

**OHIO COURT OF APPEALS, THIRD APPELLATE DISTRICT, SENECA
COUNTY**

State v. Guzman

2021-Ohio-2168 (Ohio Ct. App. 2021) · No. 13-21-03 · Decided June 28, 2021

SUMMARY

The Ohio Third District Court of Appeals reversed the Tiffin-Fostoria Municipal Court's order disqualifying defense counsel as a necessary witness in a prosecution for violating a consent agreement. The appellate court held that the trial court had not considered the alternatives to proving service under R.C. 2919.27(D), which could affect whether counsel's testimony was necessary, and remanded for further proceedings.

CASE DETAILS

COURT	Ohio Court of Appeals, Third Appellate District, Seneca County
WRITING FOR THE COURT	Willamowski, P.J.; Zimmerman, J.; Shaw, J.
JURISDICTION	Ohio
DECIDED	June 28, 2021
DOCKET	13-21-03
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Guzman appealed an interlocutory pretrial order of the Tiffin-Fostoria Municipal Court disqualifying his defense attorney as a necessary witness in a prosecution for violating a consent agreement.
STANDARD OF REVIEW	The opinion applies the legal standard governing attorney disqualification under Prof.Cond.R. 3.7, requiring admissible and necessary testimony before disqualification, subject to the rule's exceptions. The appellate court reviewed the municipal court's disqualification ruling and reversed because the trial court failed to consider the statutory alternatives to proving service.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion
PARTIES	Michael A. Guzman v. State of Ohio

TOPICS

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QUESTIONS PRESENTED

1. Whether the trial court properly disqualified Guzman's defense counsel as a necessary witness under Prof.Cond.R. 3.7.
2. Whether the State was required to prove service of the consent agreement, or could instead rely on the alternative notice methods provided by R.C. 2919.27(D).
3. Whether Guzman's additional arguments concerning service, attorney-client confidentiality, and the State's alleged failure to serve him were properly before the appellate court.

HOLDINGS

1. The trial court erred in disqualifying defense counsel because it did not consider whether the State could establish the defendant's notice of the consent agreement through either of the alternative methods in R.C. 2919.27(D) without counsel's testimony. Attorney disqualification is a drastic measure that should not be imposed unless absolutely necessary.

KEY QUOTATIONS

“Disqualification of an attorney is a drastic measure which should not be imposed unless it is absolutely necessary.” (¶ 7)

“In other words, the attorney must be someone who has relevant, necessary information that no other witness can provide.” (¶ 8)

FACTUAL BACKGROUND

Guzman was charged with violating a consent agreement that prohibited harassment and related conduct toward M.V. The agreement had been signed by Guzman, his attorney, M.V., her attorney, and the issuing judge. The State sought to disqualify Guzman's attorney because it believed counsel was the only person who could establish that Guzman had been served with the agreement. The record also contained a copy of the agreement bearing what appeared to be Guzman's signature.

PROCEDURAL HISTORY

Guzman was charged with violating a consent agreement under R.C. 2919.27(A). The State moved to disqualify defense counsel, arguing that counsel was the only person who could testify about service of the consent agreement. The municipal court granted the motion, and Guzman appealed. The Third District reversed and remanded for the trial court to consider whether the State could proceed under the alternative notice provisions of R.C. 2919.27(D) without counsel's testimony.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must reconsider the motion to disqualify defense counsel in light of R.C. 2919.27(D), including whether the State can establish either statutory alternative to service without counsel's testimony. The trial court should conduct further proceedings consistent with the opinion.

CASES CITED

- City of Youngstown v. Joenub, Inc., 7th Dist. Mahoning No. 01 CA 01, 2001-Ohio-3401, ¶ 15
- State v. Ponce, 2012-Ohio-4572, 977 N.E.2d 1062 (7th Dist.)
- Ross v. Olsavsky, 7th Dist. Mahoning No. 09 MA 95, 2010-Ohio-1310
- State v. Smith, 136 Ohio St. 3d 1, 2013-Ohio-1698, 989 N.E.2d 972
- State v. Tolle, 4th Dist. Adams No. 19CA1095, 2020-Ohio-935
- State v. Lay, 2021-Ohio-892 (12th Dist.)
- State v. Doss, 2d Dist. Champaign No. 2018-CA-41, 2019-Ohio-2247
- State v. Wilson, 6th Dist. Lucas No. L-20-1050, 2021-Ohio-1444
- State v. Kidd, 8th Dist. Cuyahoga No. 109126, 2020-Ohio-4994
- State v. Johnson, 197 Ohio App. 3d 631, 2011-Ohio-6809, 968 N.E.2d 541 (6th Dist.)
- Popa Land Co., Ltd. v. Fragnoli, 9th Dist. Medina No. 08CA0062-M, 2009-Ohio-1299, 2009 WL 735969
- Rock v. Sanislo, 9th Dist. Medina No. 09CA0031-M, 2009-Ohio-6913, 2009 WL 5154889

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