

IN THE SUPREME COURT OF OHIO

09-0554

STATE OF OHIO,

Case No. _____

Plaintiff-Appellee,

On Appeal from the Cuyahoga County
County Court of Appeals
Eighth Appellate District

vs.

C.A. Case No. 90789

Jamil Abdul-Shabazz,

Defendant-Appellant.

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT Jamil Abdul-Shabazz

Jamil Abdul-Shabazz 541-031
NAME AND NUMBER

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

'The case against Defendant-Appellant Mr. II Jamil Abdul Shabazz (Jamil Shabazz Abdul) is of great interest because it deals with the 5 amendment and 14 amendment of the constitution. The state violated the Defendant-Appellant rights to a fair trial when they purposely change Defendant-Appellant name from Jamil Abdul Shabazz to (Jamil Shabazz-Abdul) for know apparent reason but to deceive the potential jurist into believing that the Defendant-Appellant was of Islamic faith therefore making it impossible for the jurist to reach conscious judgement on the facts of the case without being bias due the existing war against islamic extremist abroad and here in America. Its a known fact that (Abdul) is a Muslim name and not a common American name, the jurist were never ask if they would have a problem if a individual charge with a serious crime could deal with the facts and not stereotype one base on name, religion, or color therefore Defendant-Appellant feels his constitutional rights were violated. The question is was this a malicious act by the Cuyahoga County prosector office if not then why was Defendant-Appellant old name used Garrett S. Brandon when the Defendant-Appellant name has been change since 1996. The state would have the jury believe that alais were given in this case and there wasnt, therefore is a strong possiblity the jurist could assme the defendant-appellant had a prior record, there was know mention by the state or the defendant-appellant court appointed attorney that defendant appellant legally change his name and this should of been stated once jury was told about the name Garrett S. Brandon, this issue

as well as the others could fall under violation of Defendant
6 amendment rights to assistance of good counsel the constitution
guarantees even a indigent individual the right to effective
assistance to counsel. The Defendant-Appellant doesnt feel
that he recieve a fair trial without prejudice and trickery
and bias and discrimination by the state or did Defendant-
Appellant receive effective assistance of counsel, in these
instances, the 5#, 6#, and 14# Constitutional Amendment rights
where violated making impossible for any individual to recieve
the fairness this Country was built on therefore this case
should be heard by the Supreme Court so that the Constitution
that is suppose to protect everybody who is a citizen of
United States of America receive the fairness under the law
like everyone else despite the color, belief, or wealth status
or lack of. There is another issue of concern in this case
that may effect others, and this issue falls under lack of
evidence. The test which is to be applied in questions of
sufficiency of the evidence differs from those in questions
of manifest weight of the evidence. That test to be applied
to questions of sufficiency of the evdience is, "After viewing
the evidence in the light most favorable to the State, could
a reasonable trier of fact find that the essential elements
of the crime were proven beyond a reasonable doubt!" The
Defendant-appellant and his court appointed attorneys felt
the evidence wasnt sufficiency enough therefore a Motion for
Acquittal pursuant to rule 29 of the Ohio rules of Criminal
Procedure was made at closing of the States case in chief
and was denied, the state error in this decision Defendant
Appellant feels violating his Constitutional rights.

STATEMENT OF THE CASE AND THE FACTS

Defendant-Appellant, Jamil Abdul Shabazz (Jamil Shabazz Abdul) was a member of a social fraternity called the Mad Dogs which originated at Central State University.(Tr. p.308). The organization is a social group,(Tr.p.306-307). On good friday since 2000 the brothers would hold a annual event called a Ball to raise money for charity. On April 6, 2007, the Ball was held in Cleveland,Ohio at club called "The Mirage" in the flats (Tr.p.211 a number of individuals attended the Ball. Among the many who attended was the decease Gregory Rodgers(Gromo), Ted Carter, William Green(Creeper), and Dwayne Saunders(Diamond),and a Dale Beckett along with Defendant-Appellant, Jamil Abdul Shabazz (Jamil Shabazz Abdul) who was also known as Garrett Brandon 1988 before legally changing his name in 1996. (Tr.p.212). All of the persons mentioned above left the Ball along with other members an friends at about 2:30am-3:00am and was going to Ted Carters Condo (Tr.p212) most of the brothers who were from out of town was stay ing there for the night. William Green and Gregory Rodgers who rode together along with Dwayne Saunders was ask not to come over afterwards if they were going to bring Gregory Rodgers because he had just got into a altercation with William Green at the club plus he had call Ted Carter "bitches" every chance he got see (Charles Gaston) Tr.testimony and (Dale Beckett). William Green ignored Mr.Carters plea and him and Mr.Rodgers and Mr.Saunders came to the Condo anyway and Mr. Carter and Mr.Rodgers had words Mr.Carter told Mr.Rodgers to leave.(Tr.p212). It is alleged that Defendant-Appellant, Jamil Abdul Shabazz (Jamil Shabazz-Abdul)

became involved because he and Mr. Rodgers were good friends the Defendant-Appellant tried to calm Mr. Rodgers down telling him to be nice and kiss him on the forehead while having there arm around one another. Its alleged that Defendant-Appellant push the decease Mr. Gregory Rodgers down some steps into the living room of the condominium. (Tr.p.213). It is further allege that Mr. Shabazz (Abdul) went to his truck (Tr.p.213) and returned with a gun (Tr.p.314) it is also allege that Mr. Shabazz (Abdul) put the gun to the head of Mr. Gregory Rodgers and pulled the trigger (Tr.p.213-214). When EMS arrived at 421am the victim Mr. Gregory Rodgers (Gromo) was dead. (Tr.p.215). Its a known fact that EMS was not called until 45 mins after the allege incident why? the Coroner-Dr. Erica Armstrong testified for the state saying Mr. Rodgers had a minimum of 11-12 drinks and cocaine marijuana was found in his system at the time of death. Mr. Rodger had a blood-alcohol level was 0.23-0.31 (legal limit is 0.08) and the gun was anywhere from 1-12 inches away from Mr. Rodgers head, but there was know evidence of a contact wound and the "Homicide" ruling was made by the coroner because the Detective inform her to make that ruling, she stated she could ^{not} tell if it was a accident or Homicide it is a known fact yhat law enforce ment officers can be bias in some instances, and in this case they were because they were lied to by there key witness William Green that the Defendant-Appellant had done this before in 1988 and that he is a Muslim making the police bias toward Mr. Shabazz (Abdul). There is new evidence by way of a deposition that clears Mr. Shabazz (Abdul) then Garrett Brandon of any wrong doing in the 1988 case. Trace Evidence- Ms. Lisa Przepyszny stated there

was gunshot residue on both shoulders of Mr. Rodgers shirt, she stated gunshot residue can be transfer, she was the person who folded Mr. Rodgers shirt and put it in a bag without first testing for residue (potentially destroying the sample). Mr. William Green- had multiple contradictions between his written statement and oral testimony. Mr. Green, Mr. Saunders, Mr. Rodgers rode to the "Mirageclub" together and the afterwards to Ted Carter home Mr. Green and the decease Mr. Rodgers got in a fight at the club before leaving and was told by Mr. Carter not to come by his place because the names Mr. Rodgers was calling him and the fact they dont get alone. Mr. Green brung Mr. Rodgers anyway along with Mr. Saunders just to start trouble. Know one at the party seen Mr. Rodgers hurt after allegely being push down the stairs as Mr. Green claims Defendant-Appellant did, Mr. Green also stated the Defendant-Appellant call him and stated it was merely a small accident. Its also known fact he left after the incident with Mr. Saunders without waiting on the EMS or the Police. Mr. Ted Carter contradicts William Green Testimony, he said Mr. Dale Becket was on the first floor when the incident happen, verifies that ther was no streetlight outside of the Condo it was pitch black at the time Defendant-Appellant allegely went to his truck so there was no way anyone could of seen him and that he never heard the outside door open or close. Also heard what sounded like an elbow hitting the wall, and then a shot, testify that Defendant-Appellant gave Mr. Rodgers a kiss on the forehead in the kitchen trying to calm him down and told him he love him. Sgt. Nathan Wilson- testified that a guncan be carried around with a bullet in the chamber(???). Mr. Charles Gaston- clearly had a

agenda he was not present at Ted Carter home during the incident but said he did break up a fight between Mr.Green and Mr.Rodgers at the "Mirage club" and that the bartender did stop the drinks of Mr. Rodgers due his actions in the club. Mr.Gaston claims Defendant-Appellant call him and stated it was a accident. Also stated he didnt know Defendant-Appellant long, but him and the decease Mr.Rodgers were best friends and seen each other daily. Mr.Dwayne Saunders- has a criminal record said he loves Mr.Rodger talk to him everyday, they were together the entire night of incident, claims that he only had two beers and that Mr.Rodgers wasnt drunk or high. Claims he was tired and was laying down on on first floor of Mr.Carter condo, claims that Mr.Rodgers only had a contact wound (contradicts coroners): Mr.Saunders could'nt have seen Defendant-Appellant tell Mr.Rodgers "I love you bro" from where he was allegely seated on the first floor. He spent the night a William Green and had plenty time to get the stories striaght, claims the driveway was illuminated, could^{nt} of seen the driveway and where Defendant-Appellant car was parked from where he places himself on the first floor. Also claims that he did not notice the gun until after the shooting, said he thought he heard a shot hit the wall, claim he didnt know how to call 911 in Cleveland said he put his boots on and ran out the house but claims he loves Mr.Rodgers. Mr.Saunders said he call Mr.Green once outside, but Mr.Green said they both were right there. Mr. Saunders didnt come forward until September 2007 the incident happen in April 2007 and Mr. Green waited Five days before he came forward. Know one testify that there was any long term orshort term promblem between Defendant-Appellant and the decease Mr. Rodgers so were is the motive, isnt it more likly that this

was an accident, as opposed to a murder with prior calculation and design in front of 35-40 people.

Defendant-Appellant, Jamil Abdul Shabazz (Jamil Shabazz Abdul) was arrested in Toledo, Ohio on April 12, 2007 and transported to Cuyahoga County. (Tr.p.535 and 537). On April 26, 2007, the Defendant-Appellant was indicted (without a preliminary hearing) on charges of Aggravated Murder. Defendant-Appellant was arraigned on April 30, 2007. Following pretrials, jury selection began on November 13, 2007, trial commenced on November 14, 2007. ON November 19, 2007 the jury returned a verdict of guilty of a lesser included offense of Murder, in violation of Ohio R.C. 2903.02. with a firearm specification. (Tr.p.715-716) The repeated violent offender specification and the prior conviction specification were bifurcated.(Tr.p.722). Defendant-Appellant waived a jury on these issues. On November 28, 2007 a hearing was held on both of these specification, the court found the Defendant-Appellant guilty on both specification. (Tr.p 724). The court proceeded to sentencing, and sentenced Defendant-Appellant to a term of fifteen years to life on the base offense and three years consecutive and prior to the fifteen year sentence on the firearm specification. Defendant is now before this Honorable Court appealing his conviction as a matter of right.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW I: Defendant-Appellant was not afforded effective assistance of counsel when defense counsel failed to question prospective jurors about would they be bias towards a individual of Islamic faith.

The question was never ask so there isnt a clear answer, but in light of the war and how Muslims are stereotyped for practicing a belief that is supposed to be practice freely without bias and is protected under Constitution of United States First Amendment the is a strong possibility that bias existed. It is a well establish principal under th six amendment of the Constitution of United States of America, that a person accused of a crime no matter if indigent is entitled to effective assistance of counsel. Gideon v Wainwright 372.U.S. 335 (1963) also Strickland v Washington 466 U.S. 668 (1984). To prove that a Defendant-Appellant has been prejudice by counsel deficient performance the Defendant-Appellant must prove that there exist a reasonable probability that were it not for counsel error, the results of the trial would have been different in the Defendant-Appellant case the state key witness William Green extensive criminal record was not reveal to jury during his trial testimony therefore making him seem creditable tothe jury this was a act soley to blame on counsel State v Bradley (1989) 42 Ohio st 3d 136, 538 N.E. 2d 373. The court has held counsel performance will will not be deemed ineffective unless and until counsel performance is proved to have fallen below and objective standard of reasonable representation and therefore prejudice arises from counsel performance. In this case prejudice arose when Defendant-

Appellant asking for new representation on September 24, 2007 the trial was postpone until November 14, 2007. The reason for Defendant-Appellant asking for the new representation was due to court appointed attorney withholding evidence causing a conflict in interest. A review of the voir dire conducted by defense counsel disclosed that no inquiry was made of the perspective twenty-two jurors concerning their feelings towards a member or individual of Islamic faith.(Tr.p.21-199). This is particularly bothersome in light of the tragic events September 11. Defendant Appellant name itself would lead many people to the assumption he is a Muslim, especially when the court took it upon themselves to switch Defendant-Appellant's name from being Jamil Abdul Shabazz to Jamil Shabazz Abdul. This act Defendant-Appellant feels was of malicious intent on the Cuyahoga County Prosecutor part so the jurist could form a bias opinion before hearing the evidence, it is possible that a jurist could of had a love one serving this great country we live in and also could of lost a love one in the war, therefore the question should of been ask would anyone of the jurist be bias base on the Defendant-Appellant faith and since it wasnt there is a strong possibility the Defendant-Appellant did not recieve a fair trial violating his "due process" rights that are suppose to be protected under the Constitutions of United States of America.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

PROPOSITION OF LAW II. The trial court error in denying Defendant-Appellant's "Motion for Acquittal" pursuant to criminal rule 29 of the Ohio rules of Procedure where evidence is not sufficient to support the conviction.

The test for reviewing the question of sufficiency of the evidence is set forth in State v Jenks (1991) 61 Ohio st. 3d 259, 574 N.E. 2d 492. Proceeding to consider the proper standard of Appellate review when the evidence is circumstantial, we conclude that relevant inquiry on appeal is whether any reasonable trier of fact should have found the Defendant guilty beyond a reasonable doubt. State v Eley (1978) 56 Ohio st 2d 169, 171, 383 N.E. 2d 132, 134. thus reviewing both weight and sufficiency of the evidence, the same test is applied. The verdict will not be disturbed unless the appellate court finds that reasonable minds without prejudice could reach this conclusion of guilty. After viewing the evidence in light most favorable to the prosecution whether any reasonable minds would have found the essential elements of guilty proven beyond a reasonable doubt. Jackson v Virginia 443 U.S. 307 at 319 (1979). the test which is to be applied in this case is the question of sufficiency of the evidence, differs from those in question of manifest weight of the evidence. Counsel for Defendant-Appellant Jamil Abdul Shabazz (Jamil Shabazz Abdul) made a "Motion for Acquittal" pursuant to rule 29 of Ohio rules of criminal procedure at the closing of the State's case in chief (Tr.p. 571-572) defense counsel argued that there were numerous material inconsistencies in the testimony of the State's two key alleged eyewitnesses.

who have extensive criminal records. Thus the prosecution had not proven its case beyond a reasonable doubt. Counsel renewed its "Motion for Acquittal" at the conclusion of the defense's case (Tr.p.620). In both instances Defendant-Appellant's motion was denied (Tr.p.573 and 621). Criminal rule 29 (A) provides that the court on motion of a defendant or on its own motion, after the evidence on either side is closed, shall order the entry of a judgement of acquittal of one or more offense charged in the indictment, or complaint, if the evidence is insufficient to sustain a conviction of such offense or offenses in the case at bar, it appears that the volume of the testimony put forth by the prosecutor simply overwhelmed the jury. However the state produced only two allege eyewitnesses who stories are contradicting, not withstanding the fact that there were 25-30 people present at the time of the incident. When Gregory Rodgers incident occur(Tr.p374 and 583) there was another eye-witness Mr. Dale Beckett (Tr.p.586) who disputes along with Ted Carter, the testimony of William Green and Dwayne Saunders (Tr.p.315 and 497). Mr.Beckett testified that he seen the whole incident and state the following, Defendant-Appellant and Mr. Rodgers were standing there talking with there arms around each other not arguing or anything (Tr.p.586) he Mr. Beckett also said that a gun fell from a jacket pocket of the coat of Mr.Rodgers (Tr.p.587) and Defendant-Appellant pick it up off the floor before Mr. Rodgers did and ask Mr Rodgers what is this "I hope this isnt for anyone" Mr.Rodgers was trying to put on his jacket his arm swung up and hit the Defendant-Appellant hand they fell back against the wall down two steps and the gun when off. (Tr.p.588). Mr. Beckett then holler for

someone to call (911) Mr. Beckett said he holler I seen the whole thing it was a accident.(Tr.p.588). In addition to the fact that most if not all of the individual present at Ted Carters Condominuim had been drinking all night, there was strong odor of marijuana in the air when the police arrived at 4:21am(Tr.p.352) and (Tr.p.360) due to these accounts of what happen Ohio R.C.2901.05 places the burden of establishing every essential element of the offense charged upon the state. In order to find the accused guilty of Murder under Ohio R.C. 2903.02, it is the duty of the state to prove that Defendant-Appellant purposely with specific intention cause the death of the decease Mr.Gregory Rodgers (TR.p.636-638) there is to much conflicting testimony by states key witnesses all ~~have~~ claimed to have loved the decease therefore the question remains did Defendant-Appellant have the requisite purpose, or intent, necessary to be found guilty of Murder, for all the foregoing reason the conviction of Defendant-Appellant Jamil Abdul Shabazz (Jamil Shabazz Abdul) should be reversed.

PROPOSITION OF LAW

PROPOSITION OF LAW I: Defendant-Appellant was not afforded effective assistance of counsel when defense counsel failed to ask prospective jurist would they be bias toward a individual who practice the Islamic faith.

PROPOSITION OF LAW II: The trial court error in denying Defendant-Appellant's "Motion for Acquittal" where evidence is not sufficient to support conviction.

CONCLUSION

Mr. Jamil Abdul-Shabazz
SIGNATURE

Jamil Abdul-Shabazz 541-031
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DEFENDANT-APPELLANT, **PRO SE**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum in Support of Jurisdiction was forwarded by regular U.S. Mail to Mr. William Mason, Prosecuting Attorney, Cuyahoga County, 1200 Ontario street, Cleveland, Ohio 44113, this 23 day of March, 2009.

Mr. Jamil Abdul-Shabazz
SIGNATURE

Jamil Abdul-Shabazz 541-031
NAME AND NUMBER

DEFENDANT-APPELLANT, PRO SE

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. _____
Plaintiff-Appellee,	:	
	:	On Appeal from the <u>Cuyahoga</u>
vs.	:	County Court of Appeals
	:	<u>Eighth</u> Appellate District
<u>Jamil Abdul-Shabazz,</u>	:	
	:	C.A. Case No. 90789
Defendant-Appellant.	:	

APPENDIX TO

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT Jamil Abdul-Shabazz

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 90789

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

JAMILL SHABAZZ ABDUL

DEFENDANT-APPELLANT

**JUDGMENT:
AFFIRMED**

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CR-495551

BEFORE: Blackmon, J., McMonagle, P.J., and Boyle, J.

RELEASED: January 22, 2009

JOURNALIZED: FEB 1 1 2009

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PATRICIA ANN BLACKMON, J.:

Appellant Jamill Shabazz Abdul¹ appeals his conviction and assigns the following errors for our review:

“I. Appellant was not afforded effective assistance of counsel when defense counsel failed to inquire concerning prospective jurors bias toward members of the Muslim faith.”

“II. The trial court erred in denying appellant’s motion for acquittal where evidence is not sufficient to support conviction.”

Having reviewed the record and pertinent law, we affirm Shabazz Abdul’s conviction. The apposite facts follow.

On April 26, 2007, a Cuyahoga County Grand Jury indicted Shabazz Abdul on one count of aggravated murder. The indictment included a three-year firearm specification, notice of prior conviction, and repeat violent offender specification.

On November 13, 2007, Shabazz Abdul executed a jury waiver as to the notice of prior conviction and repeat violent offender specification. On that same

¹Although the lower court’s record indicates the spelling of appellant’s first name as “Jamill,” in appellant’s pro se brief to this court, he spells his first name as “Jamil,” which brief was sua sponte stricken from the record and is not a part of this opinion. Jamill Shabazz Abdul is also referred to in this opinion as Brandon.

date, a jury trial commenced on the remaining charge of aggravated murder with a three-year firearm specification attached.

Jury Trial

At trial, the evidence established that Shabazz Abdul is a member of a social organization or fraternity known as the "Mad Dogs," which originated on the campus of Central State University in Wilberforce, Ohio. The members joined the organization while attending Central State University.

Each year, on Good Friday, the members host a party called the Mad Dog Ball. The ball is held in a different Ohio city each year. In 2007, the Mad Dog Ball was held in Cleveland, Ohio at the Mirage Night Club; those in attendance included Shabazz Abdul, Gregory Rodgers, William Green, Theodore Carter, Charles Gatson, Dwayne Saunders and Dale Becket.

At trial, the State presented the testimony of 13 witnesses including William Green, who testified that after leaving the 2007 Mad Dog Ball, he proceeded to an after-hour party at the home of fellow Mad Dog member, Theodore Carter. Green testified that fellow members Dwayne Saunders and the victim, Gregory Rodgers, traveled with him to Carter's home.

Green testified that he observed Carter and Rodgers talking. Rodgers whispered something to Carter, who then stated "well, you got to get out of my

house." Rodgers agreed to leave, began using profanity, and proceeded downstairs towards the living room.

Because Rodgers had traveled with Green to Carter's home, he also decided to leave. As Green walked downstairs towards the living room, other guests indicated that Shabazz Abdul pushed Rodgers down the steps. Green observed Shabazz Abdul exit the home through the back door and re-enter the home a few moments later.

When Shabazz Abdul re-entered the home, he had a small chrome-plated semi-automatic pistol in his hand. Shabazz Abdul cocked the gun, rushed up, placed the gun to Rodgers' head and pulled the trigger and then he calmly walked back up the stairs.

As Shabazz Abdul walked up the stairs, he turned around with the gun pointed at Green. As Shabazz Abdul continued to walk up the stairs, he stated: "I just killed Gromo. I'm killer Casy. Anybody else want some?"²

Green testified about the aftermath of the shooting as follows:

Q. Did you hear from the Defendant after that?

A. Yes.

Q. And how did you hear from him?

²Tr. 318.

A. He called me.

Q. And what if anything did he say at that time?

A. He seemed to be very, he seemed to be very remorseful and panic stricken himself, at this point, at which he said he didn't know if he should go kill himself. He said, what should I do, he said, just go kill myself? I told him, no, don't do that. He should turn himself in.

Q. Did he say anything else to you?

A. And he tried to say that it was an accident. I tried to tell him, no, it wasn't no accident. He just kind of got a temper back, said, what, you snitching, you snitching? I said, no, because I was scared, myself, at that point, scared for myself and scared for my little six year old child. I don't know if he's going to double back to Cleveland, come try to kill me.

Q. Did the Defendant ever call you after that?

A. Yes.

Q. What, if anything, did he tell you at that time?

A. He said he was going to get a lawyer and turn himself in, to get everything straightened out.

Q. What did you say to him?

A. I told him that was the best thing he could do. He promised me he would turn himself in."³

³Tr. 320-321.

Theodore Carter testified that there were approximately 30 to 40 people present at his home for the after-hour party. The guests were socializing and having a good time.

During the course of the party, Rodgers called Carter a "bitch" and he asked Rodgers to leave. Rodgers agreed to leave, proceeded down the steps, but turned around, came back upstairs and stated: "You all are bitches."⁴ Rodgers proceeded downstairs with Shabazz Abdul following behind him.

A few moments later Carter heard a gun shot, went downstairs, and saw Rodgers slumped on the steps. Shabazz Abdul came up the stairs and stated that Rodgers was playing, because they were only blank shots.

Dwayne Saunders testified that he also attended the after-hour party at Carter's home. Saunders observed Shabazz Abdul kiss Rodgers, told him he loved him, and Rodgers responded that he loved Shabazz Abdul, but could not respect him for what he had done to him upstairs. Shabazz Abdul reminded Rodgers that he "messed" with guns, then Shabazz Abdul went out to his car.

Saunders testified as follows about the ensuing events:

"Q. Then what did you see happen?"

A. When he came back in, me and Gro [Rodgers] were standing there and Gro said, you didn't have to go get a gun for me

⁴Tr. 380.

did you? I don't know if he said, did you have to go get a gun or did you have to go get that for me? And, from that point, he came in.

Q. Who came in?

A. Brandon. And, that's when he shot him.

Q. Can you describe how he shot him?

A. Yeah. We were standing on the landing when Brandon came in, basically just walked like this, three steps. And, we was on the first level. And, I think Brandon might have walked up one, maybe two steps and in between the wall and Gro and pulled the trigger.⁹⁵

Shabazz Abdul shot Rodgers point blank on the left side of his head. A few days after the shooting, Shabazz Abdul contacted Saunders by phone. During their conversation, Shabazz Abdul claimed that the shooting was an accident and that he used blanks.

Dr. Erica Armstrong, a forensic pathologist with the Cuyahoga County Coroner's Office, testified that she performed the autopsy on Rodgers. Dr. Armstrong said the bullet entered Rodgers from the left side of his head and that the bullet had been fired from a distance of 12 inches or less.

⁹Tr. 497.

Dale Beckett, who testified for the defense, said that he was not a member of the Mad Dog organization, but he was invited to the ball by Shabazz Abdul, whom he has known for approximately 30 years.

While at the after-hour party, Beckett heard Carter tell Rodgers to leave his home, because Rodgers was being obnoxious. Beckett observed Shabazz Abdul and Rodgers standing on the stairway with their arms around each other. Beckett said that it appeared to him that as Rodgers was in the process of putting on his jacket, a gun fell to the ground.

Beckett testified about the shooting, as follows:

"A. It appeared to me like it came from that jacket. But, Shabazz, he seen the pistol and he said, man, what the hell is this? You don't need no gun for me. That's what it sounded like he said. I can't be exact, but it sounded like.

Q. This is Shabazz saying that to the victim?

A. To the victim. And as he went to put his jacket on, he put his hand through the arm and that's when I heard the gun go off. And, when the gun went off, he grabbed the side of his face and sat down on the step and he was rocking.

Q. Where was the gun when it went off; you see that?

A. The gun was in Shabazz's hands.

Q. How did he get shot then?

A. That, I don't know. It seemed to me when he put his jacket on, it hit his hand.

Q. Hit whose hands?

A. Actually, Shabazz's hand. He hit Shabazz's hand. That's what caused - - from my vantage point, that's what it looked like to me.***⁹⁶

On November 16, 2007, Shabazz Abdul requested a jury instruction on the lesser-included offenses of reckless homicide, negligent homicide, and involuntary manslaughter. The State requested a jury instruction on the lesser-included offense of murder. The trial court instructed the jury on aggravated murder, murder, reckless homicide, and negligent homicide.

On November 19, 2007, the jury found Shabazz Abdul guilty of murder with the three-year firearm specification attached. On November 28, 2007, the trial court found Shabazz Abdul guilty of the notice of prior conviction and repeat violent offender specifications. The trial court sentenced Shabazz Abdul to a prison term of 15 years to life for the murder charge and three years for the firearm specification. The trial court ordered consecutive sentences.

Motion for Acquittal

For ease of discussion, we will begin with the second assigned error. In the second assigned error, Shabazz Abdul argues the trial court erred in denying his

⁶Tr. 587-588.

motion for acquittal because the evidence was insufficient to support his conviction. We disagree.

The sufficiency of the evidence standard of review is set forth in *State v. Bridgeman*:⁷

“Pursuant to Criminal Rule 29(A), a court shall not order an entry of judgment of acquittal if the evidence is such that reasonable minds can reach different conclusions as to whether each material element of a crime has been proved beyond a reasonable doubt.”⁸

Bridgeman must be interpreted in light of the sufficiency test outlined in *State v. Jenks*,⁹ in which the Ohio Supreme Court held:

“An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence submitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt. 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. (*Jackson v. Virginia* [1979], 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560, followed.)”

⁷(1978), 55 Ohio St.2d 261, syllabus.

⁸See, also, *State v. Apanovitch* (1987), 33 Ohio St.3d 19, 23; *State v. Davis* (1988), 49 Ohio App.3d 109, 113.

⁹(1991), 61 Ohio St.3d 259, paragraph two of the syllabus.

After reviewing the evidence in a light most favorable to the State, we find that the evidence, if believed, could convince a rational trier of fact that the State had proven beyond a reasonable doubt each element of the charge of murder, namely that Shabazz Abdul, as a principle, purposely caused the death of Rodgers.

Two eye-witnesses, both members of the Mad Dog social organization, testified that they saw Shabazz Abdul exit the residence, re-enter after a few moments with a gun, and immediately shoot Rodgers in the head. Both Green and Saunders testified that Shabazz Abdul shot Rodgers at close range. In addition, Dr. Armstrong, a forensic pathologist, confirmed that Rodgers was shot in the head from a distance of less than 12 inches.

Consequently, viewing the evidence in the light most favorable to the State, we conclude that any rational trier of fact could have found that the State proved all of the essential elements of murder beyond a reasonable doubt. Thus, the trial court properly denied Shabazz Abdul's motion for acquittal. Accordingly, we overrule the second assigned error.

Ineffective Assistance of Counsel

In the first assigned error, Shabazz Abdul argues that his defense counsel was ineffective for failing to voir dire prospective jurors about possible bias towards people of the Muslim faith. We disagree.

We review a claim of ineffective assistance of counsel under the two-part test set forth in *Strickland v. Washington*.¹⁰ Under *Strickland*, a reviewing court will not deem counsel's performance ineffective unless a defendant can show his lawyer's performance fell below an objective standard of reasonable representation and that prejudice arose from the lawyer's deficient performance.¹¹ To show prejudice, a defendant must prove that, but for his lawyer's errors, a reasonable probability exists that the result of the proceedings would have been different.¹² Judicial scrutiny of a lawyer's performance must be highly deferential.¹³

In the instant case, Shabazz Abdul cites *State v. Atalla*,¹⁴ in support of his claim that defense counsel was ineffective for failing to voir dire prospective jurors about possible bias towards members of the Muslim faith. However, we find *Atalla* distinguishable from the instant case and Shabazz Abdul's reliance on it misplaced.

¹⁰(1984), 466 U.S. 668, 80 L.Ed.2d 674, 104 S.Ct. 2052.

¹¹*State v. Bradley* (1989), 42 Ohio St.3d 136, paragraph one of syllabus.

¹²*Id.* at paragraph two of syllabus.

¹³*State v. Sallie* (1998), 81 Ohio St.3d 673, 674.

¹⁴157 Ohio App.3d 698, 2004-Ohio-3414.

Contrary to Shabazz Abdul's representation, *Atalla* does not stand for the broad proposition that the failure to inquire about prospective jurors' religious biases renders trial counsel's assistance ineffective. Rather, the court addressed the specific issue of whether *Atalla's* defense counsel was ineffective for failing to object to the prosecutor's questions concerning his religion and ethnicity when it was done in such a way as to create bias among the entire jury pool. The court further found that defense counsel added to the error in continuing the same line of questioning in a manner which created bias and prejudice in the minds of the potential jurors.

Unlike the facts of *Atalla*, we find that defense counsel's decision not to draw attention to Shabazz Abdul's religion was a matter of trial strategy. Voir dire is largely a matter of strategy and tactics.¹⁵ Actions of defense counsel which might be considered sound trial strategy are to be presumed effective.¹⁶ As such, we conclude that trial counsel was not ineffective in choosing not to inquire about the prospective jurors' feelings about members of the Muslim faith. Accordingly, we overrule the second assigned error.

Judgment affirmed.

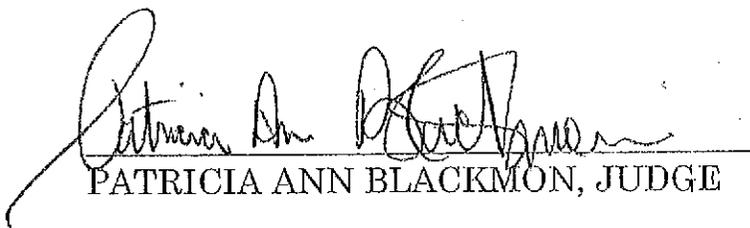
¹⁵*State v. Keith* (1997), 79 Ohio St.3d 514, 521.

¹⁶*State v. Rodgers*, 6th Dist. No. L-02-1089, 2004-Ohio-3795, citing *Strickland*, supra, at 687.

It is ordered that appellee recover of appellant its costs herein taxed.

It is ordered that a special mandate be sent to said court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



PATRICIA ANN BLACKMON, JUDGE

CHRISTINE T. MCMONAGLE, P.J., and
MELODY J. STEWART, J., CONCUR