

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio,	:	S. Ct. Case No. 11-1912
	:	C.A. Case No. E-10-022
Appellee	:	C.P. Case No. 2008-CR-282
v.	:	
Thomas J. Ricks,	:	
Appellant	:	

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APPEAL FROM THE SIXTH APPELLATE DISTRICT
ERIE COUNTY, OHIO

MEMORANDUM IN OPPOSITION OF JURISDICTION

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WHY LEAVE TO APPEAL SHOULD BE DENIED

Appellant has failed to demonstrate in his Memorandum in Support of Jurisdiction that this case involves a substantial constitutional question or that this case is one of public or great general interest. The Sixth District Court of Appeals correctly held that, based on the totality of the circumstances, the witness identifications from photo arrays, which arrays contained other individuals known to the witnesses, were reliable and there was no likelihood of misidentification. The reviewing court recognized that this issue has not been squarely addressed by the Ohio courts. Therefore, the Appellate Court relied on cases from other jurisdictions, whose courts upheld witness identifications similar to the facts in the case at bar – **State v. Battle** (2008), 312 Wis.2d 481; **State v. Stokes** (Kan. App.2004), 87 P.3d 375; **People v. James** (1963), 218 Cal.App.2d 166, and **Younger V. Delaware** (Del. 1985), 496 A.2d 546. The Sixth District Court of Appeals also found that witness identifications where the police have indicated to the witness that a person of interest was included within the photo array was not, without more, unduly suggestive. The court relied on the Sixth District Court of Appeals case of **State v. Starks**, 2007-Ohio-4897, 2007 Ohio App. LEXIS 4364, **discretionary appeal not allowed** 115 Ohio St. 3d 1475.

The Sixth District Appellate Court also correctly found that incriminating statements made by a codefendant may be offered through the testimony of an investigating officer to explain the officer's conduct in the course of an investigation, so long as a limiting instruction is given to the jury, as was done in the case at bar. The court recognized that under **Lilly v. Virginia** (1999), 527 U.S. 116, appellant has the constitutional right to confront witnesses against him. However, relying on **State v. Blevins** (1987), 36 Ohio App.3d 147 and **State v.**

Williams, 2003-Ohio-5204, Ohio App. LEXIS 4661, appeal den. (2004), 101 Ohio St.3d 1468, the reviewing court determined that there was no evidence that the codefendant's statements were used to exonerate himself or to implicate appellant. With the curative instruction, there was no error found. Therefore, based on the case law cited by the reviewing court, there has been no demonstration in appellant's jurisdictional memorandum that a substantial constitutional question has been raised or that this case is one of public or great general interest.

STATEMENT OF THE CASE

Appellant was indicted on or about May 9, 2008, by the Erie County Grand Jury on two counts of aggravated murder with prior calculation and design, one count of aggravated robbery, a felony of the first degree, one count of trafficking in marijuana a felony of the first degree and one count of trafficking in cocaine, a felony of the first degree. Further, the counts of aggravated murder and aggravated robbery carried firearm specifications.

On April 27, 2010, appellant was found guilty by a jury of his peers on both counts of aggravated murder with the firearm specifications, one count of aggravated robbery with the firearm specification, one count of complicity to trafficking in marijuana, and one count of complicity to trafficking in cocaine. Further, the parties had stipulated that the offenses of trafficking were committed within one thousand feet of the boundaries of a school premise.

On May 3, 2010, appellant was sentenced to a total of one life sentence without the possibility of parole in addition to twenty six years as evidenced by the entry filed May 4, 2010. Appellant filed a notice of appeal in The Sixth District Court of Appeals on the entry filed May 4, 2010.

On September 30, 2011, the Sixth District Court of Appeals vacated appellant's convictions for complicity to trafficking in cocaine and complicity to trafficking in marijuana,

and remanded for resentencing. The remainder of the judgment against appellant was affirmed.

State v. Ricks, 2011 Ohio App. LEXIS 4157, 2011-Ohio-5043 (Ohio App. 6 Dist.).

Appellant filed his notice of appeal with the Supreme Court of Ohio on November 10, 2011, on the judgment rendered by the Sixth District Court of Appeals filed September 30, 2011.

On November 29, 2011, appellant's resentencing hearing was ordered stayed by the trial court pending the outcome of appellant's appeal to the Supreme Court of Ohio.

STATEMENT OF THE FACTS

On March 10, 2008, co-defendant Aaron Gipson (hereinafter "Gipson") and appellant, were visiting with Chanel Harper (hereinafter "Chanel") at her residence, along with Crystal Pool (hereinafter "Crystal"). Neither Chanel nor Crystal had seen appellant before that night, but they all hung out for a few hours. Chanel and Gipson had dated in the past, and he helped her out occasionally. In fact, Chanel owed Gipson money for marijuana he had fronted her. Chanel was also aware that her brother, the victim, Calvin Harper (hereinafter "Mann"), was involved in drugs and that Gipson was her brother's middle man in the drug dealings.

On March 10th, the same day, Mann went to his mother's house, Queen Amison (hereinafter "Queen"), to pick up about \$3,000.00 that she was holding for him. Mann told Queen he knew a guy who had some drugs. Queen was also aware of the relationship between Mann and Gipson.

The next day, March 11th, Rhonda Farris (hereinafter "Rhonda") called Mann early in the morning to ask if she could borrow \$20.00. Rhonda and Mann were neighbors and very close friends. In fact, Rhonda would watch Mann's back, even kept drugs at her residence for Mann, and cooked for him. When Rhonda went next door to get the money, she noticed two

large stacks of money sitting on the stove, which totaled \$20,000.00. After seeing the money, Rhonda left quickly because she knew Mann was going to do a transaction that day.

Around 4:00 p.m., Rhonda's daughter had just come home from track practice. Rhonda noticed a man coming up her front steps. She opened the door and inquired who he was looking for. The man was only a foot in front of Rhonda when he looked at her and said, "Oh shit, Mann." Then he turned around and started up the sidewalk to Mann's house. Rhonda called Mann to warn him of the strange man coming up to his home. Mann told Rhonda, "That's my dude, he cool he cool, good lookin' out." Mann told Rhonda he would call her back, but she never heard from him. Rhonda tried calling Mann but he did not answer. A number of people had tried calling Mann throughout the evening without any success.

On March 12th, Queen did not receive a phone call from her son, as she did every morning. After a few phone calls and no one being able to contact Mann, Rhonda called Queen. Queen told Rhonda to enter Mann's house and make sure everything was alright. Rhonda and her son, Kevin Farris (hereinafter "Kevin"), went into the house through the back door, while Queen was still on the cell phone. They found Mann's cell phone on the stove. When Rhonda found Mann lying on the floor, Rhonda made a noise, Queen knew something was wrong, and rushed to her son's home. Rhonda left the house distraught and called 911.

Officers arrived on scene. Sergeant Richard Braun (hereinafter "Braun") testified that Mann had no pulse and felt stiff. Officer Alexander (hereinafter "Alexander") identified the victim as Calvin Harper. Detectives arrived on scene, and Braun, Alexander, and Sergeant Snyder (hereinafter "Snyder") all went outside to secure the area. There was a crowd quickly gathering around Mann's home with people becoming extremely upset and yelling.

Detective Gary Wichman (hereinafter "Wichman") arrived at Mann's home with Detective John Orzech (hereinafter "Orzech"). From that day on, through interviews and speaking with witnesses, detectives were aware that a drug deal was to have taken place between Mann and an unknown individual or individuals. They were directed to Mann's phone to find out who he was dealing with. Detectives were led to Gipson. Through phone records, it was learned that Gipson was in Sandusky on March 10th and 11th. Further, Chanel gave detectives a description of the man who was with Gipson at Chanel's apartment the day before the murder. Rhonda had given detectives the same description of the man who was at her door the day of the murder. Crystal was unable to give a verbal description; however, she advised that she would be able to point him out if she saw him again.

Gipson was eventually found to be in Canton, Michigan, in lockup. After Canton Police spoke with Gipson, detectives became aware of appellant. Contrary to appellant's allegation, Gipson only identified appellant to be the individual known as "Peanut." Orzech, Wichman, and Detective Helen Prosowski (hereinafter "Prosowski") drove to Canton to have Gipson identify appellant and were assisted by Officer Michael Steckel (hereinafter "Steckel") of the Canton Police Department. The officers then drove to 14263 Strathmore in order for Gipson to point out appellant's residence and observed a person standing in front of the residence. Gipson pointed to the individual stating it was appellant, who was only known at that time as "Peanut." Once back at the station, detectives were able to verify appellant's identity. Steckel then e-mailed appellant's photo to officers at Sandusky Police Department (hereinafter "SPD").

Detective Eric Graybill (hereinafter "Graybill") received the forwarded e-mail of the picture of appellant from Orzech who also requested that Graybill configure a photo lineup containing appellant's photo. Graybill testified that department procedure for photo lineups

consist of an array of eight photographs. Graybill first entered appellant's information into the records management system, created a name file and record number, and saved appellant's photo. In creating the lineup, appellant's photo was inserted into slot number six. Graybill further testified that the system automatically populates other individuals within the system. The individuals are all of similar physical characteristics: height, weight, eye color, and hair color. Graybill will then manually choose to insert pictures that are analogous to the background and physical features of the individual. Graybill was cautious not to insert a photo that had a completely different background, keeping the photos as close to the same as possible.

At the hearing on the motion to suppress the identification and at trial, the testimony demonstrated that Chanel was shown the photo array and picked number six as being the man at her house with Gipson. Chanel testified that she was "a hundred percent sure and I'm a hundred for sure now" that appellant was the man at her home with Gipson. Crystal was also shown the photo array with appellant's photo. Crystal testified she was 100% sure that appellant was the man at Chanel's house with Gipson. Crystal further testified that although she knew some of the other people in the photo array, it did not cause her to be any less sure of the person she picked. Detectives had also shown the photo array to Rhonda. Rhonda identified appellant as the man who came to her door the day of the murder. Rhonda also knew the other people in the array. It should also be noted that when the arrays were shown to the witnesses, law enforcement was not made aware that the witnesses knew the other people in the array.

Officer Rocky Middendorf (hereinafter "Middendorf"), from Cobb County Georgia, testified that he answered a call about a robbery in Cobb County. Appellant was standing with two other individuals near where the call was received. Middendorf approached the individuals and smelled marijuana. Appellant gave Middendorf a fake name and he was arrested for

obstruction. Middendorf, upon receiving appellant's real name, checked NCIC, found the warrant from Sandusky, and took appellant to Cobb County Jail.

ARGUMENT

PROPOSITION OF LAW NO. ONE: A PHOTOGRAPHIC ARRAY WHICH CONTAINS PHOTOGRAPHS OF INDIVIDUALS PREVIOUSLY KNOWN TO AN IDENTIFYING EYEWITNESS, AND WHICH ALSO CONTAINS A PHOTOGRAPH OF THE EVENTUAL DEFENDANT, IS NOT UNDULY SUGGESTIVE IN NATURE.

When reviewing issues of identification, a court must look to the "totality of the circumstances" when determining whether an identification was suggestive or conducive to irreparable mistake. Stovall v. Denno (1967), 388 U.S. 293; Simmons v. United States (1968), 390 U.S. 377. An identification is reliable as long as the police procedure used does not create "a very substantial likelihood of irreparable misidentification." State v. Waddy (1992), 63 Ohio St.3d 424, 439, quoting Simmons v. United States (1968), 390 U.S. 377, 384. See also Neil v. Biggers (1972), 409 U.S. 188, 198. In determining whether the procedure created a very substantial likelihood of irreparable misidentification, courts should look at the following factors: "(1) the witness's opportunity to view (or, in the case of a voice identification, to hear) the defendant during the crime, (2) the witness's degree of attention, (3) the accuracy of the witness's prior description of the suspect, (4) the witness's certainty, and (5) the time elapsed between the crime and the identification." State v. Waddy, 63 Ohio St.3d at 439, citing Biggers, 409 U.S. at 199-200.

Flaws in the identification procedure do not necessarily preclude their admission. State v. Dickess (2008), 174 Ohio App. 3d 658, 668. See State v. Moody (1978), 55 Ohio St.2d 64, 67; State v. Merrill (1984), 22 Ohio App.3d 119, 121. "[R]eliability is the linchpin in determining the admissibility of identification testimony." Dickess, 174 Ohio App. at 668,

quoting **Manson v. Brathwaite** (1977), 432 U.S. 98, 114. Therefore, although an identification may be suggestive, or be flawed in other ways, it is still admissible as long as it is reliable. **Id.**

In the case at bar, appellant argues that the appellate court applied the “totality of the circumstances” test unreasonably. See **Memorandum in Support of Jurisdiction of Appellant Thomas J. Ricks, 11**. Contrary to appellant’s argument, the appellate court performed a thorough review of the facts surrounding the photographic identification of appellant.

The appellate court stated that a photograph of appellant was obtained from Cobb County, Georgia, and emailed to Sandusky County, Ohio. The photo was used to develop a photo array, placing appellant’s photo in slot six, out of eight. **Ricks**, 2011-Ohio-5043 at 10-11,

¶25. The Sixth District Court specifically noted that:

Detective Eric Graybill testified that he compiled the photo array. Graybill stated that in compiling the array, *he looked for photographs with similar backgrounds and individuals with similar physical characteristics*. Detective Graybill stated that the *photographs were selected from those already in the department's system*. Graybill indicated that *he did not know where the other individuals in the array lived*. (Emphasis added)

Id. at 11, ¶28.

Additionally, the appellate court noted that the witnesses that identified appellant were able to do so, independent of their knowledge of the other individuals in the photo array:

The three witnesses that identified appellant testified. Crystal Pool testified that on March 10, 2008, she spent a few hours with appellant at her friend's house. That was the first time she met appellant. Regarding the photo array, *Pool admitted that she knew “just about everybody in the picture,” but that she recognized appellant, too*. *Pool testified that she would never forget his eyes*.

Chanel Harper testified that the victim was her brother. Harper stated that Gipson and appellant were at her home on March 10, 2008. Regarding the photo array, *Harper testified that she knew “mainly all of” the individuals in the array and went to school with some of them*. *Harper stated that she was “very sure” of her identification*.

Rhonda Farris testified that she lived next door to the victim and that, just before the murder, a man mistakenly knocked on her door. *Farris testified that they were approximately six inches apart. Farris testified that she was "very sure" that the individual was appellant and she picked him out of the photo array.* Farris stated that her cousin was in the array and that she knew all the others. Farris stated that she "picked him out first" before she even looked at the other photos.

Detective Helen Prosowski testified that she presented the photo array with Detective Wichman, separately, to Chanel Harper and Rhonda Farris. It was presented approximately ten days after the murder. Prosowski testified that both women immediately identified appellant.

Id. at 11-13, ¶29-32.

While the appellate court noted that Ohio courts have not squarely addressed the issue of witnesses' knowledge of other individuals in the photo array, the court did note that it has been addressed in other jurisdictions:

In **State v. Battle** (2008), 312 Wis.2d 481, "[t]he court concluded that the appellant failed to demonstrate that the array was unduly suggestive. The court noted that the detective did not suggest to the victim who to pick and that the victim immediately recognized and identified the appellant. The court noted that 'the fact that [the victim] recognized all of the people depicted in the array from the neighborhood' did not affect the reliability of the identification." **Ricks**, 2011-Ohio-5043 at 14, ¶36.

In **State v. Stokes** (Kan.App.2004), 87 P.3d 375, unbeknownst to the detective, the witness knew four of the individuals in the photo array. The court noted that "prior to the identification, the detective did not know that the victim knew the other individuals. Further, there was no evidence that the detective suggested the appellant's photo to the victim. The court concluded that even if the array was suggestive, the identification was reliable." **Ricks**, 2011-Ohio-5043 at 14, ¶38.

In People v. James (1963), 218 Cal.App.2d 166, and Younger v. Delaware (Del. 1985), 496 A.2d 546, the courts allowed the identifications even where witnesses knew one or more of the individuals in the lineups were ununiformed police officers. In doing so, the courts focused on the certainty of the identifications. Ricks, 2011-Ohio-1415 at ¶39.

Appellant also contends that “[w]hile the witnesses expressed certainty regarding their identifications, at least one of the identifications followed an investigator’s prompt that a suspect was, in fact, depicted within the array.” See **Memorandum in Support of Jurisdiction of Appellant Thomas J. Ricks, 9**. The appellate court also addressed this issue by stating that:

Appellant also argued that Detective Wichman’s statement that a suspect was included in the photo array was unduly suggestive. In State v. Starks, 6th Dist. Nos. L-05-1417, L-05-1419, 2007-Ohio-4897, [discretionary appeal not allowed 115 Ohio St. 3d 1475] this court noted that a police officer’s statement that a suspect was included among those in the array, without more, was not impermissibly suggestive. We noted that “[i]t seems not unreasonable to assume that any time police show a photo array, one of the pictures there is of an individual of police interest.” Id. at ¶ 33.

Ricks, 2011-Ohio-1415 at 15, ¶40. The holding in Starks has also been followed by other Ohio courts in State v. Gloss, 2010-Ohio-4059, 2010 Ohio App. LEXIS 3432, 21-22, ¶58 (Ohio App. 5 Dist.) and State v. Bandy, 2008-Ohio-1494, 2008 Ohio App. LEXIS 1310, 23, ¶48 (Ohio App. 11 Dist.).

In the case at bar, based upon the totality of the circumstances, the identifications should be found to be reliable based upon the testimony of the witnesses. While the witnesses may have known the other individuals in the photo arrays, or that appellant was among the individuals contained in the photo arrays, the witnesses positively identified appellant, resulting in minimal likelihood of misidentification. Therefore, the appellate court did not err by upholding the identification of appellant in the case at bar.

Appellant is aware that the legislature has set forth changes in the photo array identification procedures subsequent to the case at bar to protect suspects from unduly suggestive eyewitness identifications. Even with this in mind, a defendant must demonstrate an unduly suggestive eyewitness identification. The trial court, as well as the Sixth District Court of Appeals, found appellant has failed to demonstrate any faulty identification. This decision does not present this Honorable Court with a substantial constitutional question nor is this case one of public or great general interest.

PROPOSITION OF LAW NO. TWO: INCRIMINATING STATEMENTS MADE BY A CODEFENDANT MAY BE OFFERED THROUGH THE TESTIMONY OF AN INVESTIGATING OFFICER TO EXPLAIN HIS CONDUCT IN THE COURSE OF AN INVESTIGATION, SO LONG AS A LIMITING INSTRUCTION IS GIVEN TO THE JURY.

The admission or exclusion of evidence rests within the sound discretion of the trial court. A reviewing court will not disturb a trial court's ruling absent an abuse of discretion. State v. Cody, 2007 Ohio App. LEXIS 5938, 2007-Ohio-6776, 7 (Ohio App. 10 Dist.). The Sixth Amendment to the United States Constitution provides that an accused has the right to confront witnesses against him. In Crawford v. Washington (2004), 541 U.S. 36, the United States Supreme Court held that “[w]here nontestimonial hearsay is at issue, it is wholly consistent with the Framers’ design to *afford the States flexibility in their development of hearsay law*-as does Ohio v. Roberts [(1980), 448 U.S. 56], and as would an approach that exempted such statements from Confrontation Clause scrutiny altogether. Where testimonial evidence is at issue, however, the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination.” (Emphasis added) Crawford, 541 U.S. at 68. “Thus, Crawford only applies to hearsay statements that are not subject to any hearsay exceptions.” State v. Goza, 2007 Ohio App. LEXIS 5982, 2007-Ohio-6837, 14 (Ohio App. 8

Dist.) citing State v. Banks, 2004 Ohio App. LEXIS 5957, 2004-Ohio-6522 (Ohio App. 10 Dist.).

The general rule is that a codefendant's statements implicating the other defendant are not admissible and violates a defendant's right to confrontation when the codefendant does not testify. Bruton v. United States (1968), 391 U.S. 123, syllabus. However, "[n]ot all out-of-court statements are hearsay, *e.g.*, some statements are merely verbal parts of acts and are, as the acts are themselves, admissible. However, in a criminal case, the potential for abuse in admitting such statements is great where the purpose is merely to explain an officer's conduct during the course of an investigation. Therefore, in order to admit out-of-court statements which explain an officer's conduct during the course of a criminal investigation, the conduct to be explained must be relevant, equivocal and contemporaneous with the statements. In addition, the statements must meet the standard of Evid.R. 403(A)." State v. Kobi (1997), 122 Ohio App.3d 160, 173 quoting State v. Blevins (1987), 36 Ohio App.3d 147, paragraph one of the syllabus.

Statements are not hearsay when they are admitted to explain why officers took certain steps throughout their criminal investigation. Id. See also, State v. Thomas (1980), 61 Ohio St.2d 223, 232; State v. Willis, Case No. 81AP-508, 1981 Ohio App. LEXIS 10333, (Ohio App. 10 Dist. Dec. 15, 1981); State v. Robertson, Case No. 78AP-584, 1979 Ohio App. LEXIS 10943, (Ohio App. 10 Dist. July 31, 1979).

In the case at bar, the probative value of the statements clearly outweighed the potential for prejudice. The statement of the codefendant identifying appellant as the person known as Peanuts was essential to explain officers' testimony as to how they came to know appellant and to explain the officers' conduct of including appellant in the photo array in which appellant was identified. See Blevins, *supra*. See also, State v. Williams, 2003 Ohio App. LEXIS 4661,

2003-Ohio-5204, (Ohio App. 10 Dist.); **State v. Alexander**, Case No. E-91-86, 1993 Ohio App. LEXIS 3861, (Ohio App. 6 Dist. Aug. 6, 1993); **State v. Davis** (2006), 947 So.2d 48. Contrary to appellant's assertion, at no time was testimony introduced indicating that appellant was identified by the codefendant as the person who committed the murder. The record demonstrates that the Sandusky Police Department was told by witnesses that the codefendant was in Sandusky and that he came with a person only known as Peanut. The Sandusky Police Department notified Canton, Michigan where the codefendant was incarcerated. The codefendant identified Peanut by taking Canton Police Officers to where Peanut lived.

Codefendant's statement identifying appellant as Peanut is not incriminating on its face and only became so when linked with the evidence of appellant's identification, which identification was determined by further police investigation. **Richardson v. Marsh** (1987), 481 U.S. 200, 203. Where such a link is required to incriminate defendant, a limiting instruction to the jury is sufficient to satisfy **Bruton**. **Com. v. Travers** (2001), 768 A.2d 845, 848, citing **Gray v. Maryland** (1998), 523 U.S. 185. A limiting instruction was given by the trial court in the case at bar and was duly noted and quoted by the appellate court. **Ricks**, 2011-Ohio-5043 at 22-23, ¶62-63. Specifically, the court stated that "[s]o understand when you're hearing this testimony that it's to describe this officer and that department's investigation in conjunction with the Sandusky Police Department." **Id.** at 23, ¶63. "[A] jury is presumed to follow the instructions of the court." **Blevins**, 36 Ohio App.3d at 150, citing **Lakeside v. Oregon** (1978), 435 U.S. 333. See **State v. Mason** (1998), 82 Ohio St.3d 144, 157, **recon. den.**, 82 Ohio St.3d 1483, **cert. den.**, 525 U.S. 1057. Therefore, there is no demonstration that the trial court abused its discretion in allowing the codefendant's statements, as the statements explained the police investigation of appellant, and a limiting instruction was given to the jury.

Finally, the appellate court noted that

In the present case, we have a co-defendant who identified an individual he believed to be Peanut. There is no evidence that Gipson used the opportunity to exonerate himself and implicate appellant. Once Peanut was identified as appellant, the Sandusky officers were able to compile a photo array. Further, the court issued a lengthy curative instruction to ensure that the jury properly interpreted the testimony. Finally, Gipson was made available for questioning but appellant declined. Based on the foregoing, we find that the trial court did not err in allowing the testimony. Appellant's third assignment of error is not well-taken.

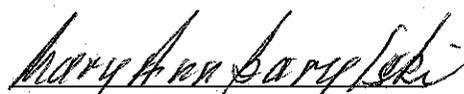
Ricks, 25-26, ¶69.

Appellant relies on the dissenting opinion of Judge Yarbrough. What Judge Yarbrough failed to take into consideration in his opinion was the totality of all the evidence presented at trial. Judge Yarbrough only centered on the identification of Peanut as being appellant. Other evidence demonstrates that appellant, while incarcerated in the State of Georgia, made incriminating statements: when appellant was asked why appellant did not tell his friend about what happened in Ohio, appellant responded that "it happened, Sonja. Just know it happened." Appellant knew the U.S. Marshalls were coming for him, that he needed a good lawyer, that it was over for appellant, that appellant was not getting out of jail, that they got him, etc. Consequently, based on the totality of the circumstances the trial court and the Sixth District Court of Appeals rendered the proper decisions, which decisions do not require further review.

CONCLUSION

Because appellant has failed to demonstrate that this Honorable Court has original or appellate jurisdiction, or why this case involves a substantial constitutional question, or that this case is one of public or great general interest, appellee respectfully moves that appellant's memorandum in support of jurisdiction be dismissed.

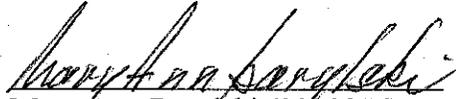
Respectfully submitted,



Mary Ann Barylski (0038856)
Assistant Prosecuting Attorney

CERTIFICATION

This is to certify that a copy of the foregoing response to Appellant's Memorandum in Support of Jurisdiction was mailed to Kristopher A. Haines, Assistant State Public Defender, 250 E. Broad St., Suite 1400, Columbus, Ohio 43215, on this 7th day of December, 2011, by regular U.S. mail.


Mary Ann Barylski (0038856)
Assistant Prosecuting Attorney