IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case No. _____
Plaintiff-Appellee,	:	
	:	On Appeal from the
vs.	:	Jackson County Court of Appeals,
	:	Fourth Appellate District
LISA SHEETS,	:	
Defendant-Appellant.	:	C.A. Case No. 22CA0001

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT LISA SHEETS

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EXPLANATION OF WHY THIS CASE IS ONE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

Ordinarily, Ohio trial courts satisfy their due process obligation to establish the knowing, intelligent, and voluntary nature of a guilty plea by complying with Ohio's Criminal Rule 11. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *State v. Nero*, 56 Ohio St.3d 106, 107, 564 N.E.2d 474 (1990); *State v. Griggs*, 103 Ohio St.3d 85, 2004-Ohio-4415, 814 N.E.2d 51, ¶ 11; *State v. Fitzpatrick*, 102 Ohio St.3d 321, 2004-Ohio-3167, 810 N.E.2d 927, ¶ 56-58.

However, virtually all of Ohio's appellate courts agree that, sometimes, compliance with Criminal Rule 11 is not enough. *State v. Swift*, 86 Ohio App.3d 407, 413, 621 N.E.2d 513 (11th Dist.1993) and progeny; *State v. Padgett*, 67 Ohio App.3d 332, 338, 586 N.E.2d 1194 (2d Dist.1990) and progeny. If a defendant is demonstrably either confused about offense elements or expressing innocence while also pleading guilty, courts must do more than recite the rule of procedure to ensure that the defendant's plea is knowing, intelligent, and voluntary. *Swift* at 413 (confused); *Fitzpatrick*, 2004-Ohio-3167, ¶57-62; *Padgett*, 67 Ohio App.3d at 338 (expressing innocence). Instead, before accepting the questionable plea, the court must affirmatively resolve the discrepancy between the defendant's choice to plead guilty and her statements contradicting guilt. *Id*. But despite broad agreement on this general principle, there is little agreement about the specifics, i.e., when these enhanced due process obligations are triggered and what trial courts must do to satisfy them.

Some district court decisions suggest that the due process clause is not triggered unless a defendant explicitly announced their confusion on the record. *See State v. Griffey*, 11th Dist. Portage No. 2009-P-0077, 2010-Ohio-6573, ¶ 31; *State v. Lisa Sheets*, 4th Dist. Jackson No. 22CA1, 2023-Ohio-2593, ¶ 26**.** Others hold that behavior indicating confusion is enough, whether or not a defendant is explicitly aware of her own confusion. *See State v. Greathouse*, 2d Dist. Greene No. 2003 CA 80, 2004-Ohio-3402, ¶ 12-29. The same dichotomy appears in the case law dealing with protestations of innocence during a guilty plea hearing. *Compare State v. Nevels*, 8th Dist. Cuyahoga No. 108395, 2020-Ohio-915, ¶ 25 *with State v. McClelland*, 7th Dist. Jefferson No. 20 JE 0017, 2021-Ohio-3018, ¶ 20. *Sheets* at ¶ 24.

Some districts hold that trial courts satisfy their due process obligations by pausing a change of plea hearing and allowing trial counsel another chance to advise their client before proceeding. *See State v. Swoveland*, 3d Dist. Van Wert No. 15-17-14, 2018-Ohio-2875, ¶ 14-20. Other districts have endorsed a trial judge's decision to intervene directly to explain the elements of the offense or develop facts allaying fears of actual innocence. *See McClelland* at ¶ 27. Some courts refuse to consider a defendant's claims of innocence when they first emerge at sentencing, even if sentencing occurs minutes after the plea is accepted. *State v. Lisa Sheets*, 4th Dist. Jackson No. 22CA1, 2023-Ohio-2593, ¶ 24. Others do not so harshly enforce this change of plea hearing/sentencing hearing dividing line where the

defendant's change of plea hearing is combined with sentencing. *See McClelland* at ¶ 25-27.

Although every district court has relied on *Padgett* in some way, and all but the Third District have relied on *Swift*, this court has never squarely addressed the due process questions raised in either line of cases. It should now. All defendants in Ohio should receive the same minimum due process when forfeiting their constitutional rights and pleading guilty to a felony offense. Because that is not currently the state of things, this case presents a question of great public and general interest and involves a substantial constitutional question.

STATEMENT OF THE CASE AND FACTS

On October 30, 2020, Lonnie Sheets shot his brother, Paul Sheets; Paul's wife, Tabitha Sheets; and another more distant relative, David "Bugsy" Yeley. He killed Tabitha Sheets and David Yeley. Lonnie first killed David Yeley in his home, then he killed Tabitha Sheets and shot Paul Sheets in their home a few miles away. Eventually, the state prosecuted Lonnie's wife, Lisa Sheets, as a knowing and purposeful accomplice to Lonnie's crimes.

Because no one solicited a statement of facts during Lisa's eventual change of plea hearing, the record in her case sheds little light on the facts underlying the state's decision to pursue charges against her. The record shows that, throughout her marriage to Lonnie, Lisa frequently called Detective Conkin of the Scioto County Sheriff's Office to ask for help when Lonnie abused or raped her. It shows Lisa drove Lonnie to the scenes of his crimes on the night of the shootings at his

request. And it shows that Lisa consistently explained to all involved that she did not know of Lonnie's purpose to commit the shootings at any time prior to when they occurred. Lisa insisted throughout that she remained in her car and waited for Lonnie to return after dropping him off at each stop during their route on October 30, 2020.[1] The record makes no reference to any text messages, social media posts, or other evidence suggesting Lisa knew of Lonnie's criminal intent in advance.

At all times, the charges against Lisa were stated in terms of R.C. 2923.03 complicity; the elements of murder and attempted murder never appeared in any documents filed in her case, including the indictment. Throughout investigative interrogations, law enforcement repeatedly misstated the law by omitting any reference to the purposely mens rea requirement for complicity to murder. Lisa's attorney waived a reading of the indictment at arraignment. The elements of the offenses did not appear in her plea paperwork. The only indication that anyone explained to Lisa that she could not be guilty of complicity unless she shared Lonnie's intent to kill appears in a boilerplate attorney certification on page 6 of Lisa's standard plea paperwork.

On the day her trial was scheduled, Lisa accepted a plea deal in exchange for the chance at parole. The trial court held a combined change of plea and sentencing

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[1] In proceedings below, the state of Ohio repeatedly disregarded its obligation to rely only on facts within the record, choosing instead to bolster its case by interjecting facts developed in the trial of Lonnie Sheets. Neither Lisa nor her trial counsel participated in the trial of Lonnie Sheets. Lisa timely objected to these tactics by motion, in her reply brief, and at oral argument. Although none of the interjected facts provide much insight into Lisa's mental state at the time Lonnie committed his crimes, this court should nevertheless disregard improperly inserted facts if the state engages in the same behavior here.

hearing on December 13, 2021. The entire hearing spanned twenty-two total transcript pages, beginning on page 109 and ending on page 131 of the transcript. After it conducted a complete Criminal Rule 11(C) colloquy, the court accepted Lisa's guilty pleas to two counts of complicity to murder and one count of complicity to attempted murder. The court's acceptance of those guilty pleas appears on page 125 of the transcript. The court did not solicit facts about Lisa's alleged role in Lonnie's shootings from either the state or the defense. There was no discussion on the record of the elements of the offenses either in this hearing or at any time dating back to arraignment.

The court then proceeded to the sentencing phase of the combined hearing. It invited Lisa to make a statement about her offenses, as required by her negotiated plea deal. On page 128 of the transcript, she said:

> DEFENDANT: Um… tell him what I told you? Lonnie went… had me take him to Glenn Davis' to get a gun. He did not tell me the truth. He said he was going to get it on the third but he didn't he got it before then. Then he asked me to take him to Bugs' [David Yeley] to get his clothes and medicine. I waited up the road even when he got up there, he said bugs was dead. I killed him. I said why? He didn't answer me. He says take me to Paul and Tabby's. Paul owes me money and drugs. They got into a fight. An argument however you want to put it and next thing I know Tabby was shot and Paul was hurt. I did not know anything until it was afterwards. So, he kind of didn't tell me until after he did it.
>
> COURT: Anything else you want to state?
>
> DEFENDANT: Is that it? That's all.

The court then sentenced Lisa to two concurrent life sentences and a concurrent 10-15 year sentence. The court made no attempt to resolve the discrepancy between

Lisa's statement indicating she lacked foreknowledge of Lonnie's intent to kill and her decision to plead guilty to offenses requiring a purposely mens rea.

Lisa filed a direct appeal. In her first assignment of error, she argued the trial court failed to meet its due process obligation to ensure that her guilty plea was knowing, voluntary, and intelligent. Specifically, Lisa argued that her statement at sentencing explicitly negated the purposely mens rea element of complicity to murder and attempted murder, the crimes to which she had just admitted guilt. She contended that, though ambiguous, this statement amounted to either confusion under *Swift* or a protestation of innocence under *Padgett*. Either way, she implored, by failing to clear up the discrepancy, the trial court breached its due process obligations when it sentenced her on her demonstrably questionable guilty plea.

The Fourth District overruled her assignment of error and affirmed her conviction. Lisa Sheets now timely seeks this court's discretionary review.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW

Where a defendant affirmatively denies acting with the requisite mental state to be guilty of an offense, her guilty to plea to that offense triggers the trial court's due process duty to make sure she understands what she is doing. If the trial court accepts the plea without resolving the discrepancy, it has violated its due process duty to establish the knowing, voluntary, and intelligent nature of the plea.

It is the trial court's due process duty to ensure that a defendant's guilty plea is knowing, voluntary, and intelligent. *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); *State v. Montgomery*, 148 Ohio St.3d 347, 2016-Ohio-5487, 71 N.E.3d 180, ¶ 40. Courts must consider the totality of the circumstances, including additional record evidence beyond the plea hearing, to determine the voluntariness of a plea. *Montgomery* at ¶ 43, citing *State v. Barker*, 129 Ohio St.3d 472, 2011-Ohio-4130, 953 N.E.2d 823, ¶ 24.

Both *Swift* and *Padgett* hold that a trial court fails to establish a knowing, voluntary, and intelligent plea where the record reveals an unresolved discrepancy between the defendant's choice to plead guilty and her statements contradicting her factual guilt. *See Swift*, 86 Ohio App.3d at 413, citing *Nash v. Israel*, 707 F.2d 298 (7th Cir.1983); *See Padgett* 67 Ohio App.3d at 338, citing *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970). Although *Swift* addresses a court's due process obligations when faced with a *confused* defendant, and *Padgett* considers unexpected *Alford* pleas, the distinction makes little difference in the due

process analysis. *Id*. Whether a defendant's statements suggest confusion about her factual guilt, or whether a defendant insists on factual innocence while pleading legal guilt, a trial court must affirmatively investigate the discrepancy between the defendant's decision to enter a guilty plea and any statements inconsistent with actual guilt. *Id*. If the trial court fails to inquire and finalizes a conviction based on a questionable plea, the plea is involuntary. *Id*.

Here, Lisa's statement at sentencing created a discrepancy between her decision to plead guilty and her description of her alleged conduct. Lisa's statement, made minutes after she pleaded guilty to life-sentence offenses, affirmatively negated the mens rea element of complicity to murder and attempted murder. If, as she stated, she "did not know anything until it was afterwards," she could not have shared Lonnie's specific intention to cause the deaths of David Yeley, Tabitha Sheets, and Paul Sheets, an elemental perquisite to criminal liability. R.C. 2903.02, R.C. 2923.03(A)(2); *See State v. Johnson*, 93 Ohio St.3d 240, 245-46, 754 N.E.2d 796 (2001) (holding that the offense of complicity to murder required proof that an accomplice shared the principal offender's specific intention to cause the death of another.) The trial court made no effort to investigate this discrepancy before imposing sentence and finalizing Lisa's conviction. Therefore, the trial court failed in its duty to demonstrate that Lisa's plea was knowing, voluntary, and intelligent. *Swift* at 413; *Padgett* at 338. The Fourth District Court of Appeals should have reversed.

But it did not. Instead of considering Lisa's plea voluntariness under the totality of the circumstances as required by *Boykin*, the Fourth District lost sight of the forest through the trees by attempting to parse the disparate rules developed in lower court decisions applying *Swift* and *Padgett*. *Sheets*, 2023-Ohio-2593, ¶ 23-24. The court cited district court cases and facts that supported its ultimate outcome, but it overlooked or simplified cases that did not. In doing so, the Fourth District both failed to remedy the constitutional harm to Lisa and contributed to the growing dissonance among district courts considering the due process rule in *Swift* and *Padgett*. If the analytical irregularities highlighted below go unaddressed, that dissonance will only worsen.

I. The Fourth District's reliance on its arbitrary distinction between the plea "phase" and the sentencing "phase" of a combined hearing undermines *Boykin*'s command that the voluntariness of a guilty plea should be assessed based on the totality of the circumstances.

The Fourth District held that *Swift* and *Padgett* did not even apply to Lisa's case because her contradictory statement "did not occur until after the trial court had already accepted her guilty pleas and had moved on to the sentencing phase of the [combined] hearing." *Sheets* at ¶ 23, 26. In reaching this conclusion, the court relied on district court decisions that refused to apply *Alford* and *Padgett* when the defendant's guilty plea and protestation of innocence are separated by weeks or months. *Sheets* at ¶ 23, citing *State v. Gales*, 131 Ohio App.3d 56, 60, 721 N.E.2d 497 (7th Dist.1999); *State v. Corbett*, 8th Dist. Cuyahoga No. 99649, 2013-Ohio-4478, ¶ 7.

But the Fourth District *did not* cite cases like *State v. Cutlip*, which clarify that the change of plea/sentencing distinction is meant to prevent a defendant from "[testing] the waters as to what the sentence would be and then bring that plea into doubt if the defendant is unhappy with the sentence." 8th Dist. Cuyahoga No. 72419, 1998 Ohio App. LEXIS 2899, 1998 WL 323556 (June 18, 1998). Other cases, like *State v. Gallant*, draw no distinction at all between contemporaneous and asynchronous discrepant statements. 6th Dist. Erie No. E-12-033, 2013-Ohio-3953, ¶ 7-13. A fair reading of cases descending from *Swift* and *Padgett* shows that some district courts view the contemporaneousness of the guilty plea and the discrepant statement as one of many factors relevant to assessing voluntariness, not the bright line rule applied by the Fourth District in this case. *See State v. Smith*, 10th Dist. Franklin No. 99AP-846, 2000 Ohio App. LEXIS 2299, *6, 2000 WL 704953. And even then, the need for contemporaneousness is relevant only when there is some reason to believe a defendant could have developed "cold feet" after entering a guilty plea. *See State v. Evans*, 5th Dist. Licking No. 2020 CA 00039, 2021-Ohio-829, ¶ 20-30, 35. It is difficult to see how that could have happened here, when mere minutes separated Lisa's plea from her contradictory statement of innocence.

The Fourth District's decision below elevates a voluntariness factor to an arbitrary categorical rule that, in this case, foreclosed relief to Lisa because her confusion or protestation of innocence became apparent minutes after the court accepted her guilty plea. Such arbitrary reasoning rebels against this court's clear directives that trial courts assessing plea voluntariness must consider the totality of

the circumstances, including any circumstances that occur outside of the plea hearing itself. *Montgomery*, 148 Ohio St.3d 347, 2016-Ohio-5487, ¶ 43. This court should intervene before the decision below creates further dissonance among the lower courts.

II. Although *Swift* and *Padgett* concluded that a defendant's affirmative responses to Rule 11(C) questions could not salvage a questionable guilty plea with an unexplained discrepancy, the Fourth District reached the opposite conclusion without explaining its reasoning.

The Fourth District's reasoning will also sow confusion among the lower courts in other ways. Its reasoning swallows whole the due process rules announced in *Swift* and *Padgett*. Both cases addressed circumstances where the trial court had conducted a colloquy pursuant to Criminal Rule 11(C). *Swift*, 86 Ohio App.3d at 411-13; *State v. Padgett*, 67 Ohio App.3d at 1195-99. Thus, in both cases, the defendants stated that they understood their constitutional rights, that they had consulted with their lawyers, that they had signed plea paperwork, that they understood the paperwork, and that their lawyer had explained the paperwork. *Padgett* at 1196-97; *See Swift* at 413. *See also State v. Higgs*, 123 Ohio App.3d 400, 408-09, 704 N.E.2d 308 (11th Dist.1997). The Second District and Eleventh District nevertheless found their guilty pleas involuntary because the trial court failed to resolve a discrepancy between each defendant's decision to plead guilty and his statements affirmatively indicating confusion or innocence. *Id*. Both district courts must have believed that satisfaction of Criminal Rule 11(C) does not always equate with satisfaction of due process.

Although the Fourth District was presented with nearly identical facts regarding the plea colloquy, it inexplicably arrived at the opposite result. Unlike the Second and the Eleventh District, the Fourth District decided that Lisa's responses to standard Rule 11(C) questions *were* enough to establish the voluntariness of her guilty plea despite her unexplained statement negating the purposely mens rea element in the offense of complicity to murder. *Sheets*, 2023-Ohio-2593, ¶ 15-18. Nothing about the Fourth District's analysis reconciles why Lisa's affirmative answers to standard Rule 11(C) questions proved the voluntariness of *her* plea, but Appellant Swift's and Appellant Padgett's affirmative answers to the same questions did not. This unexplained difference is yet another indicator that this court's intervention in this area of law is needed.

III. The Fourth District improperly appointed itself finder of fact.

Finally, without explanation, the Fourth District made the unusual decision to appoint itself finder of fact. *Sheets* at ¶ 25. Based only on the cold transcripts before it, the Fourth District drew adverse credibility inferences against Lisa. *Id*. It reasoned that, because Lisa "knew her husband had already killed one person at the time she agreed to drive him to the next house of someone who owed him money and drugs," she was simply attempting "to minimize her conduct" when she denied foreknowledge of Lonnie's homicidal plans. *Id*. Based on this reasoning, the court decided that Lisa was neither confused nor protesting her innocence, and therefore she was not entitled to enhanced due process protections at all.

This, too, swallows whole the due process protections recognized in *Swift* and *Padgett*. If a defendant's unresolved record statements negating guilt can be simply construed by an appellate court as "minimizing the conduct," then no appellant would ever obtain the constitutional relief recognized in *Swift* or *Padgett*. In every case, the appellant will have made a statement that undermines some aspect of guilt. That is exactly what raises concerns under the due process clause. In *Swift*, which this court has cited approvingly in *Fitzpatrick*, the appellant believed he did not *force* his young daughter to submit to sexual penetration because he had offered her the choice to be disciplined either by spanking or by sex. *Swift* 86 Ohio App.3d at 412; *Fitzpatrick*, 2004-Ohio-3167, ¶ 57. In *Padgett*, the appellant asserted that the victim in the alleged offense "was lying" while he also pleaded guilt. *Padgett* at 335. If Lisa's statements can be characterized as "minimizing," so can these. But the Fourth District's opinion below offers no reasoning for why the appellants' statements in *Swift* and *Padgett* warranted constitutional relief, but Lisa's statements did not. The court did not even attempt to distinguish the cases.

The Fourth District also offers no reasoned basis or case law supporting its decision to draw credibility inferences at all. "[F]actual determinations are best left to those who see and hear what goes on in the court room." *State v. Cowans*, 87 Ohio St.3d 68, 84, 717 N.E.2d 298 (1999). It is the trial court that must build a record demonstrating the knowing, voluntary, and intelligent nature of a guilty plea. *Nero*, 56 Ohio St.3d at 107. Appellate courts simply review this record for sufficiency using the totality of the circumstances standard announced in *Boykin*. *Id*. If the

meaning of a statement in the record is ambiguous, appellate courts cannot paper their own interpretation onto the record to cure the ambiguity left by the trial court's breach of its due process duty. Appellate courts must take records as they come.

More problematic still, the Fourth District's credibility determination ignores equally plausible alternatives. For example, the totality of this record suggests that Lonnie had terrorized Lisa with sexual and physical violence for years. Would a woman with such a documented history of victimization feel empowered to refuse the commands of her violent husband in any situation? What if her violent husband was armed with a gun and had killed someone just minutes earlier? What if Lisa genuinely believed that Lonnie had no motive to harm his own brother and sister-in-law, even if he had motive to harm someone else? Although these questions are readily apparent, neither the trial court nor the Fourth District sought answers to them.

Even taking the Fourth District's credibility reasoning at face value, all that can be said of this record is that Lisa may have been reckless when she transported Lonnie to and from the scenes of his crimes. Too many tenuous inferences stand between this record and sufficient cause to believe that Lisa acted *purposely* and with the specific intent to cause the deaths of David Yeley, Tabitha Sheets, and Paul Sheets. Due process does not tolerate such ambiguity when it comes to whether a record adequately establishes the knowing, voluntary, and intelligent nature of a defendant's guilty plea.

CONCLUSION

The Fourth District's decision below marks a new milestone in the growing irregularity of lower court decisions apply *Swift* and *Padgett*. As more time passes without this court's intervention, the district court applications of *Swift* and *Padgett* will grow more incongruous. This court should accept this case for review and offer guidance to lower courts considering the voluntariness of a guilty plea that is coupled with a defendant's statement of innocence or confusion.

For the foregoing reasons, Appellant Lisa Sheets asks this court to accept this matter for discretionary review. This felony case presents a matter of great public and general importance and constitutional questions.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing **Memorandum in Support of Jurisdiction of Appellant Lisa Sheets** was sent by electronic mail to Andrea Boyd, Special Prosecuting Attorney, Ohio Attorney General, andrea.boyd@ohioattorneygeneral.gov, on this 1st day of September, 2023.

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APPENDIX TO

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