

OHIO COURT OF APPEALS, FIRST APPELLATE DISTRICT, HAMILTON
COUNTY

State of Ohio v. Deonte Baber

2021-Ohio-1506 (Ohio Ct. App. 2021) · No. C-190338 · Decided April 30, 2021

SUMMARY

The Ohio First District Court of Appeals affirmed Deonte Baber’s murder conviction arising from the shooting death of a driver during an altercation. The court held that the prosecution improperly relied on an inadequate witness nondisclosure certification, and it identified additional errors involving detective testimony, jury communications, juror misconduct, and judicial notice. However, the court concluded that Baber failed to demonstrate material prejudice or reversible error.

CASE DETAILS

COURT	Ohio Court of Appeals, First Appellate District, Hamilton County
WRITING FOR THE COURT	Bergeron, Presiding Judge; Crouse, Judge; Winkler, Judge
JURISDICTION	Ohio
DECIDED	April 30, 2021
DOCKET	C-190338
DISPOSITION	affirmed
PROCEDURAL POSTURE	Baber appealed his murder conviction and related violent-offender registration requirement, raising seven assignments of error concerning discovery, evidentiary rulings, juror misconduct, judicial notice, cumulative error, manifest weight of the evidence, and retroactivity.
STANDARD OF REVIEW	Discovery and evidentiary rulings, including witness nondisclosure and denial of a mistrial, are reviewed for abuse of discretion, together with a showing of material prejudice where applicable. Unpreserved errors are reviewed for plain error. A manifest-weight challenge is reviewed under the thirteenth-juror standard, with reversal permitted only where the jury clearly lost its way and created a manifest miscarriage of justice. The constitutional classification of Sierah's Law was reviewed as a legal issue under the court's prior precedent.
PRECEDENTIAL VALUE	Published Ohio Court of Appeals opinion; precedential within the applicable Ohio appellate framework, subject to Ohio Supreme Court

review and the noted conflict concerning Sierah's Law.

PARTIES

Deonte Baber v. State of Ohio

TOPICS

criminal procedure

discovery criminal

evidence

appellate procedure

standard of review

PRACTICE AREAS

criminal procedure

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discovery

jury misconduct

sentencing and offender registration

QUESTIONS PRESENTED

1. Whether the prosecution's generalized Crim.R. 16(D) nondisclosure certification for eight witnesses satisfied the rule and, if not, whether Baber demonstrated material prejudice requiring reversal.
2. Whether testimony by a detective purporting to identify a muzzle flash in video evidence required a mistrial.
3. Whether the trial court abused its discretion or committed plain error in investigating and remedying juror misconduct through collective questioning after dismissing an offending juror.
4. Whether the trial court plainly erred by taking judicial notice of the date of a Facebook post and failing to instruct the jury that it could reject the judicially noticed fact.
5. Whether the cumulative effect of the trial errors deprived Baber of a fair trial.
6. Whether Baber's murder conviction was against the manifest weight of the evidence.
7. Whether applying Sierah's Law's violent-offender registration requirements to Baber violated the Ohio Constitution's Retroactivity Clause.

HOLDINGS

1. The prosecution's generalized nondisclosure certification lacked the required case-specific justification, and the trial court abused its discretion by approving it. Reversal was nevertheless unwarranted because Baber failed to demonstrate material prejudice.
2. The detective's testimony about a muzzle flash was inadmissible and potentially prejudicial, but the trial court did not abuse its discretion in denying a mistrial because the court instructed the jury to disregard the testimony, the comment did not expressly identify Baber as the shooter, and other evidence supported the conviction.
3. The trial court did not abuse its discretion or commit plain error by individually identifying and dismissing the offending juror and collectively questioning the remaining jurors about possible prejudice.
4. The trial court erred by taking judicial notice of the date of a Facebook post and by failing to tell the jury that it could reject the noticed fact, but the error was not plain error because the date had little

significance compared with the admissible photograph and other evidence.

5. The cumulative effect of the three trial errors did not deprive Baber of a fair trial and did not require reversal.
6. Baber's murder conviction was not against the manifest weight of the evidence.
7. Applying Sierah's Law's violent-offender registration requirements to Baber did not violate the Ohio Constitution's Retroactivity Clause because the law is remedial rather than substantive.

KEY QUOTATIONS

“If the state can simply say “we are concerned because this is a serious case,” without more, and avoid disclosure, it transforms Rule 16(I) into a hollow letter.” (¶ 19)

“In other words, a mistrial is necessary only when “a fair trial is no longer possible.”” (¶ 23)

“Under the doctrine of cumulative error, ‘a conviction will be reversed where the cumulative effect of errors in a trial deprives a defendant of the constitutional right to a fair trial even though each of numerous instances of trial court error does not individually constitute cause for reversal.’” (¶ 37)

FACTUAL BACKGROUND

Jamie Urton accidentally struck a young child with his vehicle. The child's father, Jamall Killings, attacked Urton, and Urton was shot and later died. Killings initially confessed during a 911 call but later recanted and identified Baber as the shooter. A video appeared to show a person in a blue-and-orange jacket approaching and fleeing from the vehicle, and witnesses identified Baber, although the video was unclear, ballistics were inconclusive, and eyewitness accounts conflicted.

PROCEDURAL HISTORY

A Hamilton County jury convicted Baber of murder after a shooting during an altercation. The Hamilton County Court of Common Pleas imposed the conviction and applied the violent-offender registration requirements of Sierah's Law. Baber appealed; the First District overruled all seven assignments of error and affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Davenport, 1st Dist. Hamilton No. C-130307, 2014-Ohio-2800
- State v. Williams, 1st Dist. Hamilton No. C-130277, 2014-Ohio-1526
- State v. Wallace, 1st Dist. Hamilton No. C-160613, 2017-Ohio-9187
- State v. McKelton, 148 Ohio St.3d 261, 2016-Ohio-5735, 70 N.E.3d 508
- State v. Woods, 1st Dist. Hamilton Nos. C-130413 and C-130414, 2014-Ohio-3892
- State v. Harris, 1st Dist. Hamilton No. C-110472, 2012-Ohio-349

- State v. Hernandez-Martinez, 12th Dist. Butler No. CA2011-04-068, 2012-Ohio-3754
- Mauzy v. Kelly Services, Inc., 75 Ohio St.3d 578, 592, 664 N.E.2d 1272 (1996)
- State v. Allenbaugh, 2020-Ohio-68, 151 N.E.3d 50, ¶ 30 (11th Dist.)
- State v. Belton, 149 Ohio St.3d 165, 2016-Ohio-1581, 74 N.E.3d 319
- State v. Treesh, 90 Ohio St.3d 460, 480, 739 N.E.2d 749 (2001)
- State v. Reynolds, 49 Ohio App.3d 27, 33, 550 N.E.2d 490 (2d Dist. 1988)
- State v. Franklin, 62 Ohio St.3d 118, 127, 580 N.E.2d 1 (1991)
- State v. Jones, 1st Dist. Hamilton No. C-180091, 2019-Ohio-4862
- State v. Knight, 2016-Ohio-8505, 78 N.E.3d 1267 (9th Dist.)
- Columbus v. Aleshire, 187 Ohio App.3d 660, 2010-Ohio-2773, 933 N.E.2d 317
- State v. Maurer, 15 Ohio St.3d 239, 267, 473 N.E.2d 768 (1984)
- State v. Loza, 71 Ohio St.3d 61, 75, 641 N.E.2d 1082 (1994)
- State v. Kelley, 1st Dist. Hamilton No. C-140112, 2014-Ohio-5565
- Bostic v. Connor, 37 Ohio St.3d 144, 149, 524 N.E.2d 881 (1988)
- State v. Sanders, 92 Ohio St.3d 245, 252, 750 N.E.2d 90 (2001)
- State v. Lang, 129 Ohio St.3d 512, 2011-Ohio-4215, 954 N.E.2d 596
- Remmer v. United States, 347 U.S. 227, 229-230, 74 S.Ct. 450, 98 L.Ed. 654 (1954)
- State v. Lee, 2018-Ohio-3957, 143 N.E.3d 1126 (10th Dist.)
- State v. Thompson, 141 Ohio St.3d 254, 2014-Ohio-4751, 23 N.E.3d 1096
- State ex rel. Banker's Choice, LLC v. City of Cincinnati, 1st Dist. Hamilton No. C-200017, 2020-Ohio-6864
- State ex rel. Richardson v. Gorman, 117 Ohio App. 244, 246, 187 N.E.2d 411 (1st Dist. 1962)
- States Resources Corp. v. Hendy, 9th Dist. Summit No. 25423, 2011-Ohio-1900
- United States ex rel. Dingle v. BioPort Corp., 270 F. Supp. 2d 968, 972 (W.D. Mich. 2003)
- State v. Burgett, 2019-Ohio-5348, 139 N.E.3d 940 (1st Dist.)
- State v. Garner, 74 Ohio St.3d 49, 64, 656 N.E.2d 623 (1995)
- State v. Leach, 150 Ohio App.3d 567, 2002-Ohio-6654, 782 N.E.2d 631 (1st Dist.)
- State v. Echols, 128 Ohio App.3d 677, 700, 716 N.E.2d 728 (1st Dist. 1998)
- State v. Zimmerman, 2019-Ohio-721, 132 N.E.3d 1185 (10th Dist.)
- State v. Thompkins, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997)
- State v. Martin, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist. 1983)
- State v. Ham, 1st Dist. Hamilton No. C-170043, 2017-Ohio-9189
- State v. Robinson, 12th Dist. Butler No. CA2018-08-163, 2019-Ohio-3144
- State v. Lunsford, 12th Dist. Brown No. CA2010-10-021, 2011-Ohio-6529
- State v. Hubbard, 2020-Ohio-856, 146 N.E.3d 593 (12th Dist.)
- State v. Jarvis, 2020-Ohio-1127, 152 N.E.3d 1225 (5th Dist.)
- State v. Jarvis, 159 Ohio St.3d 1427, 2020-Ohio-3473, 148 N.E.3d 568
- State v. Rike, 1st Dist. Hamilton No. C-190401, 2020-Ohio-4690

- State v. Williams, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108

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