONALITY. THE COURT HEREBY ENTERS ITS FINDING OF FORFEITURE. ACCORDINGLY, THE OFFENDER SHALL FORFEIT TO THE STATE ALL OF THE OFFENDER'S INTEREST IN THE M1800726 WHICH SHALL BE FORFEITED TO THE STATE AND DESTROYED.

With respect to the imposition of consecutive sentences, the Court hereby finds that consecutive sentences are necessary to protect public and to punish the Defendant,

and are not disproportionate to seriousness of the Defendant's conduct and the danger the Defendant poses to the public.

Further, specifically, the Court finds that at least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the Defendant's conduct.

The Defendant's criminal history shows a need to protect the public from future crime by the Defendant.

AS TO COUNTS #3, #8 AND #9 THE DEFENDANT HAS BEEN ADVISED THE HE/SHE MAY BE ELIGIBLE TO EARN DAYS OF CREDIT UNDER THE CIRCUMSTANCES SPECIFIED IN R.C. 2967-193; THE DEFENDANT WAS FURTHER ADVISED THAT DAYS OF CREDIT ARE NOT AUTOMATIC, BUT MUST BE EARNED IN THE MANNER SPECIFIED IN THAT SECTION.

AS PART OF THE SENTENCE IN THIS CASE IN COUNT #5, THE DEFENDANT SHALL BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL, FOR FIVE (5) YEARS.

AS PART OF THE SENTENCE IN THIS CASE IN COUNT #2, THE DEFENDANT SHALL BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL, FOR THREE (3) YEARS.

AS PART OF THE SENTENCE IN THIS CASE IN COUNTS #3, #8 AND #9, THE DEFENDANT MAY BE SUPERVISED BY THE ADULT PAROLE AUTHORITY AFTER DEFENDANT LEAVES PRISON, WHICH IS REFERRED TO AS POST-RELEASE CONTROL, FOR UP TO THREE (3) YEARS AS DETERMINED BY THE ADULT PAROLE AUTHORITY.

IF THE DEFENDANT VIOLATES POST-RELEASE CONTROL SUPERVISION OR ANY CONDITION THEREOF, THE ADULT PAROLE AUTHORITY MAY IMPOSE A PRISON TERM, AS PART OF THE SENTENCE, OF UP TO NINE (9) MONTHS, WITH A MAXIMUM FOR REPEATED VIOLATIONS OF FIFTY PERCENT (50%) OF THE STATED PRISON TERM. IF THE DEFENDANT COMMITS A NEW FELONY WHILE SUBJECT TO POST-RELEASE CONTROL, THE DEFENDANT MAY BE SENT TO PRISON FOR THE REMAINING POST-RELEASE CONTROL PERIOD OR TWELVE (12) MONTHS, WHICHEVER IS GREATER. THIS PRISON TERM SHALL BE

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SERVED CONSECUTIVELY TO ANY PRISON TERM IMPOSED FOR THE NEW FELONY OF WHICH THE DEFENDANT IS CONVICTED.

FURTHER, IN ACCORDANCE WITH RC 2901.07, THE DEFENDANT IS REQUIRED TO SUBMIT A DNA SPECIMEN WHICH WILL BE COLLECTED AT THE PRISON, JAIL, CORRECTIONAL OR DETENTION FACILITY TO WHICH THE DEFENDANT HAS BEEN SENTENCED. IF THE SENTENCE INCLUDES ANY PERIOD OF PROBATION OR COMMUNITY CONTROL, OR IF AT ANY TIME THE DEFENDANT IS ON PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, THE DEFENDANT WILL BE REQUIRED, AS A CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL, TO SUBMIT A DNA SPECIMEN TO THE PROBATION DEPARTMENT, ADULT PAROLE AUTHORITY, OR OTHER AUTHORITY AS DESIGNATED BY LAW. IF THE DEFENDANT FAILS OR REFUSES TO SUBMIT TO THE REQUIRED DNA SPECIMEN COLLECTION PROCEDURE, THE DEFENDANT WILL BE SUBJECT TO ARREST AND PUNISHMENT FOR VIOLATING THIS CONDITION OF PROBATION, COMMUNITY CONTROL, PAROLE, TRANSITIONAL CONTROL OR POST-RELEASE CONTROL.

Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2951. Probation (Refs & Annos)

R.C. § 2951.02

2951.02 Supervision of community control or nonresidential sanction; community service work; ignition interlock devices

Effective: April 6, 2017
Currentness

(A) During the period of a misdemeanor offender's community control sanction or during the period of a felony offender's nonresidential sanction, authorized probation officers who are engaged within the scope of their supervisory duties or responsibilities may search, with or without a warrant, the person of the offender, the place of residence of the offender, and a motor vehicle, another item of tangible or intangible personal property, or other real property in which the offender has a right, title, or interest or for which the offender has the express or implied permission of a person with a right, title, or interest to use, occupy, or possess if the probation officers have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of the misdemeanor offender's community control sanction or the conditions of the felony offender's nonresidential sanction. If a felony offender who is sentenced to a nonresidential sanction is under the general control and supervision of the adult parole authority, as described in division (A)(2)(a) of section 2929.15 of the Revised Code, adult parole authority field officers with supervisory responsibilities over the felony offender shall have the same search authority relative to the felony offender during the period of the sanction that is described under this division for probation officers. The court that places the misdemeanor offender under a community control sanction pursuant to section 2929.25 of the Revised Code or that sentences the felony offender to a nonresidential sanction pursuant to section 2929.17 of the Revised Code shall provide the offender with a written notice that informs the offender that authorized probation officers or adult parole authority field officers with supervisory responsibilities over the offender who are engaged within the scope of their supervisory duties or responsibilities may conduct those types of searches during the period of community control sanction or the nonresidential sanction if they have reasonable grounds to believe that the offender is not abiding by the law or otherwise is not complying with the conditions of the offender's community control sanction or nonresidential sanction.

(B) If an offender is convicted of or pleads guilty to a misdemeanor, the court may require the offender, as a condition of the offender's sentence of a community control sanction, to perform supervised community service work in accordance with this division. If an offender is convicted of or pleads guilty to a felony, the court, pursuant to sections 2929.15 and 2929.17 of the Revised Code, may impose a sanction that requires the offender to perform supervised community service work in accordance with this division. The supervised community service work shall be under the authority of health districts, park districts, counties, municipal corporations, townships, other political subdivisions of the state, or agencies of the state or any of its political subdivisions, or under the authority of charitable organizations that render services to the community or its citizens, in accordance with this division. The court may require an offender who is ordered to perform the work to pay to it a reasonable fee to cover the costs of the offender's participation in the work, including, but not limited to, the costs of procuring a policy or policies of liability insurance to cover the period during which the offender will perform the work.

A court may permit any offender convicted of a felony or a misdemeanor to satisfy the payment of a fine imposed for the offense pursuant to section 2929.18 or 2929.28 of the Revised Code by performing supervised community service work as described in this division if the offender requests an opportunity to satisfy the payment by this means and if the court determines that the offender is financially unable to pay the fine.

After imposing a term of community service, the court may modify the sentence to authorize a reasonable contribution to the appropriate general fund as provided in division (B) of section 2929.27 of the Revised Code.

The supervised community service work that may be imposed under this division shall be subject to the following limitations:

(1) The court shall fix the period of the work and, if necessary, shall distribute it over weekends or over other appropriate times that will allow the offender to continue at the offender's occupation or to care for the offender's family. The period of the work as fixed by the court shall not exceed in the aggregate the number of hours of community service imposed by the court pursuant to section 2929.17 or 2929.27 of the Revised Code.

(2) An agency, political subdivision, or charitable organization must agree to accept the offender for the work before the court requires the offender to perform the work for the entity. A court shall not require an offender to perform supervised community service work for an agency, political subdivision, or charitable organization at a location that is an unreasonable distance from the offender's residence or domicile, unless the offender is provided with transportation to the location where the work is to be performed.

(3) A court may enter into an agreement with a county department of job and family services for the management, placement, and supervision of offenders eligible for community service work in work activities, developmental activities, and alternative work activities under sections 5107.40 to 5107.69 of the Revised Code. If a court and a county department of job and family services have entered into an agreement of that nature, the clerk of that court is authorized to pay directly to the county department all or a portion of the fees collected by the court pursuant to this division in accordance with the terms of its agreement.

(4) Community service work that a court requires under this division shall be supervised by an official of the agency, political subdivision, or charitable organization for which the work is performed or by a person designated by the agency, political subdivision, or charitable organization. The official or designated person shall be qualified for the supervision by education, training, or experience, and periodically shall report, in writing, to the court and to the offender's probation officer concerning the conduct of the offender in performing the work.

(5) The total of any period of supervised community service work imposed on an offender under division (B) of this section plus the period of all other sanctions imposed pursuant to sections 2929.15, 2929.16, 2929.17, and 2929.18 of the Revised Code for a felony, or pursuant to sections 2929.25, 2929.26, 2929.27, and 2929.28 of the Revised Code for a misdemeanor, shall not exceed five years.

(C)(1) If an offender is convicted of a violation of section 4511.19 of the Revised Code or a substantially similar municipal ordinance, the court may require, as a condition of a community control sanction, that the offender operate only a motor vehicle equipped with an ignition interlock device that is certified pursuant to section 4510.43 of the Revised Code.

(2) If a court requires an offender, as a condition of a community control sanction pursuant to division (C)(1) of this section, to operate only a motor vehicle equipped with an ignition interlock device that is certified pursuant to section 4510.43 of the Revised Code, the offender immediately shall surrender the offender's driver's or commercial driver's license or permit to the court. Upon the receipt of the offender's license or permit, the court shall issue an order authorizing the offender to operate a motor vehicle equipped with a certified ignition interlock device and deliver the offender's license or permit to the registrar of motor vehicles. The court also shall give the offender a copy of its order for purposes of obtaining a restricted license.

(3) An offender shall present to the registrar or to a deputy registrar the copy of the order issued under division (C) of this section and a certificate affirming the installation of an ignition interlock device that is in a form established by the director of public safety and that is signed by the person who installed the device. Upon presentation of the order and certificate, the registrar or deputy registrar shall issue a restricted license to the offender, unless the offender's driver's license or commercial driver's license or permit is suspended under any other provision of law and limited driving privileges have not been granted with regard to that suspension. The restricted license shall be identical to the surrendered license, except that it shall have printed on its face a statement that the offender is prohibited from operating a motor vehicle that is not equipped with an ignition interlock device that is certified pursuant to section 4510.43 of the Revised Code. The registrar shall deliver the offender's surrendered license or permit to the court upon receipt of a court order requiring it to do so, or reissue the offender's license or permit under section 4510.52 of the Revised Code if the registrar destroyed the offender's license or permit under that section. The offender shall surrender the restricted license to the court upon receipt of the offender's surrendered license or permit.

(4) If an offender violates a requirement of the court imposed under division (C)(1) of this section, the court may impose a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code. On a second or subsequent violation, the court may impose a class four suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code.

CREDIT(S)

(2016 H 388, eff. 4-6-17; 2011 H 5, eff. 9-23-11; 2006 S 8, eff. 8-17-06; 2002 H 490, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 2000 H 349, eff. 9-22-00; 1999 H 471, eff. 7-1-00; 1999 S 107, eff. 3-23-00; 1999 S 9, eff. 3-8-00; 1997 H 408, eff. 10-1-97; 1996 S 269, eff. 7-1-96; 1995 S 2, eff. 7-1-96; 1995 H 167, eff. 11-15-95; 1995 H 4, eff. 11-9-95; 1994 H 687, eff. 10-12-94; 1994 H 571, eff. 10-6-94; 1993 H 152, eff. 7-1-93; 1990 S 258; 1989 H 381; 1988 H 322, H 429; 1983 S 210; 1982 S 432; 1981 H 1; 1980 H 682, H 892; 1978 S 119; 1975 S 144; 1972 H 511)

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