

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

v.

DEVOROUS HENDRICKS,

Defendant-Appellant.

Case No.

On Appeal from the Hamilton  
County Court of Appeals,  
First Appellate District

Hamilton App. No. C-0900352

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**APPELLANT DEVOROUS HENDRICKS'  
MEMORANDUM IN SUPPORT OF JURISDICTION**

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## **Explanation Of Why This Is A Case Of Public Or Great General Interest And Involves A Substantial Constitutional Question**

Devorous Hendricks has been incarcerated since 2008, when he was sentenced to a term of life imprisonment with the possibility for parole after thirty years for the murders of Patrick Peterson and Cameron Parson. Hendricks steadfastly maintains his innocence and continues to look forward to that which he was denied – a fair trial. The Constitution requires that the State allow an accused to put on a defense. And, in order to fulfill that responsibility, the prosecution must disclose all material, exculpatory evidence within the possession of the investigating authorities. *Brady v. Maryland*, 373 U.S. 83 (1963). This Court should grant jurisdiction in this case because the state failed to perform its duty under *Brady*. Instead, it repeatedly suppressed exculpatory or favorable evidence that was material to Hendrick's guilt or innocence.

Further, despite the constitutional mandate that he be protected from conviction "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged," the trial court convicted Hendricks of the double-murders. *Jackson v. Virginia* (1979), 443 U.S. 307, 316; *In re Winship* (1970), 397 U.S. 358, 364; *State v. Jenks* (1991), 61 Ohio St. 3d 259. Hendricks has been deprived of his right to liberty without the due process of law, which is guaranteed to him through the Fifth and Fourteenth Amendments to the United States Constitution and through Section 16, Article I of the Ohio Constitution. While the evidence must be evaluated in the light most favorable to the State, that standard must be viewed with common sense. And although there was some scant evidence that might support the State's theory, that evidence was insufficient to prove Mr. Hendricks guilty beyond a reasonable doubt.

## **Statement of the Case and the Facts**

Devorous Hendricks stands convicted of the double-murder of Patrick Peterson and Cameron Parson after a seven-day bench trial, despite the fact that another person—Edgar Crawford Jr.—confessed to committing the murders. The State was unable to produce any physical evidence tying Mr. Hendricks to the crime, and substantial evidence exists inculcating the individual who did confess to the murders.

### **A. Procedural Posture**

On October 3, 2008, a Hamilton County grand jury indicted Devorous Hendricks with two counts of murder, one count of second-degree felonious assault, and with one count of third-degree intimidation of a crime victim or witness. The murder charges and the felonious assault charges carried firearm specifications. Hendricks was alleged to have purposely caused the death of Patrick Peterson and Cameron Parson, and in a separate incident, to have fired a gun at and intimidated Larrie DuBose. The indictment also charged Edgar Crawford Jr. with obstructing justice and tampering with evidence, both third-degree felonies, in relation to the murders of Peterson and Parson.

Hendricks pleaded not guilty and opted for a bench trial, which lasted seven full days. Despite the evidence contradicting the State's shaky case against Hendricks, the trial court convicted him of both counts of murder and of felonious assault, in addition to the firearm specifications. The court acquitted Hendricks of the intimidation charge. Subsequent to trial, Hendricks filed a motion for new trial, which the court denied. The court then sentenced him to life in prison with the possibility of parole after thirty years.

**B. The Death of Patrick Peterson and Cameron Parson on September 23, 2007.**

Officer Charles Roelker of the Silverton Police Department was dispatched to an apartment building at 6308 Plainfield Road at 11:44p.m. on September 23, 2007. Officer Roelker arrived to find Patrick Peterson fatally wounded in the hallway and Cameron Parson lying dead on the back steps.

Police found no suspects on the scene and began what would become a year-long investigation. The Silverton Chief of Police testified that there is not “any physical evidence whatsoever that physically connects Devorous Hendricks to the two murders.” The only basis for convicting Hendricks of the killings was the testimony of three witnesses who claimed that Hendricks admitted to the killings, but who were shown to be dishonest after cross-examination.

Antoinette Greene, Hendricks’ former girlfriend, testified that Hendricks admitted to her that he shot Parson and Peterson. Ms. Greene testified that Hendricks told her that he and Antwain Lowe went to confront Parson and Peterson about money they were owed. According to Ms. Greene, Hendricks said that the four then got into an altercation and that he shot one of the boys in the back as he was running away, and then shot the other one.

But Ms. Greene’s testimony was not credible. She admitted to lying on the stand. On cross-examination, she testified that she was angry because Hendricks chose another woman over her, and that if he had chosen to remain with her, she would not have testified against him. Ms. Greene then testified that police officers told her they would take her child if she failed to testify against Hendricks, exerting so much pressure that Ms. Greene cried. According to Ms. Greene, Hendricks repeatedly denied that he had any role in shooting Parson and Peterson before he later admitted that he did. Amazingly, Ms. Greene was unable to provide any specifics about when the conversation took place in which she says

Hendricks admitted to the murders. Ms. Greene stated that the conversation took place “[s]ometime in [20]08,” but was unable to say what month, or even if it was hot or cold at the time. And Ms. Greene lied under oath by testifying that she stopped writing letters to Hendricks on August 1, 2008. She then admitted that this was not true and that she had written letters to him up until the week before trial.

Another witness testified that she heard Hendricks, whom she only knew as “Gump,” admit to the murders. Shanee Thompson was sitting on her porch drinking alcohol in the fall of 2007. She heard several people standing outside across the street talking. According to Ms. Thompson, there were five people standing across the street, with a car parked in between them and her, it was so dark that she was unable to see their faces, and it was at 1:30 in the morning. Ms. Thompson was unable to sleep, and had gotten out of bed to go onto her porch and drink alcohol. Her testimony is unreliable, as she was drowsy and under the influence of alcohol when the claimed conversation occurred.

The third witness who claimed to have heard Hendricks make incriminating statements was convicted felon Antwain Lowe. Lowe’s testimony concerned both the felonious assault and murder charges. Lowe testified that he picked Hendricks up to give him a ride and that they drove past Larrie DuBose, who flagged them down, causing Lowe to stop. Lowe testified that Hendricks then got out and began shouting at DuBose, and that Hendricks then pulled out a gun and fired one shot at DuBose. Lowe also testified that, as they were driving away, he asked Hendricks “what was that about,” and Hendricks replied, “I ‘murked’ his brothers.” Lowe understood “murked” to mean “murdered.” Lowe admitted that he had consumed an entire bottle of tequila and was intoxicated when the incident occurred, making his testimony suspect at best. Moreover, Lowe had a strong incentive to falsify his testimony—he was facing twenty-seven-years imprisonment on

various charges, but was given a one-and-a-half-year plea bargain in exchange for testifying against Hendricks. Finally, Lowe's story flatly contradicts the testimony given by Antoinette Greene.

Dr. Obinna Ugwu of the Hamilton County Coroner's Office performed the autopsies of Parson and Peterson. Dr. Ugwu determined that Parson suffered gunshot wounds to the left side of his head and the front of his chest, and that the immediate cause of death was the gunshot wound to the head, which came second. Dr. Ugwu determined that Peterson died from a gunshot wound that entered on the lower right side of his face, below his nose. Accordingly, the forensic evidence directly contradicts Antoinette Greene's testimony that one of the boys was shot in the back while running away from Hendricks.

John Heile, a firearm examiner at the Hamilton County Coroner's Office, examined the bullets found in the deceased's bodies. Mr. Heile was certain that the bullets came from revolvers, which do not automatically eject spent shell casings. Mr. Heile testified that all bullets were "consistent" with having come from one gun, but he could not form an opinion that they did in fact come from one gun. The bullets could not have come from the guns taken from Antwain Lowe in connection with the case.

Edgar Crawford Jr. admitted to killing the two people whom Hendricks was convicted of murdering. Crawford lied to police by stating that he was not at the scene of the killings, when cell phone tower records showed that he was in fact there. While being arrested, Crawford spontaneously asked if he was being arrested for murder, without having been informed of the charge, and he knew what type of weapon was used in the killings.

Lieutenant Bruce Plummer of the Silverton Police Department testified primarily to authenticate a recorded interview that he conducted with Hendricks. On cross-examination, Lieutenant Plummer testified to a great deal of evidence suggesting that

Crawford committed the murders for which Hendricks was charged. When Crawford came to the police station for an interview, he stated "you didn't find anything at the crime scene, did you? Revolvers are a bitch," then he tried to run away from the officers. During his investigation of this case, Lieutenant Plummer had told witnesses that he believed Crawford is a killer and a sociopath. During his investigation, Lieutenant Plummer worked with Tamisha Bankston and Todd Johnson to get recordings made of Crawford. In one of those recordings, Crawford stated that he (Crawford) had shot Peterson because Peterson had shot Parson. Lieutenant Plummer testified that Crawford told several different conflicting stories to police about the events surrounding the murders, and that Crawford admitted he was at the scene of the murders and had run away.

Officer Thomas Hickey of the Silverton Police Department testified for the defense. Officer Hickey arrested Crawford, who asked him "are you charging me with murder?" and stated "that's because you have no evidence against me, although I guess you could find some," and then "that's because revolvers are a bitch." Detective McKinley Brown, an investigator with the Hamilton County Prosecutor's Office, also testified that when Brown interviewed Crawford, Crawford knew that a revolver was used in the murders.

Kejuan Masters, a 17 year-old man who knew both Hendricks and Crawford, had a conversation with Crawford in the juvenile detention center. When Crawford saw Masters, Crawford asked him if he had seen Hendricks. Masters said no and asked Crawford why he wanted to know. Crawford told Masters that the police were looking for Hendricks "for them two killings that I did." Crawford then said: "because I blamed it on 'Gump.'" Crawford kept talking and told Masters he killed both of the victims with a .32 revolver. There was no evidence or testimony offered in the trial that would show any reason for Masters to lie.

Mike Daudistel, the Silverton Police Chief, testified that Crawford gave multiple conflicting statements to police and that he believes Crawford has a character for being untruthful. Daudistel testified that he is not aware of any physical evidence that connects Hendricks to the murders.

**C. Felonious Assault of Larrie DuBose on November 4, 2007.**

Brittany Johnson lives with Larrie DuBose Jr. and their three children. In the evening on November 4, 2007, Johnson looked outside to see DuBose, Lowe, and "Gump" (a.k.a. Hendricks) arguing, so she got a knife and went outside. Johnson testified that she heard DuBose tell Gump: "I paid you a hundred dollars not to touch my brothers." She further testified that Gump replied: "no, you paid me a hundred dollars not to kill you." Johnson heard Gump clearly state that he never shot the boys. Johnson stated that she saw Gump pull out a gun. She then ran inside the house, heard a gunshot, and looked out the window to see Gump and Lowe get into their car and drive away. Ms. Johnson first stated that she only heard one gunshot, but at trial, she testified that she heard two. Johnson did not see who fired the gunshots.

Officer Upchurch of the Cincinnati Police Department responded to the scene. Officer Upchurch processed the area, but he found no shell casings. Based on the description given to them by DuBose, officers stopped a red SUV driven by Lowe. Officers searched that vehicle and found a semi-automatic pistol.

DuBose testified in this case while serving a two-year prison sentence for child endangering and burglary. DuBose's attorney told the prosecutor that he planned to file for judicial release and the prosecutor promised to tell the judge presiding over DuBose's case that he was cooperating. DuBose testified that he, Crawford, Parson, and Peterson committed a burglary together. DuBose testified that, after the burglary, Hendricks called

him and told him that he was upset because it was his cousin who was burglarized and that something had to be paid. DuBose testified that he met Hendricks in the park and gave him \$100 in "protection money."

DuBose then talked with the police because he believed Hendricks killed Parson and Peterson. Dubose believes Hendricks found out about this conversation and confronted him when he saw him. Dubose testified that Hendricks yelled "why are you telling the police I killed somebody - I didn't kill anybody." DuBose stated: "I paid you \$100 for all three of us," to which Hendricks allegedly responded "that was just for you." DuBose testified that Hendricks then fired a 9-millimeter ACP High Point gun at DuBose, but missed, and got into the car and drove away. On cross examination, Dubose admitted to lying to police about his involvement in the burglary. And DuBose initially told Detective Steele that he never saw the gun that Hendricks fired at him, but at trial, DuBose identified the type of gun.

Daryl Scott, a Hamilton County Justice Center corrections officer, testified that he heard Hendricks and DuBose arguing while they were incarcerated. Officer Scott heard DuBose tell Hendricks that when DuBose gets done with him, Hendricks is going to do a lot of time.

### **Proposition of Law I**

**The State violates a defendant's right to due process and to a fair trial when it withholds a multitude of material exculpatory evidence. *Brady v. Maryland*, 373 U.S. 83 (1963).**

The Constitution requires that the State allow an accused to put on a defense. And, in order to fulfill that responsibility, the prosecution must disclose all material, exculpatory evidence within the possession of the investigating authorities. *Brady v. Maryland*, 373 U.S. 83 (1963). *Brady* held that "the suppression by the prosecution of evidence favorable to an

accused upon request violates due process where the evidence is material to guilt or to punishment.” 373 U.S. at 87. Later cases eliminated the “upon request” requirement. *United States v. Bagley*, 473 U.S. 667, 669 (1985); *United States v. Agurs*, 427 U.S. 97, 108 (1976). The “constitutional duty” to disclose is now “triggered by the potential impact of favorable but undisclosed evidence,” rather than by the type of request, if any, made by the defense. *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).

In order to prevail on a *Brady* claim, a petitioner need only demonstrate that the State withheld material, favorable information from the defense at trial. The test of materiality is whether suppression of evidence “undermine[s] confidence in the verdict.” *Kyles*, 514 U.S. at 435. While materiality requires that a petitioner show a “reasonable probability” of a different result, he does not need to prove that a different result is more likely than not. *Williams*, 529 U.S. at 405-6 (“reasonable probability” test does not require proof of a different result by a “preponderance of evidence”). *Brady* draws no distinction between impeachment material and material that affirmatively exculpates the defendant. *Bagley*, 473 U.S. at 676 (“Impeachment evidence . . . falls within the *Brady* rule.”); *Giglio v. United States*, 405 U.S. 150, 154 (1972). Even “inculpatory” material falls within *Brady*’s ambit if, “whatever [the material’s] other characteristics,” it “may be used to impeach a witness.” *Strickler v. Green*, 527 U.S. 263, 282 n.21 (1999).

Further, *Brady*’s imperative unquestionably applies to evidence in the hands of the police but not the prosecutor, “regardless of any failure by the police to bring [the] favorable evidence to the prosecutor’s attention.” *Kyles*, 514 U.S. at 421. Because the Supreme Court has entrusted the prosecutor with the responsibility of complying with *Brady*’s dictates, each “individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” *Id.* at 437; see *Harris v.*

*Lafler*, No. 05-2104/2159, slip op. at 6 (6th Cir. January 30, 2009) (“*Brady* thus applies to relevant evidence in the hands of the police, whether the prosecutors knew about it or not[.]”); accord *Jamison v. Collins*, 291 F.3d 380, 388 (6th Cir. 2002). As the Supreme Court has emphasized, “whether the prosecutor succeeds or fails in meeting this obligation . . . , the prosecution’s responsibility for failing to disclose known, favorable evidence rising to a material level of importance is inescapable.” *Kyles*, 514 U.S. at 437-38; see also *United States v. Auten*, 632 F.2d 478, 481 (5th Cir. 1980) (if *Brady* obligations “were excused in instances where the prosecution has not sought out information readily available to it,” the law would be “inviting and placing a premium on conduct unworthy” of the government).

At its heart, *Brady* is a truth-seeking rule, an outgrowth of “the special role played by the American prosecutor . . . in criminal trials.” *Strickler*, 527 U.S. at 281. The prosecution’s interest “is not that it shall win a case, but that justice shall be done.” *Id.* (citation and quotation omitted). And “the truth-seeking function of the trial process,” *Agurs*, 427 U.S. at 104, is subverted no less by the suppression of evidence in good faith than by its concealment in bad faith. *Kyles*, 514 U.S. at 437-38.

In this case, the State repeatedly failed to disclose favorable evidence to Hendricks in advance of trial. First, the State failed to inform defense counsel that Robert Mahl, who witnessed two people arguing outside the apartment building where Parson and Peterson were murdered, was shown a photograph of Hendricks in an array and did not identify him. Mahl specifically told police that he saw one of the two men point his finger into the chest of the other and make the motion of shooting a gun. The person making the gesture then walked away, right past Mahl, but Mahl could not identify Hendricks as either of two men he witnessed arguing. The State disclosed this significant evidence during trial, but the court denied Hendricks’ motion for a mistrial.

It is highly relevant that an eyewitness to an argument at the scene of the crime who saw the aggressor walking away was shown a picture of Hendricks and was unable to identify him. And although the state clearly knew of this information, the prosecutor failed to disclose it, even though it clearly and materially bears on Hendricks' guilt or innocence. In fact, after hundreds of hours of preparation, this fact was only disclosed accidentally and upon the cross-examination of the witness.

Mahl's inability to identify Hendricks was not the only exculpatory evidence the prosecutor failed to disclose. When Lieutenant Plummer interviewed Hendricks in the course of his investigation, Hendricks asked Plummer to retrieve data off of Hendricks' cell phone. Hendricks clearly believed that there was exculpatory evidence on the phones, including a recording where another person made a statement about what happened regarding the murders. Police obtained a forensic expert to retrieve information from the cell phone. Lieutenant Plummer testified that police provided this information to the prosecutor's office.

But defense counsel was never provided with the content of the information on the phones. Instead, defense counsel was merely permitted to inspect the physical phones after the SIM cards had been removed and the phones were not usable. Defense counsel objected to the state's failure to provide this evidence, arguing that it violated Hendricks' due process rights. The trial court did not explicitly state its ruling on this objection, but effectively overruled it by proceeding with trial.

The State's failure to provide Hendricks with data from his seized cell phone was a constitutional violation. A recording of someone else making an incriminating statement regarding the crime is highly material, and would have changed the outcome of the trial. The trial court was faced with a morass of contradictory evidence, including testimony by

multiple witnesses who stated that several different people had confessed to the crime. But if Hendricks could have offered a tape-recorded statement of someone making a confession or admission, he would have been exonerated. But the State either destroyed or lost that evidence, and thereby deprived Hendricks of the opportunity to receive a fair trial in violation of both *Brady, supra*, and *California v. Trombetta*, 467 U.S. 479, 485 (1984).

The third *Brady* violation in this case occurred when the state failed to inform Hendricks that a pit bull was confined to the bathroom of the victims' apartment after the murders took place. Edgar Crawford Jr., who lived with both victims and confessed to murdering them, told police that he called 911 from the bathroom of the apartment after the murders. However, there was no barking from a pit bull on the 911 recordings, which shows that Crawford was lying. If Hendricks had been provided with this information before trial, he could have altered his defense and offered more evidence to show that Crawford lied to police. This evidence was material to Hendricks' guilt or innocence and was exculpatory. By withholding it, the State deprived Hendricks of his constitutional rights to due process and a fair trial.

### Proposition of Law II

**A defendant is deprived of due process of law when the State fails to present sufficient evidence to prove guilt of all essential elements of a crime beyond a reasonable doubt and is convicted in contravention to the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and Section 16, Article I of the Ohio Constitution. *Jackson v. Virginia* (1979), 443 U.S. 307.**

Evidence is sufficient for conviction only when there is "substantial evidence upon which a [factfinder] could reasonably conclude that all the elements of an offense have been proven beyond a reasonable doubt." *State v. Filiaggi* (1999), 86 Ohio St.3d 230, 247 (citations omitted); see also, *Jackson v. Virginia* (1979), 443 U.S. 307, 316. The State's failure

to prove each element of the offenses beyond a reasonable doubt violated Hendricks' rights under the Fifth and Fourteenth Amendments to the United States Constitution. *Jackson v. Virginia* (1979), 443 U.S. 307. Here, the evidence presented failed to attain "the high degree of probative force and certainty required of a criminal conviction." *State v. Getsy* (1998), 180 Ohio St.3d 193, 193.

In this case, all three of the witnesses who testified that Hendricks made incriminating statements regarding the murders were completely discredited upon cross-examination. Antoinette Greene admitted to lying on the witness stand. Shanee Thompson was drowsy and under the influence of alcohol when she believes she heard incriminating statements made by Hendricks. Antwain Lowe was highly intoxicated after drinking an entire bottle of tequila when he believes he heard Hendricks make an incriminating statement about the murders, and Lowe was given a one-and-a-half-year plea bargain on charges that carried a twenty-seven-year maximum in exchange for his testimony. The testimony of these extremely dubious witnesses is not sufficient to prove Hendricks' guilt beyond a reasonable doubt. *State v. Thompkins* (1997) 78 Ohio St.3d 380, 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175; *State v. Jenks* (1991), 61 Ohio St.3d 259.

In this case, there was no physical evidence that tied Hendricks to the murders. The limited physical evidence the State did offer actually benefitted Hendricks, as it contradicted Antoinette Greene's damaging testimony. The felonious assault conviction was similarly based upon the testimony of one witness who was not credible, and was not supported by physical evidence.

The insufficiency of the state's evidence is even more glaring when considering the overwhelming evidence suggesting that Crawford—and not Hendricks—murdered Parson

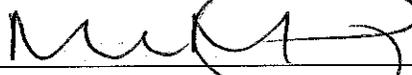
and Peterson. Crawford lived with the two victims at the apartment where they were shot. When questioned by police, Crawford stated that he was nowhere near the apartments at the time of the offense, but cell phone tower records proved otherwise. Before Crawford even knew why he was being interviewed, he asked if he was being charged with murder. Crawford also knew what type of murder weapon was used before the police gave him that information. Finally, Kejuan Masters testified that Crawford told him he committed the murders and that he blamed them on Hendricks to avoid getting caught. The evidence established that Crawford, not Hendricks, was guilty of the murders. And only the state's violations of Mr. Hendricks' due process rights to a fair trial supported the contrary result.

### **Conclusion**

For all these reasons, this case involves a matter of public and great general interest and a substantial constitutional question, and this Court should accept jurisdiction over Mr. Hendricks' case.

Respectfully submitted,

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**Certificate of Service**

I hereby certify that a copy of the foregoing **Appellant Devorous Hendricks'**  
**Memorandum in Support of Jurisdiction** was mailed by regular U.S. Mail, postage  
prepaid, to Ronald Springman, Jr., Assistant Prosecuting Attorney, Hamilton County  
Prosecutor's Office, 230 E. 9th Street, Suite #4000, Cincinnati, Ohio 45202, on this 7th day  
of September, 2010.

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

STATE OF OHIO,

Plaintiff-Appellee,

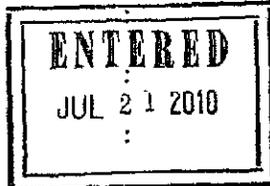
vs.

DEVOROUS HENDRICKS,

Defendant-Appellant.

APPEAL NO. C-090352  
TRIAL NO. B-0806126(A)

*JUDGMENT ENTRY.*



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

Defendant-appellant Devorous Hendricks was indicted on two counts of murder with specifications,<sup>2</sup> one count of felonious assault with a specification,<sup>3</sup> and one count of witness intimidation.<sup>4</sup> The case was tried without a jury. At the conclusion of the trial, the trial court convicted Hendricks of both murder charges with the specifications, as well as the felonious assault with the specification. Hendricks was acquitted of the witness-intimidation charge. He was sentenced to a total prison term of 30 years to life. Costs were remitted.

Larry DuBose, Patrick Peterson, Cameron Parsons, Edgar Crawford, Jr., and others burglarized the apartment of Mario Floyd. The group apparently took nothing during the burglary. Hendricks, who was Floyd's cousin, called DuBose soon after and confronted him about the break-in. The two met, and Hendricks demanded

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

<sup>2</sup> R.C. 2903.02(A).

<sup>3</sup> R.C. 2903.11(A)(2).

<sup>4</sup> R.C. 2921.04(B).



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payment—what he called a “hood tax”—in exchange for Hendricks forgoing retaliation for the break-in. DuBose paid Hendricks \$100.

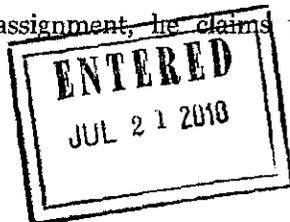
On September 23, 2007, police responded to the scene of a double homicide. Both Peterson and Parsons had been shot and killed. This had occurred in an apartment complex where DuBose, Peterson, and Parsons lived.

Two months later, Hendricks drove to find DuBose with a man named Antwain Lowe. Hendricks got out of the vehicle and accused DuBose of being a snitch. DuBose asked Hendricks why he had shot and killed Peterson and Parsons when the “hood tax” had been paid. Hendricks told DuBose that the \$100 had only covered him. But because Hendricks believed that DuBose was a snitch, he drew a gun and began firing at DuBose. Lowe shoved Hendricks, and Hendricks missed DuBose. Brittany Johnson, DuBose’s girlfriend, witnessed the incident.

Hendricks and Lowe got into the vehicle and left. Lowe asked what “all that” had been about. Hendricks told Lowe that DuBose was just angry because he (Hendricks) had killed Peterson and Parsons.

During the investigation of the murders, which received wide media attention, Hendricks initially agreed to turn himself in, but ultimately failed to do so. He was apprehended after he was featured on a local news program’s “Wheel of Justice.” During his interview, Hendricks admitted that the burglary had occurred, that he knew DuBose, Peterson, and Parsons had been involved, that he had collected a “hood tax” from DuBose (but claimed that it was payment to keep him from going to the police), and that he and DuBose had an argument. He denied shooting a gun or shooting at anyone.

On appeal, Hendricks raises three assignments of error. In his first assignment, ~~he claims~~ that the state on three occasions improperly withheld



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exculpatory information in violation of the rule announced in *Brady v. Maryland*.<sup>5</sup> We disagree.

In the first instance, Hendricks claims that the state improperly failed to inform him that one of its witnesses could not identify him in a photo array. But the witness's inability to identify anyone in the array was not exculpatory. If the witness had identified someone else, and the state had failed to disclose this fact, *Brady* might have been implicated. Further, the witness testified at trial. There is no *Brady* violation when the information "is disclosed to a defendant in time for its effective use at trial."<sup>6</sup>

The second claim is that the state failed to provide recorded cellular-phone messages that Hendricks claims contained another party's admission to the shootings. The state, at trial, did not have the information. The lead detective testified that "I don't remember any regular messages on his phone." The state suggested that Hendricks's counsel speak to the officer who had collected the information. Hendricks called that officer as a witness for the defense. But no questions were asked about phone messages containing admissions by third parties.

On this record, it is unclear if any such message existed. And if it did, Hendricks had the opportunity to explore the issue with the officer who had collected the data from the phones. Therefore, we find no *Brady* violation.

The third claim concerns the failure of the state to inform Hendricks that a pit bull was confined in the bathroom from which a witness had claimed to call 911. But, as Hendricks notes, there was no barking heard on the 911 tape. And, this information came out during the trial early enough for Hendricks to effectively use it. Further, Hendricks makes no reference to a place in the record where he raised this issue with the trial court. Therefore, we find no *Brady* violation.

<sup>5</sup> (1963), 373 U.S. 83, 83 S.Ct. 1194.

<sup>6</sup> *State v. Iacona* 93 Ohio St.3d 83, 100, 2001-Ohio-1292, 752 N.E.2d 937.

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For the foregoing reasons, we overrule Hendricks's first assignment of error.

In his second assignment of error, Hendricks claims that his convictions were based upon insufficient evidence. In his third assignment of error, he claims that his convictions were against the manifest weight of the evidence.

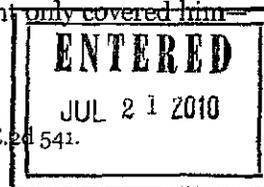
The standards for determining whether a conviction was based upon insufficient evidence or was against the manifest weight of the evidence are well established. When an appellant challenges the sufficiency of the evidence, we must determine whether the state presented adequate evidence on each element of the offense.<sup>7</sup> On the other hand, when reviewing whether a judgment is against the manifest weight of the evidence, we must determine whether the trier of fact clearly lost its way and created a manifest miscarriage of justice.<sup>8</sup>

Hendricks premises his arguments here on two points: that there was no physical evidence linking him to the crimes, and that the witnesses who testified against him, saying that he had admitted to the shootings, were not credible. In particular, he notes that Antoinette Green, Hendricks's ex-girlfriend, admitted to lying on the stand about other things. Shanee Thompson, another witness who had overheard an admission by Hendricks, was drowsy and under the influence at the time. And Antwain Lowe was also under the influence and had received a favorable plea deal from the state. Hendricks claims that the evidence overwhelmingly pointed to Edgar Crawford as the shooter.

Antoinette Green testified that Hendricks had admitted to shooting the victims and to shooting at DuBose. Shanee Thompson overheard Hendricks admit to the killings and heard him say that the victims deserved to be shot. DuBose testified about the burglary and about paying the "hood tax." He also testified that he had confronted Hendricks after the killings to find out why he had committed the crimes. He testified that Hendricks had told him that the \$100 payment only covered him—

<sup>7</sup> See *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52, 678 N.E.2d 541.

<sup>8</sup> See *id.* at 387.



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not Peterson or Parsons. DuBose also testified that Hendricks had shot at him at the end of this confrontation, accusing him of snitching. Antwain Lowe testified to the argument between DuBose and Hendricks and to his conversation with Hendricks after he had shot at DuBose. Lowe said that Hendricks had admitted to the shootings during that conversation. Even Hendricks's interview with police corroborated many of the details of the events involved in this case, except for the actual shootings themselves.

Matters as to the credibility of evidence are for the trier of fact to decide.<sup>9</sup> This is particularly true regarding the evaluation of witness testimony.<sup>10</sup> We will not reverse a conviction on the manifest weight of the evidence when the trial court has chosen one credible version of events over another. We overrule Hendricks's second and third assignments of error.

Having considered and overruled all of Hendricks's assignments of error, we affirm the trial court's judgment.

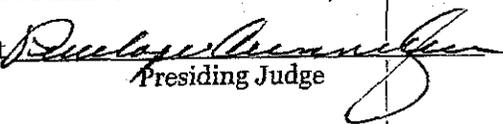
A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**HILDEBRANDT, P.J., DINKELACKER and MALLORY, JJ.**

To the Clerk:

Enter upon the Journal of the Court on July 21, 2010

per order of the Court

  
Presiding Judge



<sup>9</sup> *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, 804 N.E.2d 433, ¶116.

<sup>10</sup> *State v. Williams*, 1st Dist. Nos. C-060631 and C-060668, 2007-Ohio-5577, ¶45, citing *Bryan*, supra, and *State v. Russ*, 1st Dist. No. C-050797, 2006-Ohio-6824, ¶23.