

STATE OF OHIO)
)ss:
COUNTY OF SUMMIT)

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

STATE OF OHIO

Appellant

v.

MICHAEL L. RAINES, JR.
RALPH C. BAKER, III
BRANDON D. ARNOLD
FRANK D. MURPHY
NICHOLAS R. CRAWFORD
STEPEHN J. BROWN
JOHN S. KORMENDY
THOMAS LAVELL ALEXANDER
BRICE MURRELL GOLDING, JR.
SHATOSHA U. JONES
BRIAN A. SCHMIDT
JEFFREY L. GURLEY
MATTHEW J. JACKSON
DAVID DAVIS
DANIELLE BOYD
MICHAEL F. LITTON, JR.

Appellees

C. A. Nos. 24824, 24835, 24839,
 24843, 24853, 24854, 24866,
 24920, 24921, 24954, 24955,
 24992, 25012, 25046, 25047,
 25091

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO

CASE Nos. CR 08 12 4216,
 CR 09 04 1098,
 CR 09 03 0849,
 CR 07 05 1715,
 CR 09 03 0707,
 CR 08 09 2997,
 CR 08 06 1864,
 CR 09 02 0499,
 CR 09 04 1045,
 CR 09 04 1058(A),
 CR 09 04 1314(B),
 CR 09 05 1510,
 CR 09 06 1792,
 CR 09 03 0691,
 CR 08 11 3888(A),
 CR 09 06 2020

DECISION AND JOURNAL ENTRY

Dated: December 8, 2010

BAIRD, Judge.

INTRODUCTION

{¶1} In this consolidated case, the State has appealed 16 Summit County Common Pleas Court orders disbursing forfeiture proceeds obtained via guilty pleas to forfeiture

specifications in criminal cases. The State has argued that the trial court did not have discretion under Chapter 2981 of the Ohio Revised Code to deduct court costs and/or appointed attorney fees from forfeited funds before ordering the funds to be split between the prosecutor's law enforcement trust fund and the relevant law enforcement agency's trust fund. This Court reverses 14 of the cases because the trial court incorrectly deducted court costs and/or appointed attorney fees from forfeited funds. The other two cases are affirmed because, in one case, the trial court's sentencing entry did not include an order to deduct court costs or attorney fees, and in the other, the State failed to object and the issue does not rise to the level of plain error.

DISTRIBUTION OF FORFEITED FUNDS

{¶2} The State's first assignment of error is that, in 13 of the cases consolidated in this matter, the trial court improperly deducted court costs and/or appointed attorney fees from money forfeited pursuant to guilty pleas to criminal forfeiture specifications. In each of the 13 cases, the State objected at the sentencing hearing to the trial court's proposed disbursement order. In each case, the trial court issued a subsequent sentencing entry ordering a deduction from the forfeited funds to cover court costs, appointed attorney fees, or both.

{¶3} Under Section 2981.13(B), a trial court's forfeiture order must apply forfeiture proceeds first and foremost to pay the costs incurred in the seizure and sale of forfeited property. R.C. 2981.13(B)(1). Second, the money must be applied "to satisfy any restitution ordered to the victim of the offense" in a criminal forfeiture case or "to satisfy any recovery ordered for the person harmed" in a civil case. R.C. 2981.13(B)(2). The third step is "to pay the balance due on any security interest preserved under . . . [C]hapter [2981]." R.C. 2981.13(B)(3). Finally, the trial court is required to "apply the remaining amounts . . . one hundred per cent to the law enforcement trust fund of the prosecutor and to the . . . fund supporting the law enforcement

agency that substantially conducted the investigation” R.C. 2981.13(B)(4)(b). “[Section] 2981.13 [of the Ohio Revised Code] lists the ways in which forfeited property ‘shall’ be used, and those uses don’t include payment of court costs and attorney fees.” *State v. Cruise*, 185 Ohio App. 3d 230, 2009-Ohio-6795, at ¶20 (Dickinson, P.J., concurring in judgment only). Therefore, in *Cruise*, this Court reversed a similar Summit County Common Pleas Court order disbursing forfeiture proceeds to pay the defendant’s court costs and his appointed attorney fees.

{¶4} In *Cruise*, a criminal defendant pleaded guilty to a number of offenses, including a forfeiture specification under Section 2941.1417. As part of a plea agreement, Mr. Cruise agreed to forfeit the money seized at the time of his arrest. Despite the State’s objection at the sentencing hearing, the trial court ordered deduction of court costs and attorney fees prior to disbursement of the forfeited funds to the law enforcement trust funds named in the statute. See R.C. 2981.13(B)(4).

{¶5} The facts of *Cruise* cannot be meaningfully distinguished from those of Michael Raines, Jr., C.A. 24824, or the following 11 additional cases consolidated in this matter: Brandon Arnold, C.A. 24839; Stephen Brown, C.A. 24854, John Kormendy, C.A. 24866; Thomas Alexander, C.A. 24920; Shatosha Jones, C.A. 24954; Brian Schmidt, C.A. 24955; Jeff Gurley, C.A. 24992; Matthew Jackson, C.A. 25012; David Davis, C.A. 25046; Danielle Boyd, C.A. 25047; Michael Litton, Jr., C.A. 25091. Therefore, the State’s first assignment of error is sustained in regard to these 12 cases.

{¶6} As part of its first assignment of error, the State has argued that the case of Nicholas Crawford, C.A. 24853, is factually similar to the 12 other cases discussed in this assignment of error. At Mr. Crawford’s sentencing hearing, the trial court indicated that it would deduct court costs from the forfeited money before dividing the remainder between the law

enforcement funds. The trial court later discovered a post-release control notification problem in its sentencing entry and resentenced Mr. Crawford on December 29, 2009. The State has appealed that entry, but the December entry did not include any reference to deducting court costs or appointed attorney fees from the money forfeited by Mr. Crawford. Therefore, regardless of its stated intention, the trial court did not order deduction of court costs or appointed attorney fees in Mr. Crawford's case. *Schenley v. Kauth*, 160 Ohio St. 109, paragraph one of the syllabus (1953) ("A court of record speaks only through its journal and not by oral pronouncement or mere written minute or memorandum."). Thus, the State's first assignment of error is overruled in regard to case number 24853.

BAKER: NO OBJECTION

{¶7} The State's second assignment of error is identical to the first, except for a minor factual distinction affecting one of the consolidated cases. The State has argued that, in *State v. Baker*, C.A. 24835, the trial court incorrectly deducted court costs from money forfeited pursuant to a plea to a criminal forfeiture specification without giving the State an opportunity to object at the sentencing hearing.

{¶8} At a sentencing hearing on May 26, 2009, the trial court accepted from Ralph C. Baker, III a plea of guilty to a criminal forfeiture specification. The State requested that the forfeited money be split between the Akron Police Department and the Summit County Prosecutor's Office. The trial court agreed, stating "All right. It will be so ordered." In the sentencing entry, however, the trial court ordered that "[t]he court costs are to be paid first" before the remainder would be disbursed to the two law enforcement funds.

{¶9} Because the trial court did not mention its intention to order the court costs deducted from the forfeited funds, there was no cause or opportunity for the State to object at the

hearing in order to preserve this error for appeal. Therefore, for the reasons discussed above, the trial court incorrectly ordered disbursement of the forfeited money to pay court costs in Mr. Baker's case. *State v. Cruise*, 185 Ohio App. 3d 230, 2009-Ohio-6795, at ¶20 (Dickinson, P.J., concurring in judgment only). The State's second assignment of error is sustained.

GOLDING: PLAIN ERROR

{¶10} The State's third assignment of error is that, in case number 24921, the trial court committed plain error by deducting court costs from funds forfeited by Brice Murrell Golding, Jr. pursuant to a plea agreement. At the sentencing hearing, the trial court ordered forfeiture of \$1400 to the Akron Police Department and to the Summit County Prosecutor's trust fund, but also indicated that it "want[ed] the court costs taken out of that first" The State did not object to that proposed order. In its sentencing entry, the trial court ordered the court costs to be paid first, with the remainder of the forfeited funds going to the two law enforcement trust funds.

{¶11} Under Rule 52(B) of the Ohio Rules of Criminal Procedure, "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Even if an error meets these requirements, courts are to notice plain error "only to prevent a manifest miscarriage of justice." *State v. Payne*, 114 Ohio St. 3d 502, 2007-Ohio-4642, at ¶16 (quoting *State v. Long*, 53 Ohio St. 2d 91, paragraph three of the syllabus (1978)). In the civil context, "the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself." *Goldfuss v. Davidson*, 79 Ohio St. 3d 116, syllabus (1997).

{¶12} The State has not claimed that this situation meets the high standard for this Court to notice plain error in the civil context. If such an argument exists, “it is not this Court’s duty to root it out.” *Cardone v. Cardone*, 9th Dist. No. 18349, 1998 WL 224934 at *8 (May 6, 1998). Furthermore, even under the criminal plain error standard, this Court would not notice the trial court’s error in this instance. The trial court’s error in this case does not require this Court’s attention so as to “prevent a manifest miscarriage of justice.” *State v. Payne*, 114 Ohio St. 3d 502, 2007-Ohio-4642, at ¶16 (quoting *State v. Long*, 53 Ohio St. 2d 91, paragraph three of the syllabus (1978)). The State’s appeal does not involve its right to prosecute criminal behavior for the benefit of its citizens. The appeal involves the State’s statutory right to collect forfeited funds. The State failed to avail itself of the opportunity to object at a time when the trial court could have corrected its error. Therefore, the State failed to preserve the issue for review on appeal. The State’s third assignment of error is overruled.

MURPHY: STATUTORY AMENDMENT

{¶13} The State’s fourth assignment of error is that, in the case of Frank D. Murphy, case number 24843, the trial court incorrectly deducted court costs and attorney fees from money forfeited pursuant to a plea accepted under the former version of the forfeiture statutes. Although *Cruise* analyzed the statutes as amended, the State has correctly pointed out that the change made to the disbursement statute between the time of indictment and the time of sentencing in this case has no bearing on whether the Common Pleas Court is entitled to deduct court costs and attorney fees from forfeited funds.

{¶14} The statutory amendment that became effective between Mr. Murphy’s offense date in May 2007 and his sentencing in June 2009 moved the law enforcement trust funds down one place in the disbursement hierarchy. R.C. 2981.13(B), compare former R.C. 2933.43(D)(1).

Under the current statute, effective before Mr. Murphy was sentenced, the law enforcement funds stand in fourth place, rather than third, because the General Assembly has placed restitution and recovery for victims in the hierarchy above the funds. R.C. 2981.13(B).

{¶15} Neither version of the statute permits the trial court to deduct court costs and/or appointed attorney fees from forfeited funds and the trial court erred by doing so in Mr. Murphy's case. The State's fourth assignment of error is sustained.

CONCLUSION

{¶16} The State's first assignment of error is sustained in regard to the 12 cases wherein the State properly objected at the sentencing hearing to the trial court's stated intention to deduct court costs and/or appointed attorney fees from forfeited funds. The first assignment of error is overruled in regard to Nicholas Crawford, C.A. 24853, however, because the trial court did not order deduction of court costs and/or appointed attorney fees in its sentencing entry in that case. The State's second assignment of error is sustained, despite the fact that the State did not object at sentencing, because the State was not given an opportunity to object at a time when the trial court could have corrected its error. The third assignment of error is overruled because the State failed to preserve the issue for appeal and the trial court's deduction of court costs is not plain error. The fourth assignment of error is sustained because, under either version of the statute potentially at issue in case number 24843, the trial court is not authorized to deduct court costs and/or attorney fees from the funds forfeited by Mr. Murphy.

{¶17} Therefore, the judgments of the Summit County Common Pleas Court in *State v. Crawford*, C.A. 24853 and *State v. Golding*, C.A. 24921 are affirmed. The other 14 judgments

of the Summit County Common Pleas Court that were appealed in this consolidated matter are reversed and those causes are remanded for proceedings consistent with this opinion.

Judgment affirmed in part,
reversed in part,
and cause remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellees in case numbers 24824, 24835, 24839, 24843, 24854, 24866, 24920, 24954, 24955, 24992, 25012, 25046, 25047, 25091 and Appellant in case numbers 24853 and 24921.

WILLIAM R. BAIRD
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR

(Baird, J., retired, of the Ninth District Court of Appeals, sitting by assignment pursuant to §6(C), Article IV, Constitution.)

APPEARANCES:

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