

**ORIGINAL**

NO. 2011-1260

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IN THE SUPREME COURT OF OHIO

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APPEAL FROM  
THE COURT OF APPEALS FOR CUYAHOGA COUNTY, OHIO  
NO. 95209

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STATE OF OHIO,

Plaintiff-Appellee

-vs-

MICHAEL FOSTER,

Defendant-Appellant

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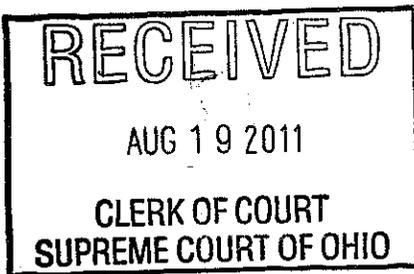
**APPELLEE'S MEMORANDUM IN RESPONSE**

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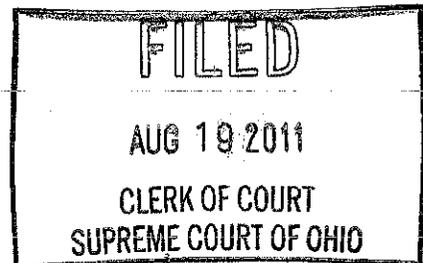
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**WHY THIS FELONY CASE IS NOT A CASE OF PUBLIC OR GREAT  
GENERAL INTEREST AND DOES NOT INVOLVE A SUBSTANTIAL  
CONSTITUTIONAL QUESTION**

Michael Foster, Appellant, seeks to invoke this Honorable Court's jurisdiction to set and apply the standard for determining probable cause beyond a reasonable doubt. Appellant fails to demonstrate that he was convicted without the State proving that he was guilty beyond a reasonable doubt. The Propositions of Law advanced in this Appeal have been properly adjudicated by the Courts below and involves the application of well-settled law to the facts of this case. No complex issues are presented herein and the within case is of no great public concern.

The Eighth District Court of Appeals decision in *State v. Foster* (June 9, 2011), Cuyahoga Appeals No. 95209, was correct. Consequently, Appellee State of Ohio respectfully submits that Leave to Appeal should not be granted, as no substantial constitutional question is involved, nor is this case one of public or great general interest.

**STATEMENT OF THE CASE**

Michael Foster, Appellant, was indicted on August 19, 2008, by the Cuyahoga County Grand Jury and charged with Count One, Aggravated Murder in violation of R.C. 2903.01(B) with 1-year Firearm, R.C. 2941.141 and 3-year Firearm, R.C. 2941.145, Notice of Prior Conviction, and Repeat Violent Offender, R.C. 2941.149, Specifications, Count Two, Aggravated Murder in violation of R.C. 2903.01(A) with 1-year Firearm, R.C. 2941.141 and 3-year Firearm, R.C. 2941.145, Notice of Prior Conviction, and Repeat Violent Offender, R.C. 2941.149, Specifications, Count Three, Aggravated Robbery in violation of R.C. 2911.01(A)(1) with 1-year Firearm, R.C. 2941.141 and 3-year Firearm, R.C. 2941.145, Notice of Prior Conviction, and Repeat Violent Offender, R.C. 2941.149,

Specifications, Count Four, Aggravated Robbery in violation of R.C. 2911.01(A)(3) with 1-year Firearm, R.C. 2941.141 and 3-year Firearm, R.C. 2941.145, Notice of Prior Conviction, and Repeat Violent Offender, R.C. 2941.149, Specifications, Count Five, Having a Weapon While Under Disability in violation of R.C. 2923.13 and Count Six, Receiving Stolen Property in violation of R.C. 2913.51(A). Appellant waived his right to a Jury Trial and was convicted by the Trial Court of Count Five, Having a Weapon While Under Disability in violation of R.C. 2923.13, and the Repeat Violent Offender Specifications, on March 9, 2010. Appellant stipulated to his prior convictions.

The case was extensively pre-tried and full discovery was provided by the State. Appellant successfully petitioned the Trial Court for monies and retained an investigator, firearms/ballistics expert, and an expert, Dr. Bux of Colorado Springs, Colorado, to challenge the cause and manner of death. It is important to note that the State provided defense counsel with copies of all reports in its possession (including reports relating to its notice of intention to introduce other acts evidence pursuant to Evid.R. 404(B)), copies of potentially exculpatory reports relating to an initial suspect, James Sheron, and the extensive medical records of the victim. The State advised defense counsel orally, and in writing, of its intent to introduce other acts evidence. Appellant filed a timely Brief in objection. Appellant urged that Lamont Foster, a witness, was incompetent to testify. The Trial Court held a Competency Hearing. The Trial Court found Lamont Foster competent to testify.

~~A Jury Trial commenced and Appellant was found guilty of the lesser included offense of Count One, Murder in violation of R.C. 2903.02 with 1-year Firearm, R.C. 2941.141 and 3-year Firearm, R.C. 2941.145 Specifications, Count Three, Aggravated Robbery in violation of R.C. 2911.01(A)(1) with 1-year Firearm, R.C. 2941.141 and 3-year~~

Firearm, R.C. 2941.145, Specifications, Count Four, Aggravated Robbery in violation of R.C. 2911.01(A)(3) with 1-year Firearm, R.C. 2941.141 and 3-year Firearm, R.C. 2941.145 Specifications, and Count Six, Receiving Stolen Property in violation of R.C. 2913.51(A), on March 19, 2010. Appellant was found not guilty of Aggravated Murder as charged in Count 2. Appellant waived his right to a Jury Trial on Count Five, Having Weapon While Under Disability and the Repeat Violent Offender Specifications, on March 9, 2010. Appellant stipulated to his prior convictions. The Trial Court sentenced Appellant to a prison sentence of 53 years to Life, on May 5, 2010, to be served concurrently to the sentence he received in another case. Appellant appealed his conviction and sentence. The Eighth District Court of Appeals affirmed Appellant's conviction and sentence in *State v. Foster* (June 9, 2011), Cuyahoga Appeals No. 95209.

#### **STATEMENT OF THE FACTS**

Appellant and his brother, Lamont Foster, robbed Anwar Hamed and the Miles Eagle Supermarket at gunpoint, On August 3, 2001. Appellant shot Mr. Hamed twice, paralyzing him during the robbery. Mr. Hamed died from his injuries on March 21, 2007.

Mr. Hamed entered the store on August 3, 2001, at approximately 8:15 A.M. and began opening it for business. Appellant and Lamont Foster entered the store. They were armed with handguns and disguised. They demanded money from the store's safe and cash register. The cash register was located near the rear entrance of the business. It was impossible to see the cash register area from across Miles Avenue by the train tracks. Mr. Hamed was armed and raised his hands up and began yelling in Arabic. He dropped his hands and Appellant shot him in his back chest. As Mr. Hamed lay on the ground bleeding, Appellant walked over him. Appellant stood over him and shot him

again. This shot landed approximately six inches above Mr. Hamed's waistline and struck him in the spine. This bullet was later recovered by the Cuyahoga County Coroner's Office from Mr. Hamed's lung. Mr. Hamed was paralyzed immediately and rendered a paraplegic, with permanent loss of control of his legs. Appellant reached into Mr. Hamed's pockets and took his wallet. Appellant and Lamont Foster fled with money, cigarettes, and a handgun taken from the store. No shell casings were found on scene, indicating the gun used in the robbery was likely a revolver. Members of the Cleveland Police Department interviewed Mr. Hamed at the hospital. Mr. Hamed advised officers that his wallet was taken during the robbery. It contained his CitiBank issued MasterCard and Visa credit cards. Mr. Hamed also told officers that one of the perpetrators wore goggles and something over his nose.

Detective Daugenti contacted CitiBank and learned that Mr. Hamed's credit cards were used at the Maple Town Bi-Rite, Sunoco, and the Super Kmart in Warrensville Heights, Ohio within hours of the aggravated robbery and shooting of Mr. Hamed. Detective Daugenti interviewed employees at these businesses and secured transaction receipts for items purchased with Mr. Hamed's credit cards. Detective Daugenti also recovered a surveillance video from the Super Kmart. A person appearing to be Appellant is observed on video surveillance purchasing household items, such as fresh meat, ketchup, underwear, Folgers Coffee, with his brother. Appellant was wearing a baseball cap that was later recovered from the Cleveland Motel as officers investigated the Greenlite Beverage robbery. Appellant's car was also observed on video surveillance in the parking lot. Detective Daugenti interviewed Appellant based on a Crime Stoppers tip that Appellant was involved in the robbery and shooting of Mr. Hamed. Appellant

told Detective Daugenti that his brothers, Lamont and Gilbert Foster, robbed the Miles Eagle Supermarket.

Detective Daugenti subsequently interviewed Lamont and Gilbert Foster. Detective Daugenti learned that Gilbert Foster was uninvolved. Gilbert Foster was working at the time of the Miles Eagle Supermarket robbery that day; his supervisor as well as attendance and payroll cards verified his alibi. Detective Daugenti re-interviewed Appellant. Appellant now claimed that Gilbert and Lamont walked over to his house before the Miles Eagle Supermarket robbery and asked to use Appellant's car. Appellant advised Detective Daugenti that he told them that he did not want anything to do with the robbery and that they could not use his car. Appellant further claimed he followed Gilbert and Lamont to the Miles Eagle Supermarket and, at most, acted like a lookout. Appellant stated that he walked over by the train track and looked across Miles Avenue into the store. Appellant claimed he looked into the back of the store and saw Lamont shoot Mr. Hamed, heard him screaming in Arabic, watched him turn to run, and Lamont shoot him again, and saw Gilbert go through Mr. Hamed's pockets. It is impossible to see into the back of the store or hear screams from Appellant's claimed vantage point. Detective Daugenti received additional information that Appellant had been living with his cousin, Angelica Weaver. Detective Daugenti went to Ms. Weaver's home and interviewed her. Ms. Weaver advised officers that Appellant had been living with her and agreed to a consent search of her home. In searching her home, Detective Daugenti located items Appellant purchased from the Super K-Mart using Mr. Hamed's credit cards. Detective Daugenti matched identifying store information on the items and UPC coding to the transaction receipts. These included fresh meat that had been placed in the freezer, ketchup, underwear, and Folgers Coffee.

Appellant and Lamont Foster robbed the Greenlite Beverage Store, on September 13, 2001. Police officers converged on scene and Appellant was pulled over in his car. Appellant was the sole occupant of the vehicle. He had just dropped off Lamont Foster at the Cleveland Motel. Officers discovered one of the victim's identification cards and his credit card on Appellant's person. The car was registered to Appellant and matched the vehicle shown in the Super Kmart surveillance video. In the backseat, officers secured a gym bag that held two guns. Lamont Foster later advised officers that the guns discovered in the backseat were the guns used in the Miles Eagle Supermarket robbery and shooting of Mr. Hamed. A ballistics examination between one of the guns and the bullet taken from Mr. Hamed's lung by the County Coroner's Office revealed a match. Lamont Foster was arrested at the Cleveland Motel. He admitted his involvement to officers on scene.

Mr. Hamed was prescribed Fentanyl patches for pain and tried to adjust to paraplegia. Mr. Hamed never expressed thoughts of suicide or acted under the influence of opiate intoxication or abuse. Mr. Hamed collapsed at his home and later died at the hospital in 2007. The Cuyahoga County Coroner's Office examined Mr. Hamed's body and determined the cause of death as homicide because of the injuries Mr. Hamed received in 2001. The Cuyahoga County Coroner found that the cause of death was acute bronchopneumonia due to paraplegia because of the gunshot wound to the lumbar spine with spinal cord injury and the manner of death was ruled as a homicide while at work. Appellant's expert Dr. Bux opined that Mr. Hamed died due to a massive Fentanyl drug overdose and pneumonia and that they were independent of Mr. Hamed's gunshot wound. The Cuyahoga County Coroner disagreed with Dr. Bux and described the level of Fentanyl found in Mr. Hamed as misleading because it was

measured 33 hours after Mr. Hamed's death. The medication was not being metabolized and it was released into the body after death creating an abnormally, artificially high, extremely high level.

### LAW AND ARGUMENT

***PROPOSITION OF LAW NO. 1: THE STANDARD FOR DETERMINING WHETHER A MOTION FOR ACQUITTAL IS PROPERLY DENIED IS THAT A COURT CANNOT ENTER A JUDGMENT OF ACQUITTAL IF, UPON THE EVIDENCE, REASONABLE MINDS CAN REACH DIFFERENT CONCLUSIONS AS TO WHETHER EACH MATERIAL ELEMENT FO THE OFFENSE WAS PROVED BEYOND A REASONABLE DOUBT. STATE V. BRIDGEMAN (1978), 55 Ohio St.2d 261.***

Appellant argues that the verdict was not supported by sufficient evidence to prove that Appellant caused the death of Mr. Hamed. Appellant is incorrect and this Proposition of Law lacks merit and should be denied.

The standard of review with regard to the sufficiency of evidence is set forth in *State v. Bridgeman* (1978), 55 Ohio St.2d 261, 381 N.E.2d 184, syllabus: "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." In *State v. Jenks* (1991), 61 Ohio St.3d 259, 574 N.E.2d 492, paragraph two of the syllabus, the Ohio Supreme Court held that "[a]n 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 Appellant'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.”

A challenge to the sufficiency of the evidence supporting a conviction requires a court to determine whether the state has met its burden of production at trial. *State v. Thompkins* (1997), 78 Ohio St.3d 380. Sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law. Courts are to assess not whether the state’s evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. Whether the evidence is legally sufficient is a question of law, not fact. *Thompkins, supra*. In determining the sufficiency of the evidence, an appellate court must give “full play to the responsibility of the trier of fact to fairly resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.” *Jackson v. Virginia* (1979), 443 U.S. 307, 316, 99 S.Ct. 2781. The weight of the evidence and the credibility of the witnesses are issues primarily determined by the trier of fact. *State v. Yarbrough*, 95 Ohio St.3d 227. A verdict will not be disturbed unless, after viewing the evidence in the light most favorable to the prosecution, it is apparent that reasonable minds could not reach the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484.

The critical inquiry on review of the sufficiency of the evidence to support a criminal conviction begins by looking at the record evidence to determine if the record could reasonably support a finding of guilt beyond a reasonable doubt. However, “this inquiry does not require the court to ask itself whether *it* believes that the evidence at the trial established guilty beyond a reasonable doubt.” *Woodby v. INS* (1966), 385 U.S. 276, 285-286, 87 S.Ct. 483, 487-488. (Emphasis in original). Rather, the relevant

question is whether “after viewing the evidence in the 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, supra*. (Emphasis in original).

Reviewing the facts of this case in the light most favorable to the State, there is sufficient evidence to sustain the jury’s and trial court’s verdicts. The record is replete with evidence that Appellant committed Murder, Aggravated Robbery, Having a Weapon While Under Disability, and Receiving Stolen Property. The Jury heard testimony and reviewed evidence that it was Appellant who shot Mr. Hamed, that Appellant put himself at the crime scene, that Appellant had purchased items with Mr. Hamed’s credit card, and that Appellant was found at the scene of another robbery with the firearm that shot Mr. Hamed.

During the time that followed, Hamed was prescribed Fentanyl patches for pain and tried to adjust to paraplegia. Hamed never expressed thoughts of suicide or acted under the influence of opiate intoxication or abuse. Mr. Hamed collapsed at his home and later died at the hospital, on March 21, 2007. The Cuyahoga County Coroner’s Office examined Mr. Hamed’s body and determined the cause of death as homicide because of the injuries Mr. Hamed received in 2001. The Cuyahoga County Coroner found that the cause of death was acute bronchopneumonia due to paraplegia because of the gunshot wound to the lumbar spine with spinal cord injury and the manner of death was ruled as a homicide while at work. In contrast, Appellant’s expert Dr. Bux opined that Mr. Hamed died due to a massive Fentanyl drug overdose and pneumonia and that they were independent of Mr. Hamed’s gunshot wound. The Cuyahoga County Coroner

disagreed with Dr. Bux and described the level of Fentanyl found in Mr. Hamed as misleading because it was measured 33 hours after Mr. Hamed's death. The medication was not being metabolized and it was released into the body after death creating an abnormally, artificially high, extremely high level.

Considering the evidence adduced at trial, after viewing the probative evidence there from in the light most favorable to the prosecution, any reasonable trier of fact could have found all the essential elements of Murder, Aggravated Robbery, Having a Weapon While Under Disability, and Receiving Stolen Property . It is clear that the State presented substantial evidence of sufficient probative value. The record, when taken as a whole, amply demonstrates that reasonable inferences would allow a trier of fact to find that Appellant was guilty of the charges. This Honorable Court should deny Appellant's Proposition of Law.

***PROPOSITION OF LAW NO. II: THE TRIAL COURT CORRECTLY ADMITTED OTHER ACTS TESTIMONY AS IT WAS INTRODUCED TO DIRECTLY CONNECT APPELLANT TO A STORE ROBBERY AND THE SHOOTING OF THE VICTIM.***

Appellant argues that the Trial Court erred when it admitted other acts testimony. Appellant argues that the "direct use" of evidence about the recovered gun from his vehicle was merely cumulative. Appellant is incorrect and this Proposition of Law lacks merit and should be denied.

The admission or exclusion of evidence lies within the trial court's sound discretion and will not be disturbed absent an abuse of discretion. *State v. Sage* (1987), 31 Ohio St.3d 173, 510 N.E.2d 343. Abuse of discretion is a ruling by a trial Court that must be more than legal error; it must be unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

The State provided notice in advance of trial of its intention to present other acts testimony. The Trial Court held a hearing on the matter and ultimately determined that the State could present evidence of the Greenlite Beverage robbery. Appellant claims, however, that the Trial Court improperly admitted this “other acts” evidence and it served to only inflame the passions of the jury and attempt to show that Appellant is of bad character. Evid.R. 404(B) states:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

The State contended that evidence of the Greenlite Beverage robbery was admissible to prove Appellant’s identity. The Supreme Court of Ohio held in *State v. Lowe*, 69 Ohio St.3d 527, 1994-Ohio-345, 634 N.E.2d 616:

Other acts can be evidence of identity in two types of situations. First are those situations where other acts “form part of the immediate background of the alleged act which forms the foundation of the crime charged in the indictment,” and which are “inextricably related to the alleged criminal act.”

Other acts may also prove identity by establishing a modus operandi applicable to the crime with which a Appellant is charged. “Other acts forming a unique, identifiable plan of criminal activity are admissible to establish identity under Evid.R. 404(B).” “Other acts” may be introduced to establish the identity of a perpetrator by showing that he has committed similar crimes and that a distinct, identifiable scheme, plan, or system was used in the commission of the charged offense. While we held in [*State v. Jamison* (1990), 49 Ohio St.3d 182, 552 N.E.2d 180] that “the other acts need not be the same as or similar to the crime charged,” the acts should show a modus operandi identifiable with the Appellant.

The Ohio Supreme Court, in *State v. Watson* (1971), 28 Ohio St. 2d 15, reviewed the admissibility of other acts evidence involving a defendant being seen with a firearm. The Court stated that the “general rule of exclusion does not apply where the evidence of

another crime is relevant and tends directly to prove the accused's guilt of the crime charged, or to connect him with it, or to prove some particular element or material fact in such crime' and evidence of other offenses may be received if relevant for any purpose other than to show mere propensity or disposition on accused's part to commit the crime" Id. At 21, quoting 22A Corpus Juris Secundum (1962), Criminal Law, Section 683. The Court in *Watson, supra*, concluded that the other acts evidence was admissible when it showed that the defendant had possession of the murder weapon used in the crime charged. The evidence introduced in the instant case regarding the Greenlite robbery was not introduced to provide "a forbidden inference of criminal propensity." The evidence was not introduced to prove that Appellant was a bad person, or to establish that because he committed the Greenlite store robbery, he must have committed the Miles store robbery. The evidence of the Greenlite robbery was offered to directly connect Appellant to the Miles store robbery and shooting of Mr. Hamed and to prove Appellant's guilt of the crimes charged. The .38 revolver found in the back seat of Appellant's vehicle when he was apprehended after the Greenlite robbery turned out to be the exact firearm used to shoot Mr. Hamed and, thus was direct evidence of the crimes for Appellant was charged.

The other acts evidence forms part of the immediate background of the Miles Eagle Supermarket robbery and it is inextricably related to it. The other acts evidence proves identity through the characteristics of acts. Appellant has failed to show that the Trial Court abused its discretion and acted unreasonably, arbitrarily, or unconscionably in its admission of this evidence. This Honorable Court should deny Appellant's Proposition of Law.

**PROPOSITION OF LAW NO. III: FAILURE TO GIVE AN ACCOMPLICE INSTRUCTION TO THE JURY IS HARMLESS ERROR WHERE DEFENSE COUNSEL FAILS TO REQUEST THE INSTRUCTION AND SIGNIFICANT OTHER EVIDENCE INTRODUCED AT TRIAL SUPPORTED APPELLANT'S CONVICTION.**

Appellant argues that the Trial Court committed reversible error when it failed to give the jury a cautionary instruction concerning the testimony of an accomplice. Appellant is incorrect and this Proposition of Law lacks merit and should be denied.

Appellant did not object to the omission of an accomplice instruction. The Trial Court's decision must be reviewed under the plain error standard. An appellate court must determine that the outcome of the trial clearly would have been different, but for the trial court's improper actions, in order to find plain error. *State v. Waddell* (1996), 75 Ohio St.3d 163, 166, 661 N.E.2d 1043. A trial court's decision will be reversed only in exceptional circumstances to prevent miscarriage of justice. *State v. Cooperrider* (1983), 4 Ohio St. 226, 227, 448 N.E. 2d 452. However, even if an appellate court finds plain error, it is not required to correct it.

This Honorable Court has previously found the failure to give an accomplice instruction to be harmless error where defense counsel failed to request the instruction in the trial court and significant other evidence introduced at trial supported the Appellant's conviction. *State v. Small*, Cuyahoga App. No. 84768, 2005-Ohio-1316, ¶ 23, See, e.g., *Cleveland Heights v. Riley* (May 20, 1999), Cuyahoga App. No. 74101; *State v. Cardwell* (Sept. 2, 1999), Cuyahoga App. Nos. 74496, 74497, 74498.

Significant other evidence, including Appellant's own oral and written statements to the police, support his conviction. Appellant admitted to officers that he was present as a lookout, but claimed that he viewed it from across the street. It was impossible,

however, to see into the back of the Miles Eagle Supermarket where the robbery took place from Appellant's claimed vantage point. Appellant disavowed any involvement in the crime, but he was captured on Super Kmart surveillance video wearing a baseball cap later recovered after the aggravated robbery of the Greenlite Beverage store and using Mr. Hamed's credit cards to purchase items within hours of the robbery and shooting. Appellant's vehicle was also shown in Super Kmart surveillance video of the parking lot. Police officers obtained sales receipts from the two stores where Mr. Hamed's credit cards were used that contained UPC codes of the items purchased, many of these exact items were found in Appellant's house. UPC codes on products are similar to fingerprints on people. Appellant was later captured after committing another aggravated robbery with a gun. Police Officers located the gun used to shoot Mr. Hamed in Appellant's vehicle.

The absence of a specific instruction regarding the testimony of an accomplice did not affect the outcome of the Trial. The Trial Court gave the Jury proper instructions on assessing the credibility of witnesses. Those instructions included a warning to consider the interest or bias of the witness. Appellant extensively cross-examined Lamont Foster and argued his lack of credibility to the Jury. The Jury learned in cross examination that in exchange for his testimony, Lamont Foster would receive a concurrent sentence to his current sentence. Finally, the Jury was instructed that it was the sole judge of the credibility of the witnesses, and that it could give each witness' testimony the weight it deemed proper, taking into consideration such matters as "interest and bias." This Honorable Court should deny Appellant's Proposition of Law.

**CONCLUSION**

Appellee, the State of Ohio, respectfully submits that Appellant Michael Foster's Memorandum in Support of Jurisdiction fails to present a substantial constitutional question or an issue of public or great general interest. The Eighth District properly rejected Foster's claims. Appellant has offered no constitutional issue or question of great public interest to this court. The proceedings in the Court below were fair and consistent. Further review of this matter should be denied.

Respectfully submitted,

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CUYAHOGA COUNTY PROSECUTOR

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**CERTIFICATE OF SERVICE**

A copy of the foregoing Memorandum in Response has been mailed this the 18<sup>th</sup> day of August 2011 to Stephen P Hardwick, 250 East Broad St., Suite 1400, Columbus, Oh 43215.

  
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Assistant Prosecuting Attorney