

[Cite as *State v. Newman*, 2006-Ohio-4160.]

IN THE COURT OF APPEALS FOR MONTGOMERY COUNTY, OHIO

STATE OF OHIO :
Plaintiff-Appellee : C.A. CASE NO. 21264
v. : T.C. NO. 2005 CR 1116
BRETT A. NEWMAN : (Criminal Appeal from
Defendant-Appellant : Common Pleas Court)

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OPINION

Rendered on the 11th day of August, 2006.

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BROGAN, J.

{¶ 1} Brett A. Newman was indicted with one count of domestic violence, a felony of the fourth degree, arising out of the assault of his live-in girlfriend on March 19, 2005. Newman

moved to dismiss the charge, arguing that it violated the so-called Defense of Marriage amendment to the Ohio Constitution, Article XV, Section 11. On July 11, 2005, the court overruled the motion. Newman subsequently entered a plea of no contest to the domestic violence charge. The court found him guilty and sentenced him to community control sanctions. Newman appeals.

{¶ 2} Newman’s sole assignment of error is as follows:

{¶ 3} “THE TRIAL COURT ERRED IN OVERRULING APPELLANT’S MOTION TO DISMISS AND CONVICTING APPELLANT OF DOMESTIC VIOLENCE AS SUCH PROSECUTION AND CONVICTION VIOLATES ARTICLE XV, SECTION 11 OF THE OHIO CONSTITUTION.”

{¶ 4} Newman claims that the trial court erred when it found that R.C. 2919.25 was constitutional as it applies to persons living as spouses and denied his motion to dismiss.

{¶ 5} It is undisputed that Newman and the victim lived together for a period of time, but that they were never married and they did not have any children together. Accordingly, based on the record, the victim was a “person living as a spouse” under R.C. 2919.25.

{¶ 6} This court has recently determined that, to the extent that R.C. 2919.25 extended its protection to “a person living as a spouse,” it was rendered unconstitutional by the Defense of Marriage amendment, which became effective on December 2, 2004. *State v. Ward*, 166 Ohio App.3d 188, 2006-Ohio-1407, – N.E.2d –. For the reasons set forth in *Ward*, Newman’s argument is meritorious.

{¶ 7} The assignment of error is sustained.

{¶ 8} The judgment of the trial court will be reversed and the cause remanded for further

proceedings consistent with this opinion.

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WALTERS, J., (visiting judge) concurring in judgment only:

{¶ 9} I write separately to state that, although I disagree with this Court’s precedents, I must concur on the basis of stare decisis.

DONOVAN, J., dissenting:

{¶ 10} I disagree for the reasons set forth in my dissent in *State v. Ward*.

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(Hon. Sumner E. Walters, retired from the Third District Court of Appeals, sitting by assignment of the Chief Justice of the Supreme Court of Ohio).

Copies mailed to:

- Johnna M. Shia
- Stacey J. Brown
- Hon. G. Jack Davis, Jr.