**[Cite as *State v. Carosiello*, 2018-Ohio-860.]**

STATE OF OHIO, COLUMBIANA COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

| | | |
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| STATE OF OHIO | ) | CASE NO. 15 CO 0017 |
| | ) | |
| PLAINTIFF-APPELLEE | ) | |
| | ) | |
| VS. | ) | OPINION AND |
| | ) | JUDGMENT ENTRY |
| NICOLAS CAROSIELLO | ) | |
| | ) | |
| DEFENDANT-APPELLANT | ) | |

CHARACTER OF PROCEEDINGS: Appellant's Application for Reconsideration Pursuant to App.R. 26(A)

JUDGMENT: Application Denied.

APPEARANCES:

For Plaintiff-Appellee:

Atty. Robert Herron
Columbiana County Prosecutor
Atty. John E. Gamble
Atty. Tammie Riley Jones
Assistant Prosecuting Attorneys
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For Defendant-Appellant:

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JUDGES:
Hon. Cheryl L. Waite
Hon. Gene Donofrio
Hon. Stephen A. Yarbrough, of the Sixth District Court of Appeals, sitting by assignment. (Retired)

Dated: March 5, 2018

**[Cite as *State v. Carosiello*, 2018-Ohio-860.]**
PER CURIAM.

**{¶1}** Appellant Nicolas Carosiello requests reconsideration of our Opinion in *State v. Carosiello*, 7th Dist. No. 15 CO 0017, 2017-Ohio-8160, pursuant to App.R. 26(A). Appellant argues that the record supports a finding that he acted in accordance with the "castle doctrine." As such, he believes that his aggravated murder conviction is supported by insufficient evidence and is against the manifest weight of the evidence. For the following reason, we deny Appellant's application for reconsideration.

**{¶2}** Appellant is a known drug dealer who kept large amounts of marijuana and cash inside his residence, which is located in Wellsville. A group of people led by Appellant's estranged wife, the victim, unsuccessfully attempted to burglarize Appellant's house on two occasions. Appellant learned they were planning a third attempt to burglarize his home and he decided to make it appear as if no one was home. He also asked a friend to inform the robbers that the house would be empty that night.

**{¶3}** The robbers did arrive at Appellant's house and unsuccessfully attempted to gain entry. At some point, the victim tried to enter through an upstairs window where Appellant was waiting, armed with a handgun. Appellant fired one shot which struck the victim between the eyes and killed her. Appellant instructed his brother to dispose of his gun along with bags of marijuana before the police could arrive.

**{¶4}** Appellant was charged with one count of aggravated murder, an unspecified felony in violation of R.C. 2903.01(A), three counts of tampering with

evidence, a felony of the third degree in violation of R.C. 2921.12(A)(1), one count of possession of drugs in violation of R.C. 2925.11(A), and three attendant firearm specifications.

**{¶5}** At trial, the state theorized that Appellant lured the would-be thieves to enter the house on the premise that it was empty, with the intent to ambush them once inside. In response, Appellant claimed that he acted in self-defense in accordance with the "castle doctrine." The jury found Appellant guilty on all counts. However, the jury found that the state had not offered adequate proof on the amount of drugs in Appellant's possession, and his conviction for possession of drugs was reduced to a minor misdemeanor.

**{¶6}** On April 10, 2015, the trial court sentenced Appellant to life in prison without the possibility of parole for aggravated murder, 36 months of incarceration on each of the three counts of tampering with evidence, three years of incarceration on one firearm specification and one year for the other two firearm specifications. The court also ordered Appellant to pay a $150 fine and ordered that his driver's license be suspended for possession of drugs. The trial court ordered all of the sentences to run consecutively.

> The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been.

*Columbus v. Hodge*, 37 Ohio App.3d 68, 523 N.E.2d 515 (10th Dist.1987), paragraph one of the syllabus.

**{¶7}** App.R. 26(A)(1)(a) states, in relevant part: "[a]pplication for reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App. R. 30(A)."

**{¶8}** Appellant's judgment was mailed to his counsel and a note relevant to this mailing was placed on the docket on October 6, 2017. In order to be timely, an application would have been filed no later than October 16, 2017. However, Appellant did not file his application until December 20, 2017, sixty-five days after the deadline.

**{¶9}** Pursuant to App.R. 14(B), an "[e]nlargement of time to file an application for reconsideration or for en banc consideration pursuant to App. R. 26(A) shall not be granted except on a showing of extraordinary circumstances." Here, Appellant argues that his judgment entry was mailed to his trial counsel who did not forward him a copy until October 18, 2017, two days after the deadline had already passed. Appellant further argues that he did not receive his mail until October 30, 2017. Appellant provides a copy of the prison's mail log as evidence. However, assuming *arguendo* that Appellant did receive the judgment entry on October 30, 2017, he has failed to explain why he waited until December 20, 2017 (fifty-one days later) to file his application.

**{¶10}** Regardless, Appellant merely repeats the same arguments made on appeal in this matter and fails to even suggest an issue that was either not considered at all or was not fully considered by the Court. Appellant maintains that the record does not support a determination that he "lured" and "enticed" the group of robbers to his home. He contends that the robbers arrived at his home to burglarize his house and he merely acted to defend himself and his home. Appellant believes we should assume that he held a reasonable belief that he was in imminent danger based simply on the fact that a group of persons were attempting to burglarize his house. These arguments were each fully addressed within our Opinion. It is apparent from Appellant's application that he merely disagrees with the decision of and logic used by this Court.

**{¶11}** "Reconsideration motions are rarely considered when the movant simply disagrees with the logic used and conclusions reached by an appellate court." *State v. Himes*, 7th Dist. No. 08 MA 146, 2010-Ohio-332, ¶ 4, citing *Victory White Metal Co. v. Motel Syst*., 7th Dist. No. 04 MA 245, 2005-Ohio-3828; *Hampton v. Ahmed*, 7th Dist. No. 02 BE 66, 2005-Ohio-1766.

**{¶12}** In order to prevail on an application for reconsideration, an appellant must demonstrate an obvious error in our decision or that an issue was raised that was either not dealt with or was not fully considered. Mere disagreement with this Court's logic and conclusions does not support an application for reconsideration. Accordingly, Appellant's application for reconsideration is denied.

Waite, J., concurs.

Donofrio, J., concurs.

Yarbrough, J., concurs.