IN THE SUPREME COURT OF OHIO

STATE OF OHIO

Plaintiff-Appellant,

-vs-

NATHAN STILTNER,

Defendant-Appellee,

CASE NO.: 2021-0573

On Appeal from the Scioto County Court of Appeals
Fourth Appellate District

C.A. Case No. 19-CA-3882

MOTION FOR RECONSIDERATION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

MOTION FOR RECONSIDERATION

Pursuant to S. Ct. Prac. R. 18.02, Appellee, the State of Ohio, respectfully requests the court reconsider its Decision and Entry filed October 12, 2022, remanding this matter to the trial court for a new trial consistent with *State v. Brooks*, _ Ohio St. 3d _, 2022-Ohio-2478, _NE3d_. Appellee respectfully submits for the reasons stated herein that this matter should be remanded to the Court of Appeals for Scioto County to conduct a harmless-error analysis consistent with *State v. Brooks*.

STATEMENT OF THE CASE AND FACTS

The Scioto County Grand Jury indicted Appellant, Nathan Stiltner, on August 23, 2018, for Count 1: Aggravated Murder, Count 2: Murder, Count 3: Felonious Assault, and Court 4: Having Weapons Under Disability. Counts one through three included Firearm specifications.

August 24, 2018, Appellant was arraigned, entered Not Guilty Pleas, and was appointed counsel. Appellant's bond was set at $150,000.00, cash/surety. A pre-trial conference was scheduled August 28, 2018.

The jury trial commenced in this matter on May 20, 2019 and concluded May 24, 2019. Appellant filed a Motion for Proposed Jury Instruction on Self-Defense pursuant to 2018 H.B. 228 on May 23, 2019. Appellee filed a set of Proposed Jury Instructions on May 24, 2019 which included a self-defense instruction utilizing the unmodified law placing the burden of proof upon the Defendant. At the conclusion of the trial, the trial court instructed the jury utilizing the self-defense instruction proposed by the State pursuant to the law in effect prior to the trial. Appellant was found guilty of all counts with the exception of Count 4-Having a Weapon Under Disability, which was dismissed by the State. Based upon the State's election at Sentencing, Appellant was sentenced to a Life Sentence without the possibility of Parole for 25 years with a mandatory three-year term of incarceration for a firearm specification. The total sentence was 28 years to life. A timely notice of appeal was filed.

By Decision in *State v. Stiltner*, 4th Dist Scioto No. 19CA3882, 2021-Ohio-959 filed March 22, 2021, the 4th District Appellate Court Affirmed the convictions and sentence of Appellant, but reversed and remanded in part specifically for the limited purpose of notifying Appellant of post-release control consistent with R.C. §2929.191.

Douglas Thackston died from a gunshot wound of the abdomen (Tr. 480, Ln. 8) received at apartment 1923D in Kendall Heights (also known as Wayne Hills) in Portsmouth, Ohio on August 4, 2018. Witnesses saw Appellant with a metal detector looking for a gun the night prior to the shooting. (Tr. pp. 435, 485) The day of the

shooting, Appellant had a gun in the waistband of his pants (Tr. pp. 484, 565), argued with the victim, but did not shoot him. (Tr. pp. 484, 485, 502, 565) Everything calmed down. However, Appellant went back with the gun that same evening grabbed the victim and shot him at point blank range in the abdomen. (Tr. pp. 504-505, 566) Two witnesses, Jean Conley and Chuckie Blevins, were both present in their apartment and witnessed Nathan Stiltner shoot Douglas Thackston in the stomach. Appellant was arrested August 5, 2018.

The 4th District affirmed the conviction and sentence by Decision filed March 22, 2021, *State v. Stiltner*, 4th Dist. Scioto No. 19CA3882, 2021-Ohio-959. Appellant appealed to the Supreme Court of Ohio, *State v. Stiltner,* 2022-Ohio-3589, _NE3d_ and this court accepted and held this matter for decision pending the outcome of *State v. Brooks,* _ Ohio St. 3d _, 2022-Ohio-2478, _NE3d_. By Decision and Entry filed October 12, 2022, the court remanded this matter to the trial court for a new trial consistent with *State v. Brooks*.

ARGUMENT FOR RECONSIDERATION

First, this matter was not fully briefed before the Supreme Court of Ohio and decided only upon the Memorandum in Support of Jurisdiction and Memorandum in Response to Jurisdiction.

Second, Appellant's argument below addressed the self-defense issue only in terms of manifest weight and sufficiency of the evidence. Specifically, Appellant's Eighth Assignment of Error was that Appellant's Convictions for Aggravated Murder, Murder, and Felonious Assault Were Against the Manifest Weight of the Evidence, as Appellant was Acting in Self-Defense at the Time of the Shooting. The issue of any

failure on the part of the trial court to present a self-defense jury instruction pursuant to H.B. 228 was never raised below in the Appellant's appeal and was only mentioned in Appellant's Memorandum in Support of Jurisdiction in his Statement of the Case and Facts by stating "[t]he trial court denied Appellant's request to instruct the jury on self-defense as amended by 2018 H.B. 228." (Memorandum in Support p. 2). The trial court did give a self-defense jury instruction under the previous law in effect prior to H.B. 228 placing the burden of proof upon the Defendant. (Tr. pp. 857-859)

Regardless, the 4th District Decision addressed the evidence presented in great detail and Appellee contends no self-defense instruction was necessary or justified pursuant to the modified standard of H.B. 228 and *State v. Brooks*, or in the alternative, failure to give such an instruction was harmless error.

Specifically, the 4th District Opinion recited the evidence presented as followed:

> **{ ¶12}** At trial, the state presented 16 witnesses and evidence that generally indicated the following: Appellant threatened Thackston because of a debt owed, including threats made through Facebook Messenger, with Appellant stating: "Bruh if u don't come pay me I swear to God imam find u and I will personally shoot up ur van wit u in it and yo ass will be homeless and walkin." Appellant was seen the night before the murder with a metal detector to get his "tool" and later returned showing his tool to David Kazee, which was a gun. Appellant and Thackston argued the day of the murder, and, at the time, Appellant had a gun in the waistband of his pants. Later that same day, Appellant entered a nearby apartment owned by Jean Conley, which was also occupied by Chuckie Blevins, Fred Williams, Stevie Williams, and Thackston. After Appellant entered the apartment, he sat for several minutes not speaking to anyone, and when asked by Blevins to leave if he had a gun, Appellant began walking toward the front door. The allegations and testimony differed as to what occurred next. Appellant's counsel argued that Appellant was grabbed by four persons and beaten, and then he shot Thackston in self-defense. Blevins testified that the Appellant was grabbed from behind by Thackston, and then Appellant pulled his gun and shot Thackston. But Conley testified that Blevins "did not grab [Appellant]," and she "didn't see [Thackston] grab [Appellant] either," although later in her testimony she agreed she did not see much immediately prior to the shooting. After Appellant shot Thackston, he fled the scene. *State v. Stiltner* at ¶12.

Regarding proof of prior calculation and design on the Aggravated Murder charge, the 4th District Opinion found:

> **{ ¶44}** It is undisputed that Appellant and Thackston knew each other, and Thackston owed Appellant money. There is also evidence that their relationship was strained because of said debt, including threats by Appellant through Facebook Messenger that Appellant would shoot Thackston. There was testimony that Appellant used a metal detector to possibly locate a firearm the night before the shooting. The day of the shooting, Appellant, who was apparently armed at the time, and Thackston argued about the debt, and Thackston struck Appellant. Later that day, Appellant entered Jean Conley's apartment and after several minutes without saying anything, he was purportedly asked to leave if he possessed a gun. While it is not undisputed, there is testimony that established that Appellant was headed toward the front door, but, before he exited, he turned and shot Thackston at point-blank range killing him. *State v. Stiltner* at ¶44.

The 4th District analyzed Appellant's Assignment of Error Eight, asserting his convictions for aggravated murder, murder, and felonious assault were against the manifest weight of the evidence based upon self-defense applying the law in effect at the time of the offense pursuant to former R.C.§2901.05 requiring the defendant to bear the burden of proving self-defense by a preponderance of the evidence. (See *State v. Stiltner*, at ¶68). The Opinion made the following findings:

> **{ ¶70}** Aside from *Appellant*'s statements to the police, there is no testimony or evidence that suggests that Appellant was attacked by multiple assailants. Blevins did testify that Thackston grabbed Appellant from behind as Appellant was purportedly exiting Conley's apartment, but Conley gave conflicting evidence testifying that she never saw Thackston grab Appellant just seconds before the shooting. Determining the credibility of this testimony was the jury's duty.
>
> **{ ¶71}** Aside from the testimony of Blevins and Conley, it is undisputed that Appellant had an ongoing dispute regarding money that Thackston owed Appellant. Appellant had threatened Thackston regarding this debt. Appellant had apparently acquired a gun the night before the murder, and Appellant shot Thackston in the abdomen at point-blank range. This evidence could infer that Appellant planned to kill Thackston prior to the shooting.
>
> **{ ¶72}** Accordingly, after reviewing the entire record, we do not find the jury clearly lost its way in not finding that Appellant acted in self-defense so as to create

> such a manifest miscarriage of justice that his convictions must be reversed. Therefore, we overrule Appellant's eighth assignment of error. *State v. Stiltner*, at ¶¶70-72.

Accordingly, Appellee respectfully submits this matter is similar to *State v. Irvin*, 2nd Dist Montgomery No. 28495, 2020-Ohio-4847 and this matter should be remanded for a harmless error analysis as well. See also *State v. Irvin*, 2022-Ohio-3587. Even if this Court were to find that Stiltner should have received the H.B. 228 jury instruction, there was no prejudice to Stiltner, and any error is harmless. "A reviewing court may not reverse a conviction in a criminal case due to jury instructions unless it is clear that the jury instructions constituted prejudicial error." *State v. Ray*, 2013-Ohio-3671, 997 N.E.2d 205, ¶ 28 (12th Dist.), quoting *State v. Campbell*, 12th Dist. Butler No. CA2009-08-208, 2010-Ohio-1940, ¶ 13. "A jury instruction constitutes prejudicial error where it results in a manifest miscarriage of justice." *Id.* The test for harmless error is whether " 'beyond a reasonable doubt' * * * the remaining evidence alone comprises 'overwhelming' proof of defendant's guilt." *State v. Williams*, 6 Ohio St.3d 281, 290, 452 N.E.2d 1323 (1983), quoting *Harrington v. California*, 395 U.S. 250, 254, 89 S.Ct. 1726, 23 L.Ed.2d 284 (1969). In this case, there was overwhelming evidence of Stiltner's guilt. Even still, Appellee contends Stiltner was not entitled to a self-defense instruction in the first place and any error in the instruction was also harmless. *State v.Ramey*, 2nd Dist. Montgomery, No. 27636, 2018-Ohio-3072, at ¶ 37, citing *Miller*, 2009-Ohio-4607, at ¶ 28. Thus, given the holding in *Brooks*, the trial court's failure to provide a jury instruction pursuant to H.B. 228 was harmless, and the outcome of his case would not change.

Finally, had a revised self-defense instruction been given, a review of the evidence and the analysis of the Fourth District Opinion clearly reflects the facts in this

matter do not support a self-defense claim. Had the revised version of R.C.§2901.05 been applied in this matter the evidence presented by the State would have overcome the burden placed upon the State at trial to prove there was no self-defense.

There was no testimony or evidence that suggested Appellant was attacked by multiple assailants. The evidence below was undisputed that Appellant had an ongoing dispute regarding money that Thackston owed Appellant. Appellant had threatened Thackston regarding this debt and Appellant had acquired a gun the night before the murder. Finally, Appellant shot Thackston in the abdomen at point-blank range. Defendant was unable to prove self-defense by a preponderance of the evidence. Applying the revised burden-shifting requirement of revised §2901.05, given the same evidence, the State proved beyond a reasonable doubt that Appellant did not use force in self-defense.

CONCLUSION

WHEREFORE, based upon the foregoing the State of Ohio respectfully requests this Court grant the Motion for Reconsideration and remand this matter to the 4th District Court of Appeals to conduct a harmless error analysis consistent with the holding in *State v. Brooks*.

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CERTIFICATE OF SERVICE

A copy of the foregoing was served upon Richard M. Nash, Jr., counsel for Appellant, by email at richardnashesq@yahoo.com, this 14th day of October, 2022.

s/Jay S. Willis

By: _____

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