

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

PLAINTIFF-APPELLEE,

09-0129

VS

ON APPEAL FROM THE FRANKLIN  
COURT OF APPEALS, TENTH APPELLATE  
DISTRICT.

COURT OF APPEALS CASE NO.07AP-837

MENTAE HUMPHREY,

DEFENDANT-APPELLANT.

MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT MENTAE HUMPHREY

RON O' BRIEN, PROSECUTING ATTORNEY  
FOR FRANKLIN COUNTY OHIO.  
373 South High Street  
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Plaintiff-Appellee State of Ohio

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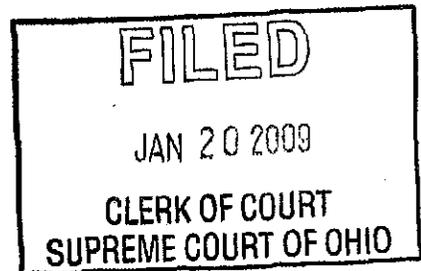


TABLE OF CONTENTS

PG

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC  
OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL  
CONSTITUTIONAL QUESTION..... 1

STATEMENT OF THE CASE ..... 2

STATEMENT OF THE FACTS..... 3

PROPOSITION OF LAW NO.1 ..... 7

PROPOSITION OF LAW NO.2 ..... 12

CONCLUSION..... 15

PROOF OF SERVICE..... 15

APPENDIX

OPINION OF THE FRANKLIN COUNTY COURT OF APPEALS  
( December 4, 2008 )..... 1

**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR  
GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL  
CONSTITUTIONAL QUESTION.**

In this case the evidence is insufficient to support a finding of guilt of Murder, attempted murder, aggravated robbery and improperly discharging a firearm into a habitation or safety zone. Within the this brief this court will find that the state failed to prove their case beyond a reasonable doubt and that the evidence is against the manifest weight of the evidence.

Moreover, appellant was prejudiced by the inadmissable hearsay testimony of Detective James McCoskey. All of appellant's assertion's will be fully explained in appellant's brief.

## STATEMENT OF THE CASE

Appellant Mentae Humphrey was indicted by the Franklin County Grand Jury in case 06 CR 7615 on one count of Aggravated Murder, in violation of R.C. Section 2903.01, one count of Murder, in violation of R.C. Section 2903.02, one count of Aggravated Robbery, R.C. Section 2911.01, one count of Attempted Murder, R.C. Section 2923.02, and one count of Improperly Discharging a Weapon into or at a Habitation or School Safety Zone, R.C. Section 2923.61. All the counts carried a Firearm Specification and the location of the offense was Franklin County, Ohio.

Counts one, two, and three pertained to the murder and robbery of Juan Munguia. The Deceased sister, Milagros Munguia was the listed victim on count four, Attempted Murder. Count five, Improperly Discharging a Weapon into or at a Habitation or School Safety Zone, was in reference to 5408 Chaumont Drive, where the deceased and his family resided.

A jury trial commenced on Wednesday, September 5, 2007 before the Honorable Judge David W. Fais of the Franklin County Court of Common Pleas. On September 11, 2007 the jury returned a verdict finding the appellant guilty of Murder, Aggravated Robbery, Attempted Murder, and Improperly Discharging a Weapon into or at a Habitation or School Safety Zone. All counts carried a firearm specification. The Jury acquitted the appellant on count one, Aggravated Murder in the death of Juan Munguia.

On September 14, 2007 the appellant was sentenced on count two, murder, to fifteen years to life consecutive to a three year term for the firearm specification. Count three; the aggravated robbery was determined to merge with count two. Count four, pertaining to the attempted murder of Milagros Munguia, the appellant was sentenced to eight years at the Ohio

Department of Corrections consecutive to count two. Count five was determined to merge with count four. The remaining firearm specifications all merged with count two. The total sentence imposed was twenty-six years to life.

Appellant appeals the judgment of the Franklin County Court of Common Pleas.

### STATEMENT OF THE FACTS

Juan Munguia was shot in his chest and killed while unhooking his father's taco trailer outside of his residence in an apparent robbery attempt. Patrol officer William Edwards, a five year veteran of the Columbus Police Department, was the first witness called by the State of Ohio. (Tr.I. 39.) Officer Williams was dispatched to 5408 Chaumont Drive on April 13, 2006 on a report of a fight in the street. (Tr.I. 39,40,45.) Upon arrival the officer discovered the street vacant, but ascertained through Milagros Munguia that her brother Juan Munguia had been shot. (Tr.I. 41.)

Officer Williams secured the scene and dispatched a car to Mount Carmel East Hospital to check for a victim. (Tr.I. 43.) In securing the scene, the officer witnessed some blood, a .25 caliber shell casing, and a hat in the street. (Tr.I. 43,44.) A bullet was later discovered by the officer inside the residence at 5408 Chaumont. (Tr.I. 44.)

Homicide Detective James McCoskey testified pursuant to a stipulation that the cause of death to Juan Munguia was a single gunshot wound to the upper right quadrant of his chest near the clavicle. (Tr.I. 51,60.) The bullet entered through the front of the victim and exited through the rear. (Tr.I. 60.) In examining the scene, Detective McCoskey was able to recover a second shell casing missed by the initial responders. (Tr.I. 73.)

McCoskey testified that an anonymous crime stoppers tip was received on July 12, 2006 with a suspects name spelled Minte that was responsible for the murder of Juan Munguia. (Tr.I. 62.) After contacting the gang unit at the Columbus Police Department, the detective established the name Mentae Humphrey. (Tr.I.62.) McCoskey testified to the jury that Mentae Humphrey was also a suspect in an additional unrelated City of Whitehall robbery. (Tr.I. 65.66.) In that case, Detective McCoskey stated the suspects were believed to be targeting illegal Mexicans since they would not likely report the offense to the authorities. (Tr.I. 65,66.)

McCoskey testified that there was no physical evidence recovered that linked Mentae Humphrey to the murder of Juan Munguia. (Tr.I. 85.)

Officer Heather McClellan, a criminalist with the Columbus Police Department testified that two shell casings recovered from the scene likely came from a .25 Caliber semi-automatic handgun, but could not ascertain whether they were fired from the same gun. (Tr.I. 97,101,103,104.) One projectile recovered was from a .25 caliber weapon, while the other projectile recovered was too damaged to determine. (Tr.I. 98,102.)

Javon Redmon testified that he was playing football on the day of the offense on Makuta Drive when an unknown male approached and tried to sell a small chrome handgun with a brown handle. ( Tr.I. 117.) In order to join in the football game, this individual hid the gun in some bushes. (Tr.I. 118.) Redmon testified that Kenyatta Banks then called Mentae Humphrey and told him where the gun was so he could come and steal the weapon. (Tr.I. 119.) Redmon never witnessed Mentae retrieving the weapon. (TR. I. 119-210.)

After the football game concluded, Redmon went home, showered, and left around dusk to go visit a female friend. (Tr.I. 120-122.) As he traveled from his house, he observed Mentae Humphrey and an unknown male runs towards a taco truck. (Tr.I. 125.) Redmon then heard a

man yelling in a different language and three to four gun shots. (Tr.I. 125-126.) He stated he saw Mentae with a silver handgun, but did not witness the actual shooting. (Tr.I. 127.)

After Redmon heard the shots, he turned around and ran back to his house. (Tr.I. 131.) The next day, he testified that Mentae Humphrey traveled to Javon Redmon's house and Redmon and Kenyatta Banks arranged for Mentae to sell the weapon to a third party. (Tr.I. 134, Tr.II . 75-76,78.) During this discussion, Mentae purported to admit shooting Juan Munguia two times. (Tr.I. 128.) This information only came to light after Redmon was indicted on serious charges and agreed to strike a deal with the State. In exchange for Redmon's testimony, the state allowed him to plea guilty to a lesser included offense from an unrelated aggravated robbery charge with a recommendation for community control. (Tr.I. 109.)

Kenyatta Banks also testified for the State that he was playing football with Javon Redmon when the unknown male came over and tried to sell the handgun. (Tr.II. 54-55.) Once the seller hid the gun in the bushes Kenyatta stated he called Mentae Humphrey to come over and take the weapon. (Tr.II. 56.) Kenyatta was to obtain thirty dollars from Mentae for informing him about the weapon. (Tr.II. 62,64.)

After the game concluded Kenyatta Banks was walking up Fox Chapel Run to meet a friend when he witnessed Mentae and an unknown male wrestling with a Hispanic individual. (Tr.II. 64, 68.) Kenyatta witnessed Mentae shoot the gun at the Hispanic male he was wrestling with as well as shooting the weapon into a crowd. (Tr.II. 67.) He stated it was the same gun he observed earlier that day. (Tr.II. 70.) Later that night, Banks testified Mentae spoke with him on the phone and admitted to shooting the male. (Tr.II. 72.) The following day, Kenyatta Banks testified he met with Javon Redmon and the appellant to broker a deal to sell the gun to a third party. (Tr.II. 75-76, 78.)

Similar to Javon Redmon, the information provided by Kenyatta Banks only came to light after he was facing a bind over in juvenile court on an unrelated aggravated robbery charge. In exchange for his testimony, the state agreed to have his case remain under the jurisdiction of the juvenile court. (Tr.I. 68, 80.)

Milagros Munguia testified she was the nineteen year old sister of Juan Munguia. (Tr.II. 9.) Milagros testified that Juan and her closed up her parents taco stand around 7:30 p.m. and returned it to their residence. (Tr.II. 12,23.) Upon arrival at her house, she walked quickly inside while her brother unhitched the taco stand. (Tr.II. 13.) As she entered the house, her brother Rigoberto was opening the door and they heard Juan yell for help. (Tr.II. 15.) As they approached Juan, he was slumped over against the car with his hands on his chest. (Tr.II. 15.)

As Milagros was running towards Juan, she testified a man running away turned and fired at her. (Tr.II. 15,20.) Milagros stated she did not get a very good view of the person who shot towards her because it was getting dark out and there were no street lights. (Tr. II. 20,33.) She stated she was not close enough to see the pistol and was unable to recognize any suspects when presented with a photo array. (Tr.II. 34,21.)

Rigoberto Munguia testified he was at home when his brother and sister returned with the taco cart. (Tr.II. 134.) As he opened the door for his sister, he heard his brother cry out for help. (Tr.II. 137.) As Rigoberto ran toward Juan, he observed two African-American males fighting with him by the cart. (Tr.II. 138.) When his brother was getting the upper hand on the assailant, one pulled out a gun and fired it at his brother's chest. (Tr.II. 141.) A second shot was fired in the direction of his sister Milagros as the assailant fled. (Tr. 141.)

He described the man with the gun as wearing a white shirt and black pants. (Tr.II. 144.) During a photo array with Detective McCoskey he picked out a photo of the appellant and wrote

“This looks like the guy that shot my brother, but I am not sure.” (Tr.I. 70, Tr.II. 145.) In court, he stated he was sure of the identification. (Tr.II. 148.)

Mentae Humphrey was arrested on October 1<sup>st</sup>, 2006 and denied any involvement in the homicide. (Tr.I. 72.)

**ASSIGNMENT OF ERROR NO 1:**

**THE APPELLANT WAS DENIED A FAIR TRIAL CONSISTENT WITH THE SIXTH AMENDMENT BY THE ADMISSION OF PREJUDICIAL HEARSAY TESTIMONY.**

The appellant was denied a fair trial in violation of the Sixth Amendment by the admission of improper hearsay testimony. The first error in admission pertained to allowing the lead detective, James McCoskey to read to the jury, over defense objection, an anonymous crime stoppers tip which named the appellant as the one responsible for the murder of Juan Munguia. (Tr.I 62-66.) The second error in admission was allowing the State to introduce other act hearsay evidence, in violation of Ohio Evidence Rule 404(B) and 403. Here, Detective McCoskey testified to the jury that after speaking with the gang unit members within the Columbus Police Department, the appellant was a gang member suspected in other robberies that targeted illegal Mexicans. ( Tr. I. 66.) The State was drawing the connection since this case involved a Mexican immigrant and he was a suspect in other cases involving illegal immigrants, he therefore was responsible for the murder of Juan Munguia. This is clearly inadmissible other act evidence plagued by deep layers of unsubstantiated hearsay.

The trial court erred in allowing Detective James McCoskey to testify, over defense counsel's objection, that the Columbus Police Department had received an anonymous tip that the appellant was the party responsible for the murder of Juan Munguia. (Tr.I. 62-66.) The anonymous tip came from Crime Stoppers, a segment in the local media outlets, which provides a telephone number for viewers who have information regarding the crimes featured in the segment. The trial court overruled the hearsay objection to Detective McCoskey's testimony apparently based on the States position that the out-of-court statement was not admitted to prove the truth of the matter asserted, but merely to explain Detective McCoskey's course of conduct. (Tr.I. 63.) However, by allowing the whole report to be read to the jury, the anonymous tip was not offered solely for the detectives' actions, but as substantive proof of guilt.

In his direct testimony Detective McCoskey was asked:

Q. How did you generate defendant Mentae Humphrey as a possible suspect?

A. This was in the early part of July when his name first came up. It came from a crime stoppers tip where people can call into the police headquarters where crime stoppers is and they gave the first name of Mentae being involved in this crime.

Q. Okay. When they gave the name of Mentae, was – did you initially link that up with this defendant?

A. Yes, Sir.

Q. Okay, was it spelled the same?

A. No.

Q. Did that throw you off at all?

A. Again, I contacted the gang unit and they recognized it as a possibility.

Q. Okay, show you States exhibit 4. What is States Exhibit 4, Detective?

A. This is the crime stoppers tip which came in on July 12<sup>th</sup>, 2006, giving the information and possible suspect with the name, it was spelled that time with M-I-N-T-E, Minte.

Q. Can you actually read for the jury what is on that sheet?

A. The entire thing?

Q. Yes, Sir, Please.

A. Well, at the top it just identifies it as a central Ohio crime stoppers. This is the form that is used in there. And, again it gives the date that it was received.

Q. What was that date?

Defense Counsel: I Object. This is a hearsay document.

Prosecution: We are not offering it for the truth of the matter, we are offering it as the detectives course of conduct.

The Court: Objection is overruled.

Prosecution: Thank you.

Q. Go Ahead.

A. It gives a date, it was received on July 12<sup>th</sup>, 2006. It is also assigned a number. Everyone can remain anonymous, but they are assigned a tipster number that is on there. And anyway, down to the body of this form it indicates, says general information, date crime occurred, one or two months ago, victim, Mexican male early thirties. How's caller aware of the crime. Caller saw a report on TV about a homicide of Mexican Male, and he had a food cart parked somewhere when the shooting took place. And this says danger to the tipster, unknown. How caller heard about the crime stoppers, unknown.

It goes on to state caller said they heard some people talking about the shooting and this male named Mentae 18 year old black male, brown skin, no facial hair, five-six, 160 pounds was also involved in the shooting of the Mexican male one or two months ago. Caller said at the time of the shooting there was another male with the suspect, Mentae. Caller said the suspects pulled a gun to rob the Mexican male unknown name, and victim pulled out a gun and that is when the suspects shot the victim. The caller said the report said the Mexican male had a portable food cart and was selling food. The shooting location was unknown by the caller but they stated it was on the East side of Columbus. This is all the information the caller had to give.

Q. Okay, you don't know who the caller is do you?

A. No Sir.

Q. So you had no one to interview about that. Was that the first clue that a suspect by the name of Mentae was involved in this case?

A. Yes Sir.

(Tr.I. 62-64.)

“Hearsay’ is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Evid.R. 801(C). Generally, out-of-court statements offered to explain a police officer's conduct while investigating a crime, rather than for their truth, are not hearsay. State v. Thomas (1980), 61 Ohio St.2d 223, 232, 400 N.E.2d 401. Nevertheless, where out-of-court statements are admitted merely to explain a police officer's conduct during the course of an investigation, “the potential for abuse in admitting such statements is great.” State v. Blevins (1987), 36 Ohio App.3d 147, 149, 521 N.E.2d 1105. Specifically, a prosecutor might use a police officer's testimony regarding his investigative activities as a pretext to introduce a number of highly prejudicial out-of-court statements, justifying their admission on the grounds that the statements are being offered merely to explain the police officer's conduct, rather than for their truth.

In order to limit this potential for abuse, the Blevins court set forth the following standard governing the admission of out-of-court statements offered, ostensibly, to explain a police officer's conduct during the course of an investigation. First, the conduct to be explained must be “relevant, equivocal, and contemporaneous” with the out-of-court statements. Id. Second, the out-of-court statements must meet the standard of Evid.R. 403(A). Thus, even if the statements are relevant to proving some fact other than the truth of the matter asserted, the evidence still must be excluded if its probative value is substantially outweighed by the dangers of unfair

prejudice, confusion of the issues, or misleading the jury. Blevins, supra, and Evid.R. 403(A).

Applying this standard here, the conduct of Detective McCoskey sought to be explained was how the appellant became a suspect. Although Detective McCoskeys's conduct was relevant, i.e., that Mentae Humphrey was a suspect involved in the incident, there is no justifiable reason for Detective McCoskeys to read the entire crime stoppers report to the jury through the use of the out-of-court statement. The exchange illustrates the State did not understand the limited purpose for which the anonymous tip was being admitted or simply choose to ignore it. Furthermore, the probative value of the out-of-court statement was substantially outweighed by the danger of unfair prejudice, since the statement identified the appellant as the suspect in the murder. See Blevins, supra, at 149-150, 521 N.E.2d 1105 (since the out-of-court statement went to an element of the offense, the chances for prejudice were high).

The prosecutor's primary purpose in eliciting Detective McCoskeys testimony regarding the anonymous tip was for the truth of the matter being asserted therein and not to explain Detective McCoskeys actions. This conclusion is further confirmed by the fact that, during his closing argument, the prosecutor tried to use the anonymous tip as substantive proof of the appellants guilt, by stating as follows: Prosecutor: "The Detective stated after he got the name Mentae from the gang unit, from the anonymous call-in, he became aware that Mentae Humphrey, as well as Kenyatta and two other folks, were suspects in a robbery of Hispanic folks in Whitehall. He got that from the Whitehall detective. Next we know that Hispanics are often robbed or victims because they are often illegal and become easy prey. Now, Mentae was a suspect in this case." (Tr. II. 193.)

**ASSIGNMENT OF ERROR NO II:**

**THE EVIDENCE WAS INSUFFICIENT TO SUPPORT A FINDING OF GUILT.**

The evidence in this case was insufficient as a matter of law to support a finding of guilt on the charge of Murder and Attempted Murder. Specifically, there was insufficient evidence presented that appellant caused the death of Juan Munguia as the proximate result of the appellant committing or attempting to commit aggravated robbery, an offense of violence. Further, there was insufficient evidence to prove the appellant engaged in conduct that if successful, would have resulted in the purposeful death of Milagros Munguia. Accordingly, the trial court denied appellant Due Process under both the State and Federal Constitutions when it did not dismiss those charges. Crim.R.29.

The Fifth Amendment to the United States Constitution provides that "No person

shall...be deprived of...liberty...without due process of law.” The United States Supreme Court has held that a criminal defendant is denied due process of law when his conviction is not supported by sufficient evidence to prove his guilt of every element of the crime charged beyond a reasonable doubt. In such a case, due process requires that the defendant's conviction be reversed. Jackson v. Virginia (1979), 443 U.S. 307. See also, State v. Thompkins (1997), 78 Ohio St.3d 380.

A criminal conviction is not supported by sufficient evidence when the prosecution has failed to “prove beyond a reasonable doubt every fact necessary to constitute any crime for which it prosecutes a defendant.” State v. Robinson (1976), 47 Ohio St.2d 103, 108, citing In Re Winship (1970), 397 U.S. 358. In such a situation, due process demands are great and “neither a trial court nor an appellate court may abdicate its responsibility to enter a judgment of acquittal when the evidence is legally insufficient to support a conviction.” State v. Goodin (1979), 56 Ohio St.2d 438, 442.

Under Crim.R. 29, a trial court is empowered to grant a motion for acquittal upon finding that the evidence was insufficient to support the conviction. Thompkins, Supra. Indeed, the accused must be acquitted in such a situation because “a conviction based on legally insufficient evidence constitutes a denial of due process.” Id., citing Tibbs v. Florida (1982), 457 U.S. 31, 45, citing Jackson v. Virginia (1979), 443 U.S. 307.

There was insufficient evidence presented to support a conviction on the charge of Attempted Murder. Attempted Murder, R.C. 2923.02/2903.02, states, in part, that no person shall purposely engage in conduct that if successful would result in the offense of Murder. Murder is defined by purposely causing the death of another. In this case, the evidence presented of the required mental state, “purposely” was absent. R.C. 2901.22(A) defines the culpable mental

state of purposely:

“A person acts purposely when it is his specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, it is his specific intention to engage in conduct of that nature.”

In the case at bar, there was not insufficient evidence that appellant had purposely attempted to cause the death of Milagros Munguia or purposely did cause the death of Juan Munguia as the proximate result of the appellant committing or attempting to commit aggravated robbery, an offense of violence. According to detective McCoskey there was no forensic evidence recovered that linked the appellant to the scene of the crime. (Tr.I. 85.) The States foundation was rested in the hands of two felons who came forwarded well after the offense was committed and only motivated by elevating their own legal troubles. In the case of Javon Redmon, the State allowed him to plea guilty to a lesser included offense from an unrelated aggravated robbery for a recommendation of community control. (Tr.I. 109.) Kenyatta Banks was allowed to remain under the jurisdiction of the Juvenile Court and avoid a bind over to be tried as an adult in an additional unrelated robbery offense. (Tr.I. 68,80.) The only other witness that placed appellant at the scene was Rigoberto Munguia. However, when presented with a photo array by Detective McCoskey, Rigoberto stated the appellant “Looks like the guy that shot my brother, but I am not sure.” (Tr.I. 70, Tr.II. 145.)

The State failed to prove that the appellant purposely attempted to cause the death Juan Munguia or purposely caused the death of Juan Munguia. The conviction in this case should therefore be reversed.

For the reasons set forth above, this court should accept jurisdiction over appellant's case.

Respectfully submitted,  
*Mentae Humphrey*  
Mentae Humphrey#5597055

**PROOF OF SERVICE**

This is to certify that a copy was sent to Franklin County Prosecutor Ron O' Brien at 373 South High Street Columbus, Ohio 43215 on this 13<sup>TH</sup> day of January 2009.

Respectfully submitted,  
*Mentae Humphrey*  
Mentae Humphrey#559-055

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

FILED  
COURT OF APPEALS  
FRANKLIN COUNTY, OHIO  
2008 DEC -4 PM 1:40  
CLERK OF COURTS

State of Ohio, :  
Plaintiff-Appellee, :  
v. : No. 07AP-837  
Mentae Humphrey, : (C.P.C. No. 06CR-10-7615)  
Defendant-Appellant. : (REGULAR CALENDAR)

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O P I N I O N

Rendered on December 4, 2008

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*Ron O'Brien*, Prosecuting Attorney, and *Seth L. Gilbert*, for appellee.

*Law Office of Thomas F. Hayes, LLC*, and *Thomas F. Hayes*, for appellant.

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APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} Mentae Humphrey, defendant-appellant, appeals from a judgment of the Franklin County Court of Common Pleas, in which the court found him guilty, pursuant to a jury verdict, of murder with a firearm specification, in violation of R.C. 2903.02, which is a felony of the first degree; aggravated robbery with a firearm specification, in violation of R.C. 2911.01, which is a felony of the first degree; attempted murder with a firearm specification, in violation of R.C. 2923.02 as it related to R.C. 2903.02, which is a felony of the first degree; and improperly discharging a firearm at or into a habitation or school

safety zone with a firearm specification, in violation of R.C. 2923.161, a felony of the second degree.

{¶2} On April 13, 2006, Kenyatta Banks and Javon Redman were playing football with friends. A person approached them seeking to sell a handgun. The person hid the gun in a bush and played football with the others. During this time, Kenyatta called appellant and told him that there was a gun in the bushes that he could steal in exchange for \$30.

{¶3} Later that same day, Juan Munguia and his sister Milagros arrived home after selling food from their parents' taco trailer. While Milagros went to the front door of the home and met their brother Rigoberto, Juan unhooked the taco trailer from a vehicle. Milagros and Rigoberto then heard Juan yelling. Rigoberto ran toward Juan and saw an African-American male fighting with Juan, while another African-American male fled. Rigoberto joined the struggle, and the African-American male shot Juan. While fleeing, the African-American male fired another shot at Milagros, missing her. The bullet hit the Munguia's house.

{¶4} On July 12, 2006, the police received a tip based upon a local television news segment entitled "crimestoppers," which profiled the case. The tipster stated that the person who killed Juan was "Minte." Detective James McCoskey contacted the gang unit which told him that appellant had a similar name and was a suspect, along with Banks, in a robbery in Whitehall, Ohio, which had targeted illegal aliens.

{¶5} In September 2006, McCoskey interviewed Banks and learned about the gun in the bushes on the day of the incident. Banks also stated that he and a friend had been walking to meet appellant to receive the \$30 payment for the gun, when he saw

appellant shoot a Hispanic individual and then shoot again at people who had run out of the house. Banks also stated that, the day after the shooting, he spoke with appellant, who said he wanted to sell the gun. Banks called Redman, who arranged to have the gun sold to someone on the opposite side of town later that day. Redman also stated he had been in the area at the time of the shooting, and he saw appellant run toward a taco stand, heard someone yelling in a foreign language, heard gunshots, and saw appellant holding a gun.

{¶6} In September 2006, Rigoberto chose appellant from a photograph array, but he indicated he was not sure if appellant was the person who committed the offenses. Appellant was arrested on October 1, 2006, and was indicted on one count of aggravated murder with a firearm specification, one count of murder with a firearm specification, one count of aggravated robbery with a firearm specification, one count of attempted murder with a firearm specification, and one count of improperly discharging a weapon into or at a habitation or school safety zone with a firearm specification.

{¶7} A jury trial commenced September 5, 2007, after which the jury found appellant guilty of murder, aggravated robbery, attempted murder, and improperly discharging a weapon into or at a habitation or school safety zone, as well as the accompanying firearm specifications. On September 14, 2007, appellant was sentenced to a total incarceration term of 26 years to life. Appellant appeals the judgment of the trial court, asserting the following assignments of error:

I. The Appellant was Denied a Fair Trial Consistent With The Sixth Amendment By the Admission of Prejudicial Hearsay Testimony.

II. The Evidence was Insufficient to Support a Finding of Guilt.

III. The Verdict was Against the Manifest Weight of the Evidence.

{¶8} We will address all three assignments of error together. Appellant argues in his first assignment of error that he was denied a fair trial based upon the admission of prejudicial hearsay testimony. Appellant argues in his second assignment of error that the evidence was insufficient to support a finding of guilt. Appellant argues in his third assignment of error that the verdict was against the manifest weight of the evidence.

{¶9} With regard to appellant's first assignment of error, appellant presents two separate arguments. Appellant first asserts that the trial court erred when it allowed Detective McCoskey to read to the jury the report of an anonymous crimestoppers tip that identified appellant as the shooter. Appellant contends that the testimony constituted hearsay, and by allowing the whole report to be read to the jury, the anonymous tip was not offered solely to explain the detective's actions, but as substantive proof of guilt.

{¶10} The Ohio Rules of Evidence forbid the use of hearsay evidence at trial absent a recognized exception. Evid.R. 802. Hearsay evidence is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid.R. 801(C). Decisions regarding the admissibility of evidence are within the sound discretion of the trial court and will not be reversed absent a showing of an abuse of discretion. *State v. Graham* (1979), 58 Ohio St.2d 350, and *State v. Lundy* (1987), 41 Ohio App.3d 163. An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶11} It is well-established that, where statements are offered into evidence to explain an officer's conduct during the course of investigating a crime, such statements are generally not hearsay. *State v. Thomas* (1980), 61 Ohio St.2d 223, 232. There are limits, however, to this general rule because of the great potential for abuse and potential confusion to the trier of fact. See *State v. Blevins* (1987), 36 Ohio App.3d 147, 149. For example, a prosecutor may attempt to use a police officer's testimony regarding his investigative activities as a pretext to introduce highly prejudicial out-of-court statements, while claiming the statements are being offered merely to explain the police officer's conduct, rather than for their truth. Furthermore, when the statements connect the accused with the crime charged, they should generally be excluded. See *State v. Culley* (Aug. 31, 1989), Franklin App. No. 89AP-153, citing *Blevins*. To limit the potential for abuse (1) the conduct to be explained must be relevant, equivocal, and contemporaneous with the out-of-court statements, and (2) the out-of-court statements must meet the standard of Evid.R. 403(A); that is, the evidence must be excluded if its probative value is substantially outweighed by the dangers of unfair prejudice, confusion of the issues, or misleading the jury, even if it is relevant. *Blevins*, at 149.

{¶12} Here, in his testimony, Detective McCoskey read and/or paraphrased much of the crimestoppers report, which included the tipster's claim that others had stated a male named "Minte" had shot a Mexican victim, as well as the tipster's description of Minte, the surrounding circumstances, and the general location of the incident. Appellant claims that, although mentioning that the crimestoppers tip might have been proper if presented in some limited scope, it was overly prejudicial to have the detective read the entire contents of the report. Other courts have addressed similar situations in which the

contents of a crimestoppers report have been entered as evidence. In *State v. Sinkfield* (Oct. 2, 1998), Montgomery App. No. 16277, the court found that, although the state claimed that the crimestoppers statement was necessary to explain why the officer placed the defendant's photograph in an array, it was doubtful that the officer's action was so equivocal or ambiguous that it needed to be explained to the jury through the use of the crimestoppers report. The court also found that the probative value of the crimestoppers report was substantially outweighed by the danger of unfair prejudice, because the statement identified the defendant as a suspect. Thus, the court in *Sinkfield* concluded that the trial court abused its discretion by not excluding as hearsay the detective's testimony regarding the anonymous crimestoppers tip.

{¶13} In *State v. Stadmire*, Cuyahoga App. No. 81188, 2003-Ohio-873, the court reached a conclusion contrary to *Sinkfield*. In *Stadmire*, the defendant claimed the trial court erred when it allowed the investigating detective to testify as to information he received from a crimestoppers call. The court indicated there was no strict bright-line rule in such circumstances, and Ohio courts routinely hold that testimony concerning the basis or reason for an officer's investigation or subsequent investigative activities is admissible. The court in *Stadmire* found the evidence admissible because the detective's testimony explained the officer's conduct while investigating a crime, and the case was tried to a judge rather than a jury; thus, the danger of unfair prejudice, if any, was less of a concern.

{¶14} This court has before found testimony involving a crimestoppers tip was inadmissible because it was overly prejudicial. In *State v. Faris* (Mar. 24, 1994), Franklin App. No. 93APA08-1211, the detective testified that he received a crimestoppers tip that the defendant was responsible for the crime. This court found that the fact the detective

received information from crimestoppers was admissible for foundation purposes; however, the detective continued to testify as to hearsay statements, including that he had received information that the defendant was responsible for the crime. We found this hearsay was not admissible and was unnecessary for foundation purposes. Relying upon *Blevins*, we stated that, because these statements clearly went to an element of the offense that went toward guilt, and there was little need to explain in such detail why the police began investigating the defendant, the statements should be excluded.

{¶15} In the present case, the tipster reported that appellant shot Juan. Pursuant to *Sinkfield* and *Faris*, the probative value of the testimony regarding the crimestoppers report would likely be deemed substantially outweighed by the danger of unfair prejudice, given the statement identified the defendant as a suspect while, pursuant to the holding in *Stadmire*, the testimony would more likely be deemed admissible. However, we need not determine whether the trial court's admission of Detective McCoskey's testimony here was unfairly prejudicial. Error in criminal proceedings is harmless only if there is no reasonable possibility that the error may have contributed to the accused's conviction. *Sinkfield*, citing *Chapman v. California* (1967), 386 U.S. 18, 23-24, 87 S.Ct. 824. In order to hold the error harmless, a reviewing court must be able to conclude that the error was harmless beyond a reasonable doubt. *Id.*, citing *Chapman*, at 24. Error is harmless beyond a reasonable doubt if the remaining evidence, standing alone, constitutes overwhelming proof of the defendant's guilt. *Id.*, citing *State v. Williams* (1983), 6 Ohio St.3d 281, paragraph six of the syllabus.

{¶16} Although in *Sinkfield* the trial court found that there was not overwhelming evidence of the defendant's guilt so as to overcome any unfair prejudice, in the present

case, without evidence of the crimestoppers report, there was overwhelming evidence of appellant's guilt. Officer William Edwards testified the suspect was 5'10", skinny, and wore a white ball cap and white t-shirt, consistent with appellant's appearance and the testimony of others. Detective McCoskey testified that he learned that Banks and appellant were suspects in another robbery of Mexicans. He later interviewed Banks, who told him that appellant was involved in the present crime. He also presented a photo array to Rigoberto, who identified appellant as looking like the man who fought with his brother, although he was not sure.

{¶17} Detective McCoskey also talked to Redman about the present crime. Redman testified that he was playing football with Banks, and someone was trying to sell a .22 or .25-caliber chrome gun. The person selling the gun hid it in bushes so he could play football. He stated appellant took the gun from the bushes after Banks called him and told him about it. After the football game, he went home, showered, and started walking to a girl's house. He saw appellant and another male, not Banks, running toward a taco stand parked by a driveway. Someone started yelling in a foreign language, and then others ran out of a house. He then heard three or four gunshots. He saw appellant with a silver .22 or .25-caliber gun, but he did not see him shoot it. However, he later heard appellant bragging about shooting the victim. The day after the shooting, appellant brought him the silver gun and asked him to help sell it. He stated he helped the prosecution by giving them information because, in exchange, the State of Ohio, plaintiff-appellee, recommended probation in another case he was involved in.

{¶18} Banks testified that, in exchange for testifying, the state agreed not to bind him over into adult court in a different case. He stated on the day of the incident, he was

playing football and someone wanted to sell a chrome .25-caliber semi-automatic pistol. The person hid the gun in the bushes, and Banks called appellant to come steal the gun. Appellant arrived, took the gun, and left. After Banks went back home, he spoke to appellant on the phone, and appellant agreed to pay him \$30 for the gun. While walking to meet some girls, he talked to appellant on the phone, and appellant told him to meet him on a particular street to receive the \$30. Banks started walking in appellant's direction and then saw appellant run toward a house and wrestle with another person. Banks then saw people running out of the house toward appellant, and appellant shot his gun at the group and the person with whom he had been wrestling. The gun appellant shot was the same gun appellant had retrieved from the bushes earlier in the day. Banks ran to meet another friend and then telephoned appellant. Appellant said he had "popped" a Mexican person because the person had a pouch with money in it. He also talked to appellant the next morning, and appellant asked him if he would help him sell the gun. Banks testified he called Redman to get rid of the gun because he knew people in north Columbus, far away from the crime. The three drove to northern Columbus and sold the gun the day after the incident.

{¶19} Heather McClellan, a forensic scientist with the Columbus Police Department, confirmed that the casings found at the scene appeared to be approximately .25 caliber and consistent with a semi-automatic weapon, thus corroborating the testimony of Redman and Banks.

{¶20} Rigoberto testified that, after his sister walked into the house upon arriving with Juan and the taco trailer, he heard Juan shouting from outside. He ran to his brother, who was fighting with two African-American men. One of the African-American men fled.

Juan started to overcome the other man, but the man retrieved a gun from his pants, pointed it at Juan, and shot once at Juan and once at Milagros. The man with the gun was wearing black pants and a white shirt. Milagros testified that, although she did not get a clear view of his face, it was a black male who shot Juan. She corroborated Rigoberto's testimony that the black male was wearing black pants and a white t-shirt. Milagros added that the bullet that appellant fired at her went into their home, entering an interior wall at a height between her chest and head.

{¶21} Rigoberto further testified that, on September 12, 2006, Detective McCoskey showed him a photograph array, and he picked appellant's photograph from the array. He told Detective McCoskey that appellant looked like the person who shot his brother, but he was "not sure," because it was only a small black and white photograph. Rigoberto identified appellant at trial as being the person who shot Juan and was "a hundred percent sure."

{¶22} We find this evidence against appellant was overwhelming. Appellant was identified in a photographic array and in person by Rigoberto as being the assailant. Rigoberto testified that appellant intentionally aimed his gun and shot Juan. Redman and Banks also gave detailed accounts of how appellant acquired the gun, the description of the gun, and appellant's later admissions regarding his murder of Juan. The testimonies of Redman and Banks were consistent with one another. Banks also testified that appellant attempted to rob Juan because he had a pouch with money in it. Both Redman and Banks gave identical accounts of appellant's enlisting them the day following the murder to help him sell the murder weapon. In addition, both Milagros and Rigoberto testified that appellant also shot at Milagros, and the bullet missed her and went into the

house. Thus, we find there was overwhelming evidence that appellant committed murder with a firearm specification, aggravated robbery with a firearm specification, attempted murder with a firearm specification, and improperly discharging a firearm at or into a habitation or school safety zone with a firearm specification. Accordingly, even if the trial court erred by permitting Detective McCoskey to read the contents of the crimestoppers report to the jury, such error was harmless, as there was overwhelming evidence of appellant's guilt, and there was no reasonable possibility that the error contributed to appellant's conviction.

{¶23} Appellant also argues under his first assignment of error that the trial court erred when it allowed the state to introduce other act hearsay evidence, in violation of Evid.R. 404(B) and 403. Specifically, appellant contends Detective McCoskey testified that appellant was a suspect in other robberies targeting illegal Mexicans, and the state was improperly attempting to imply that, because he was a suspect in those robberies, he committed the crimes in the present case.

{¶24} Evid.R. 404(B) provides: "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith." However, evidence of other crimes may be admissible as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident under Evid.R. 404(B). Similarly, R.C. 2945.59 provides that:

In any criminal case in which the defendant's motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing an act is material, any acts of the defendant which tend to show his motive or intent, the absence of mistake or accident on his part, or the defendant's scheme, plan, or system in doing the act in question may be proved, whether they are contemporaneous with or prior or subsequent thereto,

notwithstanding that such proof may show or tend to show the commission of another crime by the defendant.

In order for other acts evidence to be admissible to prove identity through a certain *modus operandi*, the other acts evidence must be related to and share common features with the crime in question. *State v. Lowe* (1994), 69 Ohio St.3d 527, paragraph one of the syllabus.

{¶25} In the present case, however, appellant did not object to Detective McCoskey's testimony on this issue. Therefore, he has waived all but plain error on review. *State v. Caplinger* (1995), 105 Ohio App.3d 567, 570-571 (failure to object at the trial court level waives all but plain error upon appeal). 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. Landrum* (1990), 53 Ohio St.3d 107, 111. Under the plain error standard, an appellant must demonstrate that the outcome of his trial would clearly have been different but for the trial court's errors. *State v. Moreland* (1990), 50 Ohio St.3d 58, 63.

{¶26} Here, we find no plain error, as appellant has failed to show that the outcome of his trial would have been clearly different but for the alleged error. As explained above, there was overwhelming evidence of his guilt. Furthermore, we find appellant's conviction was supported by sufficient evidence and was not against the manifest weight of the evidence. When reviewing the sufficiency of the evidence, an appellate court examines the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant's guilt beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus. The relevant inquiry is whether, after viewing the evidence in a light most

favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *Id.*, citing *Jackson v. Virginia* (1979), 443 U.S. 307, 99 S.Ct. 2781.

{¶27} R.C. 2903.02(B) provides:

No person shall cause the death of another as a proximate result of the offender's committing or attempting to commit an offense of violence that is a felony of the first or second degree and that is not a violation of section 2903.03 or 2903.04 of the Revised Code.

{¶28} R.C. 2911.01 provides, in pertinent part:

(A) No person, in attempting or committing a theft offense, as defined in section 2913.01 of the Revised Code, or in fleeing immediately after the attempt or offense, shall do any of the following:

(1) Have a deadly weapon on or about the offender's person or under the offender's control and either display the weapon, brandish it, indicate that the offender possesses it, or use it;

\* \* \*

(3) Inflict, or attempt to inflict, serious physical harm on another.

{¶29} R.C. 2923.02(A) provides:

No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense.

{¶30} R.C. 2923.161 provides, in pertinent part:

(A) No person, without privilege to do so, shall knowingly do any of the following:

(1) Discharge a firearm at or into an occupied structure that is a permanent or temporary habitation of any individual[.]

{¶31} With regard to murder, if believed, there was sufficient evidence to demonstrate appellant caused the death of Juan while committing aggravated robbery. Rigoberto testified that appellant intentionally aimed his gun and shot Juan. Redman and Banks also testified that appellant admitted shooting Juan in order to steal money from him. The same evidence, if believed, would also provide sufficient evidence to demonstrate aggravated robbery, in that appellant used a gun to inflict serious physical harm on Juan while attempting a theft offense. Furthermore, there was sufficient evidence, if believed, to demonstrate that appellant purposely and knowingly attempted to cause the death of Milagros. Both Milagros and Rigoberto testified that appellant intentionally shot his gun at Milagros. Milagros and Rigoberto also testified that the bullet appellant fired at Milagros missed her and entered their home, thus satisfying the elements of improper discharge of a firearm at or into a habitation. Clearly all of the gun specifications relating to the above offenses were also supported by sufficient evidence.

{¶32} The jury's verdict was also not against the manifest weight of the evidence. Our function when reviewing the weight of the evidence is to determine whether the greater amount of credible evidence supports the verdict. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387. In order to undertake this review, we must sit as a "thirteenth juror" and review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses, and determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice. *Id.*, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175. If we find that the fact finder clearly lost its way, we must reverse the conviction and order a new trial. *Id.* On the other hand, we will not reverse a conviction so long as the prosecution presented substantial evidence for a reasonable trier of fact to

conclude that all of the essential elements of the offense were established beyond a reasonable doubt. *State v. Getsy* (1998), 84 Ohio St.3d 180, 193-194; *State v. Eley* (1978), 56 Ohio St.2d 169, syllabus. In conducting our review, we are guided by the presumption that the jury "is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co. v. Cleveland* (1984), 10 Ohio St.3d 77, 80.

{¶33} Appellant's contentions herein generally relate to the credibility of the state's witnesses, particularly Redman and Banks. Appellant contends that Redman and Banks are felons and only belatedly came forward to accuse appellant in order to obtain "deals" with the state regarding their own unrelated criminal cases. Appellant points out that both Redman and Banks, in fact, received very favorable sentences for their crimes after cooperating with the prosecution in the present case. Redman received a recommendation from the state for community control after pleading guilty to a lesser-included offense from an aggravated robbery charge, while Banks avoided being bound over to adult court for a robbery offense. Although we agree that both Redman and Banks received favorable recommendations in their respective cases in exchange for testimony against appellant in the present case, and such favorable recommendations could provide incentive for defendants with pending charges to fabricate testimony to obtain a favorable recommendation, appellant has presented no reason for us to second-guess the credibility determinations by the jury. Appellant fails to identify inconsistencies in either of their testimonies, and the testimonies of Banks and Redman are consistent with each other's testimony and that of others. In sum, this court is simply without any reason to find the jury clearly lost its way and created a manifest miscarriage of justice in this respect.

{¶34} Appellant also contends that Rigoberto's statement at the time he identified appellant from a photograph array was equivocal because he stated to police that appellant merely "looks like" the shooter. However, Rigoberto testified that, after seeing appellant in person at trial, instead of in a small black and white photograph, he was 100 percent certain that appellant was the shooter. Furthermore, as the state points out, Rigoberto's uncertainty at the time of his photographic identification may have also been interpreted by the jury as demonstrating Rigoberto's careful and conscientious consideration. Again, we cannot say that the jury lost its way if, in fact, it relied upon Rigoberto's testimony. Therefore, for the above reasons, we find the jury's verdict was based upon sufficient evidence and was not against the manifest weight of the evidence. Appellant's first, second, and third assignments of error are overruled.

{¶35} Accordingly, appellant's first, second, and third assignments of error are overruled, and the judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

McGRATH, P.J., and BRYANT, J., concur.

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IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CRIMINAL DIVISION

State of Ohio, 55982109

TERMINATED NO. 3 BY: JD

Plaintiff,

-vs-

Case No. 06CR-10-7615

Mentae Humphrey,

Judge Fair

Defendant

**JUDGMENT ENTRY**  
(Prison Imposed)

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2007 SEP 19 PM 3:50  
CLERK OF COURTS

On September 11, 2007, the State of Ohio was represented by Prosecuting Attorney Jeff Rogers, and the Defendant was represented by Attorney Sean Boyle. The case was tried by a jury which returned a verdict finding the Defendant guilty of the following offenses(s), to wit: **MURDER WITH A FIREARM SPECIFICATION**, Count Two of the indictment, a violation of R.C. 2903.02, and a Felony of the First Degree; **AGGRAVATED ROBBERY WITH A FIREARM SPECIFICATION**, Count Three of the indictment, a violation of R.C. 2911.01, and a Felony of the First Degree; **ATTEMPTED MURDER WITH A FIREARM SPECIFICATION**, Count Four of the indictment, a violation of R.C. 2923.02 as it relates to 2903.02, and a Felony of the First Degree; **IMPROPERLY DISCHARGING A FIREARM AT OR INTO A HABITATION OR SCHOOL SAFETY ZONE WITH A FIREARM SPECIFICATION**, Count Five of the indictment, a violation of R.C. 2923.61, and a Felony of the Second Degree.

On September 14, 2007, a sentencing hearing was held pursuant to R.C. 2929.19. The State of Ohio was represented by Prosecuting Attorney Jeff Rogers and the Defendant was represented by Attorney Sean Boyle. The Prosecuting Attorney and the Defendant's Attorney did not recommend a sentence.

The Court afforded counsel an opportunity to speak on behalf of the Defendant and

addresses the Defendant personally, afford the Defendant an opportunity to make a <sup>559821</sup> statement on the Defendant's own behalf in the form of mitigation, and to present information regarding the existence or non-existence of the factors the Court has considered and weighed.

The Court has considered the purposes and principles of sentencing set forth in R.C. 2929.11 and the factors set forth in R.C. 2929.12, and the Court stated on the record its reasons for imposing this sentence. In addition, the Court has weighed the factors as set forth in the applicable provisions of R.C. 2929.13 and R.C. 2929.14. The Court further finds that a prison term is mandatory pursuant to R.C. 2929.13(F).

The Court hereby imposes the following sentence: **FIFTEEN (15) YEARS TO LIFE DETERMINATE SENTENCE, WITH A THREE (3) YEAR GUN SPECIFICATION** to be served **CONSECUTIVE WITH RESPECT TO COUNT TWO; COUNT THREE TO MERGE WITH COUNT TWO; EIGHT (8) YEARS WITH RESPECT TO COUNT FOUR** to be served **CONSECUTIVE TO COUNT TWO; COUNT FIVE TO MERGE WITH COUNT FOUR; ALL GUN SPECIFICATIONS TO MERGE TO COUNT TWO** and are to be served at the **OHIO DEPARTMENT OF REHABILITATION AND CORRECTIONS**.

After imposing sentence, the Court gave its finding and stated its reasons for the sentence as required by R.C. 2929.19(B)(2)(a)(b) and (c)(d) and (e).

The Defendant was further notified of his/her right to appeal as required by Criminal Rule 32(A)(2).

The Court has considered the Defendant's present and future ability to pay a fine and financial sanction and does, pursuant to R.C. 2929.18, hereby render judgment for the following fine and/or financial sanctions: **Court Costs - Four Hundred Sixty Nine Dollars (\$469.00)**.

The total fine and/or financial sanction judgment is **Four Hundred Sixty Nine Dollars (\$469.00)**; said fine and/or financial sanction to be paid through the Clerk of Courts office.

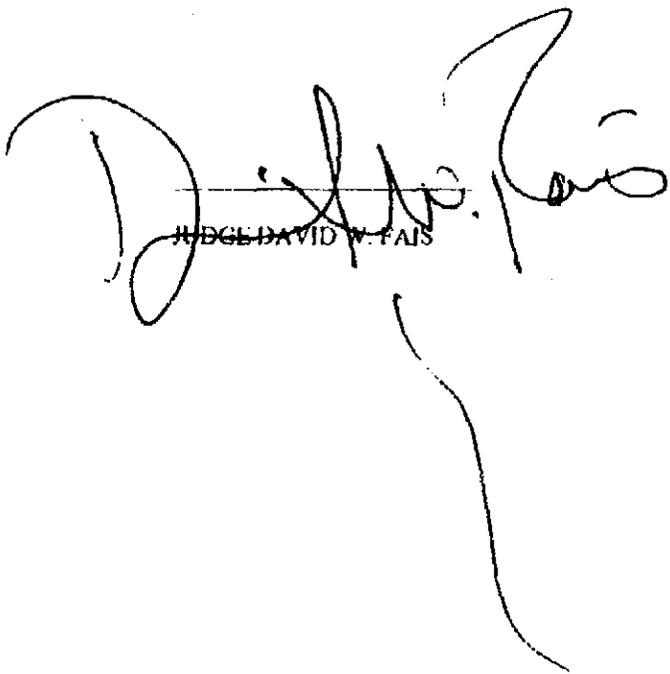
After the imposition of sentence, the Court notified the Defendant, orally and in writing, that the Defendant shall be subject to a period of mandatory post-release control pursuant to R.C. 2929.19(B)(3)(c)(d) and (e).

Therefore, the Defendant shall be subject to a **mandatory** period of post release control for five (5) years after the Defendant is released from prison.

55982111

IF THE DEFENDANT VIOLATES POST-RELEASE CONTROL SUPERVISION OR ANY CONDITION THEREOF, THE ADULT PAROLE AUTHORITY MAY IMPOSE A PRISON TERM, AS PART OF THE SENTENCE, OF UP TO NINE (9) MONTHS, WITH A MAXIMUM FOR REPEATED VIOLATIONS OF FIFTY PERCENT (50%) OF THE STATED PRISON TERM. IF THE DEFENDANT COMMITS A NEW FELONY WHILE SUBJECT TO POST-RELEASE CONTROL, THE DEFENDANT MAY BE SENT TO PRISON FOR THE REMAINING POST-RELEASE CONTROL PERIOD OR TWELVE (12) MONTHS, WHICHEVER IS GREATER. THIS PRISON TERM SHALL BE SERVED CONSECUTIVELY TO ANY PRISON TERM IMPOSED FOR THE NEW FELONY OF WHICH THE DEFENDANT IS CONVICTED.

The Court finds that the Defendant has -431- days of jail credit and hereby certifies the time to the Ohio Department of Corrections. The Defendant is to receive jail time credit for all additional jail time served while awaiting transportation to the institution from the date of the imposition of this sentence.



JUDGE DAVID W. FAIS