

[Cite as *State v. Turner*, 2011-Ohio-1089.]

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 09AP-1126
 : (C.P.C. No. 09CR-05-3048)
 Joseph L. Turner, :
 : (REGULAR CALENDAR)
 Defendant-Appellant. :

D E C I S I O N

Rendered on March 10, 2011

Ron O'Brien, Prosecuting Attorney, and *John H. Cousins, IV*,
for appellee.

Siewert & Gjostein Co., LPA, and *Thomas A. Gjostein*, for
appellant.

APPEAL from the Franklin County Court of Common Pleas

CONNOR, J.

{¶1} Defendant-appellant, Joseph L. Turner aka Hutcherson ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas, entered upon a jury verdict convicting appellant of aggravated burglary, aggravated robbery, kidnapping, and robbery, along with multiple firearm specifications, and upon a finding of guilt by the trial judge as to one count of having a weapon while under disability. For the following reasons, we affirm that judgment.

{¶2} On April 27, 2009, several men gained entry into the home of James Winbush ("James"), who lived with his parents and younger brother at 770 Bulen Avenue,

Columbus, Ohio, and eventually held him at gunpoint while they stole multiple items from the house, including three X-Box 360 game systems and numerous X-Box games. As a result of this event, appellant was indicted by the Franklin County Grand Jury on charges of aggravated burglary, aggravated robbery, kidnapping, and two counts of robbery. All five offenses were also indicted with three-year firearm specifications. In addition, appellant was indicted on one charge of having a weapon while under disability.

{¶3} Prior to trial, counsel for appellant filed a motion to suppress identification, a motion to suppress evidence, and a motion to suppress statements made to police. The motion to suppress evidence was withdrawn and a hearing was held on the remaining two motions. The trial court overruled both motions and the matter proceeded to jury trial, which commenced on October 13, 2009.¹

{¶4} At trial, James testified he met appellant in the fifth grade and appellant became one of his best friends. He and appellant spent a lot of time together at the Winbush house and appellant was often invited for dinner. A few years later, the two began attending different high schools and in the tenth grade they stopped "hanging out" and doing things together.

{¶5} James did not see appellant for approximately four and one-half years. Then, in early April 2009, appellant unexpectedly stopped by the Winbush house. Appellant advised James he had been hanging out with some bad guys and wanted to turn his life around. Appellant talked about possibly joining the Army and James' father indicated he could assist appellant in making contact with a recruiter.

{¶6} Appellant remained at the Winbush house for a few hours. Appellant and James talked and played video games in James' bedroom using James' X-Box 360 game

¹ The charge for having a weapon while under disability was tried to the judge.

system. James testified that he, his brother, and his father each owned an X-Box 360, and together they owned over 40 different games.

{¶7} On April 27, 2009, approximately two weeks later, James was making a sandwich for lunch in his kitchen when he heard a knock at the door. Upon opening the door, he saw appellant and two men he did not recognize, who were referred to as "A" and "B" during trial. Appellant said he needed to use the restroom and the telephone. James testified the three men essentially let themselves inside the house and walked into the living room. James was uneasy about the situation, so in an effort to hustle them out, he informed the men that he had to go to work.

{¶8} However, the men sat down and began talking to James. Appellant told James A and B were students at The Ohio State University. James also informed appellant that James' father had contacted a few people regarding appellant's desire to join the Army. When appellant left the room to use the restroom, James asked A and B questions about college.

{¶9} When appellant returned from the restroom, one of the men asked to smoke a cigarette inside the house. James informed him he would have to go outside, so the man left the room and went outside. When he returned, he had a fourth man ("C") with him. C was holding an assault-style rifle and ordered James to the floor. James initially worried that he and appellant were both in great danger, but as he complied, James realized appellant was not lying down on the floor. One of the men asked James where his valuables were kept. James verbally directed him to his bedroom. When appellant joined one of the other men in searching the house for valuables, James realized that appellant was a part of the criminal activity.

{¶10} While the house was being searched, James was lying on his back on the living room floor. C held him at gunpoint and threatened to "blow [his] head off" if he didn't comply. (Tr. 71-72.) James testified he could hear the men walking around upstairs. After stealing the three X-Box 360's, numerous video games, and most of James' valuables, the men asked for trash bags to use in carrying their loot out of the house. The men placed the items in some white trash bags and in a white canvas tote bag and ordered James to get up and lead them to the door.

{¶11} James led them to the back door, but it was locked. The key was in his bedroom and was needed to unlock the door in order to exit, so appellant went upstairs and retrieved the key. Meanwhile, A and B had exited out the front door. James had difficulty opening the door. C yelled at him to "quit stalling." (Tr. 74.) At some point while they were at the back door, James testified C "cocked" the gun or got it ready to shoot him.

{¶12} James eventually opened the door and was ordered to get down on his knees. At that point, James saw a fifth man ("D") standing outside in the backyard. D threatened to return to the house and kill James. C then punched James in the forehead with his fist. After the men fled with the bags filled with valuables, James closed and locked the back door. He then located his cell phone, locked himself in the bathroom, and called 911.

{¶13} Columbus Police Officer Mike Cone was the first to respond to the Winbush residence. He observed James upon his arrival and testified that James was "upset," "in a state of shock," and physically shaking. (Tr.164-65.) James advised Officer Cone that he knew one of the individuals who had been involved in the incident and provided the

name of that individual for the police report. Officer Cone testified that he contacted a robbery detective to respond to the scene.

{¶14} Detective Phillip Thomas testified he responded to the Winbush house to conduct the investigation. James reported to him that he only knew the identity of one of the men involved in the incident and that man's name was "Joey Turner." Based upon the information provided by James, Detective Thomas prepared a photo array which contained a photograph of appellant in position two. When Detective Thomas presented the photo array to James, he indicated the individual in position two was "Joey Turner" and he was one of the individuals who participated in the incident.

{¶15} Detective Thomas also testified that he had contact with appellant following his arrest on May 11, 2009, at which time he attempted to obtain biographical information from appellant, such as his name and address. Appellant told Detective Thomas that he was currently staying in the garage of a female acquaintance.

{¶16} Another Columbus police officer, Ace Trask, who executed the arrest warrant for appellant, also testified that in response to his request for appellant's address, appellant advised him that he was homeless, did not have a place to live, and was essentially living on the streets. Officer Trask testified he arrested appellant in front of the Kent Market, located at Kent Street and Fairwood Avenue, which is approximately one block from Bulen Avenue.

{¶17} In addition, the State presented the testimony of Frederick Moore. Mr. Moore testified that on April 27, 2009, he was visiting his aunt, who lives on Kent Street near the intersection of Bulen Avenue. The two of them were sitting on her front porch conversing when he observed three men walk out of an alley located next to his aunt's

house. Mr. Moore noticed two of the men were "very clean-cut" and "dressed really nice." (Tr. 146.)

{¶18} Mr. Moore and his aunt continued conversing and some time later he saw what he believed to be the same three men walking back down the alley in the opposite direction. He described the two taller men as looking the same, but he believed the third man may have changed clothing, although he acknowledged it could have been a different man than the one he saw previously. Mr. Moore described that man as wearing a dark gray or black hooded sweat suit with the hood up over his head. Mr. Moore thought this was unusual, given the very warm day. Mr. Moore also testified the man appeared to either have his hands doubled up under the hoodie or else he had something in his hands concealed under it.

{¶19} Mr. Moore testified that one of the men was carrying a plastic bucket, while one of the other men was carrying a clear bag with what appeared to be three objects stacked on top of one another. He watched the men put the items into a black car before driving away. A short time later, Mr. Moore observed police officers circulating the area.

{¶20} Outside the presence of the jury, the State presented the testimony of Richard Clark, a parole officer for the Ohio Department of Youth Services, who testified that he had previously supervised appellant while on parole for aggravated robbery. The State also introduced a certified copy of a judgment entry showing appellant had previously been adjudicated and found to be a delinquent minor on an aggravated robbery charge.

{¶21} Appellant rested without presenting any evidence in his case-in-chief.

{¶22} On October 16, 2009, the jury returned its verdicts, finding appellant guilty of aggravated burglary, aggravated robbery, kidnapping, and two counts of robbery. The

jury also found appellant guilty with respect to all of the firearm specifications. In addition, the trial judge found appellant guilty of the offense of having a weapon while under disability. The trial court sentenced appellant to a total of eight years of incarceration. This timely appeal now follows, raising two assignments of error:

ASSIGNMENT OF ERROR #1

APPELLANT'S CONVICTIONS WERE NOT SUPPORTED BY THE SUFFICIENCY OF THE EVIDENCE IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE I, SECTIONS 1 & 16 OF THE OHIO CONSTITUTION AND THE CONVICTIONS WERE ALSO AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE.

ASSIGNMENT OF ERROR #2

THE COMBINED EFFECT OF MULTIPLE TRIAL COURT ERRORS VIOLATED APPELLANT'S DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION AND ARTICLE I, SECTION 16 OF THE OHIO CONSTITUTION.

{¶23} In his first assignment of error, appellant asserts the State of Ohio failed to prove beyond a reasonable doubt that appellant was an aider and abetter who supported, assisted, encouraged, cooperated, advised, or incited the principals in the commission of the offenses that occurred at the Winbush home. Instead, appellant argues the evidence demonstrated that he was merely present. As a result, he submits there is insufficient evidence to support his convictions and the convictions are against the manifest weight of the evidence.

{¶24} Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. We examine the evidence in the light most favorable to the state and conclude whether any rational trier of fact could have found that

the state proved, beyond a reasonable doubt, all of the essential elements of the crime. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78; *State v. Williams*, 99 Ohio St.3d 493, 2003-Ohio-4396.

{¶25} In determining whether a conviction is based on sufficient evidence, an appellate court does not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. See *Jenks*, paragraph two of the syllabus; *Thompkins* at 390 (Cook, J., concurring); *Yarbrough* at ¶79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim). We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *State v. Treesh*, 90 Ohio St.3d 460, 484, 2001-Ohio-4; *Jenks* at 273. Whether the evidence is legally sufficient to sustain a verdict is a question of law. *Thompkins* at 386.

{¶26} While sufficiency of the evidence is a test of adequacy regarding whether the evidence is legally sufficient to support the verdict as a matter of law, the criminal manifest weight of the evidence standard addresses the evidence's effect of inducing belief. *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, at ¶25, citing *Thompkins* at 386. Under the manifest weight of the evidence standard, a reviewing court must ask the following question: whose evidence is more persuasive - the state's or the defendant's? *Id.* at ¶25. Although there may be legally sufficient evidence to support a judgment, it may nevertheless be against the manifest weight of the evidence. *Thompkins* at 387; See also *State v. Robinson* (1955), 162 Ohio St. 486 (although there is sufficient evidence to sustain a guilty verdict, a court of appeals has the authority to determine that such a

verdict is against the weight of the evidence); *State v. Johnson*, 88 Ohio St.3d 95, 2000-Ohio-276.

{¶27} "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony." *Wilson* at ¶25, quoting *Thompkins* at 387. In determining whether a conviction is against the manifest weight of the evidence, the appellate court must review the entire record, weigh the evidence and all reasonable inferences, consider the credibility of the witnesses and determine whether, in resolving any conflicts in the evidence, the jury clearly lost its way and thereby created such a manifest miscarriage of justice that the conviction must be reversed and a new trial must be ordered. *Thompkins* at 387, citing *State v. Martin* (1983), 20 Ohio App.3d 172, 175.

{¶28} A conviction should be reversed on manifest weight grounds only in the most " 'exceptional case in which the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *Martin* at 175. Moreover, " 'it is inappropriate for a reviewing court to interfere with factual findings of the trier of fact * * * unless the reviewing court finds that a reasonable juror could not find the testimony of the witness to be credible.' " *State v. Brown*, 10th Dist. No. 02AP-11, 2002-Ohio-5345, ¶10, quoting *State v. Long* (Feb. 6, 1997), 10th Dist. No. 96APA04-511.

{¶29} In support of his argument that he was "merely present," appellant points out that he did not have a weapon and that the only individual who did have a weapon, C, gained entry into the home through B² when B went outside to smoke. Appellant submits

² Although appellant refers to the individual who went outside to smoke as "A," there are references within the transcript which indicate that the smoker was referred to as "B" during the course of the trial. In order to maintain some consistency, we shall refer to the smoker as "B." (See Tr. 75.)

that any threats or acts of violence were committed by C and D, not by appellant. Appellant asserts he only maintained minimal contact with C and D, and he did not argue with them because C had a weapon and was handing out the orders.

{¶30} Appellant also argues it was impossible for James to see anyone removing items from the upstairs bedrooms of the house when James was lying on his back in the living room. Appellant further argues the acts of simply carrying a bag out of the house and obtaining a key to unlock the door are insufficient to support his convictions for aggravated burglary, aggravated robbery, kidnapping, and robbery. In addition, he contends the trier of fact clearly lost its way in convicting him upon such limited evidence.

{¶31} We find the evidence to be sufficient to establish the elements of all six crimes. At a minimum, the evidence demonstrated that appellant was at least complicit in the commission of these offenses.

{¶32} To prove complicity by aiding and abetting pursuant to R.C. 2923.03(A)(2), the prosecution must show "the defendant supported, assisted, encouraged, cooperated with, advised, or incited the principal in the commission of the crime, and that the defendant shared the criminal intent of the principal." *State v. Johnson*, 93 Ohio St.3d 240, 2001-Ohio-1336, syllabus; See also *State v. Jackson*, 10th Dist. No. 03AP-273, 2003-Ohio-5946, ¶32; *State v. Chatman*, 10th Dist. No. 08AP-803, 2009-Ohio-2504, ¶26. Intent may be inferred based upon the circumstances surrounding the crime. *Johnson* at syllabus.

{¶33} In addition, aiding and abetting may also be established through overt acts of assistance, such as by setting up certain schemes for obtaining entry by others into premises which are sites of criminal acts. *State v. Trocodaro* (1973), 36 Ohio App.2d 1, 6. However, " 'the mere presence of an accused at the scene of a crime is not sufficient

to prove, in and of itself, that the accused was an aider and abettor.' " *State v. McWhorter*, 10th Dist. No. 08AP-263, 2008-Ohio-6225, ¶18, quoting *State v. Widner* (1982), 69 Ohio St.2d 267, 269. Furthermore, aiding and abetting requires the accused to have taken some role in causing the offense. *McWhorter* at ¶18, citing *State v. Sims* (1983), 10 Ohio App.3d 56, 59.

{¶34} In the instant case, the evidence went well beyond appellant's "mere presence" at the scene. The evidence demonstrates that appellant took some role in causing the events to occur and in committing the offenses. A reasonable jury could have found that appellant planned and executed the aggravated burglary, aggravated robbery, robberies, and kidnapping.

{¶35} It was appellant's association with James that served as the link to the Winbush family and appellant used that relationship to his advantage. James testified that he saw appellant at the door when he looked through the blinds before opening the door. After he opened the door, he realized appellant was with two other individuals whom he did not know. The jury could properly infer that appellant led A and B to the Winbush house and that James may have been reluctant to open the door if he had not seen someone he recognized standing there, and may have been even more reluctant to allow strangers to remain in the house after they essentially let themselves inside, had it not been for appellant's presence. Appellant also put the plan into motion by deceptively telling James he needed to use the restroom and make a call. Appellant was clearly instrumental in obtaining entry into the Winbush home. See *Trocodaro* at 6.

{¶36} It was also reasonable for the jury to conclude that appellant was ensuring that no one else was home when he was "using the restroom," thus furthering the execution of the plan. Obviously, B, as the smoker, took on the role of getting C, the

gunman, into the house. D, who was later seen in the backyard, assumed the role of the lookout, as well as that of the threat-maker, along with C, who forced James to the floor and held him at gunpoint, threatening to "blow [his] head off" if he did not comply, and even physically striking James before they fled with the stolen property. (Tr. 71-72.)

{¶37} Even though appellant was not the individual holding the weapon during the invasion, such possession is unnecessary to prove the required elements of the offenses at issue as they relate to appellant. See *State v. Letts* (June 22, 2001), 2d Dist. No. 15681 (an accomplice can be found to have committed every element of the offense committed by the principal, including possession of the weapon; it need not be in his actual physical possession). See also *State v. Tuggle*, 6th Dist. No. L-09-1317, 2010-Ohio-4162, ¶139 (an accomplice can meet the element of possession of a weapon because the principal has a weapon; thus, an accomplice can be found guilty of the firearm specification); and *State v. Kimble*, 7th Dist. No. 06 MA 190, 2008-Ohio-1539, ¶27 (the elements of the principal offense, which were committed by the principal, can be imputed to the aider and abettor). While he did not possess the weapon, appellant simply took on other roles in the execution of these crimes.

{¶38} It was also reasonable for the jury to conclude that appellant was involved in the commission of the offenses when he did not get down on the floor. When C ordered James to the floor, appellant, rather than dropping to the floor, instead began combing the residence for valuables with the others. Furthermore, despite appellant's protestations to the contrary, there is nothing in the record to imply that it was impossible for James, who was lying on his back, to see appellant assisting in the theft of the property or to hear him searching around upstairs. James also testified he saw appellant with one of the bags of property, and appellant has conceded as much in his brief. There

is also evidence that appellant assisted the others in fleeing from the house with the property by retrieving the key from James' bedroom in order to unlock the back door.

{¶39} Based upon our analysis as set forth above, we find there is sufficient evidence which, if believed, supports appellant's convictions for aggravated burglary, aggravated robbery, and robbery.

{¶40} There is evidence of a trespass committed by deception inside an occupied structure in which physical harm was threatened and inflicted during the commission of various other criminal offenses, and one of the offenders also possessed a deadly weapon. Thus, there is evidence of an aggravated burglary, see R.C. 2911.11, and we find appellant aided and abetted others in the commission of said offense.

{¶41} We find there is also sufficient evidence to support the aggravated robbery and robbery convictions. There is evidence demonstrating possession of a deadly weapon during the commission of a theft offense and during the flight immediately thereafter, and that possession of the weapon was indicated or the offenders displayed or brandished the weapon. There is also evidence demonstrating the offenders recklessly used or threatened the immediate use of force against James during the commission of a theft offense or during flight immediately thereafter, as well as evidence demonstrating the infliction of physical harm and threats to inflict physical harm during the commission of the theft offense or during flight immediately following the theft. See R.C. 2911.01 and 2911.02. Therefore, we find sufficient evidence to support the aggravated robbery and robbery convictions and we find appellant aided and abetted others in the commission of those offenses.

{¶42} We also find sufficient evidence to support the kidnapping conviction. In order to demonstrate kidnapping, the State was required to demonstrate that appellant

aided or abetted his accomplices in removing James from the place where he was found, or restrained his liberty, using force or threats, in order to facilitate the commission of a felony or flight thereafter. See R.C. 2905.01.

{¶43} Here, there is sufficient evidence to demonstrate that James' liberty was restrained when he was held on the floor at gunpoint by C while appellant and others stole property from the residence. James was further restrained when he was forced, at gunpoint, to unlock the back door and when he was ordered to his knees and assaulted and threatened as the offenders exited the residence. Again, the fact that appellant was not physically holding the weapon does not require a finding that there is insufficient evidence to convict him of the kidnapping, as there is sufficient evidence to demonstrate he planned and participated in other aspects of the home invasion, and the kidnapping was necessary to carry out that plan.

{¶44} Furthermore, we find there is sufficient evidence to support the conviction for having a weapon while under disability. A conviction for this offense requires proof that appellant knowingly had, acquired, carried or used a firearm and he had been convicted of a felony offense of violence or had been adjudicated a delinquent child for the commission of an offense which, if committed by an adult, would have been a felony offense of violence. See R.C. 2923.13(A)(2).

{¶45} In the instant case, there was evidence introduced to demonstrate that appellant had previously been adjudicated a delinquent minor for the offense of aggravated robbery, a felony offense of violence. In addition, the State introduced the testimony of a juvenile parole officer who testified that he had supervised appellant while on parole for aggravated robbery. There is also evidence that a firearm was used in the commission of these offenses. Furthermore, appellant, as an accomplice or as an aider

and abettor, was responsible for the acts of the other offenders as though he had performed the acts individually. See *State v. Townsend* (May 12, 1988), 8th Dist. No. 53715 (reasonable minds could find defendant guilty of having a weapon while under disability where there is evidence that either he or his accomplice carried, possessed, used or controlled a firearm, as he is responsible for the acts of his accomplice).

{¶46} With respect to appellant's convictions regarding the firearm specifications, "Ohio case law also supports the applicability of a firearm specification to a person who assists other people who are known to be using a firearm to commit a crime of violence." *State v. Hall*, 10th Dist. No. 08AP-939, 2009-Ohio-2277, ¶28. See also *State v. Hanning*, 89 Ohio St.3d 86, 92, 2000-Ohio-436. Therefore, we find appellant's firearm specification convictions are supported by sufficient evidence.

{¶47} Appellant has also argued that his convictions are against the manifest weight of the evidence. We reject this assertion, based on our analysis as set forth above. We cannot say, after reviewing the entire record, weighing the evidence and all reasonable inferences, and considering the credibility of the witnesses, as well as resolving any conflicts in the evidence, that the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed.

{¶48} Accordingly, we overrule appellant's first assignment of error.

{¶49} In his second assignment of error, appellant asserts the combined effect of multiple errors at trial deprived him of his due process rights and his right to a fair trial, thereby warranting reversal of his convictions. The multiple errors alleged are: (1) the convictions are not supported by sufficient evidence and are against the manifest weight of the evidence as alleged in the first assignment of error; (2) the trial court committed plain error in allowing testimony, over the objection of counsel, which established that

appellant had stated he was homeless, living in the garage of a female acquaintance, and had an address of "streets of Columbus"; and (3) the trial court committed plain error in allowing James to testify, over the objection of counsel, that appellant had been involved with some bad guys and wanted to turn his life around. Appellant contends this testimony was not relevant to the crimes and was clearly prejudicial.

{¶50} We disagree with appellant's contention that there were cumulative errors which denied him a fair trial.

{¶51} Under the doctrine of cumulative error, a conviction will be reversed where the cumulative effect of the errors committed at trial deprives the accused of the constitutional right to a fair trial, even though each of the numerous instances of error does not individually require reversal. *State v. Garner*, 74 Ohio St.3d 49, 64, 1995-Ohio-168, citing *State v. DeMarco* (1987), 31 Ohio St.3d 191, paragraph two of the syllabus. Errors which are separately harmless can, when considered together, violate an accused's right to a fair trial. *State v. Madrigal*, 87 Ohio St.3d 378, 397, 2000-Ohio-448. However, " 'errors cannot become prejudicial by sheer weight of numbers.' " *State v. Bryan*, 101 Ohio St.3d 272, 2004-Ohio-971, ¶211, quoting *State v. Hill* (1996), 75 Ohio St.3d 195, 212. The doctrine of cumulative error is not applicable to cases where there has not been a finding of multiple instances of harmless error. *State v. Skerness*, 5th Dist. No. 09-CA-28, 2011-Ohio-188, ¶77.

{¶52} First, we have rejected appellant's argument that his convictions were not supported by sufficient evidence and were against the manifest weight of the evidence, as stated in our discussion of his first assignment of error.

{¶53} Second, appellant's challenges to the admission of testimony regarding his lack of a permanent residence and his desire to "turn his life around" are without merit.

The testimony regarding appellant's admissions to police that he was homeless and living in the garage of an acquaintance was relevant to prove motive, as it could explain why he would need money and why he would invade and burglarize the home of a former close friend and also terrorize that friend. See Evid.R. 404(B). Appellant's unfortunate situation made it more likely that he would commit such acts. Because the decision to admit or exclude relevant testimony is one which is within the sound discretion of the trial court, and because there is no evidence in the record which indicates the trial court committed an abuse of discretion (see *State v. Sage* (1987), 31 Ohio St.3d 173, paragraph two of the syllabus) we find no error here.

{¶54} Furthermore, we note that the statements appellant made to law enforcement regarding his lack of a permanent residence were statements made in response to law enforcement's efforts to gather biographical data pursuant to arrest and booking. As a result, such information is properly admissible, despite the fact such information was acquired without the giving of *Miranda* warnings, because it falls within a routine booking exception. See *State v. Clements* (Oct. 22, 1992), 10th Dist. No. 91AP-1238; *Pennsylvania v. Muniz* (1990), 496 U.S. 582, 110 S.Ct. 2638; and *State v. Tolliver*, 10th Dist. No. 02AP-811, 2004-Ohio-1603.

{¶55} Finally, in addressing appellant's challenge to James' testimony that appellant had advised James he had been associating with some bad guys and wanted to turn his life around, such statements were not hearsay, as they were appellant's own statements offered against him. See Evid.R. 801(D)(2). Also, such statements were relevant in explaining appellant's sudden desire to become reacquainted with James and to obtain assistance in entering the military, and were likely a part of appellant's deception. Furthermore, appellant has failed to demonstrate how this testimony caused

unfair prejudice to his defense. See Evid.R. 402 and 403. And, again, the admission of relevant evidence is subject to review under an abuse of discretion standard, and we find no abuse of discretion here.

{¶56} Because appellant has failed to demonstrate error, cumulative or otherwise, we overrule appellant's second assignment of error.

{¶57} In conclusion, we overrule appellant's first and second assignments of error and affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT, P.J., and FRENCH, J., concur.
