[Cite as *State v. Terry*, 2026-Ohio-4581.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 116163
v.	:	
CHRISTOPHER TERRY,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: November 19, 2026

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-24-696170-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Jeffrey Schnatter and Alyssa Teetzel, Assistant Prosecuting Attorneys, *for appellee*.

Marein & Bradley, LLC, and John T. Martin, *for appellant*.

SEAN C. GALLAGHER, P.J.:

{¶ 1} Christopher Terry appeals his convictions for involuntary manslaughter, failure to stop after an accident, and tampering with evidence

entered after a jury trial, and the ensuing, non-life, indefinite prison sentence of nine to twelve years. For the following reasons, we affirm.

{¶ 2} Terry lost control of his vehicle while driving nearly 100 miles per hour over the posted speed limit in a residential neighborhood, crashing into an apartment building. Terry fled the scene. The crash severed the building's natural gas line, flooding the basement with inflammable gas. Not long after the crash, the building exploded causing serious injury to the victim, who ultimately died as a result of carbon monoxide suffocation from the fire erupting from the explosion. At least two others escaped before the explosion. Shortly after the fatal collision, Terry contacted the police department claiming he was carjacked and the vehicle was stolen before the crash. The problem with that story was police investigators recovered Terry's DNA from the deployed air bags in the wrecked vehicle, which would occur if he was driving it at the time of the collision.

{¶ 3} Terry's appellate arguments are limited. In the first three assignments of error, he claims that his convictions for involuntary manslaughter and tampering with evidence are invalid because there are more specific, less severe offenses available, and in the alternative, his trial counsel was ineffective in failing to timely challenge those charges. Under this general theory, Terry claims that the first-degree felony offense of involuntary manslaughter is not cognizable and a violation of his federal constitutional rights because the State could have also charged him with a third-degree aggravated vehicular homicide, which shares similar elements as involuntary manslaughter. Likewise, he claims that falsification,

and not tampering with evidence, would have been the more appropriate charge related to his misconduct. In the fourth assignment of error, Terry claims the trial court erred by imposing consecutive sentences without making the findings required under R.C. 2929.14(C)(4). None of Terry's arguments have merit.

{¶ 4} For the first assignment of error, Terry gives this panel "two choices: Either hold that [the conviction for involuntary manslaughter] runs afoul of the General Assembly's intent or hold that the prosecution's manner of charging [that count] violated Equal Protection and Due Process" because "[e]qual protection is violated when a statutory scheme is such that two different applications of criminal law can prescribe [sic] different penalties while still requiring the State to prove identical elements." *See State v. Wilson*, 58 Ohio St.2d 52, 55 (1979). According to Terry, the involuntary-manslaughter charge is not cognizable under Ohio law because "[e]vidence that a defendant caused the death of a person through reckless driving supports a conviction for aggravated vehicular homicide as well as for the lesser offense of vehicular assault[,]" both of which are less severe than the first-degree involuntary-manslaughter offense. Terry's constitutional argument rests on his presumption that involuntary manslaughter under R.C. 2903.04(A) and aggravated vehicular homicide under R.C. 2903.06(A)(2)(a) share identical elements, and that overlap necessarily violates his federal constitutional rights.

{¶ 5} Terry's reliance on *Wilson*, in attempting to claim a due process or equal protection violation under the federal constitution, is misplaced. It is true that the court in *Wilson* held that "if the statutes prohibit identical activity, require

identical proof, and yet impose different penalties, then sentencing a person under the statute with the higher penalty violates the Equal Protection Clause" of the United States Constitution. *Id.* at 55-56. That unsupported conclusion, however, was short lived.

{¶ 6} Within months of *Wilson's* release, the Supreme Court of the United States concluded that charging offenders with one crime when another proscribes identical conduct with a different sentencing scheme is constitutionally permissible because "[t]here is no appreciable difference between the discretion a prosecutor exercises when deciding whether to charge under one of two statutes with different elements and the discretion he exercises when choosing one of two statutes with identical elements." *United States v. Batchelder*, 442 U.S. 114, 125 (1979). It was further concluded that "[j]ust as a defendant has no constitutional right to elect which of two applicable federal statutes shall be the basis of his indictment and prosecution, neither is he entitled to choose the penalty scheme under which he will be sentenced." *Id.* Accordingly, criminal statutes with identical elements but differing penalty schemes do not violate the Due Process or Equal Protection Clauses of the federal constitution. It is well within the prosecutor's discretion to choose between different criminal schemes in seeking indictments.[1]

{¶ 7} "It has long been settled that the Supremacy Clause binds state courts to decisions of the United States Supreme Court on questions of federal statutory

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[1] Terry has not advanced any assignment of error challenging the prosecutor's discretion to amend the indictment.

and constitutional law." *State v. Burnett*, 93 Ohio St.3d 419, 424 (2001). Terry has not addressed the controlling precedent on the federal constitutional question. And beyond that, Terry is unable to produce any authority in the nearly 50 years since *Wilson* was released, in which a conviction has been ultimately overturned based on *Wilson*. *See State v. Ballard*, 2016-Ohio-364, ¶ 14-15 (1st Dist.) (collecting cases).

{¶ 8} Instead of addressing the binding precedent, Terry argues that the Ohio Supreme Court left *Wilson* as controlling authority in Ohio when it distinguished it in *State v. Klembus*, 2016-Ohio-1092, a problematic assertion in light of the Supremacy Clause. In *Klembus*, the offender challenged enhancements to his offense of operating a vehicle while intoxicated ("OVI"), claiming that the enhancements were identical because a third-degree OVI offense required proof of an OVI conviction and five OVI convictions in the last 20 years, while a fourth-degree OVI offense only required proof of the five OVI convictions in the last 20 years. The Ohio Supreme Court rejected application of *Wilson* in that case because sentencing enhancements are not crimes, the issue in *Wilson*. *Id.* at ¶ 17. In other words, the validity of *Wilson* was not before the Ohio Supreme Court because the *Wilson* analysis was not implicated by the particular facts of the case.

{¶ 9} *Wilson's* conclusion is entirely based on a state court's interpretation of federal constitutional rights. The Supremacy Clause precludes this court from applying state-court precedent at odds with that issued by the Supreme Court of the United States on the constitutional question. *Burnett* at 422, quoting U.S. Const., art. VI, cl. 2 ("'This Constitution, and the Laws of the United States which shall be

made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.'"). We cannot ignore that binding precedent, and Terry has not presented any Ohio-specific constitutional arguments. Even if the elements of R.C. 2903.04(A), involuntary manslaughter, are identical to aggravated vehicular homicide under R.C. 2903.06(A)(2)(a), which we assume without deciding solely for the purpose of this discussion, that is not a constitutional violation under the federal law. *See Batchelder*, 442 U.S. 114.

{¶ 10} As it pertains to Ohio law, Terry claims that involuntary manslaughter under R.C. 2903.04(A) is not coextensive with aggravated vehicular manslaughter under R.C. 2903.06(A)(2)(a), under a test meant to determine whether a more specific criminal statute should be applied over a more generalized statute under R.C. 1.51. *See State v. Chippendale*, 52 Ohio St.3d 118, 122 (1990). R.C. 1.51 provides that "[i]f a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both." It is only "[i]f the conflict between the provisions is irreconcilable," that "the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail." *Id.* In *Chippendale*, the Ohio Supreme Court unambiguously held that because the legislature removed language to amend the involuntary manslaughter statute to exclude the vehicular-related crimes from the draft form of the statute, "the legislature clearly intended '* * * to permit a charge of manslaughter against persons

involved in vehicular fatalities despite the more specific provisions for aggravated vehicular and vehicular homicide.'" *Id.*, quoting *State v. Davis*, 13 Ohio App.3d 265 (2d Dist. 1983). Under R.C. 1.51, that demonstrates the legislature's "manifest intent" that the general provision could prevail. *Id.*

{¶ 11} Terry's discussion of *Chippendale* is limited, and he offers no arguments that any subsequent change in statutory enactment would lead to a different conclusion. Instead, Terry claims he should prevail because "what the prosecution has done in this case goes well beyond anything permitted by *Chippendale*," or in the alternative, this panel should overrule the Ohio Supreme Court. The former argument goes no deeper than that statement, and there is no explanation provided to distinguish *Chippendale*. We decline to address Terry's conclusory statement and, therefore, need not weigh in on the interplay between the two statutes at issue. In order to accept Terry's argument on this point, this panel would have to find and analyze case authority of our own volition. The parties, not an appellate court, bear the burden of advancing and supporting an argument with citations to legal authority and facts in the record. *State v. Quarterman*, 2014-Ohio-4034, ¶ 19, citing *State v. Bodyke*, 2010-Ohio-2424, ¶ 78 (O'Donnell, J., concurring in part and dissenting in part). As to his latter point, it is axiomatic that an intermediate court lacks authority to overrule a superior court.

{¶ 12} The first assignment of error is overruled.

{¶ 13} In the second assignment of error, Terry argues that if the first assignment of error is resolved under the plain-error standard, his trial counsel

should be deemed to have rendered ineffective assistance in failing to challenge the involuntary-manslaughter charge. Because that argument is limited to addressing a conclusion this panel has not reached, the second assignment of error is moot and need not be considered. *See* App.R. 12(A)(1)(c) ("Unless an assignment of error is made moot by a ruling on another assignment of error, decide each assignment of error and give reasons in writing for its decision.").

{¶ 14} In the third assignment of error, Terry claims that he "cannot be convicted of the general offense of tampering with evidence in [Count 3], when there is a more specific offense available, to wit: falsification." Importantly, Terry has conceded that his conviction for tampering with evidence is based on sufficient evidence, demonstrating that the State presented evidence establishing each element of the tampering offense. Terry further provides no authority or analysis to support his claim. *See* App.R. 16(A)(7). His sole claim is that a charge of falsification would be more specific to his criminal conduct than the tampering-with-evidence conviction that is supported by sufficient evidence. As mentioned earlier, it is not this court's responsibility to present arguments on behalf of a party. *Quarterman* at ¶ 19, citing *Bodyke* at ¶ 78. It cannot be concluded, based on the limited argument presented, that the two charges are irreconcilable under R.C. 1.51 or that the exception to that rule does not apply. The third assignment of error is overruled solely based on the cursory, unsupported argument presented for review.

{¶ 15} In the fourth, and final, assignment of error, Terry claims the trial court failed to make the consecutive-sentence findings under R.C. 2929.14(C)(4)

because the trial court did not expressly use the statutory language in announcing the findings at the sentencing hearing, which were later clarified in the final entry of conviction:

> The court imposes prison terms consecutively finding that consecutive service of the prison term is necessary to protect the public from future crime or to punish the defendant; that the consecutive sentences are not disproportionate to the seriousness of defendant's conduct and to the danger defendant poses to the public; and that, the defendant committed one or more of the multiple offenses while the defendant was awaiting trial or sentencing or was under a community control or was under post-release control for a prior offense, or at least two of the multiple offenses were committed in this case as part of one or more course of conduct, and the harm caused by said multiple offenses was so great or unusual that no single prison term for any of the offenses committed . . . adequately reflects the seriousness of defendant's conduct, or defendant's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the defendant.

It must be acknowledged that "[a] court of record speaks only through its journal and not by oral pronouncement or mere written minute or memorandum." *State v. Leegrand*, 2022-Ohio-3623, ¶ 8, citing *Schenley v. Kauth*, 160 Ohio St. 109 (1953), paragraph one of the syllabus. The written findings in the final entry of conviction, therefore, must be considered.

{¶ 16} The trial court's memorialized findings align with the statutory requirements established in R.C. 2929.14(C)(4). Under that subsection, a trial court has discretionary authority to "impose consecutive sentences for multiple offenses if it finds that doing so is necessary to protect the public or to punish the offender[,]" "that the sentences are not disproportionate to the seriousness of the offender's conduct and the danger the offender poses to the public[,]" and one of three findings

are made that "[t]he offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender[,]" that two of the offenses "were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct[,]" or "[t]he offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender." *State v. Polizzi*, 2026-Ohio-2588, ¶ 14; R.C. 2929.14(C)(4).

{¶ 17} Terry has not claimed that the final entry of conviction differs with the oral pronouncement to a reversible extent. In fact, Terry has not addressed the written findings altogether. *See* App.R. 16(A)(7). Because the findings adhere to the statutory requirements, the final assignment of error, solely claiming that the R.C. 2929.14(C)(4) findings were not made, is overruled. The record demonstrates that the trial court made the required findings before imposing consecutive sentences.

{¶ 18} Terry's convictions are affirmed.

It is ordered that appellee recover from appellant 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. The defendant's

convictions having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

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

SEAN C. GALLAGHER, PRESIDING JUDGE

ANITA LASTER MAYS, J., and
TIMOTHY W. CLARY, J., CONCUR