

COURT OF APPEALS
ASHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO	:	JUDGES:
	:	Hon. Sheila G. Farmer, P.J.
Plaintiff-Appellee	:	Hon. John W. Wise, J.
	:	Hon. Julie A. Edwards, J.
vs.	:	
	:	
STEPHEN J. CAUDILL, II	:	Case No. 04COA58
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Appeal from the Court of Common Pleas,
Case No. 02CRI075

JUDGMENT: Reversed and Remanded

DATE OF JUDGMENT ENTRY: March 4, 2005

APPEARANCES:

For Plaintiff-Appellee

RAMONA FRANCESCONI ROGERS
CHRISTOPHER R. TUNNELL
307 Orange Street
Ashland, OH 44805

For Defendant-Appellant

STEPHEN P. HARDWICK
8 East Long Street
11th Floor
Columbus, OH 43215

Farmer, P.J.

{¶1} On July 31, 2002, the Ashland County Grand Jury indicted appellant, Stephen Caudill, II, on two counts of felonious assault in violation of R.C. 2903.11 and one count of tampering with evidence in violation of R.C. 2921.12. A jury trial commenced on March 13, 2003. The jury found appellant guilty as charged. By judgment entry filed May 23, 2003, the trial court merged the felonious assault counts and sentenced appellant to seven years on those counts and four years on the tampering count, to be served consecutively for a total aggregate term of eleven years in prison.

{¶2} Appellant filed an appeal and this court reversed for resentencing pursuant to *State v. Comer*, 99 Ohio St.3d 463, 2003-Ohio-4165. See, *State v. Caudill*, Ashland App. No. 03COA031, 2004-Ohio-2803. Upon remand, the trial court reimposed the same sentence without hearing. See, Judgment Entry filed August 11, 2004.

{¶3} Appellant filed an appeal and this matter is now before this court for consideration. Assignment of error is as follows:

I

{¶4} "THE TRIAL COURT ERRED BY HOLDING A RESENTENCING PROCEEDING OUTSIDE OF APPELLANT'S PRESENCE."

I

{¶5} Appellant claims the trial court erred in resentencing him in absentia. We agree.

{¶6} Upon remand by this court for resentencing, the trial court resentenced appellant without his presence. Crim.R. 43(A) and Section 10, Article I of the Ohio

Constitution mandate a defendant's presence at every stage of the criminal proceedings, including imposition of sentence.

{¶7} In *State v. Wallace*, Richland App. No. 2002CA0072, 2003-Ohio-4119, ¶14, this court set forth the law regarding this issue as follows:

{¶8} "A defendant has a fundamental right to be present at all critical stages of his criminal trial. *State v. Hill*, 73 Ohio St.3d 433, 444, 1995-Ohio-287, 653 N.E.2d 271, citing, Crim.R. 43(A) and Section 10, Article I, Ohio Constitution. The United States Supreme Court has stated that an accused is guaranteed the right to be present at all stages of a criminal proceeding that is critical to its outcome when his or her absence may frustrate the fairness of the proceedings. *Kentucky v. Stincer* (1987), 482 U.S. 730, 745, 107 S. Ct. 2658. This right is embodied in Crim.R. 43(A). Criminal Rule 43(A) provides that, 'the defendant shall be present at the arraignment and every stage of the trial, including the impaneling of the jury, the return of the verdict, and the imposition of sentence, * * *.'"

{¶9} We note the state concurs with appellant's argument. See, Appellee's Brief at 5.

{¶10} Upon review, we find the trial court erred in resentencing appellant in absentia.

{¶11} The sole assignment of error is granted.

{¶12} The judgment of the Court of Common Pleas of Ashland County, Ohio is hereby reversed and the matter is remanded to said court for resentencing.

By Farmer, P.J.

Wise, J. and

Edwards, J. concur.

JUDGES

SGF/db 0218

