



State v. Glenn

2023-Ohio-4654 (2023) | Cited 0 times | Ohio Court of Appeals | December 21, 2023

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT COUNTY OF CUYAHOGA

STATE OF OHIO, :

Plaintiff-Appellant, : No. 112696 v. :

DANIEL GLENN, :

Defendant-Appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED RELEASED AND JOURNALIZED: December 21, 2023

Criminal Appeal from the Cuyahoga County Court of Common Pleas Case No. CR-22-668526-A

Appearances:

Attorney, Eben O. McNair and Daniel T. Van, Assistant

Prosecuting Attorneys, for appellant.

FRANK DANIEL CELEBREZZE, III, P.J.:

Plaintiff- judgment

of the Cuyahoga County Court of Common Pleas ordering the return of property in

future indictment or retrial. After a thorough review of the record and law, this court

reverses and remands for further proceedings consistent with this opinion. I. Factual and Procedural History



State v. Glenn

2023-Ohio-4654 (2023) | Cited 0 times | Ohio Court of Appeals | December 21, 2023

In January 2022, a 17-count indictment was returned against

defendant- of Daniel

Scholz and Kara Odom, who were found shot to death in a vehicle on Thanksgiving Day in 2021.

During the pendency of the instant matter, Glenn was charged in a separate matter, Cuyahoga C.P. No. CR-22-672463-B, with three counts of attempted murder, four counts of felonious assault, discharge of firearm on or near prohibited premises, improperly handling firearms in a motor vehicle, and having weapons while under disability.

On January 19, 2023, the state filed a motion to continue the trial, noting that the state was engaged in a separate double-homicide trial and that

On the date the trial was to commence, at a hearing, the state further explained its basis for the continuance, noting that several pieces of discovery were still outstanding. Particularly, the state noted that it was still waiting for a ballistics report and waiting for several cell cracked therein could be retrieved.

occupied with trials scheduled for the same time as this matter and were unprepared for trial.

During a later pretrial in January 2023, the state moved to dismiss the case without prejudice, explaining that The court granted the motion and ordered the defendant released.



State v. Glenn

2023-Ohio-4654 (2023) | Cited 0 times | Ohio Court of Appeals | December 21, 2023

On March 14, 2023, Glenn filed a the court to order the release of property that was seized as evidence in the following

matter, including

did not believe the state required the property for any further evidentiary purposes.

Twenty-seven days later, the trial court granted the motion, noting that the state had not opposed the motion.

The state commenced the instant appeal, assigning a single error for our review:

The trial court abused its discretion and committed [reversible] error by ordering the return of property, without a hearing, in law enforcement custody which the [state] intended to use in a re-trial.

II. Law and Analysis

In its sole assignment of error, the state argues that the trial court erred phones as evidence to re-indict Glenn erred in returning the property without a hearing. Glenn did not file a responsive brief.

A , even after

dismissal of a case, is derived from R.C. 2981.11(A)(1), directing that

[a]ny property that has been * * * seized pursuant to a search warrant, or otherwise lawfully seized or forfeited and that is in the custody of a law enforcement agency shall be kept safely by the agency, pending the time it no longer is needed as evidence or for another lawful purpose[.]

State v. Holloway, 6th Dist. Wood No. WD-20-021, 2021-Ohio-1843, ¶ 23.

When the evidence could be used during a potential retrial, various

Ohio courts have applied this provision as authority that law enforcement could continue to retain the property. See, e.g. State v. Metz, 8th Dist. Cuyahoga No.



State v. Glenn

2023-Ohio-4654 (2023) | Cited 0 times | Ohio Court of Appeals | December 21, 2023

107945, 2019-Ohio-3370, ¶ 12

State v. Thompson, 2d Dist. Montgomery No.

27989, 2018-Ohio-4690, ¶ 17

phones are pieces of evidence that could be used during a potential retrial, and thus

; State v. Bates, 6th Dist. Williams No.

WM-11-007, 2012-Ohio-1397, ¶ 12 (

;

State v. Rivera, 6th Dist. Lucas No. L-13-1170, 2014-Ohio- [T]here is a

possibility that the seized property might need to be used as evidence in a future

Compare In re Seizure of Approximately \$20,000 United States

Currency, 8th Dist. Cuyahoga No. 104850, 2017-Ohio-1452, ¶ 18 the state only made a bare assertion that the investigation was ongoing and that

Fletcher was a person of interest, without presenting any evidence of a current

A request for the return of seized property may be pursued three ways:

or through a post-dismissal or postconviction motion pursuant to R.C. 2981.03(A)(4) or R.C. 2981.11(A)(1). State v. Martre, 6th Dist. Lucas No. L-21-

1199, 2022-Ohio-639, ¶ 23, citing State v. Holloway, 6th Dist. Wood No. WD-20-

021, 2021-Ohio-1843, ¶ 11-24.

Applicable to the instant matter, R.C. 2981.03(A)(4) permits a person

State v. Moreno, 2017-Ohio-479, 85 N.E.3d 238, ¶ 22 (2d Dist.), quoting R.C.

2981.03(A)(4). See also State v. Leet, 2021-Ohio-1334, 171 N.E.3d 835, ¶ 15 (2d

Dist.). 2981.03(A)(4) encompasses claims for the return of property that has



State v. Glenn

2023-Ohio-4654 (2023) | Cited 0 times | Ohio Court of Appeals | December 21, 2023

Moreno at ¶ 26;

Thompson at ¶ 10, citing State v. Germany, 1st Dist. Hamilton No. C-130777, 2014-

Ohio-3202, ¶ 11. See also State v. Waycaster, 8th Dist. Cuyahoga No. 108476, 2020-

Ohio-1604, ¶ 13 . Therefore authority to return the property is

governed by R.C. 2981.03(A)(4), that pertinently provides:

A person aggrieved by an alleged unlawful seizure of property may seek relief from the seizure by filing a motion in the appropriate court that shows the person s interest in the property, states why the seizure was unlawful, and requests the property s return. If the motion is filed before an indictment, information, or a complaint seeking forfeiture of the property is filed, the court shall schedule a hearing on the motion not later than twenty-one days after it is filed. The court may extend the time for the hearing on the motion by consent of the parties or for good cause shown. At the hearing, if the property seized is titled or registered under law, the state or political subdivision shall demonstrate by a preponderance of the evidence that the seizure was lawful and that the person is not entitled to the property. If the property seized is not titled or registered under law, the person shall demonstrate by a preponderance of the evidence that the seizure was unlawful and that the person is entitled to the property.

The record does not reflect that the state was seeking forfeiture nor

was there an active indictment due to the fact that the state had voluntarily

dismissed the case and then the motion for return of property was filed. As such,

R.C. 2981.03(A)(4) dictates that the court was required to hold a hearing on the

- filed and receive

evidence pursuant to the standards set based on whether the property was titled or

registered under law. We note that this hearing is important in the instant matter,

evidence, that Glenn himself was entitled to the property requested especially

because, on its face, the motion indicates that the seized car title was in another

) belonged to Glenn.



State v. Glenn

2023-Ohio-4654 (2023) | Cited 0 times | Ohio Court of Appeals | December 21, 2023

The trial court acted contrary to law in failing to hold the requisite

hearing pursuant to R.C. 2981.03(A)(4). See *Jenkins v. Cleveland*, 8th Dist.

Cuyahoga No. 104768, 2017-Ohio-1054, ¶ 25. assignment of error is sustained, and this matter is remanded to the trial court for

further proceedings consistent with this opinion. III. Conclusion

his

property, as is statutorily required pursuant to R.C. 2981.03(A)(4). As a result, the

order is reversed and the case is remanded for further proceedings

consistent with this opinion.

It is ordered that appellant recover from appellee 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.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27

of the Rules of Appellate Procedure.

FRANK DANIEL CELEBREZZE, III, PRESIDING JUDGE

MICHELLE J. SHEEHAN, J., and EILEEN T. GALLAGHER, J., CONCUR

