[Cite as *Independence v. Muscatello*, 2024-Ohio-4905.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

CITY OF INDEPENDENCE,	:	
Plaintiff-Appellee,	:	No. 113589
v.	:	
SEAN MUSCATELLO,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: October 10, 2024

Criminal Appeal from the Garfield Heights Municipal Court
Case No. CRB2300835

Appearances:

William T. Doyle, City of Independence Prosecuting Attorney, *for appellee*.

Cullen Sweeney, Cuyahoga County Public Defender, and John T. Martin, Assistant Public Defender, *for appellant*.

MICHELLE J. SHEEHAN, J.:

{¶ 1} Defendant-appellant, Sean Muscatello, appeals the trial court's amendment to his community-control sanctions. He raises one assignment of error for our review:

> The trial court erred when it amended the conditions of community control sanctions to include a blanket prohibition on the defendant's posting any social media "about or referring to the victim."

{¶ 2} After review, we conclude that the trial court did not abuse its discretion when it modified Muscatello's community-control sanctions because the trial court had the authority to do so under R.C. 2929.25(B), the condition was rationally related to the goals of community control and not overbroad, and the condition did not violate Muscatello's constitutional right to free speech. We therefore overrule Muscatello's assigned error and affirm the trial court's judgment.

I. Procedural History and Factual Background

{¶ 3} According to the victim in this case, Muscatello, who is the victim's ex-boyfriend, assaulted her in an alley behind a shopping plaza in April 2023, breaking her nose, pulling her hair out, and leaving her with a concussion, black eye, and bruises all over her body. Muscatello was charged with domestic violence, and the victim obtained a domestic violence temporary protection order against Muscatello.

{¶ 4} In May 2023, the victim stated that Muscatello showed up at her place of employment in an unfamiliar vehicle as she was leaving work. While the victim was walking to her car, Muscatello began threatening her that he had her social security number and planned to "scam" her. The victim got into her car, drove away, and contacted the police. The victim reported that Muscatello stole her social security number and created a FanDuel (a sports betting company) account in her

name. Muscatello was charged with violating the protection order, in violation of R.C. 2919.27; the case that is the subject of the present appeal.

{¶ 5} In September 2023, Muscatello pleaded no contest to menacing, a lesser charge of violating a protection order, in violation of R.C. 2903.22, a fourth-degree misdemeanor. The victim gave a statement to the trial court at sentencing. She told the court that since the domestic violence incident in April had occurred, she had been living in fear. The victim stated that after Muscatello ignored the court's protection order, her fear had gotten worse because she did not believe that Muscatello had any regard for the law. The trial court sentenced Muscatello to 30 days in jail and three years of inactive (i.e., unsupervised) community control "with the standard conditions of community-control sanctions" and a no-contact order, prohibiting Muscatello from having any contact with the victim.

{¶ 6} Two weeks into his jail sentence, Muscatello moved to stay his jail sentence until November 10, 2023, so that he could prepare for trial in the domestic violence matter in another court.[1] The trial court granted his motion and suspended the remainder of his jail sentence with conditions. The trial court ordered, inter alia, that Muscatello be on active community-control sanctions for three years, comply with the standard conditions of community control, "comply with the post-conviction no[-]contact order and any amendments thereto," wear a GPS monitor,

[1] In December 2023, Muscatello pleaded guilty to a lesser charge of assault, a misdemeanor of the first degree, in violation of R.C. 2903.13. *See* Parma M.C. No. 23CRB01398.

complete a chemical dependency assessment and treatment, and complete domestic violence counseling.

{¶ 7} Just days after he had gotten out of jail, Muscatello posted the following on Instagram:

> The last 2 years I've been battling mental health the last 5 months have been the absolute hardest my world came crashing down and now I have 2 years hanging over my head because of a fabricated story coming from someone who I was in love with [and] protected with every ounce of me. Sad part is some of y'all who see this would love to see me go down like that and I truly just pray y'all find happiness. The real ones know how huge my heart is. Idc that I'm losing I ain't ever go down not swinging. Bet that.

{¶ 8} Based on that post, the trial court issued a judgment entry notifying the parties that Muscatello had allegedly violated the terms of his community-control sanctions and ordered the parties to appear for a violation hearing.

{¶ 9} After the hearing, the trial court concluded that Muscatello did not violate the terms of his community control because he did not send the post to the victim directly. But the trial court amended the terms of Muscatello's no-contact order to include the following prohibition: "Pursuant to the Paragraph 1 above prohibition regarding harassment of the victim, the Defendant shall not post statements, [i]mages, photographs or other matter on social media about or referring to the victim during the duration of this Order." It is from this judgment that Muscatello now appeals.

II. Law and Analysis

A. R.C. 2929.25

{¶ 10} We must first decide a threshold issue, namely, whether the trial court could modify Muscatello's community-control sanctions on its own motion and without finding that he violated the terms of his community control. The answer to this question depends upon whether Muscatello was sentenced pursuant to R.C. 2929.25(A)(1)(a) or (b). The distinction is important — because if the trial court sentenced Muscatello under R.C. 2929.25(A)(1)(a), then the court retains jurisdiction under R.C. 2929.25(B) "to modify, substitute, or impose an additional community-control sanction or condition of release without first finding a violation of community-control sanctions or conditions." *Cleveland v. Kushlak*, 2024-Ohio-973, ¶ 21 (8th Dist.), citing R.C. 2929.25(B). But if the trial court sentences an offender under R.C. 2929.25(A)(1)(b), then the court must first find that the offender violated the terms of his or her community-control sanctions before the court can modify them. *Id.* at ¶ 22.

{¶ 11} R.C. 2929.25 provides trial courts with two options for sentencing an offender for a misdemeanor. *Olmsted Twp. v. Ritchie*, 2023-Ohio-2516, ¶ 11; *see also Walton Hills v. Olesinski*, 2020-Ohio-5618, ¶ 16-17 (8th Dist.). R.C. 2929.25(A) provides:

> (1) Except as provided in sections 2929.22 and 2929.23 of the Revised Code or when a jail term is required by law, in sentencing an offender for a misdemeanor, other than a minor misdemeanor, the sentencing court may do either of the following:

(a) Directly impose a sentence that consists of one or more community control sanctions authorized by section 2929.26 [residential sanctions], 2929.27 [nonresidential sanctions], or 2929.28 [financial sanctions] of the Revised Code. The court may impose any other conditions of release under a community control sanction that the court considers appropriate. If the court imposes a jail term upon the offender, the court may impose any community control sanction or combination of community control sanctions in addition to the jail term.

(b) Impose a jail term under section 2929.24 of the Revised Code from the range of jail terms authorized under that section for the offense, suspend all or a portion of the jail term imposed, and place the offender under a community control sanction or combination of community control sanctions authorized under section 2929.26, 2929.27, or 2929.28 of the Revised Code.

{¶ 12} The Ohio Supreme Court explained R.C. 2929.25(A)(1)(a) and (b) as follows:

> Unless otherwise provided by law, a trial court sentencing an offender for a misdemeanor may impose a jail term on the offender in addition to any community-control sanction or combination of community-control sanctions. R.C. 2929.25(A)(1)(a). It also may suspend all or part of any jail term imposed and place the offender on community control. R.C. 2929.25(A)(1)(b).

Ritchie at ¶ 11.

{¶ 13} R.C. 2929.25(B) provides:

> If a court sentences an offender to any community control sanction or combination of community control sanctions pursuant to division (A)(1)(a) of this section, the sentencing court retains jurisdiction over the offender and the period of community control for the duration of the period of community control. Upon the motion of either party or on the court's own motion, the court, in the court's sole discretion and as the circumstances warrant, may modify the community control sanctions or conditions of release previously imposed, substitute a community control sanction or condition of release for another community control sanction or condition of release previously

> imposed, or impose an additional community control sanction or condition of release.

{¶ 14} Muscatello argues that he was sentenced under R.C. 2929.25(A)(1)(b). He maintains that he "was not sentenced *directly to community control* under subsection (A)(1)(a)." (Emphasis in original.) Instead, he claims that he was sentenced to jail, a portion of the jail term was then suspended, and he was placed on community-control sanctions. The State counters that Muscatello was sentenced under R.C. 2929.25(A)(1)(a) and, therefore, the court retained jurisdiction under R.C. 2929.25(B) to modify or add sanctions to an offender's original community control.

{¶ 15} We agree with the State. Under the Supreme Court's decision in *Ritchie*, 2023-Ohio-2516, R.C. 2929.25(A)(1)(a) applies when the trial court "impose[s] a jail term on the offender in addition to any community-control sanction or combination of community-control sanctions." *Id.* at ¶ 11. And R.C. 2929.25(A)(1)(b) applies when the trial court "suspend[s] all or part of any jail term imposed and place[s] the offender on community control." *Id.* Here, the trial court did not initially suspend any part of Muscatello's jail term. At the sentencing hearing, the trial court sentenced Muscatello to 30 days in jail and denied his oral request to suspend his jail sentence.

{¶ 16} Two weeks after Muscatello had been in jail, he moved to suspend his jail term until November 10, 2023. The trial court granted Muscatello's motion and suspended his remaining jail term with conditions. Although R.C. 2929.25(A)(1)(b)

states that a trial court may impose a jail term, suspend all or part of the jail term, and place the offender on community-control sanctions, it refers only to the original sentencing hearing — not the granting of a motion filed after sentencing. *See* R.C. 2929.25(A)(1) ("in sentencing an offender for a misdemeanor, other than a minor misdemeanor, the sentencing court may do either of the following[,]" and then the statute lists subsections (a) and (b)).

{¶ 17} The facts in this case are similar to the facts in *Olmsted Twp. v. Ritchie*, 2022-Ohio-124, ¶ 19 (8th Dist.), *rev'd on other grounds*, 2023-Ohio-2516.[2] The trial court sentenced Ritchie to 30 days in jail on each of his four misdemeanor counts, to run consecutive to each other for a total of 120 days, and five years of "basic probation." *Id.* at ¶ 2. This court explained that the trial court sentenced Ritchie under R.C. 2929.25(A)(1)(a) because "it imposed 30 days for each misdemeanor count in combination with the direct imposition of five years of community control." *Id.* at ¶ 18. Like *Ritchie*, the trial court in this case sentenced Muscatello to 30 days in jail without suspending any part of it and three years of community-control sanctions.

{¶ 18} We acknowledge that R.C. 2929.25(A)(1)(a) and (b) are somewhat perplexing because they both state that a trial court may sentence an offender to community-control sanctions and jail. The majority and dissent in *Ritchie*, 2022-

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[2] The Supreme Court held that "[u]nder R.C. 2929.25(D)(4), the total time spent in jail for both a misdemeanor offense and a violation of a condition of a community-control sanction imposed for that offense may not exceed the statutory maximum jail term provided for the offense in R.C. 2929.24." *Ritchie*, 2023-Ohio-2516, at ¶ 17.

Ohio-124 (8th Dist.), also acknowledged this, stating that "R.C. 2929.25 is certainly a poorly drafted and confusing statute" and is "imprecise and inartful." *Id.* at ¶ 19 (majority for the first quote and dissent for the second). But under R.C. 2929.25(A)(1)(b), the trial court must suspend all or part of an offender's jail term at the original sentencing hearing. That simply did not occur here.

{¶ 19} We therefore conclude that because the trial court sentenced Muscatello pursuant to R.C. 2929.25(A)(1)(a), it could amend Muscatello's community-control sanctions on its own motion under R.C. 2929.25(B) and without finding that Muscatello violated the original terms of his community control.

{¶ 20} Now that we have determined that the trial court could modify the original no-contact order without finding that Muscatello violated the terms of his community-control sanctions, we turn to Muscatello's substantive legal arguments.

B. Conditions of Community Control

{¶ 21} Muscatello first argues that the trial court's judgment amending the conditions of his community control to prohibit him from posting anything "about or referring to the victim" was "unduly restrictive under R.C. 2925.25" and *State v. Jones*, 49 Ohio St.3d 51, 52 (1990). Next, he argues that the additional restriction violated his constitutional right to free speech.

{¶ 22} It is well settled that courts "will not reach constitutional issues unless absolutely necessary." *State v. Talty*, 2004-Ohio-4888, ¶ 9, citing *In re Miller*, 63 Ohio St.3d 99, 110 (1992), and *Hall China Co. v. Pub. Util. Comm.*, 50 Ohio St.2d 206, 210 (1977). Therefore, when "'other issues are apparent in the record which

will dispose of the case on its merits,'" we will not address constitutional issues on appeal. *In re D.S.*, 2017-Ohio-8289, ¶ 7, quoting *Greenhills Home Owners Corp. v. Greenhills*, 5 Ohio St.2d 207, 212 (1966).

{¶ 23} Thus, we must first determine whether Muscatello's nonconstitutional arguments regarding R.C. 2925.25 and *Jones* are dispositive. *Talty* at ¶ 9. If they are — meaning Muscatello's argument that the trial court's social-media prohibition was unduly restrictive under R.C. 2929.25 and *Jones* – then we will not reach Muscatello's constitutional arguments. But if we determine that Muscatello's nonconstitutional arguments lack merit, then we will address his argument that the social-media prohibition violated his right to the freedom of speech.

{¶ 24} To determine whether Muscatello's nonconstitutional arguments are dispositive, we review whether the trial court's social-media prohibition was valid under the relevant statutes governing community-control sanctions and the case law interpreting those statutes.

1. Standard for Reviewing Community Control Conditions

{¶ 25} A trial court has broad discretion in setting the conditions of community control. *Talty*, 2004-Ohio-4888, at ¶ 10. We therefore review conditions imposed as part of community control for an abuse of discretion. *Id.* at ¶ 10, citing *Lakewood v. Hartman*, 86 Ohio St.3d 275, 277 (1999).

{¶ 26} Although a trial court has broad discretion when imposing conditions of community control, that discretion has limits. *Talty* at ¶ 11, citing *Jones,* 49 Ohio

St.3d at 52. In *Jones*, the Ohio Supreme Court "set forth the standard by which courts determine whether a trial court exceeds those limits." *Talty* at ¶ 10. Pursuant to *Jones*, "probation conditions must be reasonably related to the statutory ends of probation and must not be overbroad." *Talty* at ¶ 16. The three goals of probation are "doing justice, rehabilitating the offender, and insuring good behavior." *Jones* at 52, citing former R.C. 2951.02(C).

{¶ 27} To determine whether a condition reasonably relates to the three goals of community-control sanctions, courts must "'consider whether the condition (1) is reasonably related to rehabilitating the offender, (2) has some relationship to the crime of which the offender was convicted, and (3) relates to conduct which is criminal or reasonably related to future criminality and serves the statutory ends of probation.'" *Talty* at ¶ 12, quoting *Jones* at 53.

{¶ 28} "The requirement [under *Jones*] that a condition may not be overbroad is connected to the reasonableness of a condition." *Talty*, 2004-Ohio-4888, at ¶ 14, citing *Turner v. Safley*, 482 U.S. 78, 90-91 (1987). There is no bright-line test to determine whether a condition is overbroad. However, conditions may be overbroad if (1) the conditions unduly restrict the probationer's liberty or autonomy, (2) the conditions can be violated unintentionally, or (3) ready alternatives are available that are less restrictive and do not compromise "valid penological interests." *Id.* at ¶ 13, citing *Hughes v. State*, 667 So.2d 910, 912 (Fla.App. 1996); *Williams v. State*, 661 So.2d 59, 61 (Fla.App. 1995); *State v. Friberg*, 435 N.W.2d 509, 515 (Minn. 1989); and *Turner* at 90-91.

{¶ 29} Although *Jones* was decided before the passage of Am.Sub.S.B. 2 in 1995, when the term community control replaced probation, "community control is the functional equivalent of probation." *Talty* at ¶ 16. Indeed, "[t]he community-control statute, despite changing the manner in which probation was administered, did not change its underlying goals of rehabilitation, administering justice, and ensuring good behavior." *Id.* Therefore, the standard for reviewing the reasonableness of probation conditions set forth in *Jones* "applies with equal force to community control sanctions." *Id.*

{¶ 30} In a more recent case, *State v. Chapman*, 2020-Ohio-6730, the Ohio Supreme Court addressed the question of whether a condition that ordered Chapman "to make all reasonable efforts to avoid impregnating a woman during the community control period" was valid under *Jones*, 49 Ohio St.3d 51. *Chapman* at ¶ 2, 22. *Chapman* is relevant here because the Supreme Court stated that "[t]he crucial question is how we review conditions of sentencing that limit a fundamental right." *Id.* at ¶ 10.

{¶ 31} Chapman first argued that because the lower court had restricted his fundamental right to procreate, it should be assessed under a strict scrutiny standard rather than the reasonable test set forth in *Jones*. *Chapman* at ¶ 9. The Supreme Court rejected Chapman's argument. It explained that "criminal sanctions, by their very nature, implicate an offender's exercise of his fundamental rights." *Id.* at ¶ 11. "An individual sentenced to probation — or community control — does not possess the absolute liberty enjoyed by the general population, but rather

finds his liberty dependent upon the conditions and restrictions of his probation." *Id.* at ¶ 12, citing *Griffin v. Wisconsin*, 483 U.S. 868, 874 (1987). For these reasons, courts have "never applied a strict-scrutiny analysis to a criminal punishment." *Id.* at ¶ 14.

{¶ 32} The Supreme Court explained in *Chapman* that rather than strict scrutiny, the starting place for review is the reasonable-relationship test that it announced in *Jones*. *Chapman* at ¶ 17. But with "[t]hat said," the Court cautioned:

> [T]rial courts should not be unmindful of a condition's impact on a fundamental right. Some deprivations of liberty are fundamental to criminal punishment: by virtue of being locked up in prison, certain constitutional rights of a prisoner are necessarily compromised. So too with a community-control sanction; inherent in being supervised while allowed to remain in the community are restrictions on travel, limitations on association, restrictions on firearms ownership, being subject to warrantless searches, and the like. Other restrictions, however, are not necessarily intrinsic to community control but are tailored to the rehabilitation of the offender.
>
> When it comes to conditions of the second type, that is, ones tailored to the rehabilitation of the offender, courts should take particular care to ensure that the sanctions are appropriately crafted to meet a proper rehabilitative purpose.

Id. at ¶ 18-19.

2. Applying *Jones* and *Chapman*

{¶ 33} The social-media prohibition in this case curtails Muscatello's fundament right to free speech. We must therefore determine if this prohibition was appropriately crafted to meet a proper rehabilitative purpose under *Chapman,* 2020-Ohio-6730, as well as ensure that it is reasonably related to the statutory ends

of community control and is not overbroad under *Jones,* 49 Ohio St.3d 51. *Chapman* at ¶ 19; *Talty*, 2004-Ohio-4888, at ¶ 12-14, citing *Jones*.

{¶ 34} Muscatello maintains that the trial court's social-media prohibition went "too far in subjecting [him] to this type of vague and potentially far-sweeping condition." He contends that he could inadvertently violate the prohibition on social media (1) if he wished "all the women I've ever know who have ever affected the life of a child for the better a Happy Mother's Day," (2) stated that "all of my past romantic relationships have helped make me the person I am today," or (3) said that he is "sorry for all the people in my life that I have hurt and I vow to be a better person."

{¶ 35} Muscatello was charged with violating a protection order under R.C. 2919.27. He pleaded no contest to the lesser charge of menacing under R.C. 2923.02. This provision provides in relevant part that "[n]o person shall knowingly cause another to believe that the offender will cause physical harm to the person or property of the other person[.]"

{¶ 36} As part of his community-control sanctions, the trial court imposed a no-contact order. The standard no-contact order contained a preprinted order, stating that Muscatello "SHALL NOT ABUSE, harm, attempt to harm, threaten, follow, stalk, harass, force sexual relations upon or commit sexually oriented offenses against" the victim. The standard no-contact order also included a preprinted order that prohibited Muscatello from having any contact with the victim through "landline, cordless, cellular or digital telephone; text; instant messaging;

fax; e-mail; voice mail; delivery service; social media; blogging; writings; electronic communications; posting a message; or communications by any other means directly or through another person."

{¶ 37} Approximately two weeks after he was sentenced and just after he had gotten out of jail, Muscatello posted on social media in relevant part that he had "2 years hanging over [his] head because of a fabricated story coming from someone who I was in love with . . . [I don't care] that I'm losing I ain't ever go down not swinging. Bet that." Although the trial court determined that Muscatello did not violate his community-control sanctions, it modified the no-contact order to include, "Pursuant to the Paragraph 1 above prohibition regarding harassment of the victim, the Defendant shall not post statements, [i]mages, photographs or other matter on social media about or referring to the victim during the duration of this Order."

{¶ 38} After review, we conclude that the trial court's prohibition was appropriately crafted to meet a proper rehabilitative purpose, was reasonably related to the goals of community control, and was not overbroad. *Chapman*, 2020-Ohio-6730, at ¶ 19; *Talty*, 2004-Ohio-3301, at ¶ 12-14, citing *Jones*, 49 Ohio St.3d at 53. Unlike the complete social media ban that was found to be overbroad and overly restrictive in *State v. Wagener*, 2022-Ohio-724, ¶ 22-23 (6th Dist.), the trial court's social media restriction in this case was limited to the victim — the same victim who Muscatello assaulted in April 2023 and committed menacing against in May 2023. Prohibiting Muscatello from posting anything about or referring to the

victim ensures that Muscatello cannot publicly or subversively harass the victim and will further his rehabilitation to stop doing so. The trial court's prohibition also relates to the crime of which Muscatello was convicted, namely, menacing the victim. And although it does not directly relate to conduct that is itself criminal, it does reasonably relate to future criminality and serves the statutory ends of probation.

{¶ 39} We further note that we disagree with Muscatello that he could "inadvertently violate the prohibition on social media" if he wished all women a happy Mother's Day, stated that his past relationships made him a better person, or apologized to all the people he has hurt in the past. Innocuous posts are not going to result in a violation of the terms of his community control. Just as the Supreme Court found in *Jones*, 49 Ohio St.3d 51, there is no reason to expect that a court will not "act reasonably at a revocation hearing, aware of the practicalities and fundamental goals of probation." *Id*. at ¶ 55.

{¶ 40} We therefore conclude that the trial court's limited social media ban in this case served a proper rehabilitative purpose, was reasonably related to the goals of community control, and was not overbroad or unduly restrictive. Accordingly, the trial court did not abuse its discretion in imposing the condition.

{¶ 41} Because Muscatello's nonconstitutional arguments were not dispositive of this appeal, we must now turn to his constitutional argument. *See Talty*, 2004-Ohio-4888, at ¶ 9.

3. Constitutional Argument

{¶ 42} Muscatello also argues that the trial court's order prohibiting him from posting anything about or referring to the victim violated his right to free speech under the First Amendment and Article 1, Section 11 of the Ohio Constitution. He asserts that *Bey v. Rasawehr*, 2020-Ohio-3301, is directly on point and supports his argument.

{¶ 43} In *Bey*, the trial court prohibited the respondent of a civil stalking protection order from "posting about Petitioners on any social media service, website, discussion board, or similar outlet[.]" *Id.* at ¶ 5. The Ohio Supreme Court held that the social-media restriction "impose[d] an unconstitutional prior restraint on protected speech in violation of the First Amendment to the United States Constitution." *Id.* at ¶ 1.

{¶ 44} The Supreme Court concluded in *Bey* that the social-media prohibition was a prior restraint that regulated content-based speech and, therefore, was "subject to strict scrutiny, which requires that it be the least restrictive means to achieve a compelling state interest." *Id.* at ¶ 22, 32. The Court then held that the restriction did not survive strict scrutiny. *Id.* at ¶ 51-60. Muscatello maintains that "[b]y that same logic," the trial court's order prohibiting him from posting anything about or referring to the victim violated his right to free speech.

{¶ 45} Based on the Supreme Court's holding in *Chapman*, 2020-Ohio-6730, decided just six months after *Bey*, 2020-Ohio-3301, we find that *Bey* is not on point with, and is distinguishable from, the present case. As we previously stated,

Chapman specifically addressed the question of how courts should "review conditions of sentencing that limit a fundamental right." *Id.* at ¶ 10. It is therefore directly on point here. And notably, *Chapman* did not mention *Bey* or its holding. And even more significant to our analysis here, the Supreme Court explicitly rejected Chapman's argument that because the lower court had restricted his fundamental rights, it should be assessed under a strict-scrutiny standard rather than the reasonable test set forth in *Jones*, 49 Ohio St.3d 51. *Chapman* at ¶ 9. The Supreme Court explained that courts have "never applied a strict-scrutiny analysis to a criminal punishment." *Id.* at ¶ 14. But in *Bey*, that is exactly what the Supreme Court applied — because unlike the present case, *Bey* was not a criminal case.

{¶ 46} In rejecting Chapman's argument that strict scrutiny should apply when a trial court imposes a community-control sanction that infringes upon an offender's fundamental rights, the Supreme Court explained that "when a person has broken the laws of society and has been afforded due process of the law, the government may legitimately deprive that person of his liberty." *Chapman* at ¶ 13. The Court further explained:

> An individual sentenced to probation — or community control — does not possess the absolute liberty enjoyed by the general population, but rather finds his liberty dependent upon the conditions and restrictions of his probation. *See Griffin v. Wisconsin*, 483 U.S. 868, 874, 107 S.Ct. 3164, 97 L.Ed.2d 709 (1987). "Just as other punishments for criminal convictions curtail an offender's freedoms, a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens." *United States v. Knights*, 534 U.S. 112, 119, 122 S.Ct. 587, 151 L.Ed.2d 497 (2001).

Id. at ¶ 12.

{¶ 47} Thus, as the Supreme Court held in *Chapman*, rather than strict scrutiny, the starting place for review when a trial court imposes a condition of community control that restricts an offender's fundamental right is the reasonable-relationship test that it had announced in *Jones*. *Id*. at ¶ 17. The Court concluded that when it comes to fundamental rights, "courts should take particular care to ensure that the sanctions are appropriately crafted to meet a proper rehabilitative purpose." *Id*. at ¶ 19. We have done that in our previous analysis in this case and concluded that the trial court's prohibition in this case is sound under *Jones* and *Chapman*. We therefore conclude that the trial court did not violate Muscatello's right to free speech when it ordered that he not post anything on social media "about or referring to the victim" during the pendency of his three years of community control.

{¶ 48} Accordingly, Muscatello's sole assignment of error is overruled.

{¶ 49} Judgment affirmed.

It is ordered that appellee recover of 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 municipal 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.

_____
MICHELLE J. SHEEHAN, JUDGE

EILEEN A. GALLAGHER, P.J., and
EILEEN T. GALLAGHER, J., CONCUR