

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150259
Plaintiff-Appellee,	:	TRIAL NO. B-1402774
vs.	:	
BRANDON CURETON,	:	<i>JUDGMENT ENTRY.</i>
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Brandon Cureton appeals his conviction for having a weapon under disability, in violation of R.C. 2923.13, a third-degree felony. We affirm the judgment of the trial court.

In May 2014, Cureton was indicted in Greene County, Ohio for trafficking and possession of drugs. Later that month, an Amberley Village police officer initiated a traffic stop of Cureton's vehicle due to dark window tinting and a warrant attached to the license plate. During the traffic stop, Cureton provided the officer with his driver's license and his concealed handgun license, and informed the officer that there was a loaded handgun in the vehicle. Cureton denied knowing any information about a warrant.

The officer ran Cureton's licenses and learned that the warrants were for drug trafficking and possession. However, the officer noted that Cureton's concealed handgun license was still valid, notwithstanding the indictment. The officer asked

Cureton the location of the weapon, to which he replied that the weapon was in the center console. The officer had Cureton exit from the vehicle without placing him under arrest, and she placed him in the back of her cruiser until they could confirm the warrants. Cureton did not give the police officer permission to search his vehicle. However, about 40 minutes into the traffic stop, the police searched the vehicle after a drug-sniffing dog alerted at the trunk. Only then did police locate and retrieve the handgun from the center console.

A Hamilton County Grand Jury indicted Cureton for one count of having a weapon under disability, in violation of R.C. 2923.13. Cureton pleaded not guilty, and the case proceeded to a bench trial. During trial, witnesses testified that Cureton was under indictment, but that he had not received a copy of the indictment. Witnesses also testified that Cureton's concealed handgun license was still valid.

Cureton argued that he was immune from prosecution under R.C. 2923.23, which provides immunity from R.C. 2923.13 so long as a person "describes the firearms * * * in his possession and where they may be found, and voluntarily surrenders the firearms * * * to the law enforcement authority." Although Cureton reported and described the firearm in his possession to the police officer, the trial court found the weapon was not voluntarily surrendered and Cureton was not immune from prosecution under R.C. 2923.23. The trial court found Cureton guilty of violating R.C. 2923.13(A)(3), sentenced him to three years' community control, and ordered the firearm confiscated and destroyed. Cureton timely appealed.

In his sole assignment of error, Cureton asserts that his conviction under R.C. 2929.13 violated his right to due process under the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 16, of the Ohio Constitution. In support, Cureton argues that conviction of a licensee who is

unaware of a pending-indictment disability, but who possesses a handgun pursuant to a valid concealed handgun license, violates due process. Cureton did not raise this argument at trial, and therefore, he has forfeited all but plain error. *See State v. Quarterman*, 140 Ohio St.3d 464, 2014-Ohio-4034, 19 N.E.3d 900, ¶ 15-16.

Plain error is an obvious error or defect in the trial affecting substantial rights, which “but for the error, the outcome of the trial court clearly would have been otherwise.” *State v. Smith*, 168 Ohio App.3d 141, 2006-Ohio-3720, 858 N.E.2d 1222, ¶ 103 (1st Dist.); *see State v. Craft*, 52 Ohio App.2d 1, 7, 367 N.E.2d 1221 (1st Dist.1977). Notice of plain error under Crim.R. 52(B) is to be taken with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice. *State v. Long*, 53 Ohio St.2d 91, 93, 372 N.E.2d 804 (1978), paragraph three of the syllabus.

R.C. 2923.13(A) states that “no person shall knowingly acquire, have, carry, or use any firearm * * * if * * * (3) The person is under indictment for * * * any felony offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse * * *.” The Ohio Supreme Court has previously held that “a conviction of the offense of having weapons while under a disability as defined by R.C. 2923.13(A)(3) does not require proof of a culpable mental state for the element that the offender is under indictment for * * * any offense involving the illegal possession, use, sale, administration, distribution, or trafficking in any drug of abuse.” *State v. Johnson*, 128 Ohio St.3d 107, 2010-Ohio-6301, 942 N.E.2d 347. The statute only requires that the defendant knowingly acquire, have, carry, or use a firearm while such a disability existed. *State v. Earls*, 1st Dist. Hamilton No. C-040141, 2004-Ohio-6432, ¶ 9. The type of disability is immaterial. *Id.* at ¶ 11. “Because the plain language of the statute does not support the contention that

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notice to the defendant of his disability status is an essential element of the offense, there is no constitutional violation when the defendant claims that he did not receive notice that he was under a disability.” *Id.* at ¶ 10.

The fact that Cureton’s concealed handgun license had not been suspended does not provide a defense for R.C. 2923.13. This court has determined that “in the light of the mandatory language of the disability statute, it is no defense that [a defendant] had a [state] license to carry a firearm.” *State v. Robinson*, 187 Ohio App.3d 253, 2010-Ohio-543, 931 N.E.2d 1110, ¶ 24 (1st Dist.). The legislature has provided immunity for having a weapon while under disability if the requirements of R.C. 2923.23 are met. The trial court found that the requirements of that section were not met, and Cureton was not immune from prosecution. If the legislature had intended to create an exception for those individuals with valid state licenses, including a concealed handgun license, from the disability statute, it could have easily done so.

We do not find plain error in the trial court’s application of R.C. 2923.13(A)(3). We overrule Cureton’s sole assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

DEWINE, P.J., MOCK and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on March 30, 2016
per order of the court _____.

Presiding Judge