

IN THE SUPREME COURT OF OHIO
2010

ORIGINAL

STATE OF OHIO,

Case No. 2009-2218

Plaintiff-Appellee,

On Appeal from the
Franklin County Court
of Appeals, Tenth
Appellate District

-vs-

TORRANCE PILGRIM,

Court of Appeals
Case No. 08AP-993

Defendant-Appellant.

MEMORANDUM OF PLAINTIFF-APPELLEE OPPOSING JURISDICTION

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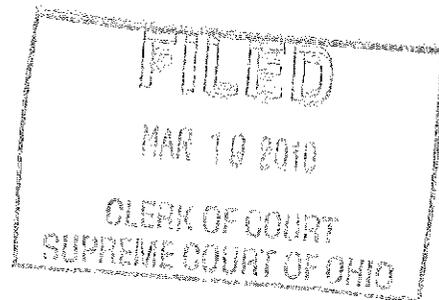
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EXPLANATION OF WHY THIS COURT SHOULD DECLINE JURISDICTION

None of defendant's propositions of law seek to resolve any conflict among the appellate districts or present any significant constitutional question. Instead, defendant asks this Court to apply well-settled law to the narrow facts of this case. All of the issues defendant raises have either been addressed by this Court before or have received uniform treatment from the appellate districts.

For example, defendant's first two propositions of law ask this Court to litigate matters that were either improperly raised or never raised below. Similarly, his third, fourth, sixth, seventh, and eighth propositions present poor vehicles for review since they challenge established legal doctrine in application only. Also, defendant's fifth proposition of law fails under this Court's settled invited-error precedent. Accordingly, the instant case does not present questions of such constitutional substance nor of such great public interest as would warrant further review by this Court. It is respectfully submitted that jurisdiction should be declined.

STATEMENT OF THE CASE AND FACTS

The State incorporates the procedural and factual history contained in the Tenth District's opinion. See *State v. Pilgrim*, 184 Ohio App.3d 675, 2009-Ohio-5357, ¶ 1-9.

RESPONSE TO FIRST AND SECOND PROPOSITIONS OF LAW:

A defendant must make clear the grounds upon which he challenges the submission of evidence pursuant to a warrantless search or seizure. The failure to adequately raise the basis of his challenge constitutes a waiver of that issue on appeal.

In his first and second propositions of law, defendant asks this Court to address Fourth Amendment claims that were never properly before the Tenth District. See ¶ 18-22. At trial, defendant challenged the "search" conducted "in the vicinity of [his] residence"; however, on direct appeal, he disputed the validity of the "investigatory stop." After correctly holding that the

former issue was waived and that the latter issue was not raised on appeal, the Tenth District proceeded to reject both claims anyway. ¶ 20-22. Now, defendant abandons his first two arguments and advances a third, arguing that pursuant to the United States Supreme Court's holding in *Arizona v. Gant* (2009), ___ U.S. ___, 129 S.Ct. 1710, "a search incident to a lawful arrest could not occur." (Memo. 9)

As defendant's arguments were not properly raised at trial or on direct appeal, they are certainly unsuitable for review in this Court. It is well-settled that a defendant "must make clear the grounds upon which he challenges the submission of evidence pursuant to a warrantless search or seizure" and failure to do so "constitutes a waiver of that issue on appeal." *City of Xenia v. Wallace* (1988), 37 Ohio St.3d 216, 219 (internal citations omitted). The "prosecutor cannot be expected to anticipate the specific legal and factual grounds upon which the defendant challenges the legality of a warrantless search." *City of Xenia v. Wallace* (1988), 37 Ohio St.3d 216, 219. Instead, "[t]he prosecutor must know the grounds of the challenge in order to prepare his case, and the court must know the grounds of the challenge in order to rule on evidentiary issues at the hearing and properly dispose of the merits." *Id.* (internal citation omitted).

This principle is consistent with Crim.R. 47, which requires that a suppression motion "state with particularity the grounds upon which it is made and shall set forth the relief or order sought. It shall be supported by a memorandum containing citations of authority, and may also be supported by an affidavit." Therefore, "the accused must state the motion's legal and factual bases with sufficient particularity to place the prosecutor and the court on notice of the issues to be decided." *State v. Shindler* (1994), 70 Ohio St.3d 54, at syllabus.

Because defendant's trial motion did not challenge the reliability of the informant or the search incident to his arrest, there is no evidence in the record substantiating or negating these

claims. Under plain-error analysis, an error must be an “obvious” defect in the trial proceedings. *State v. Barnes* (2002), 94 Ohio St.3d 21, 27. Moreover, the error must be such that, “but for the error, the outcome of the trial clearly would have been otherwise.” *State v. Long* (1978), 53 Ohio St.2d 91, paragraph two of the syllabus. Even if an error meets these conditions, “Crim.R. 52(B) states only that a reviewing court ‘may’ notice plain forfeited errors; a court is not obliged to correct them.” *Barnes*, 94 Ohio St.3d at 27. “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.” *Long*, 53 Ohio St.3d 91, paragraph three of the syllabus.

Nevertheless, defendant’s arguments fail on the merits. As the Tenth District noted,

Even if we were to consider defendant’s challenge to the lawfulness of the investigatory stop, it is without merit on this record. The state presented evidence at the suppression hearing that defendant matched the description of the suspect who reportedly had a gun in the West of Eastland Apartments complex shortly before Officer Shepard conducted his investigatory stop of defendant. It was dark at the time of the investigatory stop, the apartment complex had a higher than average amount of gun and drug activity, and defendant was alone and lurking behind some bushes when Officer Shepard observed him. Given the circumstances, Officer Shepard reasonably detained defendant to question him and to conduct a protective pat-down search of him for a weapon. *Mendoza*, 2009-Ohio-1182, 2009 WL 690204, at ¶ 12, citing *Pepper Pike v. Parker* (2001), 145 Ohio App.3d 17, 20, 761 N.E.2d 1069, citing *United States v. Cortez* (1981), 449 U.S. 411, 417, 101 S.Ct. 690, 66 L.Ed.2d 621 (“[e]ven facts that might be given an innocent construction will support the decision to detain an individual momentarily for questioning” as long as it is reasonable to infer from the totality of the circumstances that the individual may be involved in criminal activity); *Bobo*, 37 Ohio St.3d 177, 524 N.E.2d 489, paragraph two of the syllabus (“[w]here a police officer, during an investigative stop, has a reasonable suspicion that an individual is armed based on the totality of the circumstances, the officer may initiate a protective search for the safety of himself and others”).

Pilgrim, at ¶ 21.

The court did not address the search-incident-to-arrest exception because defendant never raised that exception on appeal.¹ Nevertheless, defendant's newest claim also fails on the merits since the Court in *Gant* narrowly held:

Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. When these justifications are absent, a search of an arrestee's vehicle will be unreasonable unless police obtain a warrant or show that another exception to the warrant requirement applies.

Gant, 129 U.S. at 1723-1724. In this case, however, there was no "vehicle" search, and unlike the defendant in *Gant*, defendant was not locked in the backseat of a police cruiser. Thus, there were still legitimate concerns for officer safety in this case. Accordingly, defendant's first and second propositions of law warrant no further review.

RESPONSE TO THIRD AND FOURTH PROPOSITIONS OF LAW:

The relevant inquiry in a sufficiency-of-the-evidence review 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. Under a manifest weight review, however, the reviewing court sits as a "thirteenth juror" and determines whether the jury clearly lost its way, creating such a miscarriage of justice that a new trial be ordered.

In his third and fourth propositions of law, defendant acknowledges the settled standards for sufficiency and manifest-weight challenges but contends that they were misapplied by the Tenth District. As explained below, this claim lacks merit and does not warrant review.

I.

In judging the sufficiency of the evidence, the appellate court "examine[s] the evidence admitted at trial to determine whether such evidence, if believed, would convince the average

¹ The United States Supreme Court decided *Gant* on April 21, 2009, while defendant's direct appeal was pending.

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." *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus, following *Jackson v. Virginia* (1979), 443 U.S. 307.

"This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Jackson*, 443 U.S. at 319. The standard of review for a Crim.R. 29 motion is identical to the standard used in testing the sufficiency of the evidence. *State v. Ready* (2001), 143 Ohio App.3d 748, 759.

Under a manifest weight review, a court of appeals sits as a "thirteenth juror" and, after "reviewing the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins* (1997), 78 Ohio St.3d 380, 387, quoting *State v. Martin* (1983), 20 Ohio App.3d 172, 175. Reversing a conviction as being against the manifest weight of the evidence should be reserved for only the most "exceptional case in which the evidence weighs heavily against the conviction." *Thompkins*, 78 Ohio St.3d at 387.

"[I]ndividual pieces of evidence, insufficient in themselves to prove a point, may in cumulation prove it. The sum of an evidentiary presentation may well be greater than its constituent parts." *Bourjaily v. United States* (1987), 483 U.S. 171, 179-80. "[A] piece of evidence, unreliable in isolation, may become quite probative when corroborated by other evidence." *Id.* at 180.

Moreover, circumstantial evidence alone can sustain a conviction, and evidence is not insufficient merely because there are no eyewitnesses. *State v. McKnight*, 107 Ohio St.3d 101, 2005-Ohio-6046, ¶75, citing *State v. Heinisch* (1990), 50 Ohio St.3d 231, 238. Indeed, circumstantial evidence can be just as persuasive, and in some cases more persuasive, than eyewitness testimony. *Jenks*, 61 Ohio St.3d at 272.

II.

First, defendant contends that the State's evidence did not establish constructive possession. This contention falls flat, however, given defendant's close proximity to the controlled substance, the crack already found in his possession, and his admitted cocaine abuse the night of the incident.

"Constructive possession exists when an individual knowingly exercises dominion and control over an object, even though that object may not be within his immediate physical possession." *State v. Saunders*, 10th Dist. No. 06AP-1234, 2007-Ohio-4450, at ¶11, citing *State v. Hankerson* (1982), 70 Ohio St.2d 87. "Circumstantial evidence alone may be sufficient to support the element of constructive possession." *Id.* While "mere presence" in the vicinity of illegal drugs is insufficient by itself to prove possession, this Court has held that "[t]he discovery of readily accessible drugs in close proximity to a person constitutes circumstantial evidence that the person was in constructive possession of the drugs." *State v. Stanley*, 10th Dist. No. 06AP-323, 2007-Ohio-2786, at ¶31 (internal citations omitted). "Simply stated, constructive possession can be inferred from a totality of the evidence where sufficient evidence, in addition to proximity, supports dominion or control over the contraband." *Id.*

The evidence adduced at trial proved far more than defendant's "mere presence" in the vicinity of the crack cocaine placed behind the bushes. Immediately after defendant walked out

from behind the bushes, Officer Shepard discovered a baggie of crack cocaine in defendant's pants pocket and a marijuana cigarette behind his ear. At trial, defendant admitted that the marijuana was laced with cocaine. Further, officers testified that the drugs behind the bushes looked as if they had been recently placed there not long before. Defendant also had a large quantity of drugs and money on him; both facts are indicative of drug trafficking. Moreover, defendant was an admitted crack addict. Even after two prior convictions for drug possession, defendant confessed to smoking crack shortly before his arrest and on a regular basis. That the drugs were found in a location where people would not frequently be present (i.e., behind the bushes) provides even more proof that defendant—and not someone else—was the source of the drugs, especially considering that defendant was alone when Shepard arrived at the scene. Therefore, based on the evidence, it is reasonable that defendant abandoned the drugs while hiding behind the bush.

III.

Second, defendant argues that his conviction “is based upon circumstantial evidence that is impermissibly based on inference upon inference.” (Memo) This assertion is misplaced, however, since “[a]lthough inferences cannot be built upon inferences, several conclusions may be drawn from the same set of facts.” *State v. Grant* (1993), 67 Ohio St.3d 465, 478 (citation reference omitted). “And it is equally proper that a series of facts or circumstances may be used as the basis for ultimate findings or inferences.” *Hurt v. Charles J. Rogers Transp. Co.* (1955), 164 Ohio St. 329, 334.

This Court has recognized that the rule relied on by defendant has “very limited application.” *Donaldson v. N. Trading Co.* (1992), 82 Ohio App.3d 476, 481, citing *Motorists Mut. Ins. Co. v. Hamilton Twp. Trustees* (1986), 28 Ohio St.3d 13. Because reasonable

inferences drawn from the evidence are an essential element of the deductive reasoning process by which most successful claims are proven, the rule against stacking inferences must be strictly limited to inferences drawn exclusively from other inferences. *Donaldson*, at 481. In fact, this Court noted the rule's "dangerous potential for subverting the fact-finding process and invading the sacred province of the jury." *Motorists Mut. Ins. Co.*, 28 Ohio St.3d at 17. "Even those courts that have preserved the rule have commented that it is too frequently misunderstood, or misused as a convenient means of excluding evidence regarded as too remote, speculative or uncertain to be of probative value." *Id.*, see also *Donaldson*, 82 Ohio App.3d at fn 1 ("Too often, the rule forbidding the stacking of one inference upon another is used as a substitute for analysis, concealing the real issue before the court.").

As such, the rule defendant relies on is inapplicable to the present case. Here, the evidence adduced at trial supported the ultimate conclusion that defendant knowingly possessed a controlled substance. Specifically, the jury heard that defendant—an admitted crack addict—stood directly overtop significant amounts of valuable crack cocaine that had been "recently" placed. This evidence was supported by defendant's own admission to owning the crack found in during the pat-down and smoking crack around the time of the incident.

Therefore, defendant's third and fourth propositions of law warrant no further review.

RESPONSE TO FIFTH PROPOSITION OF LAW:

A party is not permitted to take advantage of an error that he himself invited or induced the court to make.

Next, defendant alleges that the trial court abused its discretion by denying his pro se motion to dismiss for an alleged speedy-trial violation; however, defendant withdrew this motion at the conclusion of the September 26, 2008, suppression hearing. At that time, defendant's

attorney indicated that a number of defendant's pro se motions remained unaddressed and that defendant wished to withdraw them in order to restart the speedy trial clock.

Therefore, defendant's withdrawal of any pending motions constitute "invited error" and should not be reviewed by this Court. The invited error doctrine is a branch of the waiver doctrine, *Davis v. Wolfe* (2001), 92 Ohio St.3d 549, 552, and provides that "a party is not entitled to take advantage of an error that he himself invited or induced," *State ex rel. Kline v. Carroll*, 96 Ohio St.3d 404, 2002-Ohio-4849, ¶27. As defendant's own trial attorney realized, a motion to dismiss would have been meritless. If not invited, defense counsel forfeited all but plain error.

Regardless, as the Tenth District held, "defendant's right to a speedy trial was not violated." *Pilgrim*, at ¶ 49. The time to bring defendant to trial was extended by numerous tolling events. For example, on July 2, 2008, defendant requested discovery; a tolling event under R.C. 2945.72(E). See *State v. Brown*, 98 Ohio St.3d 121, 2002-Ohio-7040. Since the State provided discovery on July 21, 2008, the time to bring defendant to trial was extended by 19 days. Then, another 49 days passed between defendant's August 8, 2008, motion to suppress, and the September 26, 2008, suppression hearing. While defendant never agreed to a continuance during that period of time, his attorney did. See *State v. McBreen* (1978), 54 Ohio St.2d 315 (holding that an attorney may waive a defendant's right to a speedy trial even without his client's consent). Therefore, at a minimum, the time required to bring defendant to trial was extended by 68 days.

This calculation does not take into account the numerous tolling events occasioned by defendant's pro se motions. Defendant filed a number of frivolous motions during the time he was held—each of which caused undue delay and tolled the speedy trial clock. For instance, defendant filed a motion to produce bond, a premature notice of appeal, a motion for judgment, a

petition for writ of habeas corpus, and a motion for reconsideration . While the State chose not to respond to these motions, the speedy-trial statutes do “not require a showing that a motion caused delay before the running of speedy-trial time may be suspended.” *State v. Sanchez*, 110 Ohio St.3d 274, 2006-Ohio-4478, ¶24. “It is it the filing of the motion itself, the timing of which the defense can control, that provides the state with an extension.” *Id.* Thus, the pro se motions, by themselves, extended the time by which the State was required to bring defendant to trial.

Therefore, defendant’s fifth proposition of law warrants no further review.

RESPONSE TO SIXTH PROPOSITION OF LAW:

To succeed on a claim of ineffectiveness, a defendant must show (1) that his trial counsel acted incompetently and (2) that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.

In his sixth proposition of law, defendant reasserts his ineffective-assistance-of-counsel claim. Again, defendant does not dispute the applicable legal standard, only its application. Nevertheless, defendant cannot succeed on his claims.

To succeed on a claim of ineffectiveness, a defendant must satisfy a two-prong test. Initially, a defendant must show that his trial counsel acted incompetently. *Strickland v. Washington* (1984), 466 U.S. 668. In assessing such claims, “a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’” *Id.* at 689, quoting *Michel v. Louisiana* (1955), 350 U.S. 91, 101.

“There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way.” *Strickland*, 466 U.S. at 689. The question is whether counsel acted “outside the wide range of

professionally competent assistance.” *Id.* at 690. In assessing the competence of counsel, every effort must be made to avoid the distorting effects of hindsight. *Id.*

Even if a defendant shows that his counsel was incompetent, the defendant must then satisfy the second prong of the *Strickland* test. Under this “actual prejudice” prong, the defendant must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694.

Oftentimes, a claim of trial counsel ineffectiveness will be unreviewable on appeal because the appellate record is inadequate to determine whether counsel’s action was reasonable or to determine whether the defendant suffered actual prejudice. *United States v. Galloway* (C.A.10, 1995), 56 F.3d 1239, 1240 (en banc) (“Such claims brought on direct appeal are presumptively dismissible, and virtually all will be dismissed.”; “A factual record must be developed in and addressed by the district court in the first instance for effective review.”). No interlocutory remand will be allowed to develop the record. *Id.*

Ohio law similarly recognizes that error cannot be recognized on appeal unless the appellate record actually supports a finding of error. A defendant claiming error has the burden of proving that error by reference to matters in the appellate record. *Knapp v. Edwards Laboratories* (1980), 61 Ohio St.2d 197, 199. “[T]here must be sufficient basis in the record * * * upon which the court can decide that error.” *Hungler v. Cincinnati* (1986), 25 Ohio St.3d 338, 342 (emphasis sic).

As a general matter, the “failure to make objections does not constitute ineffective assistance of counsel per se, as that failure may be justified as a tactical decision.” *State v. Gumm* (1995), 73 Ohio St.3d 413, 428. Because objections tend to disrupt the flow of a trial, [and] are considered technical and bothersome by the fact-finder * * * competent counsel may reasonably

hesitate to object * * * .” *State v. Campbell* (1994), 69 Ohio St.3d 38, 53 (internal citation to treatise omitted). Thus, Appellant must overcome the presumption that trial counsel’s failure to object was a strategic and tactical decision. See *State v. Wright*, Portage App. No. 200-P-0128, 2002-Ohio-1432, at 5¶ (internal citations omitted).

First, defendant argues that his trial counsel was ineffective for not filing a motion to dismiss based on speedy trial grounds. However, when counsel’s alleged ineffectiveness involves the failure to pursue a motion, objection, or legal defense, the defendant must show that the motion “is meritorious,” and that there is a reasonable probability that the outcome would have been different if the motion had been granted. See *Kimmelman v. Morrison* (1986), 477 U.S. 365, 375; see, also, *State v. Santana* (2001), 90 Ohio St.3d 513.

Here, as explained in the State’s response to defendant’s fifth proposition of law, defendant cannot make either of these showings. As his trial counsel correctly noted, any speedy trial claim would have been meritless under R.C. 2945.72. Defendant’s trial counsel recognized this and attempted to explain the tolling effect of these motions to defendant. (Mtn. T. 105) Accordingly, since defendant cannot meet the threshold showing that his motion would have been “meritorious,” his argument is without merit.

Next, defendant argues that his attorney should have called five witnesses that defendant told him about prior to trial. However, nothing in the record reveals what these witnesses would have testified to, and it is impossible to discern how their presence would have changed the outcome of defendant’s case. As a result, the appellate record does not allow this Court to determine whether counsel acted unreasonably or whether the purported uncalled witnesses would have made any difference.

“Generally, counsel's decision whether to call a witness falls within the rubric of trial strategy and will not be second-guessed by a reviewing court.” *State v. Madison*, 10th Dist. No. 08AP-24, 2008-Ohio-5223, at ¶11, citing *State v. Treesh* (2001), 90 Ohio St.3d 460, 490. This Court refuses to consider such decisions as deficient performance without a showing of prejudice. *State v. Mathias*, 10th Dist. No. 06AP-1228, 2007-Ohio-6543, at ¶36. Specifically, the appellant must prove that the witness’ testimony “would have significantly assisted the defense and would have affected the outcome of the case.” *Id.*, citing *State v. Dennis*, 10th Dist. No. 04AP-595, 2005-Ohio-1530. “Otherwise, counsel’s failure to call a witness does not establish ineffective assistance.” *Id.*

Neither prejudice nor deficient performance can be established in this case since nothing in the record reveals what the purported witnesses would have testified to. “This type of vague speculation is insufficient to establish ineffective assistance of counsel.” *State v. Rippey*, 10th Dist. No. 08AP-248, 2008-Ohio-6680, ¶ 14, citing *State v. Bradley* (1989), 42 Ohio St.3d 136. Put differently, “[i]t is impossible for a court to determine on direct appeal from a criminal conviction whether counsel was ineffective in his representation where the allegation of ineffectiveness is based on facts dehors the record.” *State v. Medina*, 10th Dist. No. 05AP-664, 2006-Ohio-1648, ¶ 26. Accordingly, the record is devoid of proof that they would have significantly assisted the defense or affected the outcome of defendant’s case. Defendant’s trial counsel may have had legitimate tactical reasons for deciding not to call the purported witnesses.

Therefore, defendant’s sixth proposition of law warrants no further review.

RESPONSE TO SEVENTH AND EIGHTH PROPOSITIONS OF LAW:

When a claim of error is forfeited through lack of objection, the appellant must show plain error in order obtain appellate relief. An error will not rise to the level of plain error unless the outcome clearly would have been different but for the error.

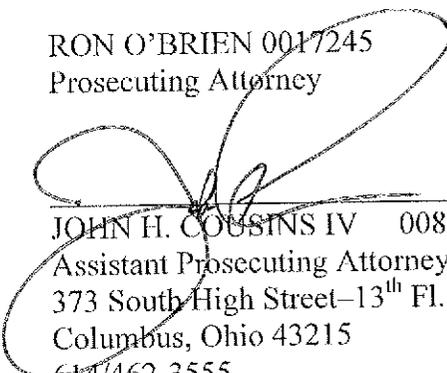
In his final two propositions of law, defendant argues matters that were not raised at trial. First, he claims that the prosecution “coached” Officer Burkey’s testimony, resulting in prosecutorial misconduct. Second, defendant contends that the court made improper comments to the jury, but does not state when these comments were ever made or how they prejudiced his case. As the Tenth District noted, neither of these claims are supported by the trial record. ¶ 64, 71. Accordingly, without a showing of prejudice, no “obvious defect” exists in this case. See *Barnes*, 94 Ohio St.3d at 27; Crim.R. 52(B). Further, defendant has not shown that, “but for the error, the outcome of the trial clearly would have been otherwise.” *Long*, 53 Ohio St.2d at paragraph two of the syllabus. As he does not disagree with this Court’s standards for plain-error analysis or prosecutorial misconduct, his last two propositions of law present poor vehicles for review in this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the within appeal does not present questions of such constitutional substance nor of such great public interest as would warrant further review by this Court. It is respectfully submitted that jurisdiction should be declined.

Respectfully submitted,

RON O'BRIEN 0017245
Prosecuting Attorney

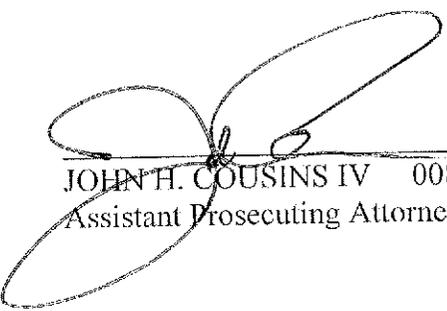


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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was sent by regular U.S. Mail, this day, March ____, 2010, to Torrance Pilgrim, #A589-102, Hocking Correctional Facility, P.O. Box 59, Nelsonville, OH 45764.



JOHN H. COUSINS IV 0083498
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