

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
HARRISON COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

BENJAMIN URSIC,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 18 HA 0006

Motion to Certify a Conflict

BEFORE:

Cheryl L. Waite, Gene Donofrio, David A. D'Apolito, Judges.

JUDGMENT:

Denied.

Atty. T. Owen Beetham, Harrison County Prosecutor and *Atty. Jeffrey J. Bruzzese*, Assistant Prosecuting Attorney, 111 W. Warren Street, P.O. Box 248, Cadiz, Ohio 43907, for Plaintiff-Appellee

Atty. Rhys B. Cartwright-Jones, 42 N. Phelps St., Youngstown, Ohio 44503-1130, for Defendant-Appellant.

Dated: June 1, 2020

PER CURIAM.

{¶1} On December 5, 2019, we released our Opinion in *State v. Ursic*, 2019-Ohio-5088, -- N.E.3d -- (7th Dist.). On December 19, 2019, Appellant Benjamin Ursic filed a motion to certify a conflict to the Ohio Supreme Court pursuant to App.R. 25(A). As our Opinion does not conflict with *State v. Goggans*, 8th Dist. Cuyahoga No. 79578, 2002-Ohio-2249 as Appellant alleges, we deny Appellant's motion to certify a conflict to the Ohio Supreme Court.

{¶2} A motion to certify a conflict is governed by Article IV, Section 3(B)(4) of the Ohio Constitution. It provides: "Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the Supreme Court for review and final determination."

{¶3} Pursuant to Ohio law, "there must be an actual conflict between appellate judicial districts on a rule of law before certification of a case to the Supreme Court for review and final determination is proper." *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 613 N.E.2d 1032, (1993), paragraph one of the syllabus. We have adopted the following requirements from the Supreme Court:

[A]t least three conditions must be met before and during the certification of a case to this court pursuant to Section 3(B)(4), Article IV of the Ohio Constitution. First, the certifying court must find that its judgment is in conflict with the judgment of the court of appeals of another district and the asserted conflict must be "upon the same question." Second, the alleged

conflict must be on a rule of law—not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. (Emphasis deleted.)

Id. at 596.

{¶4} The issue at the heart of this appeal is whether the act of pointing a deadly weapon at another, without additional evidence regarding the actor’s intent, is sufficient evidence to sustain a conviction for felonious assault in violation of R.C. 2903.11.

{¶5} Appellant contends that our Opinion is in conflict with *Goggans, supra*, where the Eighth District concluded that the state failed to present evidence that the appellant pointed his gun at the victim and, even if there was evidence that he pointed a gun at the victim, the state presented “no evidence of an overt act towards causing physical harm.” *Id.* at ¶ 21. Therefore, the court held that although the victim believed that physical harm was imminent, the state needed to prove the intent of the perpetrator by “an overt act towards causing physical harm.” *Id.* at ¶ 44.

{¶6} The facts in this case are significantly different than those in *Goggans*. Most notably because the evidence presented at trial demonstrated intent. Appellant was spotted on the top of a hill revving the engine of his vehicle. As the two police officers approached the vehicle on foot from the front, they made eye contact with Appellant and ordered him to stop. Despite being ordered to stop, Appellant continued to drive his vehicle toward the officers. Moreover, as the officers took cover behind a tree for protection, the evidence showed that Appellant swerved and hit the tree the officers were using for their protection. *Ursic* at ¶ 3. The evidence in this record clearly shows that

Appellant was using his vehicle as a deadly weapon and that he took several overt actions to indicate his intent to cause physical harm to the officers. Thus, the facts relevant to the Eighth District's holding in *Goggans* differ significantly from the facts in *Ursic*. Our holding in *Ursic* does not conflict with the holding in *Goggans*.

{¶7} Therefore, Appellant's motion to certify a conflict is denied.

JUDGE CHERYL L. WAITE

JUDGE GENE DONOFRIO

JUDGE DAVID A. D'APOLITO

NOTICE TO COUNSEL

This document constitutes a final judgment entry.

[Cite as *State v. Ursic*, 2020-Ohio-3619.]