

**COURT OF APPEALS OF OHIO, EIGHTH APPELLATE DISTRICT,
CUYAHOGA COUNTY**

State v. Butts

2020-Ohio-1498 (Ohio Ct. App. 2020) · No. No. 108381 · Decided April 16, 2020

SUMMARY

The Ohio Eighth District Court of Appeals affirmed Tamir H. Butts's convictions and sentence for rape, gross sexual imposition, kidnapping, and endangering children. The court held that the trial court did not abuse its discretion by permitting a sexual-abuse trauma expert to testify about trauma-related behaviors, delayed disclosure, and recall, and it rejected the appellant's sentencing argument.

CASE DETAILS

COURT	Court of Appeals of Ohio, Eighth Appellate District, Cuyahoga County
WRITING FOR THE COURT	Frank D. Celebrezze, Jr.; Patricia Ann Blackmon; Eileen A. Gallagher
JURISDICTION	Ohio
DECIDED	April 16, 2020
DOCKET	No. 108381
DISPOSITION	affirmed
PROCEDURAL POSTURE	Criminal appeal from convictions and sentence following a jury trial in the Cuyahoga County Court of Common Pleas.
STANDARD OF REVIEW	The admission and scope of expert testimony are reviewed for abuse of discretion. Unpreserved evidentiary claims are reviewed for plain error, which requires an error affecting substantial rights such that the outcome clearly would have been different absent the error. Felony sentences are reviewed under R.C. 2953.08(G)(2) and may be vacated or modified only upon clear and convincing evidence that the record does not support the relevant statutory findings or that the sentence is otherwise contrary to law.
PRECEDENTIAL VALUE	precedential
PARTIES	Tamir H. Butts v. State of Ohio

TOPICS

- expert testimony
- sentencing
- criminal procedure
- standard of review
- appellate procedure

PRACTICE AREAS

criminal law

criminal procedure

evidence

sentencing

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion or committed plain error by permitting the state's expert to testify about trauma, delayed disclosure, memory recall, and behaviors consistent with child sexual abuse.
2. Whether the trial court was required to consider the fifteen-years-to-life sentencing option under R.C. 2971.03(B)(1)(b) despite the jury's findings that the victim was under ten and was compelled to submit by force or threat of force.

HOLDINGS

1. The trial court did not abuse its discretion or commit plain error by permitting Mouncey to testify about the general effects of trauma and sexual abuse on child victims, including delayed disclosure, recall of abuse, and behaviors or symptoms consistent with sexual abuse. The testimony did not impermissibly address neurobiology or improperly vouch for K.R.'s credibility.
2. The sentence of twenty-five years to life on each rape count was not contrary to law, and the trial court was not required to consider the more lenient fifteen-years-to-life option under R.C. 2971.03(B)(1)(b).

KEY QUOTATIONS

“An expert witness’s testimony that the behavior of an alleged child victim of sexual abuse is consistent with behavior observed in sexually abused children is admissible under the Ohio Rules of Evidence.” (2020-Ohio-1498, ¶ 42)

“As a general rule, “it is impermissible for an expert witness to offer his or her opinion as to the truth of a child’s statements.”” (2020-Ohio-1498, ¶ 44)

“The statute does not contain any specific language requiring trial courts to consider alternative or more lenient sentences under the other subsections.” (2020-Ohio-1498, ¶ 78)

FACTUAL BACKGROUND

The victim, K.R., was seven through nine years old when Butts sexually abused her while he lived with K.R. and her mother and sometimes cared for the children while the mother was at work. K.R. disclosed the abuse in January 2017 after her mother noticed that K.R. had become withdrawn and isolated from the mother's boyfriend. At trial, the state presented K.R., her mother, the investigating detective, and Kirsti Mouncey, an expert on trauma in child victims of sexual abuse.

PROCEDURAL HISTORY

A grand jury indicted Butts on sixteen counts involving rape, gross sexual imposition, kidnapping, and endangering children. The state dismissed four counts and amended the allegations concerning four others. After a jury trial, Butts was convicted of three rape counts, two gross-sexual-imposition counts, three kidnapping

counts, and three misdemeanor endangering-children counts. The trial court merged allied offenses, imposed concurrent sentences including three terms of twenty-five years to life, and journalized its sentencing entry. Butts appealed, challenging the admission and scope of the state's expert testimony and the sentencing procedure.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded only for execution of the affirmed sentence; the appellate court directed that a special mandate issue to the common pleas court.

CASES CITED

- State v. Boston, 46 Ohio St.3d 108, 118, 545 N.E.2d 1220 (1989)
- State v. Harris, 2018-Ohio-578, 107 N.E.3d 658, ¶¶ 38, 44 (8th Dist.)
- State v. Cook, 11th Dist. Lake No. 2016-L-079, 2017-Ohio-7953, ¶ 40
- State v. Adams, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980)
- State v. Mathis, 8th Dist. Cuyahoga No. 107365, 2019-Ohio-3654, ¶¶ 34, 70
- State v. Ahmed, 103 Ohio St.3d 27, 2004-Ohio-4190, 813 N.E.2d 637, ¶ 80
- State v. Sanders, 92 Ohio St.3d 245, 257, 750 N.E.2d 90 (2001)
- State v. Barnes, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002)
- State v. Stowers, 81 Ohio St.3d 260, 261, 690 N.E.2d 881 (1998)
- State v. Nemeth, 82 Ohio St.3d 202, 206, 694 N.E.2d 1332 (1998)
- State v. Priest, 8th Dist. Cuyahoga No. 89178, 2007-Ohio-5958, ¶ 41
- State v. Williams, 99 Ohio St.3d 439, 2003-Ohio-4164, 793 N.E.2d 446
- State v. Eads, 8th Dist. Cuyahoga No. 87636, 2007-Ohio-539
- State v. Clinton, 153 Ohio St.3d 422, 2017-Ohio-9423, 108 N.E.3d 1, ¶ 126
- State v. Fautenberry, 72 Ohio St.3d 435, 440, 650 N.E.2d 878 (1995)
- State v. Marcum, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶¶ 1, 21
- State v. Thompson, 8th Dist. Cuyahoga No. 105785, 2018-Ohio-1393, ¶ 7
- State v. A.H., 8th Dist. Cuyahoga No. 98622, 2013-Ohio-2525, ¶ 10