[Cite as *State v. Girts*, 2009-Ohio-3422.]

COURT OF APPEALS
GUERNSEY COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	
	:	Hon. W. Scott Gwin, P.J.
Plaintiff-Appellee	:	Hon. Julie A. Edwards, J.
	:	Hon. Patricia A. Delaney, J.
-vs-	:	
	:	Case No. 08-CA-31
SHAWN GIRTS	:	
	:	
	:	
Defendant-Appellant	:	O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Guernsey County Court of Common Pleas Case No. 08-CR-64
JUDGMENT:	AFFIRMED
DATE OF JUDGMENT ENTRY:	July 8, 2009

APPEARANCES:

For Plaintiff-Appellee:

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For Defendant-Appellant:

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Delaney, J.

{¶1} Defendant-Appellant, Shawn Girts, appeals his conviction of one count of rape of a child, in violation of R.C 2907.02(A)(1)(b). The State of Ohio is Plaintiff-Appellee.

{¶2} The facts preceding Appellant's conviction are as follows:

{¶3} Appellant is the biological father of a minor child, T.G., who was born on July 6, 2003. T.G.'s mother, Heather Jones, has primary custody of T.G., and up through the weekend of March 23, 2008, Appellant had visitation with T.G. every other weekend.

{¶4} During the weekend of March 21-23, 2008, which was the weekend encompassing the Easter holiday, Appellant had visitation with T.G. and T.G. stayed at Appellant's house. Appellant admitted to having consumed alcohol that weekend and stated that he allowed T.G. to sleep in bed with him. When Appellant woke up the next morning, he stated that he had a "morning erection" and that he placed his penis in T.G.'s mouth. He stated that he only placed his penis in T.G.'s mouth for a few seconds and that he knew that it wasn't right so he stopped. At that time, T.G. was four years old.

{¶5} On April 2, 2008, Heather Jones, Jones' sister, and T.G. were in the kitchen at Jones' house when Jones noticed that their six month old male bulldog had an erection. Jones told the puppy to "put that away." T.G. then stated, "My daddy has a pee thing like that." Jones asked T.G. how T.G. knew what Appellant had and T.G. responded, "He puts it in my mouth." Jones and T.G.'s aunt both said, "what?" at which time, T.G. clammed up. When Jones assured T.G. that T.G. was not in trouble and

asked T.G. to repeat what she had just said, T.G. stated, “My daddy puts his pee thing in my mouth.”

{¶6} Following these statements, Jones contacted Guernsey County Children’s Services and an investigation commenced. Upon being interviewed by the police, Appellant admitted to placing his penis in T.G.’s mouth for a few seconds and stated that it only happened one time.

{¶7} On May 2, 2008, Appellant was indicted by the Guernsey County Grand Jury on one count of rape, a violation of R.C. 2907.02(A)(1)(b), a felony of the first degree. The grand jury also indicted Appellant on a life imprisonment specification.

{¶8} Appellant pled not guilty at his arraignment on May 19, 2008.

{¶9} On June 11, 2008, Appellant filed a Motion in Limine, seeking to exclude T.G.’s statement that “daddy puts his pee thing in my mouth.” The trial court, in overruling Appellant’s motion, determined that the statement was an excited utterance under Evid. R. 803(2), and therefore was an exception to the hearsay rule. The court also determined that T.G. was not competent to testify, as T.G. did not understand several basic questions that the trial court asked during the competency hearing and determined that T.G.’s statement was not admissible under Evid. R. 807 (out-of-court statement made by child victim where child’s testimony is not reasonably obtainable by the proponent).

{¶10} On August 12, 2008, Appellant waived his right to a jury trial on the record and in writing. The case then proceeded to bench trial on that same date. After a day of testimony, the trial court found Appellant guilty of rape, in violation of R.C.

2907.02(A)(1)(b), but found him not guilty as to the life imprisonment specification. Appellant was subsequently sentenced to fifteen years to life in prison.

{¶11} Appellant raises three Assignments of Error:

{¶12} "I. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT ADMITTED, OVER OBJECTION, THE ALLEGED CHILD VICTIM'S HEARSAY STATEMENTS INTO EVIDENCE, IN CONTRAVENTION OF THE OHIO RULES OF EVIDENCE, AND IN VIOLATION OF MR. GIRTS'S FIFTH, SIXTH, AND FOURTEENTH AMENDMENT RIGHTS UNDER THE UNITED STATES CONSTITUTION, AND SECTIONS 10 AND 16, ARTICLE 1 OF THE OHIO CONSTITUTION. (JUNE 11, 2008, DEFENDANT'S MOTION IN LIMINE; JUNE 17, 2008, STATE'S MOTION FOR COURT DETERMINATION PRIOR TO TRIAL; JUNE 26, 2008, IN CAMERA INTERVIEW TR.; JUNE 26, 2008, COMPETENCY HEARING TR.; JUNE 27, 2008, JUDGMENT ENTRY; STATE'S EX. C; AUG. 8, 2008, VIDEOTAPE DEPOSITION OF SGT. DAVIS TR.; TR. 68, 80-84, 88-90, 92-93, 96-98, 114-26, 129-31, 191-96).

{¶13} "II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT DENIED MR. GIRTS OF HIS RIGHT TO A TRIAL BY JURY WHEN IT FAILED TO STRICTLY COMPLY WITH THE MANDATES OF R.C. 2945.05, AND ACCEPTED MR. GIRT'S INSUFFICIENT WRITTEN WAIVER OF HIS RIGHT TO A TRIAL BY JURY, IN VIOLATION OF MR. GIRTS'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTIONS 5, 10 AND 16, ARTICLE 1 OF THE OHIO CONSTITUTION. (TR. 6-11; AUG. 12, 2008, JURY WAIVER).

{¶14} "III. DEFENSE COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF MR. GIRTS'S RIGHTS UNDER THE FIFTH, SIXTH, AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTIONS 5, 10 AND 16, ARTICLE 1 OF THE OHIO CONSTITUTION (ASSIGNMENT OF ERROR II; TR. 6-11; AUG. 12, 2008, JURY WAIVER).

I.

{¶15} In his first assignment of error, Appellant claims that the trial court erred in admitting T.G.'s statement pursuant to the excited utterance exception in Evid. R. 803(2).

{¶16} The admission of evidence lies in the sound discretion of the trial court. *State v. Sage* (1987), 31 Ohio St.3d 173, 510 N.E.2d 343. A statement which is otherwise considered hearsay may be admissible as an excited utterance when the following four criteria are met: "(1) an event startling enough to produce a nervous excitement in the declarant, (2) the statement must have been made while still under the stress of excitement caused by the event, (3) the statement must relate to the startling event, and (4) the declarant must have personally observed the startling event." *In re C.C.,* 8th Dist. Nos. 88320, 88321, 2007-Ohio-2226, ¶50, citing *State v. Brown* (1996), 112 Ohio App.3d 583, 601, 679 N.E.2d 361.

{¶17} In *State v. Taylor* (1993), 66 Ohio St.3d 295, 304, 612 N.E.2d 316, the Supreme Court recognized that children are likely to remain in a state of nervous excitement longer than an adult would, and therefore held that "admission of statements of a child regarding sexual assault may be proper under the excited utterance exception even when they are made after a substantial lapse of time." The Court also determined

that there is no per se amount of time after which a statement can no longer be considered to be an excited utterance; the central requirements are that the statement must be made while the declarant is still under the stress of the event and the statement may not be a result of reflective thought.

{¶18} The Eighth District, in *C.C.*, supra, determined that although roughly twenty-seven days had elapsed since the day that defendant babysat for the child victims, the utterance by the boys regarding what had happened to them was spontaneously uttered, the statement regarded a subject matter ordinarily foreign to a young child, and the children were both clearly under nervous excitement of the event. *C.C.*, supra, at ¶53.

{¶19} Similarly, in *State v. Dukes* (Aug. 25, 1988), 8th Dist. No. 52604, the Eighth District found that the spontaneous statement of a three-year-old child, ten days after the incident, constituted an excited utterance. While the child was being bathed, the child stated, “My daddy sucks my body.” The court found that the child's spontaneous statement regarding a subject matter ordinarily foreign to a three-year-old child constituted an excited utterance.

{¶20} Moreover, the Twelfth District, in *State v. Ames* (June 11, 2001), 12th Dist No. CA2000-02-024, held that the controlling factor is whether the declarant made the statement under circumstances that would reasonably show that it resulted from impulse rather than reason and reflection. *Ames*, supra, citing *State v. Smith* (1986), 34 Ohio App.3d 180, 190. In *Ames*, the six-year old victim’s mother was permitted to testify about the statements the victim made on October 25, 1998, concerning a sexual assault by the defendant. Although the actual date of the incident could not be

identified, testimony of different individuals narrowed the time frame to within approximately two months of the October 25th date. After the victim's mother was notified by the babysitter about what had occurred, the victim's mother asked the victim why she had not told her. While the victim was talking about the incident involving defendant with her mother, the victim's mother testified that the victim began to cry, hyperventilate, perspire and shake as she related what had happened.

{¶21} The trial court stated on the record that it was relying upon *In re Michael* (1997), 119 Ohio App.3d 112, 694 N.E.2d 538, in making its determination that the victim's statements to her mother fell within the excited utterance exception to the hearsay rule. *In re Michael* involved a time delay of two weeks between the time of the incident and the statements made. *In re Michael* cited additional authority that approved admission of excited utterances where a significant period of time had elapsed between the conduct and the statement. Those cases involved a seven month delay from incident to statements, *State v. List* (May 1, 1996), 9th Dist. No. 17295, unreported, and a four-to-six week delay. *State v. Stipek* (Mar. 30, 1995), 7th Dist. No. 92-B-59.

{¶22} The *Ames* court determined that it is in the sound discretion of the trial court to determine whether or not a declaration should be admissible under the excited utterance exception to the hearsay rule and that if the decision of the court appears to be a reasonable one, even though the reviewing court, if sitting as a trial court, would have made a different decision, then that decision must stand. Id., citing *Potter v. Baker* (1955), 162 Ohio St. 488, 500, 124 N.E.2d 140.

{¶23} As the Supreme Court in *Taylor* held, "[t]his trend of liberalizing the requirements for an excited utterance when applied to young children who are the

victims of sexual assault is also based on the recognition of their limited reflective powers. Inability to fully reflect makes it likely that the statements are trustworthy." *State v. Taylor*, supra, at 304, citing *State v. Wallace* (1988), 37 Ohio St.3d 87, 88, 524 N.E.2d 466, 468; *State v. Wagner* (1986), 30 Ohio App.3d 261, 30 OBR 458, 508 N.E.2d 164.

{¶24} Appellant contests that T.G. was under the stress of the event in the present case nine days after the incident. We disagree. The evidence is undisputed that T.G. made the statement while observing her male puppy with an erection in her kitchen. Such an event could be construed as startling to the victim.

{¶25} The excited utterance hearsay exception is treated differently when the declarant is an alleged sexually abused child; as we have already established, the test is extremely liberal. *In re D.M.* (2004), 158 Ohio App.3d 780, 822 N.E.2d 433 at ¶13 citing *State v. Shoop* (1993), 87 Ohio App.3d 462, 472, 622 N.E.2d 665. See, also, *Taylor*, supra, 66 Ohio St.3d at 304, 612 N.E.2d 316. "The scrutiny for the child declarant is less than that for an adult. The liberal scrutiny is based on the court's recognition that young children are more trustworthy because of their limited reflective powers." Id., citing *Taylor*, supra, 66 Ohio St.3d at 304, 612 N.E.2d 316; *State v. Wagner* (1986), 30 Ohio App.3d 261, 264, 30 OBR 458, 508 N.E.2d 164. With this in mind, cases involving very young children focus on the spontaneity of the statement, not the progression of a startling event or occurrence.

{¶26} "The limited reflective powers of a three-year-old, coupled with his inability to understand the enormity or ramifications of the attack upon him, sustain the trustworthiness of his communications. As a three-year-old, truly in the age of

innocence, he lacked the motive or reflective capacities to prevaricate [about] the circumstances of the attack. Furthermore, the immediacy of each communication, considered in light of the available opportunities to express himself, satisfies the requirement of spontaneity." *D.M.*, supra, citing *State v. Wagner*, (1986), 30 Ohio App.3d 261, 30 OBR 458, 508 N.E.2d 164.

{¶27} Each excited utterance must be reviewed on a case by case basis. We conclude, based on the circumstances of this case, that because the statement was spontaneous, because the victim was of such a young age, and because her statements did not indicate a reflective process, the statement constituted an excited utterance. We further find that the trial court's judgment that T.G.'s statements qualify as an excited utterance under Evid. R. 803(2) was reasonable. The record does not reveal any evidence that T.G.'s statements were fabricated, distorted or reflective. Thus, we find that the trial court did not abuse its discretion in admitting the testimony regarding T.G.'s statements.

{¶28} Appellant also argues that the trial court's decision not to allow the victim to testify due to incompetence makes her statement unreliable. We disagree.

{¶29} The statement was admitted pursuant to the excited-utterance exception to the hearsay rule, not Evid.R. 807. A prior finding of availability or competency is not necessary when the victim's statement is an excited utterance. *State v. Said* (1994), 71 Ohio St.3d 473, 644 N.E.2d 337; *State v. Boston* (1989), 46 Ohio St.3d 108, 114, 545 N.E.2d 1220; *State v. Street* (1997), 122 Ohio App.3d 79, 85, 701 N.E.2d 50; *State v. Burnette* (1998), 125 Ohio App.3d 278, 281, 708 N.E.2d 276. The Ohio Supreme Court

in *State v. Wallace* (1988), 37 Ohio St.3d 87, 93-94, 524 N.E.2d 466, addressed the issue of competency and the excited-utterance exception and held as follows:

{¶30} "[I]t has long been the common law of Ohio that the testimonial incompetency of a child-declarant does not bar the admission of the child's declarations as excited utterances. The overwhelming majority of jurisdictions which have considered this issue are in accord. * * *

{¶31} "* * *[C]ompetency is, in large part, inherently satisfied by the elements required to establish an excited utterance. * * * To be competent, a witness must appreciate the duty to tell the truth and possess the ability to recall accurately. These requirements are not relevant to the admissibility of an excited utterance because an excited utterance is made while the declarant is dominated by the excitement of the event and before there is opportunity to reflect and fabricate statements relating to the event."

{¶32} Accordingly, we find Appellant's argument to be unpersuasive and his first assignment of error is overruled.

II.

{¶33} In his second assignment of error, Appellant argues that the trial court committed error by failing to strictly comply with R.C. 2945.05 in that the trial court did not fully advise Appellant of the rights that he was giving up by waiving his right to jury trial. We disagree.

{¶34} A jury waiver must be voluntary, knowing, and intelligent. *State v. Ruppert* (1978), 54 Ohio St.2d 263, 271, 375 N.E.2d 1250, 1255.

{¶35} R.C. 2945.05 provides:

{¶36} “In all criminal cases pending in courts of record in this state, the defendant may waive a trial by jury and be tried by the court without a jury. Such waiver by a defendant, shall be in writing, signed by the defendant, and filed in said cause and made a part of the record thereof. It shall be entitled in the court and cause, and in substance as follows: ‘I _____, defendant in the above cause, hereby voluntarily waive and relinquish my right to a trial by jury, and elect to be tried by a Judge of the Court in which the said cause may be pending. I fully understand that under the laws of this state, I have a constitutional right to a trial by jury.’

{¶37} “Such waiver of trial by jury must be made in open court after the defendant has been arraigned and has had opportunity to consult with counsel. Such waiver may be withdrawn by the defendant at any time before the commencement of the trial.”

{¶38} Appellant contends that because his written waiver merely stated “Defendant waives his right to a jury trial and consents to trial to the court,” it is not in compliance with the mandates of R.C. 2945.05. Appellant does not include in his argument, however, that the trial court proceeded to go through a lengthy oral colloquy prior to accepting Appellant’s jury waiver. In whole, the colloquy between the court and Appellant was as follows:

{¶39} “THE COURT: * * * [T]he defendant, through his attorney, has prepared a waiver of right of jury trial. That waiver reads: The defendant waives his right to a jury trial and consents to a trial to the Court. The Court, therefore, has a duty under Ohio law to comply with Criminal Rule of Procedure 23(A). That rule reads in its pertinent part: In serious offense cases the defendant, before the commencement of trial, may

knowingly, intelligently and voluntarily waive, in writing, his right to trial by jury. Such waiver may also be made during the trial as this is being made prior to the commencement of the trial. I will not continue with the reading of that rule.

{¶40} "Further, Ohio case law is interpreted by the Ohio Constitution Article I, Section 10 by the State of Ohio has stated this matter must be done on the record, and it must be done in open court, and it must have a colloquy that shows that the judge has determined that the defendant is proceeding knowingly, voluntarily and intelligently.

{¶41} "Further, the supreme court has directed that, although a waiver may be filed on the day of trial, unless it is memorialized by entry and placed in the Court file, it is not a valid waiver prior to the commencement of trial. So the Court will be complying with those portions of Criminal Rule 23.

{¶42} "Mr. Girts, the first part of that rule commences with you. I have a duty to determine if you are proceeding voluntarily, knowingly and intelligently. I am going to ask you some questions regarding those matters, and as we have a court reporter, I'll need you to speak loud enough that she can hear.

{¶43} "Now, Shawn Girts, have you reviewed this waiver of right to jury trial with your attorney, Jack A. Blakeslee?

{¶44} "THE DEFENDANT: Yes, Your Honor.

{¶45} "THE COURT: And are you satisfied with the legal representation Mr. Blakeslee has provided you and is providing you in this matter?

{¶46} "THE DEFENDANT: Yes, Your Honor.

{¶47} "THE COURT: All right. Now, do you understand that you have the constitutional right to waive, that means give up your right to a jury trial, and consent to a trial to the Court? A trial to the Court means to the Judge; do you understand that?

{¶48} "THE DEFENDANT: Yes, Your Honor.

{¶49} "THE COURT: And do you understand that we do have the jurors, they are literally coming into the courthouse as we are here in court; do you understand that?

{¶50} "THE DEFENDANT: Yes, Your Honor.

{¶51} "THE COURT: All right. And did any party threaten you to cause you to waive your right to a jury trial?

{¶52} "THE DEFENDANT: No, Your Honor.

{¶53} "THE COURT: Did anyone promise you anything to get you to sign this document?

{¶54} "THE DEFENDANT: No, Your Honor.

{¶55} "THE COURT: And have you reviewed this carefully with your attorney?

{¶56} "THE DEFENDANT: Yes, Your Honor.

{¶57} "THE COURT: And do you understand that if you waive the right to a jury trial and consent to a trial to the Court, that is to the Judge, and if the evidence establishes proof beyond a reasonable doubt, the Court then could convict you and find you guilty just like a jury would do?

{¶58} "THE DEFENDANT: Yes, Your Honor.

{¶59} "THE COURT: And do you further understand if the evidence does not establish your guilt beyond a reasonable doubt, the Court, that is the Judge, could acquit you and find you not guilty just like a jury would do?

{¶60} "THE DEFENDANT: Yes, Your Honor.

{¶61} "THE COURT: And do you further understand the same evidence presumably will be presented to the Judge that could have been presented to the jury?

{¶62} "THE DEFENDANT: Yes, Your Honor.

{¶63} "THE COURT: Do you have any question regarding this matter, Mr. Girts?

{¶64} "THE DEFENDANT: No, Your Honor.

{¶65} "THE COURT: Is this how you want to proceed?

{¶66} "THE DEFENDANT: Yes, Your Honor."

{¶67} To satisfy the statutory requirements of R.C. 2945.05, a waiver must be in writing, signed by the defendant, filed in the criminal action, and made part of the record. *State v. Pless* (1996), 74 Ohio St.3d 333, 658 N.E.2d 766, paragraph one of the syllabus. While a valid waiver may not be presumed from a silent record, if the record shows a jury waiver, "the verdict will not be set aside except on a plain showing that the waiver was not freely and intelligently made." *State v. Bays* (1999), 87 Ohio St.3d 15, 18, 716 N.E.2d 1126, citing *Adams v. United States ex rel. McCann* (1942), 317 U.S. 269, 281, 63 S.Ct. 236, 242-243, 87 L.Ed. 268, 275-276. Moreover, a written waiver is presumptively voluntary, knowing, and intelligent. Id. citing *United States v. Sammons* (C.A.6, 1990), 918 F.2d 592, 597.

{¶68} In *State v. Manley* (June 21, 1996), 7th Dist. No. 95-CO-54, the defendant filed a written jury waiver that stated, "Now comes Randall Manley, in his own proper person, to waive his right to trial by jury by affixing his signature hearto [sic]." The trial court in *Manley* engaged in a colloquy similar to that of the trial court in the present case regarding Manley's understanding of waiving his right to a jury trial and the

voluntariness of that waiver. The court in *Manley* held that it was undisputed that the waiver was in writing, signed by appellant, filed with the court and made a part of the record. The court further found that the requirements set forth in *State v. Pless*, supra, were met. The court also found that the colloquy which took place between the trial court and the defendant in open court, demonstrated that the defendant knowingly and voluntarily waived his right to a jury trial. Accordingly, the court found that the defendant could not claim on appeal that he improperly waived such right.

{¶69} Moreover, in *State v. Jells* (1990), 53 Ohio St.3d 22, 26, 559 N.E.2d 464, U.S. certiorari denied 498 U.S. 1111, the Ohio Supreme Court found that while it may be better practice for the trial court to enumerate all the possible implications of a waiver of a jury trial, there is no error in the trial court's failure to do so.

{¶70} We do not find that the trial court erred. There was a written waiver signed by Appellant and a lengthy colloquy was held to ensure that he understood the rights we was waiving.

{¶71} Appellant's second assignment of error is overruled.

III.

{¶72} In his third assignment of error, Appellant argues that counsel was ineffective for allowing Appellant to improperly waive his right to a jury trial.

{¶73} To succeed on a claim of ineffectiveness, a defendant must satisfy a two-prong test. Initially, a defendant must show that his trial counsel acted incompetently. *Strickland v. Washington* (1984), 466 U.S. 668, 104 S.Ct. 2052. In assessing such claims, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must

overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. at 689, quoting *Michel v. Louisiana* (1955), 350 U.S. 91, 101, 76 S.Ct. 158, 164.

{¶74} "There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." *Strickland*, 466 U.S. at 689. The question is whether counsel acted "outside the wide range of professionally competent assistance." Id. at 690.

{¶75} Even if a defendant shows that his counsel was incompetent, the defendant must then satisfy the second prong of the *Strickland* test. Under this "actual prejudice" prong, the defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

{¶76} When counsel's alleged ineffectiveness involves the failure to pursue a motion or legal defense, this actual prejudice prong of *Strickland* breaks down into two components. First, the defendant must show that the motion or defense "is meritorious," and, second, the defendant must show that there is a reasonable probability that the outcome would have been different if the motion had been granted or the defense pursued. See *Kimmelman v. Morrison* (1986), 477 U.S. 365, 375, 106 S.Ct. 2574, 2583; see, also, *State v. Santana* (2001), 90 Ohio St.3d 513, 739 N.E.2d 798 citing *State v. Lott* (1990), 51 Ohio St.3d 160, 555 N.E.2d 293.

{¶77} Based on our ruling of Appellant's second assignment of error, we also overrule Appellant's third assignment of error. Appellant asserts that counsel was ineffective because his jury waiver was not in compliance with the statute; however, we

have determined that the waiver was in fact compliant with the statute. As such, counsel's performance was not deficient.

{¶78} Appellant's third assignment of error is overruled.

{¶79} For the foregoing reasons, we find Appellant's assignments of error to be without merit and affirm the decisions of the Guernsey County Court of Common Pleas.

By: Delaney, J.

Gwin, P.J. and

Edwards, J. concur.

HON. PATRICIA A. DELANEY

HON. W. SCOTT GWIN

HON. JULIE A. EDWARDS

[Cite as *State v. Girts*, 2009-Ohio-3422.]

IN THE COURT OF APPEALS FOR GUERNSEY COUNTY, OHIO

FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	
	:	
-vs-	:	JUDGMENT ENTRY
	:	
SHAWN GIRTS	:	
	:	
Defendant-Appellant	:	Case No. 08-CA-31
	:	

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Guernsey County Court of Common Pleas is affirmed. Costs assessed to Appellant.

_____
HON. PATRICIA A. DELANEY

_____
HON. W. SCOTT GWIN

_____
HON. JULIE A. EDWARDS