

OHIO COURT OF APPEALS, FIRST APPELLATE DISTRICT, HAMILTON
COUNTY

State v. Cannon

2025-Ohio-5729 · No. C-250313 · Decided December 23, 2025

SUMMARY

The Ohio First District Court of Appeals reviewed Darius Cannon's sentences for two fifth-degree felony trafficking convictions. The court rejected his claim that the jail component of his community-control sentence was an unconstitutional trial tax, but held that the convictions should merge for sentencing because they arose from the sale of a single drug mixture. The judgment was affirmed in part, reversed in part, and remanded for resentencing so the State could elect which offense to pursue.

CASE DETAILS

COURT	Ohio Court of Appeals, First Appellate District, Hamilton County
WRITING FOR THE COURT	Presiding Judge Zayas; Judge Bock; Judge Nestor
JURISDICTION	Ohio Court of Appeals, First Appellate District, Hamilton County
DECIDED	December 23, 2025
DOCKET	C-250313
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Cannon appealed his felony sentences following jury convictions for two counts of trafficking in a fentanyl-related compound. The appellate court affirmed the sentence-related claim alleging a trial tax, but sua sponte recognized plain error in imposing separate sentences for offenses that should have merged under the Double Jeopardy Clause.
STANDARD OF REVIEW	Under R.C. 2953.08(G)(2), an appellate court may vacate or modify a felony sentence if clear and convincing evidence establishes that the sentence is contrary to law. A claim of actual vindictiveness is reviewed by examining the entire record, including the trial court's statements, the trial evidence, and sentencing information; reversal requires a clear and convincing finding that the sentence resulted from actual vindictiveness.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion; precedential within the applicable court and subject to Ohio appellate precedent rules.

TOPICS

sentencing

double jeopardy

criminal procedure

standard of review

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the trial court's imposition of a 180-day jail term as part of Cannon's community-control sentence constituted actual vindictiveness or an unconstitutional trial tax for exercising his right to a jury trial.
2. Whether the trial court committed plain error and violated the Double Jeopardy Clause by imposing separate sentences for two trafficking convictions arising from the sale of a single mixture of drugs.

HOLDINGS

1. The 180-day jail term was authorized as a community-control sanction, and the record did not clearly and convincingly demonstrate that the trial court imposed it as punishment for Cannon's exercise of his right to a jury trial.
2. The trial court committed plain error by imposing separate sentences for the two trafficking convictions because both convictions were based on trafficking a single mixture of drugs; the offenses should have merged for sentencing.

KEY QUOTATIONS

“sentence the offender to a community control sanction or combination of community control sanctions” (§ 10)

“We will reverse the sentence only if we clearly and convincingly find the sentence is contrary to law because it was imposed as a result of actual vindictiveness on the part of the trial court.” (§ 13)

“the trial court punished [defendant] twice for a singular quantity of drugs, violating his right to be free from double jeopardy.” (§ 22)

FACTUAL BACKGROUND

Cannon was convicted of two fifth-degree-felony counts of trafficking in a fentanyl-related compound for selling less than one gram of a controlled substance to a confidential informant. He had no prior adult felony conviction, was addicted to Percocet, and requested drug treatment and community control. At sentencing, the trial court questioned his lack of remorse and emphasized that he sold fentanyl to others, then imposed three years of community control, 180 days in jail, the CBI Program, and community service. Both trafficking counts arose from the sale of a single mixture of drugs.

PROCEDURAL HISTORY

A jury found Cannon guilty of two fifth-degree-felony counts of trafficking in a fentanyl-related compound based on his sale of less than one gram of a controlled substance to a confidential informant. The trial court imposed three years of community control, 180 days in jail, completion of the CBI Program, and community service, sentencing Cannon on both offenses concurrently despite the State's agreement that they should merge. Cannon appealed, and the First District affirmed in part, reversed in part, and remanded for resentencing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the sentences and remand for a new sentencing hearing at which the State may choose which trafficking offense it wishes to pursue for sentencing. Affirm the trial court's judgment in all other respects.

CASES CITED

- State v. Marcum, 2016-Ohio-1002
- State v. Rahab, 2017-Ohio-1401
- State v. Arnold, 2021-Ohio-2836
- State v. Bailey, 2025-Ohio-5254
- Miles v. Telb, 2003-Ohio-4220
- Christopher v. McFaul, 18 Ohio St.3d 233, 234 (1985)
- State v. Davis, 2006-Ohio-4723
- State v. Keese, 2024-Ohio-5075
- State v. Pendleton, 2020-Ohio-6833
- State v. Berry, 2021-Ohio-2249
- State v. Magee, 2019-Ohio-1921
- State v. Vinson, 2016-Ohio-7604
- State v. Slagle, 65 Ohio St.3d 597, 604 (1992)

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