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In the Sixth District Court of Appeals
For Lucas County, Ohio

City of Toledo

Appellee,

vs.

David Haas

Appellant.

Case Number: CL-2023-1297
CL-2023-1298
CL-2023-1299

Trial Court: CRB-21-09126
CRB-23-03520
CRB-23-04625

Brief of the Appellee

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Appellant's Assignments of Error

- I. The trial court erred by denying trial counsel's motion in opposition to consolidation of Appellant's cases into separate trials, as the cases involved separate alleged victims, witnesses, facts, and occurred on different dates.
- II. Because of the excessive prejudice of the failure to sever the trials, the jury could not hear evidence for either matter in an unbiased way such that the jury did lose their way, and the verdict was against the manifest weight of the evidence presented at trial.
- III. Appellant's trial counsel was ineffective in their representation at trial, as evident by their numerous mistakes and missteps at trial; this is further supported by the poor relationship between the parties, and counsel's three separate attempts to withdraw from this matter.
- IV. The trial court erred when it required trial counsel to remain on the case after counsel expressed difficulty representing Appellant, and counsel proved ineffective.
- V. The trial court erred in imposing maximum sentences on all three of Appellant's convictions, as his record did not suggest that incarceration was the only necessary outcome.

Statements of Issues

- I. Did the trial court create prejudice on the Appellant when the cases CRB-23-03520 and CRB-23-04725 were joined?
- II. Whether or not the jury verdict was against the manifest weight of the evidence presented at trial?
- III. Was trial counsel's representation of Appellant ineffective?
- IV. Did the trial court err by requiring trial counsel to remain on the case, despite the request to withdraw?
- V. Did the trial court err in imposing the stated sentence on the Appellant?

Statement of the Case

Appellee accepts Appellant's Statement of the Case.

Statement of the Facts

Relevant to this appeal, Appellant David Haas is a chronic harasser to the public at large.

Appellant has been convicted, notwithstanding the cases for appeal, of multiple crimes of disorderly and harassing behavior. Further, throughout the duration of all the cases, Appellant made a host of continuances, changes in counsel and meritless *pro se* motions. The matters for appeal today, are pages to the saga which is the Appellant's behavior.

To start, CRB-23-03520, Appellant David Hass was charged with Menacing under R.C. 2903.22A. In that case, Appellant was found to have yelled and screamed at the victim while she was on her property making her believe that she was in danger in physical harm. Furthermore, on the trial record, victim explained that prior to the events charged, Appellant had consistently harassed her for nearly a year and a half, causing her belief of the danger Appellant posed.

Next, CRB-23-04625, Appellant was charged with a series of crimes at Huntington Bank. In that matter, the Toledo Police Department (hereinafter will be referred to as TPD) responded to a 911 call at a Huntington Bank branch. While investigating the matter, TPD discovered the Appellant being irate and hostile to Huntington employees. TPD was able to escort Appellant into the parking lot to continue their investigation. While detaining Appellant, Appellant began to jog to his car, away from TPD. Once TPD was able to get control of Appellant's arms, he began to pull away and was uncooperative in being restrained. Appellant was charged with Obstructing Official Business under R.C. 2921.31, Resisting Arrest under R.C. 2911.33, and Criminal Trespass under R.C. 2911.21. The City of Toledo had asked that matters be heard in one trial as the evidence was simple and direct and could be easily distinguished by the jury. On September 13th, 2023, the matters proceeded to jury trial, in which, Appellant was found

guilty of Menacing, Obstructing Official Business and Resisting Arrest. The remaining Criminal Trespass was dismissed by a Crim. R. 29 motion, made by Appellant.

Finally, on CRB-21-09126, Appellant was charged with Telecommunications Harassment under R.C. 2917.21A1. Appellant was found to have called the Lucas County Common Pleas criminal clerk's office, approximately fifteen to twenty times, after being instructed by staff not call anymore. On May 25th, 2023, Appellant pled no contest to the charge. This matter is only before the Court for sentencing considerations.

In considering all the evidence heard by the jury, the Appellant's record, the Appellant's remorse, the ability of rehabilitation for the Appellant, and comments of counsel of both parties, Appellant was sentenced to 30 days incarceration while participating in the Work Release Program on the Menacing case, 90 days incarceration while participating in the Work Release Program on the Obstructing Official Business case and 180 days incarceration while participating in the Work Release Program on the Telecommunications Harassment case. This matter is now before this Court on appeal.

Argument

I. The Trial Court Was Correct In Granting The City's Motion For Consolidation

The governing rule that applies to this issue is Crim. R. 8. Under these rules, a court may try criminal matters together if they are “constituting parts of a common scheme or plan, or are part of a course of criminal conduct.” The Supreme Court of Ohio has declared that any joinder that avoids the need for multiple trials is favored as it “conserves judicial and prosecutorial time, lessens the not inconsiderable expenses of multiple trials, diminishes inconvenience to witnesses, and minimizes the possibility of incongruous results in successive trials before different juries.” *State v. Thomas*, 61 Ohio St. 2d 223, 225 (1980)

However, under Crim. R. 14 a defendant is permitted to ask for severance of the counts when the defendant can present prejudice by the joinder of the charges. Specifically, the rule states:

If it appears that a defendant or the state is prejudiced by a joinder of offenses or of defendants in an indictment, information, or complaint, or by such joinder for trial together of indictments, informations or complaints, the court shall order an election or separate trial of counts, grant a severance of defendants, or provide such other relief as justice requires.

For the purposes of this matter, we disagree on the standard of review put forth by Appellant. This Court once held that “When a defendant makes a pretrial Crim. R. 14 motion to sever, he is required to renew the motion at the close of the state's case or the conclusion of all the evidence so that the trial court can conduct a Crim. R. 14 analysis based on all of the evidence presented at trial” *State v. Reynolds*, 2018-Ohio-40, P27(6th Dist. Ct. App). “Failure to renew the motion forfeits all but plain error on appeal”. *Id.* Here, plain error would be the standard of review. Nowhere in the record, and especially at the close of the City's case, does the Appellant renew any motion for severance. Trial Transcript Volume 2 at 189-194. This Court once held that such a renewal is necessary as it allows the trial court to conduct another analysis of prejudice based on the evidence. *Id.*, see *State v. Marshall*, 2023-Ohio-3542(6th Dist. Ct. App.). Therefore, this issue must be reviewed under the light of plain error.

Plain error requires the Appellant show that an error occurred that affected substantial rights. *Reynolds*, 2018-Ohio-40, P29. To determine if a plain error occurred, the Court must consider the supposed error in light of all the evidence properly admitted at trial. *Id.* Plain error can only be found in “exceptional circumstances and only to prevent a manifest miscarriage of justice.” *Id.* (quoting *State v. Long*, 53 Ohio St.2d 91). “Plain error is not present unless the outcome of the trial would have been different but for the complained of error.” *Id.*

To claim prejudice, a defendant must be able to present that “the advantages of joinder and avoidance of multiple trials are outweighed by the right of a defendant to be tried fairly on each charge.” *Id.* at P31. It is the defendant’s burden to establish affirmatively that his rights were prejudiced, and, present all such evidence to the trial court. *State v. Torres*, 66 Ohio St. 2d 340, 343 (1981). Yet even if the defendant provides evidence of prejudice, the government may overcome the claim of prejudicial joinder by showing that the evidence of each crime was simple and direct. *State v. Clinton*, 153 Ohio St. 3d 422, 430 (2017). “When simple and direct evidence exists, an accused is not prejudiced by joinder” *State v. Coley*, 93 Ohio St. 3d 253, 260 (2001).

In this matter, the Appellee put before the trial court a Motion for Consolidation arguing for the same reasons articulated in *Thomas*, and furthermore, the Appellee will be trying to show that the Appellant engaged in a larger course of conduct of harassment. The Appellant opposed the motion, twice, before the trial court and the court made it’s ruling to allow consolidation as the Appellee had shown that its evidence was simple and direct. Now, Appellant makes the same arguments as they did in the trial court, and even now, it is without merit.

If such prejudice did exist for Appellant, the Appellee has overcome that with presenting simple and direct evidence. In trial counsel’s opposing motion, they conceded that CRB-23-04625 has simple and direct evidence. Opposition to Motion For Consolidation, Pg. 3. As to the

other case, "Ohio appellate courts routinely find no prejudicial joinder where the evidence is presented in an orderly fashion as to the separate offenses or victims without significant overlap or conflation of proof." *State v. Hall*, 2021-Ohio-2968, P43 (6th Dist. Ct. App). This is the case now. The evidence of the Menacing was simple and direct. The Appellee and trial court made a clear break between the cases in an orderly fashion with a brief recess. Trial Transcript Volume 2 at pg. 132. The Appellee presented only one witness as to the Menacing charge and played less than 15 minutes of video footage to the jury. Furthermore, the jury is presumed capable of separating cases when the evidence is uncomplicated. *Torres*, 66 Ohio St. 2d at 343. Considering all the relevant evidence, facts and law, Appellant can never meet the standard of review of plain error. Contrary to the assertion of Appellant, the negative and prejudicial light has been overcome by the state and their issue must not be well taken.

II. Appellant's Convictions were Supported By Sufficient Evidence

Appellant contends that the jury lost their way when convicting the Appellant and that this Court should overturn the conviction. Appellant's Brief, Pg. 9. But that would be in error. Enough evidence was presented to carry the day on the conviction of the Appellant.

A manifest weight argument requires the appellate court to "weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the jury clearly lost its way in resolving evidentiary conflicts so as to create such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Watson*, 2024-Ohio-1711, P59 (6th Dist. Ct. App. 2024). Special deference must be given to the jury as they "had the benefit of seeing the witnesses testify, observing their facial expressions and body language, hearing their voice inflections, and discerning qualities such as hesitancy, equivocation, and candor" *Id.* at P60. Reversal on manifest weight grounds is reserved for "the exceptional case in which the evidence weighs heavily against the conviction." *Id.* (quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist. 1983).

First, Appellant contends the jury was “bombarded” with evidence and, in a sense, could not see the forest from the trees. Appellant’s Brief, Pg. 9. Despite, this wild characterization, this has been addressed above. The jury is presumed to be able to separate the charges.

Second, as to the evidence of the obstruction charge, the jury heard a 911 call from a security operator of Huntington Bank about a disorderly customer. The jury then heard from N.H., a branch manager at Huntington, who testified that he received a call from one of his colleagues about an unruly person at one of the bank branch locations. Trial Tp. Vol. 1, Pg. 45. After he returned, he testified that he came upon the Appellant and a lobby full of customers. Trial Tp. Vol. 1 Pg. 48. N.H.’s entire goal was to defuse the situation but Appellant was yelling at him through the glass. Trial Tp. Vol. 1, Pg. 48.

Next, the jury heard from Officer Denise Fisher, a patrolman for the TPD. Officer Fisher testified that as she arrived on scene, she observed Appellant recording the bank manager’s office. Trial Tp. Vol. 2, Pg. 102. She observed the Appellant as being “worked-up”. Trial Tp. Vol. 2, Pg. 102. She later testified that as she was helping N.H., she witnessed the interaction Appellant and N.H. had. She could personally see the Appellant talk over N.H. and observe N.H. to be fearful of Appellant. Trial Tp. Vol. 2, Pg. 104. She observed the Appellant to be “aggressive” in her opinion. Trial Tp. Vol. 2, Pg. 107. After Appellant left the bank, after not getting his way, Fisher testified that she stayed on bank property to make sure nothing else would occur. Appellant was still on bank property and remained with officers. One officer instructed Appellant not to go anywhere. Trial Tp. Vol. 2, Pg. 110. Fisher spoke with her colleagues and determined to arrest the Appellant. Trial Tp. Vol. 2, Pg. 108-9. That is when officer testified that she observed Appellant jog away from her fellow officer and then resist putting handcuffs on him. Trial Tp. Vol. 2, 109. He continued to yell at officers on scene. Trial Tp. Vol. 2, Pg. 109. This had all occurred during her investigation. Tp. Vol. 2, Pg. 113. This was the basis for the obstructing as charged in the Complaint.

Appellant argues that Officer Fisher's testimony was "prejudicial". Appellant's Brief, Pg. 10. But what Appellant seems to be arguing that Officer Fischer is not allow to form her own opinions or conclusions and that, by itself, is prejudicial. A witness is allowed to testify to their beliefs of a person based on their observations even if those conclusions are negative ones about the defendant. If the jury happened to agree, that is their right to make. But, in short, Appellant arguments fail because any negative opinion about a defendant does not automatically equate to legal prejudice. Further, it fails to strike at the root of the evidence to make their manifest weight claim. That at trial, the Appellee did present facts Appellant did obstruct police, and the jury as supported by the record, found a conviction of guilty.

Third, as to the evidence of Menacing, the jury heard from T.M. who testified that she was the next-door neighbor of Appellant. Tp. Vol. 2, Pg. 135. T.M. described to the jury that her relationship with the Appellant was cordial. Tp. Vol. 2, Pg. 135. T.M. then described that on October 12, 2021, their relationship became strained. Tp. Vol. 2, Pg. 135. She testified Appellant yelled at her at her front door, and used obscenities with her. Tp. Vol. 2, Pg. 136. She was "extremely scared" of Appellant on that day. Tp. Vol. 2, Pg. 137. T.M. testified that from there, Appellant made several derogatory comments to her on several other occasions that made her feel unsafe. Tp. Vol. 2, Pg. 137-9. Including, a threat directed at her she heard from the Appellant over her security camera. Tp. Vol. 2, Pg. 139. T.M. testified she also saw others instances of people being harassed by Appellant on her property. Tp. Vol. 2, Pg. 141-2. T.M. testified that she is scared to death of Appellant and had installed security camaras as result of all of this. Tp. Vol. 2, Pg. 142-143. Also, her husband had warned Appellant not to speak to T.M. Tp. Vol. 2, Pg. 184. On April 3rd, 2023, T.M. testified she was approached by Appellant, yelling at her about a subpoena and that he had something she could not identify in his hands. Tp. Vol. 2, Pg. 144-46. T.M. stated she became physically ill due to the fear of Appellant. Tp. Vol. 2, Pg. 147. T.M. explained that she believed Appellant was going to kill her and was in fear of physical harm. Tp.

Vol. 2, Pg. 153-4. She stated that is “petrified” of the Appellant due to all the interactions he has had with her for the past two years. Tp. Vol. 2, Pg. 157.

Appellant’s argument in their brief seems to be another way of articulating the question asked by Appellant’s trial counsel of “what’s so threatening about a subpoena?” Tp. Vol. 2, Pg. 156. But that question has been answered by the jury, who had the opportunity to watch the video containing the interaction between Appellant and T.M. Tp. Vol. 2, Pg. 150-153. The jury, in their verdict, were able to see that Appellant’s conduct was threatening, that the Appellant yelled towards T.M. and the context of their turbulent relationship. They also had the chance to see T.M.’s credibility and that T. M.’s fear was both reasonable and valid. The jury should be given the deference it is owed to make the determinations of fact. Lastly, Appellant believe prejudice is the only reason this verdict could have happened, which is simply not true. With all the evidence presented, it is very possible the jury came to the verdict, despite such alleged prejudice. Regardless, the Appellant has not met the standard of an “exceptional case in which the evidence weighs heavily against the conviction” and therefore, this issue should not be well taken. *State v. Watson*, 2024-Ohio-1711, P59.

III. Appellant’s Trial Counsel’s Error Would Not Have Reasonably Changed The Outcome Of The Case

“To prove a claim of ineffective assistance, appellant must demonstrate that counsel's performance fell below an objective standard of reasonableness, and a reasonable probability exists that, but for counsel's error, the result of the proceedings would have been different. *State v. Fenderson*, 2022-Ohio-1973, P36 (6th Dist. Ct. App.). An appeal on ineffective assistance of counsel is not to “grade counsel’s performance,” but instead to determine if counsels’ errors were of a magnitude so great it would deprive defendants of a fair trial. *Strickland v. Washington*, 466 U.S. 668, 687-688 (1984). The test for this is two prongs, (1) the objective standard of a

reasonableness for counsel and (2) trial counsel performance was outcome determinative to the case. *State v. Mick*, 2018-Ohio-999, P17 (6th Dist. Ct. App.).

The Appellant has failed meet the second prong in this matter. Appellant assumes that because Appellant's trial counsel performance deviated from the norm, it "necessarily implies" the outcome would have been different, but that is not true. Appellant's Brief, Pg. 17. That is not the test for this error. This is evident with the example Appellant cites. On Pg. 14 of the brief, Appellant states his attorney made an improper comment in opening statements. However, the trial court overruled the objection, allowing trial counsel to make his statements and creating no prejudice on the Appellant. The next example Appellant cites is that trial counsel failed to provide foundation for a piece of evidence they planned to use for impeachment purposes. Appellant's Brief, Pg. 15. However, such impeachment would have not been impactful on the charges for which Appellant was found guilty. N.H.'s testimony was relevant to the Criminal Trespass, which was ultimately found not guilty by the court in a Rule 29 motion. Tp. Vol. 2, Pg. 193. Finally, Appellant cites that trial counsel fumbled in making the Rule 29 motion. Appellant's Brief, Pg. 16. Nevertheless, the Rule 29 motion was made, and was ultimately beneficial to Appellant as an acquittal was found out of said motion. Tp. Vol. 2, Pg. 193. Even if was not renewed at the close of Appellant's case, this was not outcome determinative as the Appellant's evidence did not disrupt the Appellee putting on a prima facie case to the crimes alleged. In summary, the outcome for the Appellant would not have been different and therefore, this is a failed issue by the Appellant.

IV. The Trial Court Did Not Violate The Appellant's Sixth Amendment Right

Appellant's fourth assignment of error is that trial court error in not allowing trial counsel to withdraw. To start, Appellant cites the wrong line of case law and test when it comes to this issue. See *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617 (1989), *State ex rel. Boyd v. Tone*, 2023-Ohio-323 (6th Dist, Ct. App.) The cases cited are distinguishable from the case of

the Appellant. Here, the Appellant was denied a motion to withdraw trial counsel. In *Caplin*, the U.S Supreme was deciding if a federal law that restrict access to a defendant's funds was infringing on the Sixth Amendment. In *Tone*, the trial court granted the trial counsel motion to withdraw. The finding that "a court commits structural error when it wrongfully denies a defendant his counsel of choice, thus a defendant need not demonstrate further prejudice" **only applies** if the trial court prevents a defendant from having a counsel they already chosen. *State ex rel. Boyd v. Tone*, 2023-Ohio-323, P8. It does not apply for a withdrawal. These cases have no legal weight in this matter and there is no structural error.

Instead, this Court should evaluate this issue through another lens. The Sixth Amendment of the U.S. Constitution and Article I, Section 10 of the Ohio Constitution guarantees the right to counsel. U.S. Const., amend. VI, Ohio Const., art. I § 10. However, "a criminal defendant does not... have the right to counsel with whom he or she has a rapport or with whom he or she can develop a meaningful lawyer and client relationship". *State v. Hall*, 2019-Ohio-5123, P7 (8th Dist. Ct. App.). In short, while an important right, a defendant is entitled to effective assistance of counsel but such right is not absolute. *Id.*, see *Tone*, 2023-Ohio-323 at P9.

Next, when a trial court reviews a motion to withdraw counsel, the trial court must "balance a defendant's right to counsel of his choosing against the public interest in the administration of justice." *State v. Hall*, 2010-Ohio-2623, P12 (6th Dist. Ct. App.). If such decision is up for appeal, an appellate court reviews at the standard of abuse for discretion. *Id.* at P70. An abuse of discretion occurs when the trial court's decision was "unreasonable, arbitrary, or unconscionable." *Id.*

In this matter, the court's decision was made with careful consideration. If one looks at the journal record for CRB-21-09126, one would find that Appellant has had a plethora of counsel substitutions. A total of eight different attorneys have entered their appearance on Appellant's

case. As to the cases that went to jury trial, the trial court on August 24, 2023, allowed Appellant a chance to acquire new counsel. The journal entry reflects on CRB-23-04625 on August 24, 2023, that “If Defendant hires new counsel and that counsel is able to proceed to trial on 09/13/2023, court will entertain motion to withdraw.” On the date of the jury trial, no new counsel was acquired and therefore, the court did not entertain the motion. Nevertheless, the trial court had to balance the administration of justice with the request of trial counsel, and for the reasons above, and to prevent more undue delay, it was clear why the trial court made its decision. Then conclusively, such decision was not, arbitrary, unconscionable or unreasonable, but rather formed on logical reasoning. Therefore, this Court cannot find the Appellant’s assertion well taken.

V. The Trial Court Did Not Commit Err In Sentencing

When an appellate court reviews an issue of sentencing, it has been the long-standing standard that it must be reviewed under the standard for an abuse of discretion. *State v. Ostrander*, 2011-Ohio-3495, P28. (6th Dist. Ct. App.) “In imposing sentence for a misdemeanor offense, trial court must consider the purposes and principles of misdemeanor sentencing as set forth in R.C. 2929.21, as well as the sentencing factors set forth in R.C. 2929.22.” *Id.* Furthermore, an appellate court must presume that due consideration were given to the sentencing statutes, unless the record provides evidence to the contrary. *Id.*

In this matter there was no abuse of discretion. The trial court clearly considered the factors listed in the statutes. As to R.C. 2929.21, the trial judge considered the victim statements made at sentencing and the impact T.M. felt as a result of Appellant’s crime. Sentencing Tp. Vol. 2, Pg. 5-6. Next, in the trial judge’s pronouncement of sentencing, the judge stated how he has to consider “protecting the community.” Sentencing Tp. Vol. 2, Pg. 9-11. As to R.C. 2929.22, again the court considered the factors therein, in their colloquy, and there is no evidence to the contrary. Sentencing Tp. Vol. 2, Pg. 9-11. Appellants also cites no evidence that court did not consider

such factors. Appellant's Brief, Pg. 20-21. Finally, a trial court is not required to state if it came to the conclusion, that Appellant committed some of the worst forms of this offense. *State v. Adkins*, 2020-Ohio-3296, P13. Regardless, the trial judge gave it's reasoning for its sentence based on sound logic. Tp. Vol. 2, Pg. 9-11. In short, Appellant is ultimately arguing they came to a different conclusion than the trial court, and possibly this Court may make a different conclusion. Yet, consistent with case law, that is not enough to reverse. *Adkins*, 2020-Ohio-3296, P14.

Conclusion

Appellant's arguments are without merit for any reversal. It is again a page to the saga which is the Appellant's behavior to harass the system at large. The evidence at trial was simple and direct, countering any prejudice that might have occur. Appellant even agrees to this as he states the trial took "one day" and therefore proves how uncomplicated the evidence was. Appellant's Brief, Pg. 21. Next, trial counsel's performance created no prejudice to the Appellant as the results of his missteps would have reasonably been the same. Lastly, considering the record, the trial court did not abuse it discretion in denying trial counsels motion to withdraw and the trial court's sentence was reasonable under the law.

Respectfully, Appellant's assignments of error must not be well taken and Appellee prays this Court agrees.

Respectfully Submitted.

Aaron Hill

Aaron D. Hill

Attorney for Appellant

CERTIFICATION

I hereby certify that a copy of the foregoing was duly sent to Attorney for the Appellant,
this 23rd day of July, 2024 by email at Seglaw1029@gmail.com

Aaron Hill

Aaron D. Hill (102724)

Prosecuting Attorney

City of Toledo Prosecutor's Office