[Cite as *State v. Riggins*, 2017-Ohio-80.]

STATE OF OHIO	)	IN THE COURT OF APPEALS
	)ss:	NINTH JUDICIAL DISTRICT
COUNTY OF SUMMIT	)	

STATE OF OHIO Appellee v. CHE M. RIGGINS Appellant	C.A. No. 28080 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. CR 14 11 3501 (HH)

DECISION AND JOURNAL ENTRY

Dated: January 11, 2017

MOORE, Judge.

{¶1} Defendant-Appellant, Che Riggins, appeals from his conviction in the Summit County Court of Common Pleas. This Court affirms in part and reverses in part.

I.

{¶2} On the evening of November 15, 2014, multiple law enforcement agencies conducted a raid at a home in Akron. The raid occurred because the police suspected that a large scale, illegal dogfight was set to occur on the property. As a result of the raid, the police arrested more than 45 individuals in connection with dogfighting. Mr. Riggins was one of the individuals whom the police arrested. At the time of his arrest, he had $1,320 in cash on his person.

{¶3} A grand jury indicted Mr. Riggins on one count of dogfighting, in violation of R.C. 959.16(A)(5). His indictment also contained a specification for the criminal forfeiture of $1,320. Because the same trial judge was assigned to preside over the trials of Mr. Riggins and his co-defendants, the judge held multiple, combined pre-trials and status conferences for all of

the named defendants. Relevant to this appeal, the court set a status conference two weeks before trial for any defendant who "desire[d] to waive his right to a jury trial and, instead, elect[ed] to have his case tried to the Court." After the scheduled status conference, Mr. Riggins' counsel filed a written waiver of trial by jury. Mr. Riggins then had a bench trial, at the conclusion of which the court found him guilty of dogfighting, but not guilty of his forfeiture specification. The court sentenced him to a suspended sentence, two years of community control, and a fine.

{¶4} Mr. Riggins now appeals and raises three assignments of error for our review.

II.

ASSIGNMENT OF ERROR I

> THE TRIAL COURT COMMITTED REVERSIBLE AND PLAIN ERROR WHEN PRIOR TO CONDUCTING THE BENCH TRIAL IT FAILED TO FOLLOW THE REQUIREMENTS SET FORTH IN R.C. 2945.05[.]

{¶5} In his first assignment of error, Mr. Riggins argues that the trial court erred when it conducted a bench trial in the absence of a properly executed jury waiver. He argues that the jury waiver that his counsel filed was invalid because it did not comply with R.C. 2945.05. The State concedes the error.

{¶6} Mr. Riggins acknowledges that a plain error standard applies here, as his counsel did not object when the court held a bench trial in the absence of a valid jury waiver. "'There are three requirements to finding plain error.'" *State v. Kudla*, 9th Dist. Summit No. 27652, 2016-Ohio-5215, ¶ 7, quoting *State v. Proctor*, 9th Dist. Summit No. 26740, 2013-Ohio-4577, ¶ 4, citing *State v. Payne*, 114 Ohio St.3d 502, 2007-Ohio-4642, ¶ 15-16. "First, there must be an error." *Kudla* at ¶ 7, quoting *Proctor* at ¶ 4. "Second, the error must be obvious." *Kudla* at ¶ 7,

quoting *Proctor* at ¶ 4. "Lastly, the error must have affected the outcome of the trial." *Kudla* at ¶ 7, quoting *Proctor* at ¶ 4, citing *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002).

{¶7} R.C. 2945.05 governs jury waivers in criminal trials. It requires all waivers to be "in writing, signed by the defendant, and filed in said cause and made a part of the record thereof." R.C. 2945.05. It further provides that a waiver

> 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."
>
> 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.

Id. "Therefore, to be valid, a waiver must meet five conditions. It must be (1) in writing, (2) signed by the defendant, (3) filed, (4) made part of the record, and (5) made in open court." *State v. Lomax*, 114 Ohio St.3d 350, 2007-Ohio-4277, ¶ 9. "To satisfy the 'in open court' requirement * * *, there must be some evidence in the record that the defendant while in the courtroom and in the presence of counsel, if any, acknowledged the jury waiver to the trial court." *Id.* at paragraph two of the syllabus. "Absent strict compliance with the requirements of R.C. 2945.05, a trial court lacks jurisdiction to try the defendant without a jury." *State v. Pless*, 74 Ohio St.3d 333 (1996), paragraph one of the syllabus. *Accord State v. Woodbridge*, 9th Dist. Summit No. 26911, 2014-Ohio-1338, ¶ 8-9 (plain error occurs when a court conducts a bench trial without a valid jury waiver).

{¶8} The only written waiver that appears in the record here was filed by defense counsel eight days before trial and provides, in relevant part, as follows:

> Now comes the Defendant, Che Riggins, by and through undersigned counsel * * * and who hereby moves this Honorable Court to waive a trial by jury in the above captioned matter.

Mr. Riggins did not sign the written waiver, and "there is nothing in the written waiver that indicates that [he] fully understands that he has a constitutional right to a jury trial." *Woodbridge* at ¶ 7. Moreover, there is no indication in the record that Mr. Riggins waived his right to a jury trial in open court. *See Lomax* at paragraph two of the syllabus. The trial court specifically scheduled a status conference for two weeks before trial and ordered the attendance of any defendant who "desire[d] to waive his right to a jury trial." The record, however, does not contain a transcript of the status conference, and the State concedes that the reason no transcript appears in the record is that Mr. Riggins was not present at the status conference. Accordingly, contrary to R.C. 2945.05, there is no evidence that Mr. Riggins executed a written waiver of his right to a jury trial in open court or that he fully understood that he had a right to a jury trial.

{¶9} As previously noted, "[a]bsent strict compliance with the requirements of R.C. 2945.05, a trial court lacks jurisdiction to try the defendant without a jury." *Pless* at paragraph one of the syllabus. *Accord Woodbridge* at ¶ 8-9. Because Mr. Riggins never executed a written jury waiver in compliance with R.C. 2945.05, the court committed plain error when it conducted his bench trial. Accordingly, Mr. Riggins' first assignment of error is sustained.

ASSIGNMENT OF ERROR II

> CHE RIGGINS' CONVICTION FOR DOG FIGHTING IS NOT SUPPORTED BY SUFFICIENT EVIDENCE AS REQUIRED BY THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.

{¶10} In his second assignment of error, Mr. Riggins argues that his conviction for dogfighting is based on insufficient evidence. Specifically, he argues that the State failed to set

forth evidence that he either paid money or gave something of value in exchange for admission to a dogfight. We do not agree that his conviction is based on insufficient evidence.[1]

{¶11} The issue of whether a conviction is supported by sufficient evidence is a question of law, which we review de novo. *State v. Thompkins*, 78 Ohio St.3d 380, 386 (1997).

> An appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.

State v. Jenks, 61 Ohio St.3d 259 (1991), paragraph two of the syllabus.

{¶12} R.C. 959.16(A)(5) provides that "[n]o person shall knowingly * * * [p]ay money or give anything else of value in exchange for admission to or be present at a dogfight." This Court recently examined the foregoing statute and found it to be ambiguous. *See State v. Taylor*, 9th Dist. Summit No. 28091, 2016-Ohio-7953. We, therefore, conducted a statutory analysis and determined that R.C. 959.16(A)(5)'s legislative history supports a disjunctive reading of the statute. *Id.* at ¶ 12-15. We held that, to support a conviction under R.C. 959.16(A)(5), the State may prove either that a person (1) knowingly paid money or gave something of value for admission to a dogfight, or (2) knowingly was present at a dogfight. *Id.* at ¶ 15. "A person acts knowingly, regardless of his purpose, when he is aware that his conduct will probably cause a certain result or will probably be of a certain nature. A person has knowledge of circumstances when he is aware that such circumstances probably exist." Former R.C. 2901.22(B).

[1] We note that our resolution of Mr. Riggins' first assignment of error does not moot his sufficiency challenge because "the [S]tate is not entitled to retry a criminal defendant after reversal for trial court error if the [S]tate failed in the first instance to present sufficient evidence." *State v. Vanni*, 182 Ohio App.3d 505, 2009-Ohio-2295, ¶ 15 (9th Dist.).

{¶13} Captain Clark Westfall testified that he helped organize a raid at a home in Akron, where the police suspected that the owner was conducting a dogfighting operation. As part of its case-in-chief, the State introduced several pictures of the target residence, two of which are aerial map views. The pictures show that the home is located at the end of a dead-end street and has a sizeable backyard that abuts a noise barrier for the freeway. The backyard contains a detached garage as well as a freestanding trailer. The front of the home faces west, and the entire backyard is enclosed by a fence. The fence joins to the house on the north and south sides of the house such that the fence traverses the driveway for the residence. The portion of the fence that traverses the driveway and connects with the south side of the house is a large, retractable gate.

{¶14} Captain Westfall testified that multiple law enforcement agencies took positions around the target residence before the start of the raid and watched as numerous people entered the fenced-in backyard. He testified that the retractable gate eventually closed and, at approximately 10:41 p.m., he signaled for the raid to commence. The police used an armored vehicle to break through the gate across the driveway, and, according to Captain Westfall, "absolute chao[s]" ensued. He testified that people were "running everywhere, throwing contraband, [and] * * * trying to breach the fencing." A total of 52 law enforcement officers ultimately responded to the scene that evening, and 47 individuals were arrested.

{¶15} Detective Brian Boss testified that he acted as the lead operator for the Akron SWAT team when the raid ensued. He stated that his team was the first to breach the backyard after the gate was compromised and that he immediately rounded the southeast corner of the house. In the area between the north side of the detached garage and the north fence line, he then observed "30 to 40 people and two men taunting two pitbulls." He specified that the two men were holding the dogs on their leads, facing one another and "inciting them to fight."

Meanwhile, the crowd was gathered around watching the process. He testified that, as soon as the crowd realized the police where there, everyone scattered. He estimated that, apart from the crowd he saw outside, the police arrested another 8 to 10 individuals in the detached garage on the property.

{¶16} Officer Delvin Pickett, a member of the crime scene unit, testified that he took a video recording of the scene at the property after the raid occurred. The video recording documents numerous items related to dogfighting. Inside the detached garage at the property, Officer Pickett found a large, square, freestanding ring that looks to have been constructed from wood and other materials. The inside flooring of the ring had several long pieces of duct tape arranged in lines. Officer Pickett stated that he believed the lines were used as starting marks for the dogs placed inside the ring. He testified that both the lines of duct tape and the inside walls of the ring were covered in blood. Officer Pickett also found inside the garage buckets of water, sponges, and bloodied break sticks, which he testified are used to pry open a dog's mouth.

{¶17} Apart from the detached garage, Officer Pickett also documented the inside of the freestanding trailer at the southeast corner of the backyard and a separate, fenced area that he found there. The trailer contained more buckets of water and sponges, a filthy shower area, and weighing scales. In the separate, fenced area, Officer Pickett found individual, enclosed cages for dogs, kennels, chains, and bowls. At the time that he recorded the scene, at least one dog was still confined in one of the kennels in the fenced-in area.

{¶18} In addition to filming the contents of the structures on the property, Officer Pickett also documented the numerous vehicles that were on scene when the raid commenced. Several of the vehicles were parked inside the enclosed backyard and additional vehicles were parked at a vacant lot that was located to the north of the target residence. Officer Pickett

testified that he was able to observe kennels in a number of the vehicles that he recorded, including the vehicles parked in the backyard. There was testimony that nine of the individuals the police arrested that evening traveled from out of state.

{¶19} Officer Tim Harland testified that he is a senior officer for the Summit County Humane Society and that he was present at the target residence to secure the dogs on scene and provide them any necessary medical treatment. He testified that he ultimately collected eight dogs from the property that evening, all of which were either pit bulls or pit bull mixes. According to Officer Harland, the fact that all the dogs were pit bulls or a mix thereof was significant to him because that is the breed that people typically select for dogfighting. Of the eight dogs collected, two of them had actively bleeding puncture wounds and "had obviously been recently fought." Officer Harland testified that another dog had to be euthanized for safety reasons because he was vicious.

{¶20} Detective Mark Hockman testified that he was a member of the Akron SWAT team that raided the property that evening. Following the raid, any individuals whom the police arrested were searched and any money they possessed was confiscated. Yet, Detective Hockman testified that the police also found significant sums of money on the ground. He stated that there was money on the ground at the threshold of the attached garage and also a bundle of just under $7,000 on the ground near the northwest corner of the house. The police ultimately recovered over $52,000 in cash from the property that evening. Detective Hockman confirmed that Mr. Riggins had $1,320 in cash on his person when he was arrested. He testified that he personally completed Mr. Riggins' booking ticket that evening. It is not clear from the record where Mr. Riggins was located at the exact time of the raid or his arrest. Detective Hockman did testify,

however, that he and Mr. Riggins "were together there at [the target residence], in that garage, when [he] did that booking slip * * *."

{¶21} The State also called as witnesses, Alvin Banks, the owner of the property at issue, and Maurice Wynn, Jr., another individual who was arrested for dogfighting that evening. Mr. Banks' testimony was limited to him asserting his Fifth Amendment rights. Meanwhile, Mr. Wynn testified that he had accepted the State's offer for a reduction of his charge in exchange for his testimony. Mr. Wynn stated that he came to the target residence on the evening of the raid because Mr. Banks had told him there would be a dogfight. He also testified that he paid Mr. Banks $75, which he understood to be an admission charge to see the fight. According to Mr. Wynn, he never observed anyone else pay an admission fee. Mr. Wynn grudgingly admitted that he saw several other people in the yard that evening and that a few people threw money on the ground when the police arrived. He also acknowledged that he and a group of people were watching two dogs fight before the police arrived, but denied that anyone was taunting the dogs. He testified that the dogs had broken loose and were simply fighting one another.

{¶22} As part of its case-in-chief, the State also introduced a jail call that Mr. Riggins placed while being held at the Summit County Jail. In the call, Mr. Riggins states that he has been arrested for dogfighting. He then states that he "didn't do s***" and "was sitting at a f***ing party."

{¶23} Mr. Riggins concedes that he was present at the target residence when the police raided it. He argues that his conviction is based on insufficient evidence because there was no evidence that he either paid money or gave something of value in exchange for admission to a dogfight.

{¶24} As previously noted, this Court has interpreted R.C. 959.16(A)(5) as requiring the State to prove *either* that a person (1) knowingly paid money or gave something of value for admission to a dogfight, *or* (2) knowingly was present at a dogfight. *Taylor*, 2016-Ohio-7953, at ¶ 15. Accordingly, the State was not required to prove that Mr. Riggins paid money or gave something of value for admission to the dogfight(s) at the target residence. Mr. Riggins' conviction can stand so long as the State set forth sufficient evidence that he was knowingly present at a dogfight. Viewing all the evidence in a light most favorable to the State, we must conclude that the State satisfied its burden of production on that issue.

{¶25} Due to the chaos that ensued when the police conducted the raid here, there was no testimony as to Mr. Riggins' exact location either at the time of the raid or at the time of his arrest. Yet, he concedes that he was present at the scene. Moreover, there was testimony that, when the police arrived, a group of 30-40 individuals were watching two men taunt two dogs and incite them to fight. There was testimony that there were eight dogs on the property that evening and that two of the dogs had actively bleeding puncture wounds consistent with having been fought recently. Mr. Riggins was arrested with $1,320 in cash on his person, and there was testimony that the police seized approximately $52,000 from the people at the property that evening. The police found a significant portion of that money on the ground because numerous people dropped the money they were carrying when the police announced the raid. Given the presence of the dogs, the behavior of the crowd, the clandestine nature of the event, and the large quantities of money that the crowd had on hand, a rational trier of fact could have concluded that Mr. Riggins was knowingly present at a dogfight that evening. *See* former R.C. 2901.22(B) (defining the circumstances in which a person acts "knowingly"). He has not shown that his

dogfighting conviction is based on insufficient evidence. Consequently, his second assignment of error is overruled.

ASSIGNMENT OF ERROR III

> THE TRIAL COURT COMMITTED REVERSIBLE AND PLAIN ERROR WHEN IT ORDERED IN ITS SENTENCING ENTRY WITHOUT HAVING DONE SO AT HIS SENTENCING HEARING THAT RIGGINS REPAY SUMMIT COUNTY FOR THE FEES PAID HIS APPOINTED ATTORNEY.

{¶26} In his third assignment of error, Mr. Riggins argues that the trial court erred by imposing a financial sanction upon him without first addressing the sanction at his sentencing hearing. In light of our resolution of Mr. Riggins' first assignment of error, his third assignment of error is moot, and we decline to address it. *See* App.R. 12(A)(1)(c).

III.

{¶27} Mr. Riggins' first assignment of error is sustained. His second assignment of error is overruled, and his third assignment of error is moot. The judgment of the Summit County Court of Common Pleas is affirmed in part, reversed in part, and this matter is remanded for further proceedings consistent with the foregoing 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(C). 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 equally to both parties.

CARLA MOORE
FOR THE COURT

CARR, P. J.
WHITMORE, J.
CONCUR.

APPEARANCES:

DENNIS W. MCNAMARA, Attorney at Law, for Appellant.

SHERRI BEVAN WALSH, Prosecuting Attorney, and RICHARD S. KASAY, Assistant Prosecuting Attorney, for Appellee.