

NO. 2012-1701

IN THE SUPREME COURT OF OHIO

APPEAL FROM
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO
NO. 97522

STATE OF OHIO

Plaintiff-Appellee,

-vs-

WALTER TRIPLETT

Defendant-Appellant

MEMORANDUM IN RESPONSE OF APPELLEE STATE OF OHIO

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TABLE OF CONTENTS

WHY THIS FELONY CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION 1

STATEMENT OF THE CASE..... 2

STATEMENT OF THE FACTS 3

LAW AND ARGUMENT..... 4

 State’s Proposition Of Law No. I: A Trial Court Does Not Abuse Its Discretion By Declining to Instruct the Jury on the Lesser-Included Offense of Reckless Homicide Where The Record Reveals No Basis on Which the Jury Could Find the Defendant Guilty of the Lesser Offense After Acquitting Him of the Greater Offense..... 4

 1. Legal Standard for an Instruction on a Lesser-Included Offense. 5

 2. The Facts of Triplett’s Case Do Not Support a Conviction for Reckless Homicide Following an Acquittal on Involuntary Manslaughter..... 6

 3. Triplett Provides No Basis in His Memorandum in Support for the Finding of Any Error in the Appellate Court’s Analysis. 7

 State’s Proposition of Law II: A Trial Court Does Not Abuse Its Discretion by Instructing the Jury on Deadly Force Where It Complies With the Mandate of An Appellate Court and the Record Supports a Finding of Deadly Force..... 8

 1. Legal Standard for the Review of a Trial Court’s Jury Instructions..... 9

 2. The Trial Court’s Instructions Complied with the Eighth District’s Mandate in Triplett I..... 9

 3. The Evidence at Triplett’s Second Trial Justified an Instruction on the Use of Deadly Force.....10

 Proposition of Law III: A Defendant’s Speedy Trial Rights Are Not Violated Where Ohio’s Speedy Trial Statute Does Not Apply to Retrials and the Length of Any Delay is Not Presumptively Prejudicial.11

 1. R.C. 2945.71 Does Not Apply to Retrials Following a Successful Appeal.....11

 2. The Length of the Delay in Triplett’s Case Was Not Presumptively Prejudicial.....12

 State’s Proposition of Law IV: The Failure of a Trial Court to Make Specific Findings on the Record Justifying Admission of a Defendant’s Prior Convictions is Harmless Where the Evidence Is Overwhelming of the Defendant’s Guilt.13

 1. The Eighth District Found That It Was Harmless Error for the Trial Court to Admit Triplett’s Prior Convictions Without Making Findings on the Record.13

 2. Any Error In the Admission of Triplett’s Convictions Was Harmless.....14

CONCLUSION15

CERTIFICATE OF SERVICE.....16

**WHY THIS FELONY CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST
AND DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION**

Defendant-Appellant Walter Triplett ("Appellant") has not demonstrated any compelling or meritorious reasons why his propositions of law rise to the level of substantial constitutional questions or issues of great public or general interest.

Triplett first argues that the trial court abused its discretion by failing to instruct the jury on the lesser-included offense of reckless homicide. The record reveals no basis, however, on which the jury could have convicted Triplett of reckless homicide after acquitting him of involuntary manslaughter. Any instruction on reckless homicide would therefore have been improper. Triplett next argues that the trial court abused its discretion by instructing the jury on deadly force. But as the Eighth District found, the trial court's instruction complied with the appellate court's mandate and properly allowed the jury to determine whether a punch was sufficient to constitute deadly force.

Triplett claims that his speedy trial rights were violated in the interim between the Eighth District's reversal of his first trial and the beginning of his second trial. However, Triplett does not account for the fact that the speedy trial provisions of R.C. 2945.71 do not apply to retrials following a successful appeal. Moreover, any delay in bringing Triplett to trial was reasonable and not presumptively prejudicial. Finally, Triplett argues that the trial court erred by listing his "stale, prior convictions" in its jury instructions. Although the Eighth District agreed that this was error, it nevertheless found any error harmless in light of the overwhelming evidence of Triplett's guilt.

In his Memorandum in Support, Triplett simply reasserts many of the same claims the Eighth District considered and rejected. Triplett provides no basis on which he disagrees with any of the Eighth District's conclusions, nor does he point to any clear error

warranting review. Triplett is dissatisfied with his conviction, but his dissatisfaction with the Eighth District's opinion does not equate to a case of public or great general interest, especially where the opinion is based on well-established legal principles and sound reasoning. The State therefore respectfully requests that this Honorable Court decline jurisdiction of the propositions of law raised by Appellant.

STATEMENT OF THE CASE

On May 12, 2009, the Cuyahoga County Grand Jury returned a two-count indictment against Walter Triplett, the Defendant-Appellant herein. The indictment charged Triplett with one count of Involuntary Manslaughter under R.C. 2903.04(A) and one count of Felonious Assault under R.C. 2903.11(A)(1) relating to the April 30, 2009 death of Michael Corrado. On September 21, 2009, a Cuyahoga County jury found Triplett guilty of Felonious Assault, but was hung on the charge of Involuntary Manslaughter. The State dismissed without prejudice the Involuntary Manslaughter count while Triplett's direct appeal from his first trial was pending. The State reserved the right to re-indict this case after the outcome of that appeal.

After the first trial, the appellate court reversed Triplett's conviction and remanded for a new trial. *State v. Triplett*, 192 Ohio App.3d 600, 2011-Ohio-816, 949 N.E.2d 1058 (8th Dist.2011) (*Triplett I*). It found that the trial court improperly commingled the jury instructions regarding the self-defense, defense of another, and the duty to retreat, failed to explain the duty to retreat, and failed to instruct on the use of non-deadly force. *Id.* at ¶ 2.

On September 9, 2011, the Cuyahoga County Grand Jury re-indicted Triplett for both Involuntary Manslaughter and Felonious Assault. Triplett's second trial began on October 11, 2011. The jury found Triplett guilty of both charges, and the trial court sentenced

Triplett to a total of 20 years imprisonment; 10 years on the Involuntary Manslaughter conviction consecutive to 10 years on a Repeat Violent Offender specification. On direct appeal, the Eighth District rejected Appellant's assignments of error and affirmed his convictions. *State v. Triplett*, 8th Dist. No. 97522, 2012-Ohio-3804 (*Triplett II*).

STATEMENT OF THE FACTS

Shortly after 2:00 a.m. on April 30, 2009, Walter Triplett threw a fatal punch to the face of Michael Corrado. The State's evidence at trial indicated that Corrado and a group of friends had driven to the Barley House in downtown Cleveland on the night of April 29. Corrado and his friends sat in a booth away from the bar. Also present in the Barley House that night were Walter Triplett, his sister Waltonya, and their friends, all of whom were sitting at the bar. Triplett, a 6 foot, 6 inches tall, 254 pound bouncer who worked at a bar across the street, sat at a table directly adjacent to the bar.

At some point during the night, a member of Triplett's group punched one of the Barley House bouncers, and a fight broke out between Triplett's group and the bouncer's friends. Corrado and his group were not involved in the fight in any way. Triplett and his group left the bar and were followed outside onto the street by friends of the bouncer, where the fight continued. Corrado, still inside on the back patio area, told his friends that he was leaving because he had to go to work the next morning. Corrado walked out of the Barley House and towards the street where the two groups were fighting.

Waltonya Triplett was fighting outside on the street with some of the men from the other group when Corrado approached them. There was no testimony that Corrado was involved in the fight in any way or that he was at all threatening towards Waltonya Triplett. Triplett saw Corrado, 6 feet tall and 188 pounds, near his sister after she ran up to

him. He stated "I can't take this anymore," and punched both Corrado and another unidentified male in the face. Triplett later testified that he attacked the two men because he felt they were violating his sister's right to personal space of two to six feet. Triplett's punches knocked both men to the ground. The punch to Corrado's face fractured the orbit around his left eye, his cheekbone, and the left petrous bone at the base of his skull. Corrado fell backwards onto the pavement, striking his head on the curb. Corrado suffered a six-inch skull fracture and died later that day. The coroner determined that his death was a result of blunt impact to the head resulting from the fall. Triplett then got into his car and attempted to drive away, but was blocked in by a cab driver.

The jury in Triplett's first trial convicted him of the Felonious Assault on Corrado but was hung on the charge of Involuntary Manslaughter. After the Eighth District reversed this conviction, Triplett's case proceeded to trial a second time. Following the mandate of the Eighth District in *Triplett I*, the trial court instructed the jury on the use of both deadly and non-deadly force, as well as the defense of another. The jury in Triplett's second trial convicted him of both Involuntary Manslaughter and Felonious Assault.

LAW AND ARGUMENT

State's Proposition Of Law No. I: A Trial Court Does Not Abuse Its Discretion By Declining to Instruct the Jury on the Lesser-Included Offense of Reckless Homicide Where The Record Reveals No Basis on Which the Jury Could Find the Defendant Guilty of the Lesser Offense After Acquitting Him of the Greater Offense.

In his first proposition of law, Triplett argues that the trial court abused its discretion by refusing to instruct the jury on reckless homicide as a lesser-included offense. Specifically, Triplett argues that the jury could reasonably have found that Triplett acted

only recklessly when he punched Corrado, and his assertion of the defense of another does not obviate the trial court's duty to instruct on lesser-included offenses.

1. Legal Standard for an Instruction on a Lesser-Included Offense.

Reckless homicide is a lesser-included offense of involuntary manslaughter, but this does not end an appellate court's inquiry. "[E]ven though an offense may be statutorily defined as a lesser included offense of another, a charge on the lesser included offense is required only where the evidence presented at trial would reasonably support both an acquittal on the crime charged and a conviction upon the lesser included offense." *State v. Thomas*, 40 Ohio St.3d 213, 216, 533 N.E.2d 286 (1988). In making this determination, the trial court must view the evidence in the light most favorable to the defendant. *State v. Campbell*, 69 Ohio St.3d 38, 47-48, 630 N.E.2d 339 (1994).

The lesser-included-offense instruction is not warranted every time "some evidence" is presented to support the lesser offense. *State v. Shane*, 63 Ohio St.3d 630, 632, 590 N.E.2d 272 (1992). Rather, a court must find "sufficient evidence" to "allow a jury to *reasonably* reject the greater offense and find the defendant guilty on a lesser included * * * offense." *Id.* at 632-633 (emphasis in original). Whether a lesser-included offense should be submitted to the jury therefore depends on the facts of each case as stated in the record. *State v. Evans*, 122 Ohio St.3d 381, 2009-Ohio-2974, 911 N.E.2d 889, ¶ 13. The decision whether to instruct the jury on a lesser included offense will not be reversed absent an abuse of discretion. *State v. Wolons*, 44 Ohio St.3d 64, 68, 541 N.E.2d 443 (1989).

An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). This requires the reviewing

court to find not merely a difference in opinion; the result must be so palpably and grossly violative of fact and logic that it demonstrates not the exercise of reason but rather of passion or bias. *State v. Jenkins*, 15 Ohio St.3d 164, 222, 473 N.E.2d 264 (1984).

2. The Facts of Triplett's Case Do Not Support a Conviction for Reckless Homicide Following an Acquittal on Involuntary Manslaughter.

The jury found Triplett guilty of Involuntary Manslaughter in violation of R.C. 2903.04(A), which reads: "No person shall cause the death of another or the unlawful termination of another's pregnancy as a proximate result of the offender's committing or attempting to commit a felony." R.C. 2903.04(A) does not specify a culpable mental state; rather, the requisite mens rea is supplied by the underlying felony offense. *State v. Campbell*, 74 Ohio App.3d 352, 358, 598 N.E.2d 1244 (1st Dist.1991). In this case, the underlying felony offense was Felonious Assault under R.C. 2903.11(A)(1), which requires that the offender "knowingly * * * cause serious physical harm to another." The jury thus found that Triplett caused the death of Corrado as a proximate result of his knowingly causing serious physical harm to Corrado.

Triplett argues that the jury should have been instructed on Ohio's Reckless Homicide statute, R.C. 2903.041(A), which provides: "No person shall recklessly cause the death of another or the unlawful termination of another's pregnancy." While the charge of involuntary manslaughter required the jury to find that Corrado's death was a proximate result of a felony that Triplett had committed knowingly, a reckless homicide charge would have required the jury to find that Triplett recklessly caused Corrado's death. For Triplett to demonstrate that he was entitled to an instruction on reckless homicide, he must therefore have shown that there was some basis on which the jury could find that he caused the death of Michael Corrado, but did not do so as a proximate result of the

felonious assault. The record in this case reveals no such basis. As stated by the appellate court, “[A]n instruction on the offense of reckless homicide would have been in contradiction of the evidence adduced at trial.” *Triplett II*, at ¶ 62.

Triplett admitted during testimony to deliberately punching Corrado as a response to what he claimed was a perceived threat to his sister. This punch was so powerful that it broke bones in Corrado’s face and at the base of his skull, knocking him backwards onto the pavement. Triplett did not contest that he punched Corrado or that Corrado’s death occurred as a proximate result of the injuries he sustained in the fall. The only issue was whether Triplett acted reasonably in defense of his sister Walttonya. The jury was free to believe some, all, or none of the testimony offered on this point, but there was no question that if Triplett had caused the death of Michael Corrado, he had done so as a proximate result of a felony. Even if Triplett’s version of events were true, he still knowingly caused serious physical harm to Corrado through the punch.

3. Triplett Provides No Basis in His Memorandum in Support for the Finding of Any Error in the Appellate Court’s Analysis.

Triplett argues that the lesser-included offense instruction was necessary because “[T]he jury could have reasonably found Appellant punched without intent to kill.” Memorandum in Support, at p. 9. This is precisely what the jury did find in this case. To find Triplett guilty of Involuntary Manslaughter, R.C. 2903.04(A) required the jury only to find that Triplett had acted knowingly with regard to the punch, not to the resulting fall or injuries. The statute contains no mens rea element as to the death itself. Even if the jury believed that Triplett was merely reckless with regard to Triplett’s death, this would still provide no basis on which to find him not guilty of Involuntary Manslaughter because the statute required only that the death occur as a proximate result of the underlying felony.

Whether Triplett intended to kill Corrado was irrelevant to this case. The only evidence Triplett presented at trial was intended to justify his action out of what he claimed was a reasonable fear for his sister. This provided no basis on which to acquit Triplett of Involuntary Manslaughter and then to convict him of Reckless Homicide.

Triplett also points to the fact that the jury in his first trial was hung on the Involuntary Manslaughter count as evidence that would have justified the instruction on the lesser-included offense. "To ascribe meaning to a hung count would presume an ability to identify which factor was at play in the jury room. But that is not reasoned analysis; it is guesswork. Such conjecture about possible reasons for a jury's failure to reach a decision should play no part * * *." *Yeager v. United States*, 557 U.S. 110, 121-122, 129 S.Ct. 2360, 174 L.Ed.2d 78 (2009).

The trial court in this case properly concluded that there was insufficient evidence to both acquit Triplett of Involuntary Manslaughter and to then convict him of Reckless Homicide. *Triplett II*, at ¶ 62. Triplett's Memorandum presents no new arguments that the Eighth District did not consider and reject in affirming his conviction, or cite to a need to change well-established law. Based on the foregoing, Triplett's first proposition of law lacks merit and warrants no further review by this Honorable Court.

State's Proposition of Law II: A Trial Court Does Not Abuse Its Discretion by Instructing the Jury on Deadly Force Where It Complies With the Mandate of An Appellate Court and the Record Supports a Finding of Deadly Force.

In his second proposition of law, Triplett argues that the trial court abused its discretion by instructing the jury on deadly force.

1. Legal Standard for the Review of a Trial Court's Jury Instructions.

When reviewing a trial court's jury instructions, the proper standard of review for an appellate court is whether the trial court's refusal to give a requested instruction or giving an instruction constituted an abuse of discretion under the facts and circumstances of the case. *State v. Wolons*, 44 Ohio St.3d 64, 68, 541 N.E.2d 443 (1989). Jury instructions are reviewed in their entirety to determine if they contain prejudicial error. *State v. Porter*, 14 Ohio St.2d 10, 13, 235 N.E.2d 520 (1968).

2. The Trial Court's Instructions Complied with the Eighth District's Mandate in Triplett I.

In Triplett's first trial, the trial court instructed the jury only on the use of deadly force and declined to give an instruction on deadly force. The Eighth District reversed Triplett's convictions, finding that "a failure to instruct on nondeadly force when the death is the result of one punch places the focus on the death and not the force used (one punch)." *Triplett I*, at ¶ 12. "[T]he facts of the case should dictate whether the nondeadly-force instruction is required." *Id.* at ¶ 16. On remand for Triplett's second trial, the trial court complied with the Eighth District's mandate and instructed the jury on non-deadly force as well as on deadly force.

In his appeal from his second trial, Triplett challenged the trial court's decision to give a deadly force instruction at all. The Eighth District found that in giving both instructions, the trial court had correctly followed the mandate of *Triplett I*. "The foregoing directive from this court permitted the trial court to consider whether the evidence warranted an instruction on deadly force as well as nondeadly force." *Triplett II*, at ¶ 56. Whereas instructing the jury only on deadly force in Triplett's first trial improperly emphasized the resulting circumstances of Corrado's death when considering the

reasonableness of the force used, the trial court's instruction in his second trial properly allowed the jury to determine whether the punch was itself deadly force.

Contrary to Triplett's characterization, the Eighth District did not hold in *Triplett I* that one punch can never, under any circumstances, constitute deadly force. The court in *Triplett I* found only that "knowingly causing serious harm does not *automatically* equate to deadly force." *Triplett I*, at ¶ 14 (emphasis in *Triplett II*, at ¶ 55). This is consistent with the requirement that the jury must determine, as a question of fact, what conduct is or is not deadly force. "[T]he findings that * * * deadly force was used constitute factual issues to be determined by the jury * * *." *State v. Ford*, 10th Dist. No. 88AP-503, 1989 WL 61753, *5 (Whiteside, J., concurring). It was also consistent with the Eighth District's mandate in *Triplett I* that "the facts of the case should dictate whether the nondeadly-force instruction is required." *Triplett I*, at ¶ 16. The trial court read both instructions to the jury, and the jury was free to accept either version of the events as true and to sign the verdict forms accordingly. No error or confusion of the jury occurred.

3. The Evidence at Triplett's Second Trial Justified an Instruction on the Use of Deadly Force.

Even when considered without regard for the Eighth District's mandate in *Triplett I*, the evidence presented at Triplett's second trial independently justified an instruction on the use of deadly force in defense of another. Triplett threw two punches, one to each of two men he believed was encroaching on his sister's personal space. Triplett had a dramatic advantage in over Corrado, being 6 feet, 6 inches tall and 254 pounds, compared to Corrado's 6 foot, 188 pound stature. Triplett was also an experienced bouncer at a bar. The punch to Corrado's face was so powerful that it knocked him off his feet, breaking

bones in his face and at the base of his skull even before he hit the ground. Under these circumstances, the jury could reasonably have found that such a punch was deadly force.

Ohio courts have not created an absolute rule that one punch can never constitute deadly force. To the contrary, Ohio courts have recognized that “there is no question that a person's fists could constitute a deadly weapon.” *State v. Grubach*, 8th Dist. No. 75022, 1999 WL 1129079, at *3, citing *State v. Schaffer*, 113 Ohio App. 125, 131, 177 N.E.2d 534 (4th Dist.1960). If a person of Triplett’s size and experience had punched an infant in the face, causing its death, no one would argue that the punch could not be viewed as deadly. What constitutes deadly force depends on the facts of each case. The jury, upon hearing those facts, found that the punch was deadly force. The trial court’s instruction correctly followed the mandate of the Eighth District in allowing them to make that determination. Based on the foregoing, Triplett’s second proposition of law lacks merit and warrants no further review by this Honorable Court.

Proposition of Law III: A Defendant’s Speedy Trial Rights Are Not Violated Where Ohio’s Speedy Trial Statute Does Not Apply to Retrials and the Length of Any Delay is Not Presumptively Prejudicial.

In his third proposition of law, Triplett argues that his speedy trial time lapsed after he won his first appeal. Triplett claims that he remained in prison, “an innocent man,” between the Eighth District’s reversal of his conviction in *Triplett I* on March 1, 2011 to the date he filed his *Motion to Return Defendant and Set a Reasonable Bond* on June 30, 2011. Memorandum in Support, at p. 13.

1. R.C. 2945.71 Does Not Apply to Retrials Following a Successful Appeal.

Ohio’s speedy trial statute, R.C. 2945.71, does not apply to retrials following an appeal. *State v. Fanning*, 1 Ohio St.3d 19, 21, 437 N.E.2d 583 (1982); *State v. Hull*, 110 Ohio

St.3d 183, 2006-Ohio-4252, 852 N.E.2d 706, paragraph one of the syllabus. This was the basis on which the Eighth District rejected Triplett's speedy trial claim, and Triplett provides no explanation as to why the Eighth District's application of *Hull* warrants any review. "The standard to be applied, therefore, is basically reasonableness under federal and state constitutions." *Fanning*, 1 Ohio St.3d at 21.

Any speedy trial rights Triplett had were limited to his rights under the U.S. Constitution as explained in the Supreme Court's decision in *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972). In *Barker*, the court established a balancing test to assess constitutional speedy trial claims. Appellate courts are to analyze four factors: length of delay, reason for delay, defendant's assertion of the right, and prejudice to defendant. *Id.* at 530. However, the court also observed that unless the length of the delay is "presumptively prejudicial, there is no necessity for inquiry into the other factors that go into the balance." *Id.*

2. The Length of the Delay in Triplett's Case Was Not Presumptively Prejudicial.

A one-year delay between indictment and trial is generally considered the minimum amount of time required to trigger a full *Barker* analysis. *State v. Selvage*, 80 Ohio St.3d 465, 468, 687 N.E.2d 433 (1997). In this case, Triplett points to a period of only four months that elapsed following the Eighth District's remand for retrial. This is well short of the one year necessary to even reach a full reasonableness analysis under *Barker*. Ohio courts have repeatedly found that such minimal delays do not rise to a level of presumptive prejudice. See *State v. Echols*, 146 Ohio App.3d 81, 90-91, 765 N.E.2d 379 (1st Dist.2001) (209-day delay in retrial was not presumptively prejudicial); *State v. Pearson*, 130 Ohio App.3d 577, 590-591, 720 N.E.2d 924 (3d Dist.1998) (16-month delay in retrial was not

presumptively prejudicial); *State v. O'Brien*, 34 Ohio St.3d 7, 516 N.E.2d 218 (1987) (138-day delay was not unreasonable under *Barker*).

Moreover, the trial date was selected to accommodate Triplett's own request. The Eighth District noted that "Triplett's retrial commenced on the exact date that his defense counsel became available." *Triplett II*, at ¶ 11. Based on the foregoing, Triplett's second proposition of law lacks merit and warrants no further review by this Honorable Court.

State's Proposition of Law IV: The Failure of a Trial Court to Make Specific Findings on the Record Justifying Admission of a Defendant's Prior Convictions is Harmless Where the Evidence Is Overwhelming of the Defendant's Guilt.

In his fourth and final proposition of law, Triplett argues that the trial court improperly listed Triplett's stale convictions. Specifically, the trial court permitted the State to cross-examine Triplett regarding his convictions in 1998 for promoting prostitution and in 1999 for possession of drugs. The Eighth District found such convictions were inadmissible because the trial court did not make the requisite findings on the record, but found that any error was harmless. *Triplett II*, at ¶ 40-44.

1. The Eighth District Found That It Was Harmless Error for the Trial Court to Admit Triplett's Prior Convictions Without Making Findings on the Record.

It was undisputed that Triplett's criminal convictions occurred outside the ten-year window stated in Evid.R. 609. Consequently, evidence of those convictions was not admissible unless the trial court determined "in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect." Evid.R. 609(B). This rule required the trial court to make specific findings on the record that reflected the facts and circumstances justifying the admission of the conviction. *State v. Fluellen*, 88 Ohio App.3d 18, 22-23, 623 N.E.2d 98 (4th

Dist.1993). Because the trial court failed to make any such findings, the Eighth District found that the evidence of Triplett's prior convictions was inadmissible.

Importantly, however, the court did not find that the evidence was substantively inadmissible. The evidence was introduced "to impeach Triplett's credibility, as permitted by Evid.R. 609(A)." The trial court erred only by failing to make the requisite findings on the record. The Eighth District also found that any error was harmless because 1) "there was overwhelming evidence of Triplett's guilt," 2) the jury was unlikely to have been prejudiced by such dissimilar offenses, and 3) the trial court twice provided a limiting instruction. *Triplett II*, at ¶¶ 42-43.

2. Any Error In the Admission of Triplett's Convictions Was Harmless.

Error in the admission of evidence is harmless if there is no reasonable possibility that exclusion of the evidence would have affected the result of the trial. *State v. Boczar*, 11th Dist. No. 2007-A-0034, 2008-Ohio-834, ¶ 50, citing *State v. Webb*, 70 Ohio St.3d 325, 335, 638 N.E.2d 1023 (1994). The use of a defendant's prior convictions for impeachment is not a constitutional violation, nor does Triplett argue that the trial court's admission or recitation of such convictions violated any constitutional right. He argues only that the admission of such evidence violated Evid.R. 609 because the trial court did not make the requisite findings. "Nonconstitutional error is harmless if there is substantial other evidence to support the guilty verdict." *Webb*, 70 Ohio St.3d at 335.

The Eighth District correctly concluded that Triplett's prior convictions did not affect the result of his trial. Triplett does not contest the Eighth District's finding that there was overwhelming evidence of his guilt, that the evidence was offered for a proper purpose pursuant to Evid.R. 609(A), and that the trial court gave two instances of a limiting

instruction. Most importantly, Triplett fails to demonstrate how the admission of his convictions was unduly prejudicial to him in light of his admission to throwing the fatal punch to Corrado, and the tangential relation between any prior conviction and the charged offense. This Court has recognized that the less similarity exists between the prior conviction and the current charge, the less likely it is that the jury will be impermissibly prejudiced. *State v. Schaim*, 65 Ohio St.3d 51, 59, 1992-Ohio-31, 600 N.E.2d 661.

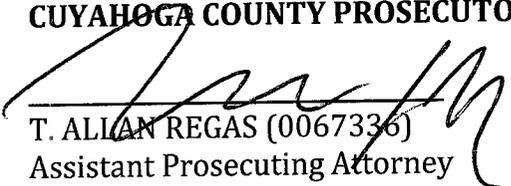
There is no reasonable probability that Triplett's prior convictions for promoting prostitution and possession of drugs would cloud the jury's judgment as to whether Triplett knowingly caused serious physical harm to Corrado through the punch. Triplett admitted as much when presenting his defense. Based on the foregoing, Triplett's second proposition of law lacks merit and warrants no further review by this Honorable Court.

CONCLUSION

The State of Ohio respectfully submits that Triplett's Memorandum in Support of Jurisdiction fails to present a substantial constitutional question or an issue of public or great general interest. The Eighth District properly rejected Triplett's claims based on the particular facts of this case and reasoned application of established precedent. As such, this Honorable Court's discretionary jurisdiction is not warranted.

Respectfully submitted,

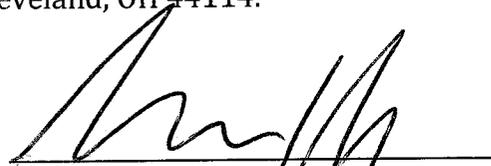
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CERTIFICATE OF SERVICE

A copy of the foregoing Memorandum in Response of Appellee State of Ohio has been mailed by regular U.S. mail this 29th day of October, 2012, to Rick L. Ferrara, Attorney for Appellant, 2077 East 4th Street, 2nd Floor, Cleveland, OH 44114.


Assistant Prosecuting Attorney