[Cite as *State v. Cuyler*, 2026-Ohio-4476.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 113967
v.	:	
DARYL D. CUYLER, JR.,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: VACATED AND REMANDED
RELEASED AND JOURNALIZED: November 12, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-23-681850-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Connor Davin, Assistant Prosecuting Attorney, *for appellee*.

Law Office of Timothy Farrell Sweeney and Timothy F. Sweeney, *for appellant*.

DEENA R. CALABRESE, J.:

I. Procedural History

{¶ 1} Defendant-appellant Daryl D. Cuyler, Jr. previously appealed his convictions and sentence after pleading guilty to amended charges of strangulation,

felonious assault with no firearm specifications, and criminal damaging or endangering. In *State v. Cuyler*, 2025-Ohio-4461 (8th Dist.) ("*Cuyler I*"), we found that the trial court completely failed to comply with a portion of Crim.R. 11. We therefore reversed the judgment of conviction, vacated Cuyler's pleas and sentence, and remanded the case for further proceedings. The State appealed, and on September 9, 2026, the Ohio Supreme Court vacated our decision in *Cuyler I* and remanded the cause to us for further consideration in light of the Court's decision in *State v. Fontanez*, 2026-Ohio-3281.[1]

{¶ 2} On October 27, 2026, Cuyler filed a motion to voluntarily dismiss his appeal or, in the alternative, to withdraw his first assignment of error — the assignment of error that triggered a *Fontanez* analysis of whether his pleas were knowingly, voluntarily, and intelligently entered. By order dated October 28, 2026 (motion No. 600681), we granted Cuyler's motion in part. We permitted him to withdraw his first assignment of error. His underlying conviction is therefore no longer at issue. We indicated, however, that we would address Cuyler's remaining three assignments of error, which read as follows:

> **ASSIGNMENT OF ERROR 2:**
>
> The court's judgment entry of sentence fails to accurately reflect Cuyler's offense of conviction and sentence in amended Count 2; the court's judgment entry of sentence must be vacated and a corrected entry issued.

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[1] *Fontanez* affirmed this court's en banc decision in *State v. Fontanez*, 2024-Ohio-4579 (8th Dist.).

ASSIGNMENT OF ERROR 3:

> The trial court's advisements of and notifications to Cuyler about both postrelease control and the Reagan Tokes law — which the court provided during the sentencing hearing and in the sentencing journal entry — were deficient and contrary to law, thereby mandating resentencing.

ASSIGNMENT OF ERROR 4:

> S.B. 201 (Reagan Tokes) violates the Sixth Amendment right to trial by jury and Fourteenth Amendment due process and the associated provisions of the Ohio Constitution, Article I, Sections 5, 10, and 16.

{¶ 3} We find no merit to Cuyler's fourth assignment of error. The State concedes, however, that Cuyler's second and third assignments of error have merit. We vacate the trial court's judgment entry of sentence and remand for full resentencing consistent with this opinion.

II. Facts and Trial Court Proceedings

{¶ 4} On or about May 26, 2023, Cuyler's ex-girlfriend, one of two victims in this case, went to his apartment to obtain her personal belongings. During the visit, Cuyler became angry and strangled her. Several hours later, Cuyler — now armed, according to the prosecution, with an AR-15 style assault rifle — confronted his ex-girlfriend and her father (the second victim) at a gas station, where he shot at their car. The shooting was partially captured on video. Neither victim sustained wounds, but the bullets shattered the windshield. They were able to flee in the vehicle and contact police.

{¶ 5} On June 13, 2023, the Cuyahoga County Grand Jury returned a five-count indictment charging Cuyler with the following offenses:

Count 1: Strangulation, a felony of the third degree, in violation of R.C. 2903.18(B)(2);

Count 2: Felonious assault (as to Cuyler's ex-girlfriend), a felony of the second degree, in violation of R.C. 2903.11(A)(2), with one- and three-year firearm specifications;

Count 3: Felonious assault (as to the ex-girlfriend's father), a felony of the second degree, in violation of R.C. 2903.11(A)(2), with one- and three-year firearm specifications;

Count 4: Discharge of a firearm on or near prohibited premises, a felony of the third degree, in violation of R.C. 2923.162(A)(3); and

Count 5: Criminal damaging or endangering, a misdemeanor of the first degree, in violation of R.C. 2909.06(A)(1).

{¶ 6} The trial court held several pretrials over the following months, with the trial date continued multiple times so the parties could engage in negotiations with the hope of resolving the case. The court called the case for trial on November 15, 2023. Cuyler appeared in court with retained counsel. The trial court indicated on the record that it had met with all counsel regarding a possible plea. The prosecuting attorney then described the proposed plea on the record. The State offered Cuyler a plea deal in which he would plead guilty to Count 1 as charged, guilty to Count 2 with the elimination of both firearm specifications but the addition of his ex-girlfriend's father as a second victim, and guilty to Count 5 as charged. The State would then nolle both Count 3, which also included firearm specifications, and Count 4. Following a plea colloquy, Cuyler entered guilty pleas in accordance with the plea deal.

{¶ 7} The trial court ordered a presentence-investigation report and scheduled sentencing for December 14, 2023. Sentencing proceeded as scheduled. Cuyler's attorney spoke in mitigation, claiming that the shooting occurred only after Cuyler had been "threatened with a firearm." (Tr. 51.)[2] Cuyler apologized to his ex-girlfriend and her father. He claimed her father had pointed a firearm at him earlier, "[w]hen they came to my house," but acknowledged that he should have contacted police rather than act impulsively. (Tr. 60.) The trial court sentenced Cuyler to a term of imprisonment. On Count 2, the trial court sentenced Cuyler to a minimum of four years and an indefinite maximum of six years. It sentenced Cuyler to 30 months on Count 1 and 180 days on Count 5. The prison terms were to run concurrently with each other. The trial court also ordered restitution for damage to the vehicle. (Tr. 62.) The trial court provided a limited explanation of postrelease control. *Id.* The trial court journalized a sentencing entry on December 19, 2023.

III. Analysis

{¶ 8} As noted above, Cuyler has abandoned his first assignment of error. For ease of analysis, we address his remaining assignments of error out of order.

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[2] The prosecuting attorney later responded: "I don't have any proof of the alleged threats that the second victim allegedly threatened the defendant, however, there's video of the defendant approaching the victims at a gas station with a long rifle, AR-15 style rifle, and putting two rounds through the passenger's side window through the windshield." (Tr. 58.)

A. Third Assignment of Error — Reagan Tokes Law and Postrelease Control Advisements

{¶ 9} In his third assignment of error, Cuyler argues that the trial court's advisements regarding the Reagan Tokes Law and postrelease control were deficient, which mandates resentencing. The State concedes that the trial court erred and that resentencing is required.

{¶ 10} With respect to the required advisements under the Reagan Tokes Law, "'a sentence is contrary to law if a trial court sentences an offender to an indefinite prison term under the Reagan Tokes Law and fails [to] advise the offender of all the notifications set forth in R.C. 2929.19(B)(2)(c) at the sentencing hearing.'" *State v. Thompson*, 2021-Ohio-4027, ¶ 29 (2d Dist.), quoting *State v. Massie*, 2021-Ohio-3376, ¶ 18 (2d Dist.), citing *State v. Whitehead*, 2021-Ohio-847, ¶ 43, 45-46 (8th Dist.). "In instances where the trial court has failed to fully notify the defendant of the R.C. 2929.19(B)(2)(c) advisements, this court has consistently remanded for resentencing." *State v. Hicks*, 2024-Ohio-974, ¶ 71 (8th Dist.). Upon review of the record and in light of the State's concession, we agree that the trial court did not adequately provide the mandatory Reagan Tokes Law advisements.

{¶ 11} In addition, "[t]he trial court must advise the offender at the sentencing hearing of the term of supervision, whether postrelease control is discretionary or mandatory, and the consequences of violating postrelease control." *State v. Bates*, 2022-Ohio-475, ¶ 11. *See also State v. Bolan*, 2024-Ohio-2640, ¶ 8 (8th Dist.). "When the trial court fails to inform the offender of postrelease control pursuant to R.C. 2967.28, the imposition of postrelease control must be vacated and

remanded for resentencing." *Id.* at ¶ 9, citing *State v. Wright*, 2021-Ohio-3818, ¶ 26 (8th Dist.). Once again, upon review of the record and considering the State's concession, we agree that the trial court did not adequately advise Cuyler regarding postrelease control.

{¶ 12} Accordingly, Cuyler's third assignment of error is sustained, the judgment entry of sentence is hereby vacated, and the case is remanded for full resentencing.

B. Second Assignment of Error — Defective Journal Entry

{¶ 13} In his second assignment of error, Cuyler argues that the trial court's sentencing entry fails to accurately reflect his offense of conviction and sentence in amended Count 2, felonious assault. As highlighted in Cuyler's brief, the trial court's entry notes the amendment to Count 2 to include both victims but failed to specify that both of the firearm specifications were deleted. The State concedes the error and indicates that it will move the trial court to issue a nunc pro tunc entry to correct the journal entry to match the sentencing transcript. *See State v. Nelson*, 2020-Ohio-6993, ¶ 64 (8th Dist.) ("A trial court may correct clerical errors in its journal entries to conform to the transcript of the proceedings and reflect what actually occurred."). In resolving Cuyler's third assignment of error, however, we have vacated the judgment entry of sentence and remanded the case for full resentencing, which will necessarily result in a new journal entry. Accordingly, Cuyler's second assignment of error is moot.

C. Fourth Assignment of Error — Constitutionality of Reagan Tokes Law

{¶ 14} Cuyler's fourth assignment of error challenges the constitutionality of the Reagan Tokes Law. Cuyler acknowledges that in 2023, the Ohio Supreme Court held the Reagan Tokes Law constitutional. *State v. Hacker*, 2023-Ohio-2535, ¶ 41. While conceding that *Hacker* is controlling, Cuyler explains in his brief that he is "raising these issues to preserve them in the event *Hacker* is reconsidered and/or overruled by the Supreme Court of Ohio and/or its reasoning or holding are rejected by a federal court under the U.S. Constitution." (Appellant's brief at p. 21.)

{¶ 15} We are constrained to follow *Hacker*. Cuyler's fourth assignment of error is overruled.

{¶ 16} The trial court's judgment entry of sentence is vacated, and the case is remanded to the trial court for resentencing consistent with this opinion, including all mandatory advisements regarding the Reagan Tokes Law and postrelease control.

It is ordered that appellant recover from appellee costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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DEENA R. CALABRESE, JUDGE

EILEEN T. GALLAGHER, P.J., and
EMANUELLA D. GROVES, J., CONCUR