

[Cite as *State v. Wagoner*, 2006-Ohio-3760.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff- Appellee	:	C.A. Case No. 21225
vs.	:	T.C. Case No. 05-CR-883
RICKY L. WAGONER	:	(Criminal Appeal from Common
	:	Pleas Court)
Defendant-Appellant	:	

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OPINION

Rendered on the 21st day of July, 2006.

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MATHIAS H. HECK, JR., Prosecuting Attorney, By: JOHNNNA M. SHIA, Assistant Prosecuting Attorney, Atty. Reg. #0067685, 301 W. Third Street, Fifth Floor, P.O. Box 972, Dayton, Ohio 45422

Attorneys for Plaintiff-Appellee

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Attorney for Defendant-Appellant

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PER CURIAM:

{¶ 1} Ricky Wagoner appeals from his conviction of domestic violence in violation of R.C. 2919.25(A) with one prior conviction for the same offense. The indictment charged Wagoner with knowingly causing or attempting to cause harm to a family or household member, to wit Mary Owens, to whom he was not married. There is no evidence in this record that she was his former spouse.

{¶ 2} Wagoner moved to dismiss the indictment claiming the statute was unconstitutional after the passage of the Marriage Amendment, Art. XV, Section 11 of the Ohio Constitution. The trial court overruled his motion, Wagoner entered his no contest plea, was sentenced, and this appeal followed. In a single assignment, Wagoner contends the statute as applied to him in this case is unconstitutional. We agree. See *State v. Karen S. Ward* (March 24, 2006), Greene App. No. 05-CA-75. The assignment of error is sustained. The Judgment of the trial court is Reversed.

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GRADY, P.J., BROGAN, J., and WOLFF, J., concur.

Copies mailed to:

Johnna M. Shia
Griff M. Nowicki
Hon. Mary Katherine Huffman