

OHIO COURT OF APPEALS, SECOND APPELLATE DISTRICT,
MONTGOMERY COUNTY

State v. Donaldson

2023-Ohio-234 (Ohio Ct. App. 2023) · No. C.A. No. 29473 · Decided January 27, 2023

SUMMARY

The Ohio Second District Court of Appeals reviewed Ora Donaldson’s delayed criminal appeal under *Anders v. California* after a jury trial on multiple theft-related charges and a guilty plea to receiving stolen property. The court independently examined six potential issues, including sufficiency of the evidence, the enterprise and pattern elements of Ohio’s RICO statute, ineffective assistance, suppression, a Crim.R. 29 motion, and restitution, and found no nonfrivolous grounds for appeal. The court affirmed Donaldson’s convictions.

CASE DETAILS

COURT	Ohio Court of Appeals, Second Appellate District, Montgomery County
WRITING FOR THE COURT	Welbaum, J.; Epley, J.; Lewis, J.
JURISDICTION	Ohio
DECIDED	January 27, 2023
DOCKET	C.A. No. 29473
DISPOSITION	affirmed
PROCEDURAL POSTURE	Donaldson brought a delayed criminal appeal from convictions entered after a jury trial in Montgomery County Common Pleas case No. 2020 CR 1113/1 and a guilty plea in case No. 2021 CR 192. Appointed appellate counsel filed an <i>Anders</i> brief asserting that no nonfrivolous issues existed.
STANDARD OF REVIEW	Sufficiency of the evidence is reviewed de novo, viewing the evidence in the light most favorable to the prosecution and asking whether any rational trier of fact could have found the essential elements proved beyond a reasonable doubt. A restitution order is reviewed under R.C. 2953.08(G)(2)(b) to determine whether it is clearly and convincingly contrary to law. <i>Anders</i> review requires an independent examination of the record for issues with arguable merit.
PRECEDENTIAL VALUE	published Ohio Court of Appeals opinion

PARTIES

Ora Donaldson v. State of Ohio

TOPICS

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criminal procedure

statutory interpretation

suppression of evidence

restitution criminal

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether sufficient evidence supported Donaldson's conviction for engaging in a pattern of corrupt activity because the statutory monetary threshold was not met by Donaldson individually or because Hammer's conduct did not satisfy the threshold.
2. Whether sufficient evidence supported the enterprise element of the pattern-of-corrupt-activity conviction.
3. Whether sufficient evidence established a pattern of corrupt activity.
4. Whether trial counsel was ineffective for failing to file a timely suppression motion and for failing to object to evidence.
5. Whether the trial court erred by denying Donaldson's Crim.R. 29 motion for acquittal on the RICO count.
6. Whether the restitution order was contrary to law.

HOLDINGS

1. The monetary threshold in R.C. 2923.31(I)(2)(c) was satisfied as to Donaldson because his own qualifying offenses involved property valued at more than \$1,000. Hammer's acts also could serve as accomplice conduct establishing her participation in the enterprise even if her individual conduct did not independently satisfy the threshold.
2. The existence of an enterprise under R.C. 2923.32(A)(1) was sufficiently proved through Donaldson's association and criminal activity with Hammer; the State did not need to prove that the enterprise was structurally separate from the pattern of corrupt activity.
3. The record contained sufficient evidence of a pattern of corrupt activity because Donaldson and Hammer engaged in related, continuous criminal activity involving the same enterprise and more than two incidents of corrupt activity.
4. The record disclosed no arguable merit to Donaldson's ineffective-assistance claim because the suppression motion was untimely, the record supported probable cause and a valid Miranda waiver, and no specific evidentiary objection showed deficient performance and prejudice.
5. The trial court properly denied Donaldson's Crim.R. 29 motion because the evidence supporting the RICO conviction was sufficient and overwhelming.

6. The restitution order was not contrary to law because Donaldson did not dispute the amounts or request a hearing, the trial court considered his ability to pay, and the ordered amounts were supported by the presentence investigation report and record.

KEY QUOTATIONS

“An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt.” (¶ 12)

“the minimum threshold found in R.C. 2923.31(I)(2)(c) must be applied to each individual within the enterprise and not to the enterprise as a whole.” (¶ 26)

“the pattern of corrupt activity ‘must include both a relationship and continuous activity, as well as proof of the existence of an enterprise.’” (¶ 35)

FACTUAL BACKGROUND

Donaldson and codefendant Patricia Hammer were involved in a series of theft and receiving-stolen-property offenses involving trailers, vehicles, landscaping equipment, and other property. Donaldson was convicted of multiple offenses and of engaging in a pattern of corrupt activity, with the State relying on his association and repeated criminal activity with Hammer to establish the enterprise and predicate offenses. Police detained and questioned Donaldson after finding him with Hammer in a pickup truck reported stolen; the record indicated that Donaldson received Miranda warnings and agreed to speak. The trial court ordered Donaldson to pay \$20,050 in restitution to seven victims.

PROCEDURAL HISTORY

Donaldson was indicted on theft, receiving-stolen-property, drug-possession, and engaging-in-a-pattern-of-corrupt-activity charges. The trial court denied his suppression motion in the jury-trial case as untimely; Donaldson was convicted after trial on March 8, 2022, and pleaded guilty in the separate case on March 29, 2022. The court granted leave to file delayed notices of appeal, independently reviewed the record under Anders, affirmed both judgments, and permitted appellate counsel to withdraw.

DISPOSITION

affirmed

CASES CITED

- Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967)
- State v. Marbury, 2d Dist. Montgomery No. 19226, 2003-Ohio-3242, ¶ 8
- State v. Pullen, 2d Dist. Montgomery No. 19232, 2002-Ohio-6788, ¶¶ 2, 4
- State v. McDaniel, 2d Dist. Champaign No. 2010-CA-13, 2011-Ohio-2186, ¶ 5
- State v. Estridge, 2d Dist. Miami No. 2021-CA-25, 2022-Ohio-208, ¶ 12 fn. 1
- State v. Wilson, 2d Dist. Montgomery No. 22581, 2009-Ohio-525, ¶ 10

- State v. Thompkins, 78 Ohio St. 3d 380, 678 N.E.2d 541 (1997)
- State v. Jenks, 61 Ohio St. 3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus
- State v. Dent, 163 Ohio St. 3d 390, 2020-Ohio-6670, 170 N.E.3d 816, ¶¶ 6, 16, 25
- State v. Barnes, 6th Dist. Wood No. WD-07-024, 2008-Ohio-1854, ¶ 23
- State v. Gregg, 11th Dist. Ashtabula No. 2006-A-0013, 2007-Ohio-1201, ¶ 31
- State v. Rich, 2d Dist. Montgomery No. 27356, 2018-Ohio-1225, ¶ 67 fn. 9
- State v. Stevens, 139 Ohio St. 3d 247, 2014-Ohio-1932, 11 N.E.3d 252, ¶ 4
- State v. Jazdzewski, 4th Dist. Washington No. 14CA15, 2015-Ohio-2416, ¶ 19
- State v. Beverly, 143 Ohio St. 3d 258, 2015-Ohio-219, 37 N.E.3d 116, ¶¶ 13, 16
- State v. Miranda, 138 Ohio St. 3d 184, 2014-Ohio-451, 5 N.E.3d 603, ¶ 13
- State v. Hatton, 2d Dist. Montgomery No. 21153, 2006-Ohio-2670, ¶¶ 3-4
- Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)
- State v. Bradley, 42 Ohio St. 3d 136, 538 N.E.2d 373 (1989)
- State v. Beasley, 152 Ohio St. 3d 470, 2018-Ohio-16, 97 N.E.3d 474, ¶ 15
- State v. Treesh, 90 Ohio St. 3d 460, 739 N.E.2d 749 (2001)
- State v. Tenace, 109 Ohio St. 3d 255, 2006-Ohio-2417, 847 N.E.2d 386, ¶ 37
- State v. Carter, 72 Ohio St. 3d 545, 553, 651 N.E.2d 965 (1995)
- State v. Lalain, 136 Ohio St. 3d 248, 2013-Ohio-3093, 994 N.E.2d 423, ¶¶ 3, 23
- State v. Phillips, 2d Dist. Montgomery No. 29087, 2022-Ohio-1262, ¶ 23
- State v. Culver, 160 Ohio App. 3d 172, 2005-Ohio-1359, 826 N.E.2d 367, ¶ 57
- State v. Brown, 2017-Ohio-9225, 103 N.E.3d 305, ¶ 25
- State v. Marcum, 146 Ohio St. 3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶¶ 7, 10
- State v. Becraft, 2017-Ohio-1464, 89 N.E.3d 218, ¶ 17
- State v. Snowden, 2019-Ohio-3006, 140 N.E.3d 1112, ¶ 88
- State v. Woods, 2d Dist. Clark No. 2015-CA-75, 2016-Ohio-1103, ¶ 12
- State v. Floyd, 10th Dist. Franklin No. 19AP-449, 2020-Ohio-4655, ¶ 13
- State v. West, 3d Dist. Seneca No. 13-22-07, 2022-Ohio-4069, ¶ 23
- State v. Beckwith, 8th Dist. Cuyahoga No. 111024, 2022-Ohio-2362, ¶ 10
- State v. Long, 53 Ohio St. 2d 91, 372 N.E.2d 804 (1978), paragraph three of the syllabus