[Cite as *State v. Chappell*, 2024-Ohio-1541.]

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

v.

RONALD JAMES CHAPPELL,

Defendant-Appellant.

OPINION AND JUDGMENT ENTRY
Case No. 23 MA 0068

Criminal Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2022 CR 00360

BEFORE:
Cheryl L. Waite, Carol Ann Robb, Mark A. Hanni, Judges.

JUDGMENT:
Affirmed.

Atty. Gina DeGenova, Mahoning County Prosecutor and *Atty. Edward A. Czopur*, Assistant Prosecutor, for Plaintiff-Appellee

Atty. Christopher P. Lacich, Roth, Blair, for Defendant-Appellant

Dated: March 27, 2024

WAITE, J.

{¶1} Appellant Ronald James Chappell appeals a May 11, 2023 judgment of the Mahoning County Court of Common Pleas convicting him of multiple gun related offenses. Appellant challenges the failure of the trial court to instruct the jury on duress, the court's decision to exclude video evidence, and his sentence. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} Appellant is a self-described investigative journalist who regularly posted YouTube and Instagram videos in which he raised allegations of drug dealings, inappropriate relationships among public officials, gang activity, and other corruption and crimes in the area. Appellant's method was to walk around public areas speaking into his phone or videotaping while discussing his claims.

{¶3} On July 1, 2022, Appellant walked down the middle of Market Street at 4:06 a.m. as he filmed himself speaking. Sergeant David Sheely of the Boardman Police Department became concerned as he drove by and stopped to conduct a welfare check on Appellant. After Appellant provided his name, Sgt. Sheely called dispatch to confirm Appellant's identity and learned that he had an active warrant in Youngstown. Sgt. Sheely was also informed that Appellant was under a weapons disability based on a prior conviction.

{¶4} Sgt. Sheely conducted a patdown of Appellant for safety purposes and felt a hard object when patting down the front left pocket. He inquired about this object and Appellant informed him that it was a magazine for a firearm located in another pocket.

Sgt. Sheely found a loaded Taurus G2c 9mm firearm that also had a bullet in the chamber. In total, officers seized a gun and four magazines from Appellant's person.

{¶5} As a result, on July 28, 2022, Appellant was indicted on one count of having weapons while under a disability, a felony of the third degree in violation of R.C. 2923.13 (A)(2), (B), and one count of carrying a concealed weapon, a felony of the fourth degree in violation of R.C. 2923.12 (A)(2), (F)(1).

{¶6} After a trial in which Appellant represented himself *pro se,* a jury convicted him on both counts as charged. Appellant conceded that the weapon was concealed and that he was under a disability, but argued that he carried the gun under duress due to the danger he believed he faced as a result of his investigative journalism. The court did not instruct the jury on duress, finding that Appellant had not satisfied the elements.

{¶7} At the sentencing hearing, the court voiced concern over the lengths Appellant would go to protect himself due to his belief there was some sort of a conspiracy against him. Although the pre-sentence investigation report recommended community control, the court imposed a prison sanction. The court rejected the state's recommendation of three years, instead sentencing Appellant to two years of incarceration with 100 days of credit. It is from the court's May 11, 2023 sentencing entry that Appellant timely appeals.

{¶8} After filing the notice of appeal through counsel, Appellant filed a series of his own motions: "Motion Asking Court to tell My Attorney to call ORDC and tell them to Put me in Protective custody as my Judge said" (8/31/23); "Motion Asking Court to tell me [sic] Attorney to file a merit brief for Appeal that I asked him to File" (9/18/23); motion for

bail; "Motion to remove counsel, and stricken merit brief filed by Christopher Lacich from record, and accept my pro se merit brief." Each of these were overruled.

Sua Sponte – Pro Se Representation

{¶9} Appellant's behavior raised some concerns regarding his mental health throughout the proceedings, including before his trial commenced. As Appellant sought to defend himself, foregoing the assistance of counsel, these became somewhat more urgent.

{¶10} When the court raised the issue of obtaining a competency evaluation, Appellant objected, saying he planned to run against President Joe Biden in 2024 and feared this evaluation would impact his ability. Appellant contended he was well-equipped to self-represent, telling the court he "used to write some of the United States Supreme Court's briefing for Justice Ruth Bader Ginsburg. She was letting [him] write briefings for the court." (11/1/22 Hearing to Request to Waive Counsel, p. 5.) When asked if he knew Justice Ginsburg, he stated "[y]eah, I used to speak to her on an astral plane through telepathy." (11/1/22 Hearing to Request to Waive Counsel, p. 5.)

{¶11} When informed that he could have stand-by counsel available, Appellant asked if that counsel would be paid. When informed that counsel would be paid, Appellant responded by requesting that the court appoint his nephew as stand-by counsel. When told that his nephew could not be appointed as he is not an attorney, Appellant responded that once he became his own attorney, he had the ability to appoint his nephew as the equivalent of an attorney.

{¶12} At the sentencing hearing, Appellant informed the court:

> I was working on getting a cure to AIDS and breast cancer, mass producing it to people in the world. And that's what I was working on. And then I was working -- then I got knowledge of individuals working with Al-Qaeda who was directly responsible for the 911 terrorist attack on America. And imprisoning me will only further delay justice for they [sic] families."

(5/10/23 Sentencing Hrg., p. 6.) Appellant also claimed that he regularly works with the FBI and CIA and oversaw a torture program used with terrorists.

{¶13} "The Sixth Amendment, as made applicable to the states by the Fourteenth Amendment, guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily, and knowingly and intelligently elects to do so." *State v. Gibson*, 45 Ohio St.2d 366, 345 N.E.2d 399 (1976), paragraph one of the syllabus, citing *Faretta v. California*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562 (1975). According to Crim.R. 44(C), "[w]aiver of counsel shall be in open court and the advice and waiver shall be recorded as provided in Rule 22. In addition, in serious offense cases the waiver shall be in writing."

{¶14} A defendant may intelligently and voluntarily waive the right to counsel only after being informed of the inherent dangers in self-representation. *State v. Downie*, 183 Ohio App.3d 665, 2009-Ohio-4643, 918 N.E.2d 218, ¶ 22 (7th Dist.), citing *State v. Ebersole*, 107 Ohio App.3d 288, 293, 668 N.E.2d 934 (1995); *Faretta*, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562. A reviewing court must review the totality of the circumstances to determine whether a defendant knowingly and intelligently waived his right to counsel. *Downie* at ¶ 26.

{¶15} In this matter, the court ordered a competency evaluation. Appellant was deemed competent. Once Appellant informed the court that he had previously represented himself, the court took the time to review the transcripts from that case to evaluate Appellant's ability. The court then conducted a thorough hearing on the matter. The court addressed the inherent dangers of self-representation and informed Appellant that the court could not assist him and that his appointed counsel is trained in the law. Although Appellant's self-representation was undoubtedly not a wise decision, it is clear that he maintained the right to represent himself and the trial court thoroughly vetted his abilities and warned him of all risks and dangers of self-representation.

Standard of Review

{¶16} Although Appellant discusses several issues and raises various standards of review throughout his brief, he concedes that he failed to object to any of the alleged errors at trial. Thus, he is limited to a plain error review. A three-part test is employed to determine whether plain error exists. *State v. Billman*, 7th Dist. Nos. 12 MO 3, 12 MO 5, 2013-Ohio-5774, ¶ 25, citing *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002).

> First, there must be an error, i.e. a deviation from a legal rule. Second, the error must be plain. To be "plain" within the meaning of Crim.R. 52(B), an error must be an "obvious" defect in the trial proceedings. Third, the error must have affected "substantial rights." We have interpreted this aspect of the rule to mean that the trial court's error must have affected the outcome of the trial.

Billman at ¶ 25.

ASSIGNMENT OF ERROR NO. 1

The trial court committed reversible error and abused its discretion when it failed to charge the jury on the affirmative defense of duress.

{¶17} Appellant discusses a wide-ranging number of issues relating to the general theory of the affirmative defense of duress. In these, he collectively contends that he was entitled to the defense of duress based on his belief that he should be treated as a "whistleblower" who had to choose between complying with the law regarding his having weapons under disability, or risk his life by being in public without any means of protection against alleged active threats. Without providing any argument of substance, Appellant cites to large portions of testimony and appears to ask this Court to review this testimony and generate his argument for him.

{¶18} The state responds by citing law holding that the affirmative defense of duress does not apply to a charge of carrying a concealed weapon where the defendant is prohibited by law from having a weapon. See *State v. Mitchell,* 11th Dist. No. 2001-L-042, 2003-Ohio-190. The state notes that the concealed carry statute also provides that in order to argue duress, a defendant cannot be barred from owning a weapon. Regardless, Appellant did not demonstrate he was subject to an imminent threat and, in fact, the evidence showed that the street was completely empty at the time of his arrest. The state also argues that a defendant who plays some role in causing the duress cannot use duress as an affirmative defense. Here, Appellant concedes that he caused his alleged duress by videotaping certain behaviors and "snitching." In using the defense,

there must not be any alternative to committing the charged offense, and the state contends that Appellant could simply have stayed home or fled from any potentially dangerous situation.

{¶19} As to the state's argument that R.C. 2923.12 (D)(2) specifically provides a defendant may not use a duress defense if that defendant is barred from owning weapons, R.C. 2923.12(D)(2) states:

> (D) It is an affirmative defense to a charge under division (A)(1) of this section of carrying or having control of a weapon other than a handgun and other than a dangerous ordnance that the actor was not otherwise prohibited by law from having the weapon and that any of the following applies:
>
> (2) The weapon was carried or kept ready at hand by the actor for defensive purposes while the actor was engaged in a lawful activity and had reasonable cause to fear a criminal attack upon the actor, a member of the actor's family, or the actor's home, such as would justify a prudent person in going armed.

{¶20} While the statute does not mention duress, it does appear to permit a person having a reasonable fear of criminal attack to carry a concealed weapon to protect him or herself while engaged in lawful activity only when that person is not prohibited by law from owning that weapon.

> To establish the affirmative defense of duress, the criminal defendant must prove five elements by a preponderance of the evidence:
>
> (1) a harm due to the pressure of a human force; (2) the harm sought to be avoided was greater than, or at least equal to that sought to be prevented by the law defining the offense charged; (3) the actor reasonably believed at the moment that his act was necessary and was designed to avoid the greater harm; (4) the actor was without fault in bringing about the situation; and (5) the threatened harm was imminent, leaving no alternative by which to avoid the greater harm.

In re J.C., 2022-Ohio-850, ¶ 13 (1st Dist.); citing C*ity of Cincinnati v. White*, 2020-Ohio-1231, ¶ 17 (1st Dist.); *State v. Flinders*, 9th Dist. Summit No. 26024, 2012-Ohio-2882, ¶ 30. "[T]he duress defense 'is strictly and extremely limited in application and will probably be effective in very rare occasions. *In Re J.C.,* at ¶ 13, citing *White* at ¶ 18; *State v. Cross*, 58 Ohio St.2d 482, 488, 391 N.E.2d 319 (1979).

{¶21} In regard to the first, third, and fifth elements, the trial court determined Appellant did not face any specific harm. The court noted that Appellant admitted the street was empty and so Appellant faced no harm at the time he was stopped. As to the second element, because there was no active threat, the court found that it is impossible to demonstrate that a firearm is an equal response to a non-existent threat. Finally, in regard to the fourth element, the court found Appellant bore at least some responsibility for bringing about the situation. While the court acknowledged that Appellant believed he was acting as an investigative journalist raising issues of corruption and crime, this was

his choice. The court also noted that Appellant could have filmed his video at home instead of in the middle of Market Street.

{¶22} Many of Appellant's fears were not realistic or stemmed from questionable threats. The specific examples raised by Appellant did not involve active threats, each occurring months or years prior to the incident. In one specific instance Appellant addressed, he claimed that a car full of people exited the vehicle in front of his house, which is surrounded by fields, and stood there. There is no evidence that any person made a threat against Appellant or that any of these people were affected, or hired by someone affected, by one of Appellant's allegations. Appellant also claimed that he received a threat after he revealed that a Mexican cartel member is a homosexual. Appellant's claim was not related to corruption or crime and was, instead, an allegation regarding this person's private life. Either way, there is no evidence that this alleged cartel member, who lives in Mexico, was an active threat to Appellant.

{¶23} While Appellant may have believed that he faced some sort of danger related to his reporting, it is clear that he failed to provide proof sufficient to meet any of the elements of duress. Thus, the court properly withheld that instruction from the jury and Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

> The trial court committed reversible error and an abuse of discretion when it failed to grant the Appellant's request to show the jury additional evidence, namely video of the night of the incident (7/1/22) and with no objection, plain error is implicated.

{¶24} Although Appellant's next argument is related to his alleged duress defense, he actually raises error regarding an evidentiary issue. Appellant argues that he was told by the trial court he would be provided a laptop computer in order to play multiple videos at trial. However, a laptop was not provided and he was permitted to play only one video. Later in his brief he concedes that he was actually permitted to show a second video at trial. The actual crux of Appellant's argument is difficult to discern. At one point, he argues that the failure of the court to provide equipment to play more videos "could" have affected his decision both to turn down a favorable plea deal and ultimately, to try the case *pro se*. He also contends the court encouraged him to testify rather than show multiple videos, and that the state mentioned there was a video of the incident on the day of the charges, yet the court would not allow that video to be played at trial.

{¶25} The state explains in response that Appellant sought to admit several videos into evidence which were from "days, months, and even years prior to the incident here at issue." (Appellee Brf., p. 8.) The state urges that the only relevant facts at trial were whether Appellant was under a weapons disability at the time of his arrest, was in possession of a firearm, and that firearm was concealed. Appellant conceded all of these facts. According to the state, no other evidence was relevant and none of Appellant's videos supported the duress argument. Even if it could be construed as error, it would be harmless, as Appellant conceded he committed both crimes.

{¶26} We note that from the start of these proceedings, Appellant rejected all plea deals and insisted on self-representation. As to the videos, "all relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by the Constitution of the State of Ohio, by statute enacted by the General Assembly not in

conflict with a rule of the Supreme Court of Ohio, by these rules, or by other rules prescribed by the Supreme Court of Ohio. Evidence which is not relevant is not admissible." Evid.R. 402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Evid.R. 401.

{¶27} "The admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Griffin*, 7th Dist. Mahoning No. 16 MA 0029, 2017-Ohio-7796, ¶ 27, citing *State v. Sage*, 31 Ohio St.3d 173, 180, 510 N.E.2d 343 (1987). "Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected" and the issue is properly preserved. Evid.R. 103(A).

{¶28} Appellant claims he was not given a laptop as promised by court. No such promise appears in this record. Even if it were true, Appellant apparently did not have a file that was capable of being transferred to a laptop. Appellant requested to show a video taken from his Instagram page, and offered his phone as a way to show the video. His phone was held for the jury to view as the video played. Importantly, at least one of the videos did not contain actual video. Instead, the video function was used to record audio.

{¶29} Appellant contends that the court encouraged him to discuss his videos in his testimony rather than play more videos at trial. The record reveals that Appellant attempted to admit videos of his investigative reporting during the testimony of the officers involved in this matter. Because these were not the appropriate witnesses through which to admit these videos, the court suggested that Appellant seek to admit them during his own testimony. Appellant agreed, but did not later seek their admission.

{¶30} As to the court's decision to limit the number of videos Appellant sought to play, the court allowed him to present three videos: two showing the content of Appellant's reporting, intended to show that he truly made such reports, and one showing several people pulling up to his house and then congregating. While Appellant wanted to play more videos of his reporting, the court found this would be cumulative, redundant evidence. Each of the videos were sought for the same purpose: to establish that Appellant disclosed allegedly uncomfortable or unlawful actions of others while producing investigative journalist videos. The court determined that watching two videos and allowing Appellant to discuss more during his testimony served that purpose, and this determination appears entirely reasonable based on the record.

{¶31} Pursuant to Evid.R. 403(B), "[a]lthough relevant, evidence may be excluded if its probative value is substantially outweighed by considerations of undue delay, or needless presentation of cumulative evidence." A court maintains the discretion to determine whether evidence should be excluded as unnecessary and cumulative. *State v. Sims*, 2023-Ohio-1179, 212 N.E.3d 458, ¶ 90 (4th Dist.), citing *State v. Campbell*, 69 Ohio St.3d 38, 51, 630 N.E.2d 339 (1994).

{¶32} It is apparent from the record the trial court was correct that none of the videos addressed the elements of the offenses at issue. Further, none of these videos supported the elements of duress, particularly since none of them showed there was a particular threat to Appellant's safety. The court correctly determined these videos were cumulative and were not particularly relevant. Accordingly, Appellant's second assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 3

The trial court erred by imposing a sentence clearly and convincingly contrary to law, by issuing a determinative sentence to Appellant of two years of prison considering his mental health issues.

{¶33} Appellant argues that his two-year sentence is excessive, considering his obvious issues with mental health, his cooperation with law enforcement, and the general mitigating facts of this case. However, Appellant concedes that his sentence is within the statutory range and that the court complied with all relevant statutes. This leads to Appellant's challenge to the constitutionality of the sentencing scheme in Ohio, which he describes as illusory, as he asserts it provides no real appellate review.

{¶34} The state does not address Appellant's constitutionality argument, but contends the record demonstrates that the court complied with all relevant statutes and this Court may not substitute its own judgment for that of the trial court.

{¶35} "[A]n appellate court may vacate or modify a felony sentence on appeal only if it determines by clear and convincing evidence that the record does not support the trial court's findings under relevant statutes or that the sentence is otherwise contrary to law." *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

{¶36} A sentence is considered to be clearly and convincingly contrary to law if it falls outside of the statutory range for the particular degree of offense; if the trial court fails to properly consider the purposes and principles of felony sentencing as enumerated in R.C. 2929.11 and the seriousness and recidivism factors set forth in R.C. 2929.12; or if the trial court orders consecutive sentences and does not make the necessary

consecutive sentence findings. *State v. Pendland*, 7th Dist. Mahoning No. 19 MA 0088, 2021-Ohio-1313, ¶ 41; citing *State v. Collins*, 7th Dist. Noble No. 15 NO 0429, 2017-Ohio-1264, ¶ 9; *State v. Bonnell*, 140 Ohio St.3d 209, 2014-Ohio-3177, 16 N.E.3d 659, ¶ 30.

{¶37} A court of appeals is limited in its review of a felony sentence. The Ohio Supreme Court has somewhat modified an appellate court's review of felony sentences in *State v. Jones*, 163 Ohio St.3d 242, 2020-Ohio-6729, 169 N.E.3d 649. The *Jones* Court clarified the standard of review for felony sentences that was previously announced in *Marcum*. In *Marcum*, the Court held "that R.C. 2953.08(G)(2)(a) compels appellate courts to modify or vacate sentences if they find by clear and convincing evidence that the record does not support any relevant findings under 'division (B) or (D) of section 2929.13, division (B)(2)(e) or (C)(4) of section 2929.14, or division (I) of section 2929.20 of the Revised Code.' " *Marcum*, *supra*, at ¶ 22. The *Jones* Court did not overrule *Marcum*, but clarified dicta to reflect that "[n]othing in R.C. 2953.08(G)(2) permits an appellate court to independently weigh the evidence in the record and substitute its judgment for that of the trial court concerning the sentence that best reflects compliance with R.C. 2929.11 and 2929.12." *Jones, supra*, at ¶ 42.

{¶38} Appellant concedes that the sentence was within the statutory range and the record clearly reflects the court complied with all relevant statutes. However, he does appear to raise a challenge to the Ohio sentencing scheme based on his contention that, despite the fact that a trial court's discretion is typically reviewable, Ohio law does not provide a truly meaningful review of a trial court's sentence. Problematically, Appellant does not develop or support this contention and the state failed to respond.

{¶39} While Ohio's sentencing laws strongly limit appellate review, a sentence must fall within the statutory range and a court must demonstrate that it considered the applicable sentencing laws which are designed to take aggravating and mitigating facts into consideration, among other things. While the constitutionality of Ohio's statutes does not appear to have been directly challenged, the Ohio Supreme Court has repeatedly addressed the standard of review and upheld the sentencing structure.

{¶40} Within his argument he challenges the court's decision to impose incarceration, as the PSI found that rehabilitation and mental health treatment would be appropriate.

{¶41} We have previously addressed similar arguments and have held in several recent cases that:

> "While mental health is a factor a trial court may consider when imposing a sentence, it is not the only factor for a court to consider." *State v. Consiglio*, 7th Dist. No. 21 MA 0066, 2022-Ohio-2340, ¶ 37; *State v. Linzey*, 7th Dist. Mahoning No. 19 MA 0041, 2021-Ohio-1994, appeal not allowed, 164 Ohio, St.3d 1433, 2021-Ohio-3091, 173 N.E.3d 514, ¶ 27. *See State v. Bishop*, 7th Dist. Jefferson No. 18 JE 0005, 2019-Ohio-4963, ¶ 41 (evidence regarding drug addiction is a factor that may be considered when determining a sentence but does not automatically reduce a sentence.) Thus, while a trial court may consider a defendant's mental illness, it is not required to impose a lesser sentence based solely on this factor.

State v. Whitfield, 7th Dist. Mahoning No. 21 MA 0071, 2022-Ohio-4819, ¶ 13.

{¶42} This trial court clearly considered Appellant's mental health. At the sentencing hearing, the court stated:

> The Court: And I believe that you believe you're not a threat to society
>
> Appellant: I'm not.
>
> The Court: And you're not a danger. But when I see someone who believes that there's a conspiracy against him, that his life's in danger and he would go to whatever lengths he needs to do to protect himself, included -- including arming himself and walking in the middle of the street in the middle of the night, then I find -- that makes me find that you're not amenable to community control; that not placing you in prison would demean the impact of your actions and the threat you are to our community.

(Sentencing Hrg., pp. 21-22.)

{¶43} We note that the court's sentence of two years of incarceration is less than the three-year sentence requested by the state and is also less than the statutory maximum. Problematic for Appellant, he expressed his belief that he could have his weapons disability removed and continue to carry a weapon and that he feels the community needs him to continue in his role. He also stated that despite his conviction, he does not "recognize himself as having ever broke the law." (Sentencing Hrg., p. 9.)

{¶44} Accordingly, Appellant's third assignment of error is without merit and is overruled.

Conclusion

{¶45} Appellant challenges the failure of the trial court to instruct the jury on duress, the court's decision to exclude video evidence, and his sentence. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Robb, P.J. concurs.

Hanni, J. concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs waived.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.