

ORIGINAL

BEFORE THE SUPREME COURT OF OHIO

STATE OF OHIO

APPELLANT/CROSS-APPELLANT

-vs-

JAMELLE JACKSON

APPELLANT/CROSS-APPELLEE

CASE NO.: 2014-0150

ON APPEAL FROM CASE NO. 26757
BEFORE THE COURT OF APPEALS
FOR THE NINTH APPELLATE
DISTRICT

RECEIVED
FEB 18 2014
CLERK OF COURT
SUPREME COURT OF OHIO

COMBINED RESPONSE TO DEFENDANT-APPELLANT'S MEMORANDUM
IN SUPPORT OF JURISDICTION, AND STATE OF OHIO/CROSS-
APPELLANT'S MEMORANDUM N SUPPORT OF JURISDICTION

JAMELLE JACKSON
INMATE NO. 640-942

MANSFIELD CORRECTIONAL
INSTITUTION (ManCI)
P.O. BOX 788
MANSFIELD, OH 44901

PRO SE DEFENDANT/
APPELLANT/CROSS-APPELLEE

PAUL J. GAINS, 0020323
MAHONING COUNTY PROSECUTOR

RALPH M. RIVERA, 0082063
ASSISTANT PROSECUTOR
Counsel of Record

OFFICE OF THE MAHONING COUNTY
PROSECUTOR
21 W. BOARDMAN ST., 6TH FL.
YOUNGSTOWN, OH 44503
PH: (330) 740-2330
FX: (330) 740-2008
rrivera@mahoningcountyoh.gov

COUNSEL FOR STATE OF OHIO/
APPELLEE/CROSS-APPELLANT

FILED
FEB 18 2014
CLERK OF COURT
SUPREME COURT OF OHIO

Certificate of Service

I certify that a copy of the State of Ohio's Combined Response to Defendant's Memorandum in Support of Jurisdiction and the State of Ohio's Defendant's Memorandum in Support of Jurisdiction was sent by ordinary U.S. mail to the following parties on February 11, 2014:

Jamelle Jackson, Inmate N. 640-942
Mansfield Correctional Institution (ManCI)
P.O. Box 788
Mansfield, OH 44901

Timothy Young, Esq.
Ohio State Public Defender
Office of the Ohio State Public Defender
250 E. Broad Street, Suite 1400
Columbus, OH 43215

So Certified,



Ralph M. Rivera, #082063

Counsel for State of Ohio/Appellee/
Cross-Appellant

Table of Contents

CERTIFICATE OF SERVICE.....ii

TABLE OF CONTENTS.....iii

STATEMENT OF WHY THE STATE OF OHIO’S
CROSS-APPEAL IS OF GREAT PUBLIC OR GENERAL INTEREST,
AND PRESENTS A SUBSTANTIAL CONSTITUTIONAL QUESTION.....1

STATEMENT OF WHY DEFENDANT’S APPEAL IS NOT
OF GREAT PUBLIC OR GENERAL INTEREST, AND DOES
NOT PRESENT ANY SUBSTANTIAL CONSTITUTIONAL QUESTIONS.....3

STATEMENT OF THE CASE AND FACTS.....5

LAW AND ARGUMENT.....13

State of Ohio’s Proposition of Law No. I:.....13
R.C. 2941.25 Does Not Require Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), to merge with a defendant’s convictions for Murder, in violation of R.C. 2903.02(B), and Felonious Assault, in violation of 2903.11(A)(2), when a defendant’s conduct demonstrates that he specifically sought to shoot up a residence in addition to commit felonious assault.

Defendant’s Proposition of Law No. I:.....21
Trial Court Erred in Sentencing Appellant Jackson to Multiple Punishments in Violation of R.C. 2941.25, for Murder, and Felonious Assault, and Improperly Discharging a Firearm at or into a Habitation, Which are Allied Offenses from a Single Act with a Single Animus.

Defendant’s Proposition of Law No. II:.....29
The Appellant’s Convictions for Murder, Felonious Assault, and Improperly Discharge of a Firearm into a Habitation in the Case were Based on Insufficient Evidence and were Against the Manifest Weight of the Evidence and as a Result, Appellant’s Rights as Protected by Article IV, Section 3 of the Ohio Constitution were Violated.

CONCLUSION.....30

Statement of Why the State of Ohio's Cross-Appeal is of Great Public or General Interest, and Presents a Substantial Constitutional Question.

The State of Ohio's Cross-Appeal is of great public and general interest that presents a substantial constitutional question, because Defendant/Appellant/Cross-Appellee Jamelle Jackson and his codefendant Columbus Jones received different sentences after each defendant's direct appeal was heard by a different appellate district following a change of venue.

Here, both Defendant and Jones were convicted of Murder, Improperly Discharging a Firearm at or into a Habitation, and ten counts of Felonious Assault following a shooting outside a Youngstown State University fraternity house. *See State v. Jackson*, 9th Dist. No. 26757, 2013 Ohio 5557; *State v. Jones*, 7th Dist. 12 MA 181, 2013 Ohio 5915.

On appeal, both Defendant and Jones argued that their convictions for Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), merged with their convictions for Murder and Felonious Assault pursuant to R.C. 2941.25. The problem was the fact that their appeals were heard by two separate District Courts of Appeal—Defendant by the Ninth and Jones by the Seventh—and each District Court came to the opposite conclusion concerning the merger of these convictions.

The Seventh District found that codefendant Columbus Jones' conviction for Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), *did not merge* with his convictions for Murder and Felonious Assault. *See Jones*, *supra* at ¶ 73. The Ninth District, however, found that Defendant's conviction for Improperly Discharging a Firearm at or into a Habitation, in violation of

R.C. 2923.161(A)(1)(C), *should have merged* with his convictions for Murder and Felonious Assault. *See Jackson*, supra at ¶ 30.

Here, this Court must decide whether R.C. 2941.25 requires Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), to merge with a defendant's convictions for Murder, in violation of R.C. 2903.02(B), and Felonious Assault, in violation of 2903.11(A)(2), when a defendant's conduct demonstrates that he specifically sought to shoot up a residence in addition to committing felonious assault.

Thus, this Court must accept the State of Ohio's discretionary appeal to resolve the apparent conflict between the Seventh and Ninth District's resolution of when Improperly Discharging a Firearm at or into a Habitation is required to merge Murder, in violation of R.C. 2903.02(B), and Felonious Assault, in violation of 2903.11(A)(2).

WHEREFORE, State of Ohio/Appellee/Cross-Appellant hereby requests this Honorable Court to Accept its Discretionary Appeal, and allow the State to fully brief its argument.

Statement of Why Defendant's Appeal is Not of Great Public or General Interest, and Does Not Present Any Substantial Constitutional Questions.

This Honorable Court must decline jurisdiction over Defendant/Appellant/Cross-Appellee Jamelle Jackson's discretionary appeal, because his arguments do not present any substantial constitutional questions and are of no general or public interest. Defendant seeks to have this Court revisit two well settled principles of law, and to merely apply them to the specific facts of this case.

As for Defendant's first proposition of law, he contends that the manifest weight of the evidence did not support his convictions for Murder, Felonious Assault, Carrying a Concealed Weapon, Improperly Discharging a Firearm at or into a Habitation, and the accompanying Firearm Specifications; and the State failed to present sufficient evidence to establish those convictions. An appellate court's review for manifest weight and sufficiency are well settled, and it is unnecessary for this Court to address them again.

As for Defendant's second proposition of law, he contends that the trial court erred in sentencing him for allied offenses of similar import pursuant to R.C. 2941.25(A)—Murder, Felonious Assault, and Improperly Discharging a Firearm at or into a Habitation.

First, the Ninth District concluded that Defendant's convictions for Murder and Felonious Assault should have merged with his conviction for Improperly Discharging a Firearm at or into a Habitation. *See Jackson*, supra at ¶¶ 28-31. This issue has been discussed above, and will be thoroughly discussed in the State of Ohio's sole proposition of law.

Second, it is well established that multiple offenses of felonious assault that are committed against multiple victims, involve separate and distinct animi. *See State v.*

Glenn, 8th Dist. No. 97314, 2013 Ohio 1652, ¶ 19, citing *State v. Lanier*, 192 Ohio App.3d 762, (1st Dist. 2011), *State v. Stall*, 3rd Dist. No. 3-10-12, 2011 Ohio 5733, and *State v. McCullough*, 12th Dist. Nos. CA2010-04-006, CA2010-04-008, 2011 Ohio 992; *see also State v. Coffman*, 10th Dist. No. 09AP-727, 2010 Ohio 1995, ¶ 8.

The Second District concluded that “when an offense is defined in terms of conduct towards another, then there is a dissimilar import for each person affected by the conduct.” *State v. Phillips*, 75 Ohio App.3d 785, 790 (1991), citing *State v. Jones*, 18 Ohio St.3d 116, 118 (1985). The same rationale applies to Defendant’s argument concerning his conviction for Murder. Thus, the trial court properly sentenced Defendant to each count of Felonious Assault and Murder.

Therefore, this Court must decline jurisdiction over Defendant/Appellant/Cross-Appellee Jamelle Jackson’s discretionary appeal, because Defendant seeks to have this Court revisit two well settled principles of law, and to merely apply them to the specific facts of this case.

WHEREFORE, State of Ohio/Appellee/Cross-Appellant hereby requests this Honorable Court to Deny Defendant/Appellant/Cross-Appellee Jamelle Jackson’s Discretionary Appeal.

Statement of the Case, Facts, and Introduction

Defendant/Appellant/Cross-Appellee Jamelle Jackson was convicted of the following offenses: Count Four, Carrying a Concealed Weapon, in violation of R.C. 2923.13(A)(2)(F)(1), a felony of the fourth degree; Count Five, Murder (Jamail Johnson), in violation of R.C. 2903.02(B)(D), with an accompanying Firearm Specification, in violation of R.C. 2941.141(A); Count Seven, Felonious Assault (Durrell Richardson), in violation of R.C. 2903.11(A)(2)(D), a felony of the second degree; Count Eight, Felonious Assault (Shavai Owens), in violation of R.C. 2903.11(A)(2)(D), a felony of the second degree; Count Nine, Felonious Assault (Jaleesa Moore), in violation of R.C. 2903.11(A)(2)(D), a felony of the second degree; Count Eleven, Felonious Assault (Ebony Mickel), in violation of R.C. 2903.11(A)(2)(D), a felony of the second degree; Count Twelve, Felonious Assault (Jordan Wagner), in violation of R.C. 2903.11(A)(2)(D), a felony of the second degree; Count Thirteen, Felonious Assault (Tejohn Lawrence), in violation of R.C. 2903.11(A)(2)(D), a felony of the second degree; Count Fourteen, Felonious Assault (Jamie Ruffin), in violation of R.C. 2903.11(A)(2)(D), a felony of the second degree; Count Fifteen, Felonious Assault (D'Anthony Brown), in violation of R.C. 2903.11(A)(2)(D), a felony of the second degree; Count Sixteen, Felonious Assault (Lisette Encarnacion), in violation of R.C. 2903.11(A)(2)(D), a felony of the second degree; Count Seventeen, Felonious Assault (Selina Howard), in violation of R.C. 2903.11(A)(2)(D), a felony of the second degree; with the accompanying Firearm Specifications, in violation of R.C. 2941.141(A), attached to each count of Felonious Assault; and Count Eighteen, Improperly Discharging Firearm at or into Habitation, in violation of R.C. 2923.161(A)(1)(C), a felony of the second degree, with an

accompanying Firearm Specification, in violation of R.C. 2941.141(A). (Trial Transcript, November 26, 2012, before the Honorable John M. Durkin, at 1517-1518.)

The following facts were presented to the jury that proved Defendant's guilt beyond a reasonable doubt.

On February 6, 2011, around 3:30 a.m., Youngstown Police responded to a shooting at 55 Indiana Avenue, in Youngstown, Mahoning County, Ohio. (Trial Tr., at 283.) It was a cold and snowy night. Police encountered a large group of people (estimated at between 80 and 90), some of them wounded from gunshots. (Trial Tr., at 284.) Youngstown Officer Chad Zubal described the scene as "chaos," as there were people screaming and running from the house. (Trial Tr., at 309-310.)

Inside the house, Zubal encountered Jamail Johnson "bleeding profusely" near the southeast corner doorway. (Trial Tr., at 311-312.)

On February 5, 2011, just hours before the shooting occurred, much of the crowd attended an earlier party at the Metroplex hotel complex in Liberty, Trumbull County, Ohio, just north of Youngstown. The party was hosted by the Kappa Fraternity. (Trial Tr., at 333.) During the Metroplex party, the DJ announced that there would be an after-party at the Omega Psi Phi Fraternity House (aka "Que House") near the campus of Youngstown State University. (Trial Tr., at 334, 489.)

The Que House's after-party began between 2:00 and 3:00 a.m. on February 6, 2011. (Trial Tr., at 335, 374.) Party-goers entered through an entrance on the back porch. There, Que brothers patted people down and collected a nominal fee as they entered. (Trial Tr., at 338.)

Braylon Rogers attended the Metroplex party with Columbus Jones, Demetrius Wright, Marqueal Smith, Mark Jones, Brandon Carter, and Defendant. (Trial Tr., at 802.)

Rogers stated that himself, Columbus Jones, Wright, and Defendant carried guns that night. (Trial Tr., at 806.) Rogers carried a 9mm handgun; Defendant carried a .45 caliber handgun; Columbus Jones carried a Glock .40 caliber handgun; and Wright carried a .40 caliber handgun. (Trial Tr., at 806-807.) The others did not have guns. (Trial Tr., at 807.)

After the Metroplex party ended, Rogers and his friends went to the Que House. (Trial Tr., at 809.) Rogers and his friends entered the party after being patted down. Rogers managed to hide his handgun, which the fraternity brothers did not find. (Trial Tr., at 812-813.) Someone, however, found Columbus Jones' handgun when he was patted down. (Trial Tr., at 813.) Columbus Jones then gave his gun to Wright, and Wright passed it back to Jones through a side window of the house. (Trial Tr., at 814.) Rogers believed that Defendant's handgun was undiscovered by the fraternity brothers. (Trial Tr., at 814.)

Sometime later, Brittany Dabie, who was intoxicated, attempted to put her shoe on by putting her arm on Rogers to balance herself. (Trial Tr., at 608, 818.) Dabie cursed and yelled at Rogers when he moved his arm, and Rogers cursed and yelled back. (Trial Tr., at 818.) Dabie escalated the situation when she yelled and tried to hit Rogers with her shoe. (Trial Tr., at 612-613, 1335.)

Dannie Williams, Dabie's brother, came over and exchanged words with Rogers. (Trial Tr., at 819.) Victor Toney tried to defuse the situation, but Rogers punched

Williams in the face. (Trial Tr., at 615, 819.) Toney grabbed Williams and took him out the back door, and the two, along with Dabie, left the party. (Trial Tr., at 616, 819.)

Williams later spoke to Durrell Richardson, who Williams knew through boxing. Williams told Richardson what had happened at the Que House, and they later met at the Belleria Pizza on Youngstown's north side, just a few blocks from the party. (Trial Tr., at 617-618, 663.) They all returned to the Que House minutes later. (Trial Tr., at 618.)

Back inside, Williams pointed out Rogers and Columbus Jones, who Richardson knew. (Trial Tr., at 668.) Richardson stated that he approached them in an attempt to squash the problem, but Rogers smacked his hand down when Richardson attempted to shake his hand. (Trial Tr., at 669.)

Moments later, a fight erupted between Williams, Richardson, Rogers, and Columbus Jones. (Trial Tr., at 619-621, 821, 1338-1339.)

Jordan Wagner testified that the two smaller guys (Richardson and Williams) started beating down the larger group (Rogers and Jones), which was overwhelmed by them (Richardson and Williams). (Trial Tr., at 382-384.)

Richardson stated that at some point during this altercation, Columbus Jones flashed his gun. (Trial Tr., at 670.) This fact was corroborated by Toney's testimony that someone yelled "guns." (Trial Tr., at 1339.)

Andre Miller testified that he helped break up the fight, and pushed Williams outside the back door. (Trial Tr., at 535-537, 621.) When Miller pushed him outside, Miller observed Columbus Jones outside the back door with a gun. (Trial Tr., at 538-539.) Everyone involved in the fight were eventually pushed out or made their way through the house's back door onto the porch. (Trial Tr., at 385.)

Selina Howard testified that she was on the back porch when Columbus Jones, Braylon Rogers, Defendant, and one other male was pushed outside the back door. (Trial Tr., at 447-449.) Howard stated that Defendant, Jones, Rogers, and the other male were argumentative with Jamail Johnson and not cooperating as they were being told to leave. (Trial Tr., at 460.)

Miller stated that Jamail Johnson was holding back Richardson, who was trying to fight Columbus Jones. (Trial Tr., at 541.) Richardson explained that he was trying to squash the problem, but Rogers responded, "We ain't here to talk." (Trial Tr., at 674.) Richardson stated that Rogers then pulled out his gun, (Trial Tr., at 674.)

Williams stated that Defendant approached him and stated, "that was my boy you was fighting." (Trial Tr., at 622.) As Williams approached Defendant to punch him, Defendant stepped back and pulled out his gun. (Trial Tr., at 622.)

Rogers stated that after talking with Richardson, Rogers started walking off the porch preparing to leave. Columbus Jones started shooting towards the back door from just off the back porch. (Trial Tr., at 825.) When Columbus stopped shooting, Defendant started shooting his gun. (Trial Tr., at 826-827.)

Carl Davison testified that Columbus Jones stated, "I'm done talking," moments before gunfire erupted. (Trial Tr., at 509, 541, 675.)

Ten party-goers testified that they suffered gunshot wounds as a result: Jalessa Moore (Trial Tr., at 346-347.); Jordan Wagner (Trial Tr., at 391.); D'Anthony Brown (Trial Tr., at 431.); Selina Howard (Trial Tr., at 453.); Jamie Ruffin (Trial Tr., at 480.); Lisette Encarnacion (Trial Tr., at 570-571.); Tejohn ("T.J.") Lawrence (Trial Tr., at 595,

597.); Durrell Richardson (Trial Tr., at 679.); Shavai Owens (Trial Tr., at 947.); and Ebony Mickel (Trial Tr., at 1377-1378.).

Dr. Joseph Ohr, M.D., Mahoning County's Deputy Coroner and Forensic Pathologist, testified that Jamail Johnson died of multiple gunshot wounds to the head and leg. Dr. Ohr concluded that Johnson's death was a homicide—"he died at the hands of someone else." (Trial Tr., at 740, 789-790.)

Rogers testified that he ran when Defendant started shooting. (Trial Tr., at 828.) Rogers and the others eventually made it to the vehicles they arrived in and drove back to 488 West Laclede on Youngstown's south side. (Trial Tr., at 832-833.) There, they discussed the situation and reloaded their guns, but Rogers stated that he pretended to reload his gun. (Trial Tr., at 834-835.) Defendant and Columbus Jones further washed their hands with ammonia to get rid of the gunshot residue. (Trial Tr., at 834, 836.)

Later that afternoon, Rogers learned from his mother that the police were looking for him, so he turned himself in on Hudson. (Trial Tr., at 841-842.) Rogers provided Youngstown police with a statement about what happened. (Trial Tr., at 845-846.) Rogers told the detectives who were involved and what occurred at the Que House. (Trial Tr., at 848.) Rogers agreed to cooperate and testify. (Trial Tr., at 849, 857.)

On February 9, 2011, search warrants were simultaneously executed at 488 West Laclede and 383 West Delason in Youngstown. (Trial Tr., at 1019, 1066.) And on February 15, 2011, additional .40 and .45 caliber shell casings were recovered from 55 Indiana Avenue. (Trial Tr., at 1075.)

Martin Lewis, a forensic scientist with Ohio's Bureau of Criminal Identification and Investigation's trace evidence section, analyzed several gunshot residue kits and

items tested for gunshot residue submitted by the Youngstown Police Department. (Trial Tr., at 1085-1086, 1092-1095; State's Exhibit No. 144.)

Lewis concluded that the ammonia and Totally Awesome Cleaner bottles recovered pursuant to the search warrants tested positive for gunshot residue. (Trial Tr., at 1098.) Furthermore, all of the submitted clothes tested positive for gunshot residue. (Trial Tr., at 1099.) Lewis also found that Jamail Johnson's hands tested positive for gunshot residue, while Durrell Richardson's hands tested negative. (Trial Tr., at 1099.)

Michael Roberts, a forensic scientist assigned to BCI's firearms section, analyzed the ballistic evidence collected at the crime scene and pursuant to the two search warrants. (Trial Tr., at 1114; State's Exhibit Nos. 38-39, 41, 48-50, 130-131.) No firearms, however, were recovered to allow Roberts to match them with the ballistic evidence recovered. (Trial Tr., at 1177.)

Roberts found that the submitted cartridge cases recovered from 55 Indiana Avenue were fired from two separate guns—.40 and .45 caliber. (Trial Tr., at 1131-1132.) The “.40 caliber S&W caliber gun fired 10, and the .45 fired 11.” (Trial Tr., at 1132.)

Roberts also determined that both firearms used were Glocks; one being a .40 caliber S&W firearm, and the other being a .45 automatic caliber firearm. (Trial Tr., at 1136.) Roberts stated that both calibers (.40 and .45) analyzed demonstrated an elliptical shape, which is consistent with a Glock. (Trial Tr., at 1148.)

Roberts further concluded that the projectiles recovered from Jamail Johnson's body included one .40 caliber and one .45 caliber. (Trial Tr., at 1141.) The inconclusive

fragments recovered were consistent with .40 caliber. (Trial Tr., at 1141.) The recovered bullet from Shavai Owens was also .40 caliber. (Trial Tr., at 1141-1142.)

The jury convicted Defendant of two counts of Murder, ten counts of Felonious Assault, one count of Carrying a Concealed Weapon, one count of Improperly Discharging Firearm at or into Habitation, and all the accompanying Firearm Specifications. The trial court sentenced Defendant to a total term of incarceration of Ninety (90) years to Life. (Judgment Entry, April 16, 2013.)

Defendant timely appealed. On December 18, 2013, the Ninth District affirmed Defendant's convictions, but concluded that his convictions for Murder and Felonious Assault should have merged with his conviction for Improperly Discharging a Firearm into a Habitation, and remanded for resentencing. *See Jackson*, supra at ¶¶ 28-31.

The State of Ohio filed a Motion for Reconsideration and Motion to Certify a Conflict with the Ninth District, but they were denied as being untimely.

On January 27, 2014, Defendant filed a Memorandum in Support of Jurisdiction. The State of Ohio filed a Notice of Cross-Appeal on February 4, 2014. The State of Ohio now submits its Combined Response to Defendant-Appellant's Memorandum in Support of Jurisdiction and the State of Ohio/Cross-Appellant's Memorandum in Support of Jurisdiction, and prays this Honorable Court Deny Defendant Jamelle Jackson's Discretionary Appeal, but accept the State of Ohio's Discretionary Appeal and allow the State to fully brief its arguments.

Law and Argument

State of Ohio's Proposition of Law No. I: R.C. 2941.25 Does Not Require Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), to merge with a defendant's convictions for Murder, in violation of R.C. 2903.02(B), and Felonious Assault, in violation of 2903.11(A)(2), when a defendant's conduct demonstrates that he specifically sought to shoot up a residence in addition to commit felonious assault.

As for the State of Ohio's Cross-Appeal and sole proposition of law, the State contends that Defendant committed each offense with a separate animus; thus, the Ninth District improperly concluded that Defendant's conviction for Improperly Discharging a Firearm at or into a Habitation should have merged with his convictions for Murder and ten counts of Felonious Assault.

The State of Ohio's Cross-Appeal is of great public and general interest that presents a substantial constitutional question, because Defendant/Appellant/Cross-Appellee Jamelle Jackson and his codefendant Columbus Jones received different sentences after each defendant's direct appeal was heard by a different appellate district following a change of venue.¹

Here, both Defendant and Jones were convicted of Murder, Improperly Discharging a Firearm at or into a Habitation, and ten counts of Felonious Assault following a shooting outside a Youngstown State University fraternity house. *See State v. Jackson*, 9th Dist. No. 26757, 2013 Ohio 5557; *State v. Jones*, 7th Dist. 12 MA 181, 2013 Ohio 5915.

¹ Codefendant Columbus Jones was tried and convicted in Mahoning County on August 29, 2012. On September 17, 2012, Defendant Jamelle Jackson and the State of Ohio agreed to a change of venue, and Defendant was subsequently tried and convicted in Summit County. Defendant's direct appeal was then heard by the Ninth District Court of Appeals.

On appeal, both Defendant and Jones argued that their convictions for Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), merged with their convictions for Murder and Felonious Assault pursuant to R.C. 2941.25. The problem was the fact that their appeals were heard by two separate District Courts of Appeal—Defendant by the Ninth and Jones by the Seventh—and each District Court came to the opposite conclusion concerning the merger of these convictions.

The Seventh District found that codefendant Columbus Jones' conviction for Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), *did not merge* with his convictions for Murder and Felonious Assault pursuant to R.C. 2941.25. *See Jones*, supra at ¶ 73. The Ninth District, however, found that Defendant's conviction for Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), *should have merged* with his convictions for Murder and Felonious Assault pursuant to R.C. 2941.25. *See Jackson*, supra at ¶ 30.

Therefore, the great public and general interest that presents a substantial constitutional question is clear and simple, because this conflict needs resolved.

A. **THE DOUBLE JEOPARDY CLAUSE
AND R.C. 2941.25 PROHIBIT MULTIPLE
PUNISHMENTS FOR THE SAME OFFENSE; BUT,
ALLOW CONSECUTIVE PUNISHMENTS WHERE EACH
OFFENSE IS COMMITTED WITH A SEPARATE ANIMUS.**

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution “protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense.” *State v. Barr*, 4th Dist. No. 07CA34, 2008 Ohio 4754, ¶ 9, quoting *Brown v. Ohio*, 432 U.S. 161, 165 (1977),

quoting *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969); *see also* Ohio Constitution, Article I, Section 10. The Ohio Legislature has codified that protection in R.C. 2941.25. *See* R.C. 2941.25; *see State v. Lovejoy*, 79 Ohio St.3d 440 (1997).

That is, a defendant may not be punished for multiple offenses if the defendant's actions constitute allied offenses of similar import. *See State v. Bell*, 7th Dist. No. 06 MA 189, 2008 Ohio 3959, ¶ 154, citing *State v. Rance*, 85 Ohio St.3d 632, 636 (1999), later clarified by *State v. Cabrales*, 118 Ohio St.3d 54, ¶ 1 of the syllabus (2008). But, “if a defendant commits offenses of similar import separately or with a separate animus, he may be punished for both.” *Id.*, citing *State v. Jones*, 78 Ohio St.3d 12, 13-14 (1997). This Court previously held that a two-tiered analysis must be employed to determine whether two offenses are allied offenses of similar import. *See State v. Winn*, 121 Ohio St.3d 413, ¶ 10 (2009), quoting *Cabrales*, 118 Ohio St.3d at 57, quoting *State v. Blankenship*, 38 Ohio St.3d 116, 117 (1988); *see also State v. Brown*, 119 Ohio St.3d 447, 452 (2008). Thus, for the offenses to merge, both prongs must be satisfied.

This Court, however, overruled its earlier test in *Rance* in *State v. Johnson* when it held that “[w]hen determining whether two offenses are allied offenses of similar import subject to merger under R.C. 2941.25, the conduct of the accused must be considered.” *State v. Johnson*, 128 Ohio St.3d 153, syllabus (2010), overruling *Rance*, 85 Ohio St.3d at 632.

Rance was overruled “to the extent that it calls for a comparison of statutory elements solely in the abstract under R.C. 2941.25. When determining whether two offenses are allied offenses of similar import subject to merger under R.C. 2941.25, the conduct of the accused must be considered.” *Johnson*, *supra* at ¶ 44.

The Seventh District summarized this Court's test as follows: "1) can the two offenses be committed by the same conduct; and if so, 2) looking at the facts of the case, were the two offenses committed by the same conduct as a single act with a single state of mind." *State v. Helms*, 7th Dist. No. 08 MA 199, 2012 Ohio 1147, ¶ 24, citing *Johnson*, at syllabus. "If the answer to both questions is yes, then they are allied offenses of similar import and must be merged. If the acts were committed separately or with a separate animus, they are not allied offenses." *Helms*, 2012 Ohio 1147, ¶ 24, citing *Johnson*, supra at ¶ 51; accord *State v. Gardner*, 7th Dist. No. 10 MA 52, 2011 Ohio 2644. The "allied offense" test is now case and fact specific, and "may result in varying results for the same set of offenses in different cases." *Johnson*, supra at ¶ 52.

That is, *Johnson* altered the first prong that was previously set forth by this Court. Instead of looking at the two offenses in the abstract, courts must now take into consideration the offender's conduct in determining whether the offenses are allied offenses. If they are allied offenses, courts must then determine whether the offender committed each offense with a separate animus. And only where the offender committed each offense with a separate animus, may he be sentenced for both offenses.

Furthermore, this Court recently held that "[w]hen deciding whether to merge multiple offenses at sentencing pursuant to R.C. 2941.25, a court must review the entire record, including arguments and information presented at the sentencing hearing, to determine whether the offenses were committed separately or with a separate animus." *Washington*, at syllabus.

1. **THE TRIAL COURT PROPERLY SENTENCED DEFENDANT FOR EACH OFFENSE, BECAUSE DEFENDANT AND JONES' CONDUCT DEMONSTRATED THAT THEY IMPROPERLY DISCHARGED THEIR FIREARMS INTO THE HOUSE WITH A SEPARATE ANIMUS THAN IN SHOOTING ELEVEN VICTIMS.**

The law regarding the State's prohibition against prosecution for multiple offenses involving the same conduct is well established. And the Seventh District, rather than the Ninth District, properly applied the well-established law to the facts here.

To begin, it is well established that multiple offenses of felonious assault that are committed against multiple victims, involve separate and distinct animi. *See State v. Glenn*, 8th Dist. No. 97314, 2013 Ohio 1652, ¶ 19, citing *State v. Lanier*, 192 Ohio App.3d 762, (1st Dist. 2011), *State v. Stall*, 3rd Dist. No. 3-10-12, 2011 Ohio 5733, and *State v. McCullough*, 12th Dist. Nos. CA2010-04-006, CA2010-04-008, 2011 Ohio 992; *see also State v. Coffman*, 10th Dist. No. 09AP-727, 2010 Ohio 1995, ¶ 8.

The Second District concluded that “when an offense is defined in terms of conduct towards another, then there is a dissimilar import for each person affected by the conduct.” *State v. Phillips*, 75 Ohio App.3d 785, 790 (1991), citing *State v. Jones*, 18 Ohio St.3d 116, 118 (1985). The same rationale applies to Defendant's argument concerning his conviction for Murder.

Thus, Defendant's convictions for ten counts of Felonious Assault and one count of Murder are not allied offenses of similar import, and the trial court properly sentenced him for each offense committed against separate and distinct victims.

Here, this Court must decide whether R.C. 2941.25 requires Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), to

merge with a defendant's convictions for Murder, in violation of R.C. 2903.02(B), and Felonious Assault, in violation of 2903.11(A)(2), when a defendant's conduct demonstrates that he specifically sought to shoot up a residence in addition to commit felonious assault.

Here, the record established that both Defendant and codefendant Columbus Jones fired a minimum of 21 shots into the fraternity house that killed Jamail Johnson and wounded ten others that evening.² *See Jones*, supra at ¶ 66.

The Seventh District found that codefendant Columbus Jones' conviction for Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), *did not merge* with his convictions for Murder and Felonious Assault. *See Jones*, supra at ¶ 73. The Ninth District, however, erroneously found that Defendant's conviction for Improperly Discharging a Firearm at or into a Habitation, in violation of R.C. 2923.161(A)(1)(C), *should have merged* with his convictions for Murder and Felonious Assault. *See Jackson*, supra at ¶ 30.

The Seventh District relied on a line of cases that dealt with similar scenarios. In *State v. Whipple*, the First District concluded that a defendant's conviction for Improperly Discharging a Firearm at or into a Habitation did not merge with his three convictions for Felonious Assault, because the defendant's conduct demonstrated an intent that went beyond a general intent to harm: "the level of destruction unleashed by Whipple upon the home demonstrated that he sought to do more than commit felonious assault." *State v. Whipple*, 1st Dist. No. C-110184, 2012 Ohio 2938, ¶¶ 37-39. In *Whipple*, the defendant

² "Some shells were not discovered until after the snow melted and metal detectors were used, Testimony was presented on the mass exodus from the house after the shooting, emphasizing the trampling of evidence. Some shells may thus remain undetected." *Jones*, supra at ¶ 66, fn. 1.

shot the house some 28 times, as 28 shell casings were found at the scene. *See id.* ¶¶ 40-42.

The First District later distinguished *Whipple* where the defendant fired several gunshots “in a quick manner” at a victim and in the direction of an apartment building. *See State v. Hodges*, 1st Dist. No. C-110630, 2013 Ohio 1195. Unlike in *Whipple*, the record did not demonstrate that the defendant in *Hodges* had a specific motive to shoot up the apartment building but rather the motive was to solely shoot the victim. *See id.* at ¶ 17. Thus, the First District reaffirmed its earlier holding in *Whipple* “a barrage of bullets can show a separate animus regarding the house.” *See Jones*, *supra* at ¶ 59, citing *Hodge*, *supra* at ¶ 17.

The Fifth District then adopted the *Whipple* distinction after the defendant fired multiple bullets at a household full of people. *See State v. Kelly*, 5th Dist. No. 2012 CA 00067, 2012 Ohio 5875. The Fifth District concluded that the defendant’s conduct demonstrated a distinct purpose to shoot up the house when he fired four to twelve rounds at the house while multiple were on the front porch and inside. *See id.*

Here, Defendant and codefendant Jones fired a minimum of 21 shots into a heavily-populated fraternity house that evening: “[t]his was a heavily-populated house that suffered a barrage of bullets in the midst of a party and then a stampede-like atmosphere. [Defendant] knew the population of the house as he had just been inside dancing among the crowd (which was said to number more than 50). Many individuals had to take cover, and many were nearly shot (including [Defendant]’s own driver).” *Jones*, *supra* at ¶ 67.

In *Jones*, the Seventh District properly concluded that “there is evidence that appellant had, for instance, a specific intent to shoot some particular individuals who were on the porch or heading into the house, a general intent to harm some other random partygoers, *and* also a desire to wreak havoc on the entire house and its many occupants. These are distinct motives.” *Jones*, supra at ¶ 73.

Thus, Defendant’s conviction for Discharging a Firearm at or into a Habitation should not merge with his convictions for Murder and Felonious Assault, because the multiple shots fired that evening demonstrated a separate animus for each of the offenses. *See, e.g., State v. Nichols*, 9th Dist. No. 24900, 2010 Ohio 5737, ¶ 62 (concluding that the defendant’s convictions for felonious assault and attempted murder did not merge when the multiple shots he fired at the victim demonstrated a separate animus for each offense).

Therefore, the trial court properly sentenced Defendant to consecutive terms of incarceration for Murder, Felonious Assault, and Discharging a Firearm at or into a Habitation, because Defendant committed each offense with a separate and distinct animus.

The State of Ohio’s sole proposition of law is meritorious and jurisdiction must be accepted.

Defendant's Proposition of Law No. I: The Appellant's Convictions for Murder, Felonious Assault, and Improperly Discharge of a Firearm into a Habitation in the Case were Based on Insufficient Evidence and were Against the Manifest Weight of the Evidence and as a Result, Appellant's Rights as Protected by Article IV, Section 3 of the Ohio Constitution were Violated.

As for Defendant's first proposition of law, he contends that the manifest weight of the evidence did not support his convictions for Murder, Felonious Assault, Carrying a Concealed Weapon, Improperly Discharging a Firearm at or into a Habitation, and the accompanying Firearm Specifications; and the State failed to present sufficient evidence to establish those convictions.

To begin, the Ninth District found that Defendant failed to make argument concerning insufficient evidence, but only argued that his convictions were against the manifest weight of the evidence. *See Jackson*, supra at ¶ 5. Thus, Defendant's argument concerning insufficient evidence was waived.

Unlike sufficiency, manifest weight of the evidence challenge contests the *believability* of all the evidence produced at trial. *See State v. Schlee*, 11th Dist. No. 93-L-082, 1994 WL 738452, *13 (Dec. 23, 1994). And when making the determination as to whether a conviction is or is not against the manifest weight of the evidence, a court in review combs the entire record, weighs the evidence and all reasonable inferences one could draw from it, weighs witness credibility, and decides whether in resolving the conflicts in the evidence, the trier of fact lost its way and created a manifest miscarriage of justice when it returned a guilty verdict. *See id.* at *15, citing *State v. Davis*, 49 Ohio App.3d 109, 113 (8th Dist. 1988); *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997).

Notwithstanding, granting a new trial is appropriate only in extraordinary cases in which the evidence weighs heavily against a conviction. *State v. Martin*, 20 Ohio App.3d

172, 175 (1st Dist. 1983). This follows, because according to the Supreme Court of Ohio, the weight to attach to the evidence and the credibility of the witnesses is exclusively for the trier of fact. *State v. Thomas*, 70 Ohio St.2d 79, 82 (1982). The issue when reviewing a manifest weight of the evidence challenge is whether there is substantial evidence upon which a jury could reasonably conclude that the State established the elements of the indictment beyond a reasonable doubt. *State v. Nields*, 93 Ohio St.3d 6, 25 (2001), quoting *State v. Getsy*, 84 Ohio St.3d 180, 193-194 (1998).

This recognizes that the “trier of fact sits in the best position to assess the weight of the evidence and credibility of the witnesses whose gestures, voice inflections, and demeanor are personally observed.” *State v. Rouse*, 7th Dist. No. 04 BE 53, 2005 Ohio 6328, ¶ 49, citing *State v. Hill*, 75 Ohio St.3d 195, 205 (1996), *State v. DeHass*, 10 Ohio St.2d 230, 231 (1967), and *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984). And the reviewing court will defer to the trier of fact “unless the evidence weighs so heavily against conviction that [it is] compelled to intervene.” *Rouse*, supra at ¶ 49, citing *State v. Black*, 7th Dist. No. 03 JE 1, 2004 Ohio 1537. Courts in review find the foregoing test satisfied where the trier of act obviously missed the point and entered a verdict with no admissible evidence to support an element (or more) of an offense. *See Nields*, 93 Ohio St.3d at 25, quoting *Getsy*, 84 Ohio St.3d at 193-194.

Further, a manifest weight challenge questions whether the state has met its burden of persuasion. *Thompkins*, 78 Ohio St.3d at 390. The Seventh District has stated that “[w]eight of the evidence concerns ‘the inclination of the greater amount of credible evidence, offered in a trial, to support one side of the issue rather than the other.’” *Rouse*,

supra ¶ 47, quoting *Thompkins*, 78 Ohio St.3d at 387. “Weight is not a question of mathematics, but depends on its effect in inducing belief.” *Id.*

Here, Defendant merely argues that the State’s witnesses, mainly Braylon Rogers, did not provide enough credible evidence to sustain his convictions.

In a manifest weight analysis, the Seventh District has previously recognized that even “[w]hen there are two fairly reasonable views of the evidence or two conflicting versions of events, neither of which is unbelievable, it is not our [the reviewing court’s] province to choose which one should be believed.” *State v. Walenciej*, 7th Dist. No. 07 JE 6, 2007 Ohio 7206, ¶ 42, citing *State v. Gore*, 131 Ohio App.3d 197, 201 (7th Dist. 1999); accord *Rouse*, supra at ¶ 49, citing *Black*, supra at ¶ 18; *State v. Lomack*, 5th Dist. No. 2012 CA 32, 2013 Ohio 5, ¶ 31. “This is because the jury is best able to weigh the evidence and judge the credibility of witnesses by viewing the demeanor, voice inflections, and gestures of the witnesses testifying before it.” *Walenciej*, supra at ¶ 42.

Here, it was the jury that was in the best position to weigh the evidence and judge the witnesses’ credibility.

- Carl Davison, who resided at the Que House, observed two black males with guns standing on the back porch after the second fight. (Trial Tr., at 489, 500.) Davison testified that the first suspect was Columbus Jones, who he described as, “dark skinned guy, had on like a black hat, black skully, black, basically all black.” The second suspect with a gun “had on all red. I don’t remember what he looked like.” (Trial Tr., at 501.) Davison stated that Columbus Jones stated, “I’m done talking,” seconds before gunfire erupted. (Trial Tr., at 509.)

- Dannie Williams testified that he made his way outside to the back porch after the altercation with Columbus Jones and Rogers. Williams stated that Defendant approached him and stated, “that was my boy you was fighting.” (Trial Tr., at 622.) As Williams approached Defendant to punch him, Defendant stepped back and pulled out a gun. (Trial Tr., at 622.) Williams described Defendant as wearing a black shirt with a red horse on it, like a Polo symbol. (Trial Tr., at 623.) Williams then went back into the house moments before the shooting started. (Trial Tr., at 626.)
- Tiara Jones testified that she also made her way through the back door and onto the back porch following the second fight. (Trial Tr., at 715.) Outside, she saw Victor Toney, who she told to get out of there. (Trial Tr., at 715.) As Jones walked off the porch, she observed a black male, wearing a hoodie with some red on it, with a gun. (Trial Tr., at 715.) She did not see his face. (Trial Tr., at 718, 730.) This suspect’s description is clearly consistent with Defendant.
- Shavai Owens attended the Que party, and testified that “you could see very clear on the back porch.” (Trial Tr., at 941.) Owens identified Defendant from a photo array as being the person she observed with a gun on the back porch that evening. (Trial Tr., at 957.)
- Braylon Rogers testified that he carried a 9mm handgun; Defendant carried a .45 caliber handgun; Columbus Jones carried a Glock .40; and Demetrius Wright carried a .40 caliber handgun. (Trial Tr., at 806-807.) The others he was with did not have guns. (Trial Tr., at 807.)

- Rogers further testified that after the second fight, he too made his way outside to the back porch. (Trial Tr., at 823.) After talking with Richardson, Rogers started walking off the porch preparing to leave. Columbus Jones took his gun and started shooting the back porch. (Trial Tr., at 825.) Rogers testified that when Columbus stopped shooting, Defendant started shooting his gun towards the back door. (Trial Tr., at 826-827.)
- Rogers testified that he did not fire his 9mm gun that night. (Trial Tr., at 828-829.)
- Like the other witnesses, Rogers described Defendant as wearing dark clothes, a red hat, and a hoodie. (Trial Tr., at 829-830.)
- Ten party-goers testified that they suffered gunshot wounds as a result: Jalessa Moore (Trial Tr., at 346-347.); Jordan Wagner (Trial Tr., at 391.); D'Anthony Brown (Trial Tr., at 431.); Selina Howard (Trial Tr., at 453.); Jamie Ruffin (Trial Tr., at 480.); Lisette Encarnacion (Trial Tr., at 570-571.); Tejohn ("T.J.") Lawrence (Trial Tr., at 595, 597.); Durrell Richardson (Trial Tr., at 679.); Shavai Owens (Trial Tr., at 947.); and Ebony Mickel (Trial Tr., at 1377-1378.).
- Dr. Joseph Ohr, M.D., Mahoning County's Deputy Coroner and Forensic Pathologist, testified that Jamail Johnson died of multiple gunshot wounds to the head and leg. Dr. Ohr concluded that Johnson's death was a homicide—"he died at the hands of someone else." (Trial Tr., at 740, 789-790.)
- Michael Roberts, a forensic scientist assigned to BCI's firearms section, analyzed the ballistic evidence collected at the crime scene and pursuant to the

two search warrants. (Trial Tr., at 1114; State's Exhibit Nos. 38-39, 41, 48-50, 130-131.) No firearms, however, were recovered to allow Roberts to match them with the ballistic evidence recovered. (Trial Tr., at 1177.)

- Roberts found that the submitted cartridge cases recovered from 55 Indiana Avenue were fired from two separate guns—.40 and .45 caliber. (Trial Tr., at 1131-1132.) The “.40 caliber S&W caliber gun fired 10, and the .45 fired 11.” (Trial Tr., at 1132.)
- Roberts also determined that both firearms used were Glock; one being a .40 caliber S&W firearm, and the other being a .45 automatic caliber firearm. (Trial Tr., at 1136.) Roberts stated that both calibers (.40 and .45) analyzed demonstrated an elliptical shape, which is consistent with a Glock. (Trial Tr., at 1148.)
- Roberts further concluded that the projectiles recovered from Jamail Johnson's body included one .40 caliber and one .45 caliber. (Trial Tr., at 1141.) The inconclusive fragments recovered were consistent with .40 caliber. (Trial Tr., at 1141.) The recovered bullet from Shavai Owens was also .40 caliber. (Trial Tr., at 1141-1142.)

The Ninth District has previously stated that “[a] jury can reasonably infer that a defendant formed the specific intent to kill from the fact that a firearm is an inherently dangerous instrument, the use of which is likely to produce death, coupled with relevant circumstantial evidence.” *State v. Grace*, 9th Dist. No. 16950, 1995 WL 598502, at *4 (Oct. 11, 1995), quoting *State v. Shue*, 97 Ohio App.3d 459, 468 (9th Dist. 1994), citing *State v. Widner*, 69 Ohio St.2d 267, 270 (1982).

The Seventh District has likewise noted that “[t]he intent to kill * * * may be deduced from the surrounding circumstances, including the means or weapon used, its tendency to destroy life if designed for that purpose, the manner in which the wounds are inflicted, and all other facts and circumstances in evidence.” *State v. Brown*, 7th Dist. No. 03 MA 231, 2005 Ohio 4502, ¶ 27, quoting *State v. Simpson*, 10th Dist. No. 01AP-757, 2002 Ohio 3717, ¶ 93, citing *State v. Robinson*, 161 Ohio St. 213, 218-219 (1954).

Further, Ohio law does not require a defendant to specifically choose his would be victim from the crowd before pulling the trigger:

Nor is it a matter of dispositive importance that the object of said purpose to kill was chosen at random and not a person consciously selected in advance. It is clear that appellant did not know the victim and that, as to him, the shooting may be said to have been rationally motiveless. But it is also clear that if one, having formed an intent with deliberate and premeditated malice to kill someone, fires a weapon into a crowd of strangers and thus accomplishes his purpose, it is irrelevant that his act expressed a general malevolence and did not specifically focus on the individual victim.

State v. Parsely, 1st Dist. No. C-74119, 1975 WL 181429, at *4 (Mar. 10, 1975), citing *Wareham v. State*, 25 Ohio St. 601, 606 (1874). And the U.S. Supreme Court has previously stated that “men are presumed to intend the natural consequences of their act, and cannot escape punishment for taking life on the claim that they had not intended or expected that such consequence would result from what they purposely did.” *Robinson*, 161 Ohio St. at 219, quoting *Pico v. United States*, 228 U.S. 225, 231 (1913).

For example, in *State v. Collins*, the Fifth District found sufficient evidence of defendant’s intent to kill where he fired into a crowded parking lot: “Appellant admitted that he fired a nine millimeter handgun numerous times into a crowded parking lot. These acts are strong indication that appellant at least intended to shoot *someone*. Given the

close range and caliber of the firearm, a trier of fact could construe the intention to shoot to shoot proof of an intention to kill.” (Emphasis sic.) *State v. Collins*, 5th Dist. No. 2003-CA-0073, 2005 Ohio 1642, ¶ 40; cf. *State v. Smith*, 89 Ohio App.3d 497, 501 (10th Dist. 1993) (sufficient evidence that defendant acted purposefully where he fired at least one shot at a crowd of people in close proximity—approximately twenty feet).

Further, the Eighth District previously concluded that “the act of pointing a functioning firearm at a group of individuals and then shooting it at them will support the element of ‘purpose’ contained in R.C. 2903.02.” See *State v. Taylor*, 8th Dist. No. 79274, 2002 Ohio 7, *6; see also *State v. Holly*, 8th Dist. No. 74452, 1999 WL 475853 (July 8, 1999); *State v. Cottrell*, 8th Dist. No. 81356, 2003 Ohio 5806, ¶ 58 (stating “the evidence of Cottrell shooting at the crowd gathered in the street was indicative of a purposeful killing, * * *”).

Here, the jury was in the best position to judge and weigh the witnesses’ credibility who testified at trial. This recognizes that the “trier of fact sits in the best position to assess the weight of the evidence and credibility of the witnesses whose gestures, voice inflections, and demeanor are personally observed.” *Rouse*, supra at ¶ 49. Accordingly, this Court must “defer to the trier of fact unless the evidence weighs so heavily against conviction that we are compelled to intervene.” *Id.*

Therefore, the manifest weight of the evidence supported Defendant’s convictions for Murder, Felonious Assault, Carrying a Concealed Weapon, Improperly Discharging a Firearm at or into a Habitation, and the accompanying Firearm Specifications.

Defendant’s first proposition of law is meritless and jurisdiction must be denied.

Defendant's Proposition of Law No. II: Trial Court Erred in Sentencing Appellant Jackson to Multiple Punishments in Violation of R.C. 2941.25, for Murder, and Felonious Assault, and Improperly Discharging a Firearm at or into a Habitation, Which are Allied Offenses from a Single Act with a Single Animus.

As for Defendant's second proposition of law, he contends that the trial court erred in sentencing him for allied offenses of similar import pursuant to R.C. 2941.25(A)—Murder, Felonious Assault, and Improperly Discharging a Firearm at or into a Habitation.

To begin, the Ninth District previously concluded that Defendant's convictions for Murder and Felonious Assault should have merged with his conviction for Improperly Discharging a Firearm at or into a Habitation. *See Jackson*, supra at ¶¶ 28-31. This issue has been thoroughly discussed above in the State of Ohio's sole proposition of law.

Second, it is well established that multiple offenses of felonious assault that are committed against multiple victims, involve separate and distinct animi. *See State v. Glenn*, 8th Dist. No. 97314, 2013 Ohio 1652, ¶ 19, citing *State v. Lanier*, 192 Ohio App.3d 762, (1st Dist. 2011), *State v. Stall*, 3rd Dist. No. 3-10-12, 2011 Ohio 5733, and *State v. McCullough*, 12th Dist. Nos. CA2010-04-006, CA2010-04-008, 2011 Ohio 992; *see also State v. Coffman*, 10th Dist. No. 09AP-727, 2010 Ohio 1995, ¶ 8.

The Second District concluded that “when an offense is defined in terms of conduct towards another, then there is a dissimilar import for each person affected by the conduct.” *State v. Phillips*, 75 Ohio App.3d 785, 790 (1991), citing *State v. Jones*, 18 Ohio St.3d 116, 118 (1985). The same rationale applies to Defendant's argument concerning his conviction for Murder.

Therefore, Defendant's convictions for ten counts of Felonious Assault and one count of Murder are not allied offenses of similar import, and the trial court properly sentenced him for each offense committed against separate and distinct victims.

Defendant's second proposition of law is meritless and jurisdiction must be denied.

Conclusion

WHEREFORE, State of Ohio/Appellee/Cross-Appellant hereby requests this Honorable Court to Deny Defendant/Appellant/Cross-Appellee Jamelle Jackson's Discretionary Appeal, but Accept the State of Ohio/Appellee/Cross-Appellant's Discretionary Appeal.

Respectfully Submitted,

PAUL J. GAINS, 0020323
MAHONING COUNTY PROSECUTOR BY:


RALPH M. RIVERA, 0082063
ASSISTANT PROSECUTOR

Office of the Mahoning County Prosecutor
21 W. Boardman St., 6th Fl.
Youngstown, OH 44503-1426
Phone: (330) 740-2330
Fax: (330) 740-2008
rrivera@mahoningcountyoh.gov
Counsel for State of Ohio/Appellee/
Cross-Appellant