

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 Common Pleas Court)
Defendant-Appellant	:	

:
.....

OPINION

Rendered on the 11th day of August, 2006.

.....

JOHNNA M. SHIA, Atty. Reg. No. 0067685, Assistant Prosecuting Attorney, 301 W. Third Street, 5th Floor, Dayton, Ohio 45422
Attorney for Plaintiff-Appellee

STACEY J. BROWN, Atty. Reg. No. 0071297, Assistant Public Defender, 117 South Main Street, Suite 400, Dayton, Ohio 45422
Attorney for Defendant-Appellant

.....

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.

.....

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*.

...

(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.