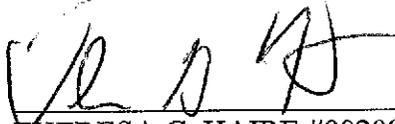


MOTION FOR DELAYED APPEAL OF APPELLANT CORNELIUS HARRIS

Defendant-Appellant, Cornelius Harris, by undersigned counsel, respectfully requests that this Court grant a delayed appeal pursuant to S. Ct. Prac. R. II(2)(A)(4)(a). The reasons for granting this motion are more fully presented in the Memorandum in Support.

Respectfully submitted,

DAVID H. BODIKER #0016590
Ohio Public Defender



THERESA G. HAIRE #0020012
Assistant State Public Defender
COUNSEL OF RECORD

Office of the Ohio Public Defender
8 East Long Street – 11th Floor
Columbus, Ohio 43215
(614) 466-5394
(614) 752-5167 - FAX

COUNSEL FOR APPELLANT
CORNELIUS HARRIS

MEMORANDUM IN SUPPORT

On August 15, 2007, the First District Court of Appeals released a judgment entry affirming the judgment of the trial court in *State of Ohio v. Cornelius Harris*, Hamilton App. No. C-060587. Harris wrote a letter to the Ohio Public Defender dated August 26, 2007, in which he requested assistance in filing an appeal to this Court. Unfortunately, Harris was misinformed as to the date judgment was entered.

When the Ohio Public Defender received Harris' letter, the intake staff attempted to secure the time-stamped judgment entry, but the Hamilton County Clerk had locked the time-stamped judgment entry. Consequently, the intake attorney calculated the date for filing Harris' appeal to this Court as October 3, 2007 based upon a notation on the docket which appeared to comport with the client's statement regarding the date. The actual deadline, however, was October 1, 2007.

As the attached affidavit avers, on October 1, 2007, as undersigned counsel was preparing Harris' appeal, counsel realized that Harris' file did not contain a time-stamped judgment entry affirming the trial court's judgment. Counsel asked support staff to secure a time-stamped copy, which counsel received shortly before 5:00 p.m. As a result, instead of filing Harris' notice of appeal and memorandum in support of jurisdiction a day before the deadline, counsel is filing this motion for delayed appeal the day after the notice and associated documents were due.

Accordingly, the failure to file the Notice of Appeal and the Memorandum timely was due entirely to a misapprehension of the appellate decision's filing date. Unfortunately, counsel did not discover the correct date until it was too late to file the notice of appeal on the date that it was due. Counsel is seeking to rectify the error by promptly filing this motion for a delayed appeal. Additionally, the circumstances that led to the miscalculation were not Harris' fault, as

he was also was misinformed as to the proper date and he timely requested assistance from the Ohio Public Defender's Office.

Undersigned counsel requests that the Court allow a delayed appeal under these circumstances. S. Ct. Prac. R, II(2)(A) provides for the filing of a delayed felony appeal when a question of great public interest or constitutional protections are involved and the Appellant can articulate adequate reasons for the delay. Harris' appeal involves multiple felony convictions for the same act, an issue presented pending before this Court. *State v. Cabrales*, Case Nos. 2007-595 and 2007-651. Thus, his case involves a felony and a constitutional question.

III. Conclusion

Based on the foregoing, Harris respectfully requests this court grant him leave to file a notice of appeal and a jurisdictional memorandum. He believes that the assignments of error raised in his appeal are meritorious.

Respectfully submitted,

DAVID H. BODIKER #0016590
Ohio Public Defender



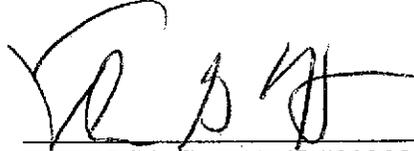
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COUNSEL FOR APPELLANT
CORNELIUS HARRIS

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION FOR DELAYED APPEAL OF APPELLANT CORNELIUS HARRIS was forwarded by regular U.S. Mail, postage prepaid to the office of Judith Anton Lapp, Assistant Hamilton County Prosecutor, 230 E. 9th Street, Suite 4000, Cincinnati, Ohio 45202 this 2nd day of October, 2007.



THERESA G. HAIRE #0020012
Assistant State Public Defender

COUNSEL FOR APPELLANT
CORNELIUS HARRIS

#264933

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, :
 : Case No. _____
 Plaintiff-Appellee, :
 : On Appeal from the Hamilton
 v. : County Court of Appeals
 : First Appellate District
 CORNELIUS HARRIS, :
 : Court of Appeals
 Defendant-Appellant. : Case Nos. C-060587

AFFIDAVIT OF ATTORNEY THERESA G. HAIRE

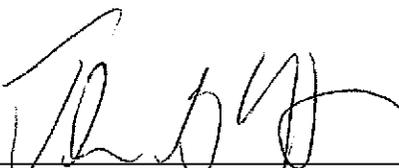
State of Ohio)
) SS:
 County of Franklin)

I, Theresa G. Haire, swear the following is true:

1. I am an attorney licensed to practice law in the State of Ohio (Atty. Reg. No. 0020012). I am currently employed as an Assistant State Public Defender.
2. Cornelius Harris sent the Ohio Public Defender a request for assistance in filing an appeal to the Ohio Supreme Court in a letter dated August 26, 2007. A stamp on the outside of the envelope indicates that the letter may have been received by the Ohio Public Defender on August 30, 2007. While I do not recollect precisely when I received Harris' file, I do know that the file was designated to be assigned to me on September 4, 2007.
3. When the Ohio Public Defender received Harris' letter, the intake staff attempted to secure the time-stamped judgment entry, but the Hamilton County Clerk had locked the time-stamped documents including the judgment entry. Consequently, the intake attorney calculated the date for filing Harris' appeal to this Court as October 3, 2007 based upon a notation on the docket which appeared to comport with the client's statement regarding the date.
4. The actual deadline, however, was October 1, 2007. As I was preparing the appeal yesterday, which was also October 1, 2007, I realized that we still did not have a time-stamped copy of the appellate court's judgment entry. I asked a staff member to assist me in finding or acquiring a time-stamped entry. I received the entry at approximately 4:45 p.m. I checked the time because as soon as I saw the date I realized that the deadline was the same day and I was hoping that I had enough time to complete the memorandum in support of jurisdiction so that I could timely file the appeal.

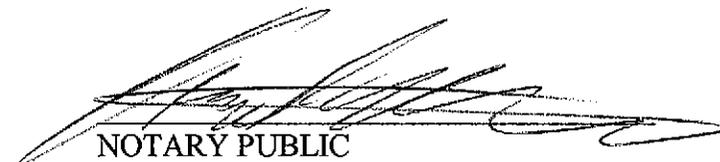
5. I have reviewed Harris' case and the appellate court's judgment entry. Harris' case involves a felony and a substantial constitutional question. Additionally, this Court has the issue presented by Harris' case before it in State v. Cabrales, Case Nos. 2007-595 and 2007-651.

Further Affiant sayeth naught.



THERESA G. HAIRE

Sworn to and subscribed in my presence this 2nd day of October, 2007.



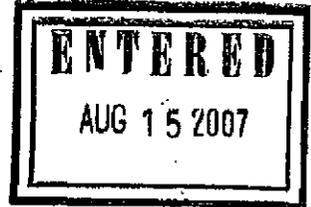
NOTARY PUBLIC

#264933



STEPHEN P. HARDWICK, ATTORNEY AT LAW
NOTARY PUBLIC, STATE OF OHIO
My commission has no expiration date.
Section 147.03 R.C.

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



STATE OF OHIO,

Plaintiff-Appellee,

vs.

CORNELIUS HARRIS,

Defendant-Appellant.

D74598573

APPEAL NOS. C-060587

C-060588

TRIAL NOS. B-05010000-A

B-0510709

JUDGMENT ENTRY.

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In case number C-060587, Cornelius Harris appeals from the judgment of the trial court convicting him of three counts of aggravated robbery and accompanying firearm specifications, three counts of robbery and specifications, and five counts of felonious assault and specifications. The trial court made Harris's sentences consecutive to each other and to the sentence imposed in case number C-060588, for a total of over 99 years' incarceration. Harris has advanced no assignments of error in case number C-060588 and has therefore abandoned that appeal. It is hereby dismissed.

At trial in case number C-060587, the state produced testimony and other evidence establishing that Harris and his friend Evander Kelley had robbed James Lawrence, Dwight Lawrence, and Demon Meatchem of money, cellular phones, and compact discs from inside James Lawrence's apartment. Kelley had been a friend of the Lawrences, and so he was allowed into the apartment along with Harris. Several minutes

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

of normal conversation in a fully lit apartment passed before Harris drew a handgun on the Lawrences and Meatchem and then proceeded to rob them. During the robbery, Meatchem and Dwight rushed Harris, and he dropped his gun. Kelly recovered the weapon and fired shots, striking Dwight and Meatcham, but missing James Lawrence. Kelley and Harris then fled. Harris was not immediately apprehended by police. The most contested issue at trial was whether the state's witnesses had properly identified Harris as one of the robbers. Harris now raises four assignments of error. We affirm.

In his first assignment of error, Harris urges that trial counsel was ineffective. To demonstrate ineffective assistance of trial counsel, the accused must establish that counsel's performance was deficient and that the deficient performance prejudiced the accused to the extent that he was deprived of a fair trial.²

Harris first contends that trial counsel was ineffective for failing to object to the testimony of investigating detective Karaguleff concerning the victims' descriptions of Harris. Harris claims that these statements were impermissible hearsay. They were not. In part, Evid.R. 801(D)(1)(c) provides that a statement is not hearsay (1) if the declarant testifies at trial and is subject to cross-examination, and (2) if the statement offered is one of identification of a person made shortly after perceiving him, provided the circumstances demonstrate the reliability of the identification.

All three victims testified at trial and were cross-examined by defense counsel. And the victims had had an opportunity to view their assailants in un-threatening circumstances for several minutes in a fully lit apartment before the robbery occurred. Finally, Karaguleff began interviewing the victims shortly after they had been robbed. Under these circumstances, the victims' descriptions were not hearsay under Evid.R.

² *Strickland v. Washington* (1984), 466 U.S. 688, 687, 104 S.Ct. 2052.

801(D)(1)(c). Defense counsel was not deficient in failing to object to Karaguleff's testimony.

Next, Harris maintains that counsel should have objected to Karaguleff's testimony that Kelley had said that he knew Harris by the name "Drama,"—which was a word that Harris had had tattooed on his neck. Kelley did not testify at trial. While we agree that this statement should not have been admitted, counsel's decision not to object could have been a trial tactic. And since Harris was identified by his three victims, we can not say that counsel's failure to object in this instance deprived Harris of a fair trial.

Harris's final argument in support of this assignment is that trial counsel's cross-examination of the victims and Karaguleff was ineffective. But the record belies Harris's contention. Counsel strenuously examined each of the witnesses in an effort to cast doubt on the validity of each identification. The first assignment of error is overruled.

In his second assignment of error, Harris contends that the trial court erred by admitting the victims' and Kelly's identification testimony because the testimony denied Harris due process and his right of confrontation. We have already determined that the victims' identification testimony was properly admitted. And all the victims testified at trial. So Harris's constitutional right to confrontation was satisfied in this regard. While Kelly's statement should not have been admitted, in light of the overwhelming identification testimony in the record, we find that this error was harmless beyond a reasonable doubt.³ Harris's second assignment of error is overruled.

In his third assignment of error, Harris declares that his convictions were against the manifest weight of the evidence and were not supported by sufficient evidence. This argument has no merit.

³ See *Chapman v. California*, (1967), 386 U.S. 18, 24, 87 S.Ct. 824; *State v. Madrigal*, 87 Ohio St.3d 378, 388, 2000-Ohio-488, 721 N.E.2d 52.

OHIO FIRST DISTRICT COURT OF APPEALS

Our review of the record convinces us that, for each of the three victims, the state presented sufficient evidence to establish the essential elements of aggravated robbery, robbery, felonious assault, and the accompanying specifications.⁴ And while Harris attempted to shed doubt on the validity of the victims' identification of him, we conclude that the jury did not "lose its way" in choosing to believe the version of events presented by the state.⁵ Accordingly, the third assignment of error is overruled.

In his fourth assignment of error, Harris submits that the lower court erred by imposing consecutive sentences for aggravated robbery, robbery, and felonious assault because they were allied offenses of similar import.⁶ This assignment fails on the authority of *State v. Rance*⁷ and *State v. Smith*,⁸ and is therefore overruled.

The judgment of the trial court is affirmed in case number C-060587, and the appeal numbered C-060588 is dismissed.

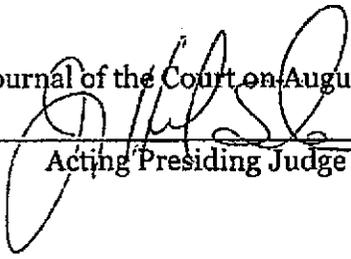
A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App. R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., HENDON and WINKLER, JJ.

RALPH WINKLER, retired, from the First Appellate District, sitting by assignment.

To the Clerk:

Enter upon the Journal of the Court on August 15, 2007
per order of the Court


Acting Presiding Judge

⁴ *State v. Eley* (1978), 56 Ohio St.2d 169, 383 N.E.2d 132, syllabus.

⁵ See *Tibbs v. Florida* (1982), 457 U.S. 31, 102 S.Ct. 2211; *State v. DeHass* (1967), 10 Ohio St.2d 230, 227 N.E.2d 212, paragraph one of the syllabus.

⁶ See R.C. 2941.25(A).

⁷ (1999), 85 Ohio St.3d 632, 710 N.E.2d 699.

⁸ (Mar. 25, 2005), 1st Dist. No. C-040348, 2005-Ohio-1325.