

[Cite as *State v. Anderson*, 2010-Ohio-5593.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 94218

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DUEVELLE ANDERSON

DEFENDANT-APPELLANT

**JUDGMENT:
REVERSED AND REMANDED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-526116

BEFORE: Rocco, P.J., Stewart, J., and Cooney, J.

RELEASED AND JOURNALIZED: November 18, 2010

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KENNETH A. ROCCO, P.J.:

{¶ 1} Defendant-appellant Duevelle Anderson appeals from his conviction for violation of R.C. 2923.13(A)(2), having a weapon under disability (“HWUD”).

{¶ 2} Although Anderson presents four assignments of error which challenge his conviction, this court need only address his last, since it is dispositive of his appeal.¹ Anderson asserts his conviction must be reversed

¹Since this court cannot assume what the ultimate outcome of this case will be, it will not render advisory opinions on issues Anderson raises in his other assignments of error. See, e.g., *State v. Doing*, Cuyahoga App. No. 87428, 2006-Ohio-5252, ¶29.

pursuant to R.C. 2945.05 because the trial court lacked jurisdiction to conduct a bench trial on this count.

{¶ 3} The record reflects his assertion has merit, and the state concedes his assignment of error. Consequently, his conviction is reversed, and this case is remanded for further proceedings.

{¶ 4} In light of the foregoing, it is unnecessary to detail every one of the facts that occurred in the trial court. It is enough to recite the following events.

{¶ 5} Anderson was charged in this case on fifteen counts with respect to an incident that was alleged to have occurred on June 18, 2009. Counts 1 through 4 charged him with kidnapping, Counts 5 through 8 charged him with aggravated burglary, Counts 9 through 12 charged him with felonious assault, Count 13 charged him with endangering children, Count 14 charged him with inciting to violence, and Count 15 charged him with HWUD.

{¶ 6} Anderson rejected the state's offer of a plea agreement and exercised his right to a jury trial. Prior to the commencement of the proceeding, however, he indicated his choice to have the final count tried to the court. The trial court agreed, but proceeded without obtaining Anderson's written waiver of his right to a jury trial on this count. Thus, no written jury waiver was filed with the clerk.

{¶ 7} At the conclusion of the case, the jury found Anderson not guilty on every count from one to fourteen. The trial court nevertheless told Anderson

that, with respect to the count of HWUD, it could not “in good spirit find him not guilty. He’s found guilty of having a weapon while under disability.”

{¶ 8} The trial court ultimately imposed a prison sentence on this count of five years, ordering the term to be served consecutively to sentences imposed on Anderson in three other cases.

{¶ 9} Anderson filed a timely appeal of his conviction, and initially presented

{¶ 10} three assignments of error.² Subsequently, this court permitted him to file an additional brief with a fourth assignment of error. It states:

“IV. The trial court was without jurisdiction to conduct a bench trial because Appellant’s jury waiver was never filed nor docketed and was therefore not in strict compliance with R.C. 2945.05.”

{¶ 11} Anderson argues that, since the record reflects the trial court failed to obtain and file his written waiver of his right to a jury trial on Count 15 as required by R.C. 2945.05, it lacked jurisdiction to convict him on this count.

²Anderson’s assignments of error as set forth in his initial appellate brief state:

“I. The State failed to present sufficient evidence to sustain a conviction against Appellant.

“II. Appellant’s conviction is against the manifest weight of the evidence.

“III. The trial court erred when it admitted other acts testimony in violation of R.C. 2945.59, Evid.R. 404(B) and Appellant’s rights under Article I, Section 10 of the Ohio Constitution and the Fourteenth Amendment to the United States Constitution.”

{¶ 12} The state concedes Anderson's assignment of error has merit.

{¶ 13} In pertinent part, R.C. 2945.05 states that a defendant in a criminal case may waive a trial by jury and elect to be tried by the court; however, in order to be valid, the waiver "shall be in writing, signed by the defendant, and filed * * * and made a part of the record thereof." Additionally, the "waiver of trial by jury must be made in open court after the defendant has been arraigned and has had the opportunity to consult with counsel."

{¶ 14} A trial court's failure to comply with the requirements of R.C. 2945.05 results in "a defect in the trial court's exercise of its jurisdiction." *State v. Franklin*, Cuyahoga App. No. 81426, 2003-Ohio-2649, ¶7; see also, *State v. Pless*, 74 Ohio St.3d 333, 1996-Ohio-102, 658 N.E.2d 766.

{¶ 15} Since the record demonstrates the trial court never obtained a written waiver from Anderson of his right to a jury trial, much less filed one, the court could not find him guilty of the remaining charge in this case. *State v. Butler*, Cuyahoga App. No. 93424, 2010-Ohio-3414; cf., *State v. Bonner*, Cuyahoga App. No. 82475, 2003-Ohio-6493.

{¶ 16} Anderson's fourth assignment of error, accordingly, is sustained.

{¶ 17} This court's disposition of Anderson's fourth assignment of error renders his other assignments of error moot. App.R. 12(A)(1)(c); *Butler*.

{¶ 18} Anderson's conviction is reversed. This case is remanded for further proceedings.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, PRESIDING JUDGE

MELODY J. STEWART, J., and
COLLEEN CONWAY COONEY, J., CONCUR