

# The Supreme Court of Ohio

State of Ohio

Case No. 2025-1340

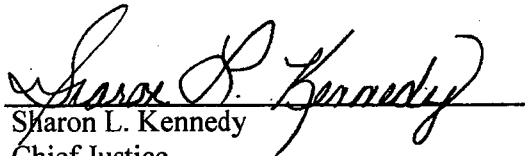
v.

ENTRY

Jaquan Hall

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to Rule 7.08(B)(4).

(Meigs County Court of Appeals; No. 22CA12)

  
Sharon L. Kennedy  
Chief Justice

FILED  
COURT OF APPEALS

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
MEIGS COUNTY

2025 AUG 29 PM 3:38

SAMANTHA MUGRAGE  
CLERK OF COURTS  
MEIGS COUNTY OHIO

STATE OF OHIO, :  
 :  
Plaintiff-Appellee, : Case No. 22CA12  
 :  
v. :  
 :  
JAQUAN HALL, : DECISION AND JUDGMENT ENTRY  
 :  
Defendant-Appellant. :

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APPEARANCES:

Kort Gatterdam and Michael B. Rogers, Columbus, Ohio, for  
appellant.<sup>1</sup>

James Keith Stanley, Meigs County Prosecuting Attorney, Pomeroy,  
Ohio, for appellee.

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CRIMINAL APPEAL FROM COMMON PLEAS COURT  
DATE JOURNALIZED:  
ABELE, J.

{11} This is an appeal from a Meigs County Common Pleas  
Court judgment of conviction and sentence. A jury found Jaquan  
Hall, defendant below and appellant herein, guilty of the  
following offenses: (1) aggravated murder, in violation of R.C.  
2903.01(A), with a firearm specification; (2) murder, in  
violation of R.C. 2903.02(A), with a firearm specification; (3)

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<sup>1</sup> Different counsel represented appellant during the trial  
court proceedings.

complicity to aggravated murder or murder, in violation of R.C. 2923.03(A)(2); and (4) conspiracy, in violation of R.C. 2923.01(A)(2). The trial court merged the offenses and sentenced appellant to a mandatory three-year prison term for the firearm specification and to life without parole for the aggravated-murder offense.

{12} Appellant assigns the following errors for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED IN REFUSING TO CHANGE VENUE. SAID ERROR DEPRIVED APPELLANT OF HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR AND IMPARTIAL JURY AND DUE PROCESS OF LAW."

SECOND ASSIGNMENT OF ERROR:

"APPELLANT WAS DEPRIVED OF HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR AND IMPARTIAL JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS WHEN THE ONLY AFRICAN-AMERICAN JUROR WILLING TO SIT WAS IMPROPERLY REMOVED FOR CAUSE."

THIRD ASSIGNMENT OF ERROR:

"THE TRIAL COURT DEPRIVED APPELLANT OF HIS RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE OHIO AND UNITED STATES CONSTITUTIONS WHEN THE COURT ALLOWED THE MOTHER OF THE VICTIM TO WEAR A 'JUSTICE FOR [K.R.]' T-SHIRT DURING INDIVIDUAL VOIR DIRE IN CHAMBERS."

FOURTH ASSIGNMENT OF ERROR:

"APPELLANT'S RIGHTS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND *MIRANDA V. ARIZONA*, 384 U.S. 436 (1966) WERE VIOLATED WHEN EVIDENCE OF APPELLANT'S POST-MIRANDA SILENCE WAS ADMITTED INTO EVIDENCE BY THE STATE."

FIFTH ASSIGNMENT OF ERROR:

"THE PROSECUTION PRESENTED IMPROPER VICTIM-IMPACT EVIDENCE THAT INFLAMED THE JURY AND AFFECTED THE OUTCOME OF APPELLANT'S TRIAL CONTRARY TO APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND A FAIR TRIAL."

SIXTH ASSIGNMENT OF ERROR:

"THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED A JUDGMENT OF CONVICTION BASED ON INSUFFICIENT EVIDENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE UNITED STATES AND OHIO CONSTITUTIONS."

SEVENTH ASSIGNMENT OF ERROR:

"APPELLANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTION 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION."

EIGHTH ASSIGNMENT OF ERROR:

"PROSECUTORIAL MISCONDUCT DEPRIVED APPELLANT OF HIS RIGHTS TO DUE PROCESS AND TO TRIAL BY AN IMPARTIAL JURY CONTRARY TO THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE OHIO CONSTITUTION."

{13} Appellant also raises the following supplemental assignment of error:

"APPELLANT'S CONVICTION FOR CONSPIRACY MUST BE REVERSED FOR FAILING TO ALLEGE AN OVERT ACT IN LIGHT OF THIS COURT'S HOLDING IN *STATE V. NELSON*."

**BACKGROUND**

{14} On April 4, 2021, around 4:45 a.m., Dave Berry awoke to the sounds of shouting and two shotgun blasts. He immediately called 9-1-1 to report the shotgun blasts and to request law enforcement officers to respond to investigate. Berry then went outside and heard his neighbor, K.R., state that he needed to go to the hospital. Berry found K.R. lying in a fetal position on the ground outside of Berry's house, and K.R. was saturated with blood. Berry observed that K.R. had two shotgun blasts to the back of his shoulders. Berry returned inside to call 9-1-1 and after the 9-1-1 dispatcher assured Berry that help was on the way, Berry returned to K.R. to find out what had happened. When Berry asked K.R. who had shot him, K.R. responded he did not know him, but identified the person as "some black guy." Berry remained with K.R. until emergency responders arrived.

{15} When the emergency responders arrived, medic Steven Vincent noticed two fist-sized holes across K.R.'s back. The

medics placed K.R. in the ambulance and attempted life-saving measures. At the same time, law enforcement officers began to search the scene for clues to identify the person or persons responsible for K.R.'s death.

{116} Before the emergency squad had departed, Meigs County Sheriff's Sergeant Donald Mohler spotted in the roadway two shotgun shells and a pair of black shorts. To prevent these items from being damaged from the emergency squad's vehicle, Sergeant Mohler removed these items from the roadway and marked the location of each item with a pen. After the emergency squad left, he returned each item to its original location for photographing.

{117} Tragically, en route to the hospital K.R. started to succumb to the mortal wounds that had been inflicted, and medical personnel were unable to save K.R.'s life. An autopsy later revealed that K.R. had sustained a shotgun wound to the back of his head, two shotgun wounds to his upper back, a gunshot wound to his lower back, a gunshot wound to his left buttock, and two gunshot wounds to his right thigh.

{118} As officers continued to search the scene, Meigs County Sheriff's Deputy Scott Spiker noticed a Crown Royal bag sitting on his cruiser's hood. The bag contained an empty box

of 12-gauge shotgun shells. Neither Deputy Spiker nor any of the other officers knew how the bag ended up on the cruiser.

{¶9} The investigation continued, and on June 17, 2021, a Meigs County Grand Jury returned an indictment that charged appellant with (1) aggravated murder, in violation of R.C. 2903.01(A); (2) murder, in violation of R.C. 2903.02(A); (3) complicity to aggravated murder or murder, in violation of R.C. 2923.03(A)(2); and (4) conspiracy, in violation of R.C. 2923.01(A)(2). The indictment also included firearm specifications for the aggravated-murder and murder offenses. Appellant entered a not guilty plea to each count.

{¶10} Officers later identified two other individuals involved in K.R.'s death: Keontae Nelson and Richard Walker. Both were indicted. Walker eventually agreed to plead guilty in exchange for testifying truthfully at Nelson's and appellant's trials.

#### Jury Selection

{¶11} On September 19, 2022, the jury-selection process began. On the first day of individual voir dire, after the parties had questioned the third prospective juror, appellant's counsel observed that the victim's parents had been present during individual voir dire and noticed that the victim's mother's "Justice for [K.R.]" shirt. He stated that the shirt

was inappropriate and prospective jurors should not be permitted to see the mother's shirt. The prosecutor, however, did not believe the shirt inappropriate. The trial court agreed. However, the court later reconsidered and instructed the parents not to wear the shirts inside the courtroom.

{¶12} During voir dire, many of the questions concerned prospective jurors' exposure to pretrial publicity. Most prospective jurors had heard about K.R.'s death. A few, however, had not heard anything at all about K.R. or his death, until they entered the courtroom to report for jury duty. For example, one prospective juror stated that she did not "know anything about any of it" and did not know that a homicide had happened until the day that she reported for jury duty. Another prospective juror likewise stated that she did not know anything about the case. The trial court excused any prospective juror who indicated that pretrial publicity would influence the juror's ability to be fair and impartial.

{¶13} Additional questions involved prospective jurors' knowledge of community sentiment as a result of exposure to signs, bumper stickers, and shirts that stated, "Justice for [K.R.]." Many prospective jurors had seen the signs placed throughout the community. Some reactions to the signs included uncertainty as to the meaning of the signs. Other prospective

jurors thought that the signs displayed disdain for law enforcement officers allegedly dragging their feet, while others thought that the signs intended to show support for the victim's family. In any event, the court excused any prospective juror who indicated that the signs or community sentiment would influence the juror's ability to be fair and impartial.

{¶14} Some race-based questions also arose. Appellant's counsel noted that appellant, who is black, likely would be judged before an all-white jury. One prospective juror questioned whether appellant could receive a fair trial in Meigs County. This prospective juror further stated, however, that he is not racist and that appellant could receive a fair trial if all 12 jurors were "just like [him]." After the parties finished questioning this prospective juror, appellant asked the court to change the venue for the trial. The trial court denied the motion as premature.

{¶15} Appellant later again asked the court to change the venue because none of the prospective jurors questioned up to that point had been a "person of color." He expressed concerns regarding the lack of any African Americans who had been summoned and the familiarity among jurors, the prosecution, and court staff. He asked the court to move the case "to another county where there would be more diversity, where there would be

a large population, where people wouldn't know one another." He also stated that the victim had a reputation in the community as a "local football hero" and his family was well-known. Appellant additionally asserted that the "Justice for [K.R.]" signs placed throughout the community were designed to influence the jury pool and to ensure a conviction. He stated that, given these circumstances, the court would not be able to provide appellant with a fair trial.

{¶16} The trial court denied appellant's motion to change venue. The court stated that, in small counties, familiarity among community members is common and does not necessitate changing venue. The court thus continued the voir dire process to attempt to seat a fair and impartial jury.

{¶17} One prospective juror, L.G.,<sup>2</sup> is an African American whose son had been friends with the victim. L.G. indicated that the victim had been to her home "quite a bit." She explained, however, that she frequently worked and never had been home when the victim was there.

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<sup>2</sup> We note that the trial court had informed the prospective jurors that answers provided during individual voir dire would be kept private. Thus, although appellant's brief freely uses jurors' actual names, this opinion uses initials or abbreviated last names when the first initial is unknown (the trial court record does not contain a list that refers to prospective jurors by numbers).

{¶18} L.G. also stated that she had seen appellant in the past. She did not recall when she saw him, but she had been with some friends when they stopped to talk to another group of people. Appellant was among this group of people.

{¶19} The prosecutor asked the court to excuse L.G. based upon her connection to the victim. Appellant's counsel objected and noted that L.G. had been "the only African American juror" who has been through voir dire. Appellant's counsel pointed out that, even though the victim had been in L.G.'s home, she had never met him. Counsel further observed that L.G. indicated that she could be fair and impartial.

{¶20} The prosecutor countered that the court had dismissed prospective jurors who had less of a connection to the victim or his family.

{¶21} The court decided to excuse L.G. and explained its rationale as follows:

And I'm as concerned as anything about her brother, who, you know, if her brother is. . . she probably has very strong feelings about the judicial system because of her brother. Uh, as well as her obvious connection with people that, um, have relationships . . . that had relationships with [the victim] and/or with Mr. Hall, uh, prior to [the victim]'s death and that's as close as we've ever had with, uh, most of these people have just been connected to, uh, work with either, uh, the victim's mother or that work with the victim's father and we have dismissed all of those people for cause. So, I'd

like to keep her, but I think she's just too close to too many situations.

{122} After questioning all of the remaining prospective jurors, the State exercised one of its peremptory challenges, and appellant exercised three of his four peremptory challenges. The parties then had selected a panel of 12 jurors.

{123} The parties next questioned the first four alternates. Appellant exercised a peremptory challenge to excuse one of the four alternates. The court called the next alternate juror, and both parties waived any challenges. Having selected 12 jurors and 4 alternate jurors, the parties proceeded to give opening statements.

#### **The Prosecution's Opening Statement**

{124} The prosecutor informed the jury that the State expected the evidence would show that early in the investigation, officers decided to contact area hospitals to ask whether, on the date of the victim's death, anyone had presented with a gunshot wound. Officers eventually discovered that a few hours after the victim had been shot, a person had presented to a Charleston, West Virginia hospital with a gunshot wound to the upper arm. The injured person checked in to the hospital using the name Johnson Ball and indicated that he was from New York.

This individual reported that he had been shot while attending a party somewhere in Charleston.

{¶25} Hospital staff contacted the Charleston Police Department pursuant to standard operating procedures when a person presents with a gunshot wound. At the time, Charleston police were unaware that a murder had occurred in Meigs County. When officers arrived to speak with the injured person, they attempted to verify his identity but were unable to verify Johnson Ball's name and date of birth. The officers advised the injured person that they could not verify his identity, and this person eventually admitted that his name was Jaquan Hall. Appellant informed officers that he did not wish to share any additional information about the shooting and did not want to cooperate with them. Appellant advised officers that he was a victim.

**Motion for Mistrial**

{¶26} After the State finished its opening statement, appellant asked the court to declare a mistrial. Appellant asserted that during the State's opening statement, the prosecutor "told the jury that [appellant] exercised his right to remain silent and to not cooperate with the police while he was at the hospital in Charleston, West Virginia." Appellant argued that the State may not comment on a defendant's decision

to exercise the right to remain silent or a defendant's choice not to speak to police. He claimed that the prosecutor's statement was an improper comment on his right to remain silent. Appellant contended that the prosecutor's comments were so prejudicial that the court should declare a mistrial.

{¶27} The prosecutor, however, denied that he had improperly commented on appellant's right to remain silent. The prosecutor asserted that, when appellant was in the Charleston hospital, the officers had not been questioning him in connection with any homicide, but attempted to investigate appellant's statement that he had been shot. The prosecutor thus stated that the officers were not questioning appellant as a suspect, but as an alleged victim of a shooting. The prosecutor claimed that nothing prohibited "the State from indicating that [appellant] failed to cooperate or refused to cooperate with a case in which he was the alleged victim." The prosecutor argued that an alleged victim's refusal to speak with officers is not an improper comment on an accused's right to remain silent.

{¶28} Appellant did not agree that the statement related only to the officers' investigation into whether appellant had been a victim. He stated that the prosecutor presented the evidence in relation to the investigation into the victim's murder. He further stated that if the prosecutor did not intend

for the jury to consider appellant's refusal to cooperate as evidence of his guilt, then the prosecutor would have not had a reason to mention it. Appellant's counsel argued that the State could not reference any unwillingness to cooperate that appellant may have displayed to law enforcement, even if it was as a victim.

{129} The trial court overruled appellant's motion for a mistrial and pointed out that it instructed the jury that opening statements are not evidence, and further noted that, at the time appellant advised Charleston police that he did not wish to cooperate, the officers did not know about the victim's murder and had talked to appellant to investigate the gunshot wound. The court indicated that, after appellant finished his opening statement, it would instruct the jury that the State could not use appellant's silence as evidence of guilt. The court also cautioned the State to refrain from mentioning appellant's lack of cooperation with law enforcement officers. The court concluded that these solutions remedied appellant's concern.

#### **Appellant's Opening Statement**

{130} Appellant's counsel asserted that appellant did not murder the victim. He stated that appellant and the victim knew each other and suggested that if appellant had shot the victim,

the victim would have identified appellant as the person who shot him, rather than stating that "some black guy" shot him. Appellant's counsel indicated that if appellant had been present at the crime scene, then the victim would have identified appellant when the neighbor asked the victim who shot him.

{¶31} Appellant's counsel additionally asked the jury to question the testimony that they would hear from one of appellant's alleged accomplices, Richard Walker.

{¶32} Defense counsel further asserted that the State lacked sufficient physical evidence to prove that appellant shot the victim. He agreed that although the State possessed DNA evidence that placed appellant at the scene, the State did not have any DNA or fingerprint evidence that would show that appellant used a weapon to shoot the victim. Defense counsel argued that appellant's mere presence was not sufficient evidence to convict him.

#### **Trial**

{¶33} At trial, the State presented evidence that appellant, Nelson, and Walker drove to the victim's house with the intent to murder him. Appellant reportedly was upset with the victim for telling law enforcement officers that appellant was selling marijuana.

{134} To support its case, the State introduced, inter alia, the following testimony and evidence. Officers discovered a pair of shorts at the murder scene, and DNA collected from this pair of shorts matched appellant's DNA. Additionally, on the hood of a patrol cruiser that had been parked at the scene, officers found a Crown Royal bag that contained shotgun shells. The bag on the outside had appellant's and Nelson's DNA.

{135} Officers later learned that on April 4, 2021, appellant had appeared at a West Virginia hospital with a gunshot wound. Appellant did not want to cooperate with officers who inquired about the source of his gunshot wound, but did tell them that he had been shot while at a party in Charleston, West Virginia. Officers could not corroborate appellant's statement.

{136} In August 2021, a bullet that had lodged in appellant's arm began to protrude and required appellant to obtain medical treatment to remove the bullet. Subsequent testing indicated that the bullet removed from appellant's arm was fired from the same weapon as the one used to shoot the victim.

{137} Other evidence included copies of a letter that appellant purportedly had written while he was in jail awaiting trial. In the letter, appellant urged the recipient to tell a

story about the murder that would save appellant from receiving a life sentence. The letter instructed the recipient to talk to appellant's lawyer and tell the lawyer that appellant did not shoot the victim. One page of the letter also contained a written phrase that stated, in all capital letters, "burn notice."

{¶38} The State additionally presented testimony from Danielle Runyon, appellant's ex-girlfriend. Runyon also had an on-and-off relationship with the victim. After she heard about the victim's murder, she called appellant. Runyon was unable to reach appellant and began to "suspect that he was involved." Around 3 p.m. that same day, she finally connected with appellant, and he acted "like nothing was going on." Runyon told appellant about the victim's murder, and "he had nothing to say about it." Runyon thus thought that appellant might have been involved in the victim's murder. She stated that appellant "would've been the first person" that she thought would be responsible for the murder. Runyon explained that appellant was aware that she had been "messing around with [the victim]."

{¶39} Richard Walker testified that about a week before the victim's death, appellant had been talking about killing the victim. Appellant believed that the victim had been "telling on" appellant for selling marijuana.

{¶40} Walker testified that around midnight on April 4, 2021, the night of the murder, he and Nelson rode with appellant to the victim's house. Once they arrived at the victim's house, appellant parked the car in an empty parking lot across the street and they retrieved weapons from the trunk. Appellant carried a 12-gauge shotgun, Nelson carried a .45-caliber Hi-Point gun, and Walker carried an inoperable pink and black gun. Armed with these weapons, they walked across the street to the victim's house.

{¶41} When the trio reached the victim's house, Nelson knocked on the door, while appellant and Walker stood to the right side. The victim opened the door, and Nelson asked if he could use the victim's phone. The victim stated, "yes, I guess so." Appellant then hit the victim "with the butt edge of the shotgun." Walker did not recall where appellant hit the victim, but the hit caused the victim to stumble back. Appellant, Nelson, and Walker then entered the house.

{¶42} Walker held the victim at gunpoint, and appellant and Nelson searched the house for marijuana, drugs, and money. The victim told the group that he did not have "anything." Still, appellant and Nelson found the victim's wallet and took the money that it contained. They also took the victim's cell phone. After they were done, appellant told Nelson, "you know

what to do." Nelson then shot the victim three to four times. Nelson also accidentally shot appellant in the arm.

{¶43} After he was shot, the victim fell down the stairs. Walker and Nelson ran to the car. Walker then heard two loud gunshots. Appellant returned to the car and "said let's go[;] I got shot." Walker drove the car back to Charleston. Along the way, Nelson discarded the victim's phone and wallet. When they returned to Charleston, they went to appellant's uncle's house to inform appellant's uncle that appellant had been shot.

{¶44} After Walker's testimony, the State rested. Appellant did not present any evidence in his defense.

{¶45} Subsequently, the jury found appellant guilty of all offenses as charged in the indictment. The parties agreed that the offenses merged for sentencing purposes, and the court sentenced appellant to a mandatory three-year prison term for the firearm specification and to life without parole for the aggravated murder offense. This appeal followed.

I

**Fair Trial Issues**

{¶46} In his first three assignments of error, appellant assigns various errors that allegedly deprived him of a fair trial. In his first and second assignments of error, appellant charges that the trial court deprived him of due process and his

right to a fair and impartial jury by (1) failing to transfer the venue of the trial and (2) dismissing for cause the only African American prospective juror. In his third assignment of error, appellant contends that the trial court deprived him of due process and a fair trial by allowing the victim's mother to wear a "Justice for [K.R.]" shirt during the first day of individual voir dire. The same constitutional principles guide our review of these three assignments of error. We thus first set forth those principles.

A

**Constitutional Principles**

{147} The Fifth Amendment to the United States Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law." U.S. Const., amend. V. "A fair trial in a fair tribunal is a basic requirement of due process," *Irvin v. Dowd*, 366 U.S. 717, 722 (1961), quoting *In re Murchison*, 349 U.S. 133, 136 (1955), as well as "a fundamental liberty secured by the Fourteenth Amendment,"<sup>3</sup> *Estelle v. Williams*, 425 U.S. 501, 503 (1976). "Fairness . . . requires an absence of actual bias in the trial of cases." In *re Murchison*, 349 U.S. 133, 136 (1955).

{¶48} Additionally, the Sixth Amendment to the United States Constitution guarantees criminal defendants the right to a trial "by an impartial jury of the State and district wherein the crime shall have been committed."<sup>4</sup> U.S. Const., amend. VI; accord *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 551 (1976). At its core, the right to a trial by an impartial jury "guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors." *Irvin*, 366 U.S. at 722, citing *In re Oliver*, 333 U.S. 257 (1948), and *Tumey v. Ohio*, 273 U.S. 510 (1927).

{¶49} With these principles in mind, we consider appellant's first three assignments of error.

B

First Assignment of Error

{¶50} In his first assignment of error, appellant asserts that the trial court erred by overruling his motion to change the venue of the trial. He contends that pervasive, adverse pretrial publicity created a presumption that the jury was prejudiced against him. Appellant claims that "the entire

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<sup>3</sup> The Fourteenth Amendment provides that a state may not "deprive any person of life, liberty, or property, without due process of law." U.S. Const., amend. XIV.

<sup>4</sup> The Sixth Amendment applies to the states via the Fourteenth Amendment. See, e.g., *Ramos v. Louisiana*, 590 U.S. 83, 93 (2020).

county was inundated with news of the most infamous crime in recent Meigs County history on the television, in the newspapers, on social media, and in front yards" and that a "battery of adverse publicity . . . besieged Meigs County for an entire year before [appellant]'s trial." Appellant further asserts that the trial court should not have believed any of the jurors' attestations that, despite the pretrial publicity, they could be fair and impartial.

{151} Appellant additionally contends that he, as a black man facing trial for the death of a white man, could not receive a fair trial in Meigs County, a predominantly white county. He observes that a few prospective jurors made comments regarding appellant's race, with more than one asking whether appellant could receive a fair trial in Meigs County.

{152} The State argues that the trial court did not abuse its discretion by overruling appellant's motion for a change of venue. The State asserts that appellant has not shown that "the pretrial publicity in this case was so pervasive" as to warrant a prejudice presumption.

{153} The State further argues that appellant has not shown that any juror actually was biased against him. The State contends that "[h]undreds of jurors sat through individual voir dire over the course of multiple days to ensure a fair jury was

selected, and a fair jury was in fact selected." The State notes that the trial court routinely excused jurors who knew "too much about the case or who were too close to anyone involved in the case or too close to their family members" and kept as prospective jurors the individuals who had "no or limited knowledge of the case." The State further contends that each juror who was "seated in this case affirmed that he or she would be fair and impartial despite what they may have already heard or saw regarding the case."

{¶54} The State also observes that appellant did not renew his request for a change of venue after the jury had been selected and that he did not exercise all of his peremptory challenges. The State contends that, by failing to do so, appellant indicated that he was satisfied that the empaneled jurors would be fair and impartial and cannot assert error on appeal.

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**Standard of Review**

{¶55} Appellate courts ordinarily will not disturb a trial court's ruling concerning a motion for change of venue absent an abuse of discretion. *State v. Clinton*, 2017-Ohio-9423, ¶ 60; *State v. Roberts*, 2006-Ohio-3665, ¶ 116. An abuse of discretion implies that a court's attitude was unreasonable, arbitrary or

unconscionable. *State v. Beasley*, 2018-Ohio-16, ¶ 12, citing *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). "A decision is unreasonable if there is no sound reasoning process that would support that decision." *State v. Ford*, 2019-Ohio-4539, ¶ 106, quoting *AAAA Ents., Inc. v. River Place Community Urban Redevelopment Corp.*, 50 Ohio St.3d 157, 161 (1990). "[A]n 'arbitrary' decision is one made 'without consideration of or regard for facts [or] circumstances.'" *State v. Beasley*, 2018-Ohio-16, ¶ 12, quoting *Black's Law Dictionary* (10th Ed.2014), and citing *Dayton ex rel. Scandrck v. McGee*, 67 Ohio St.2d 356, 359 (1981), quoting *Black's* (5th Ed.1979) ("arbitrary" means "'without adequate determining principle; . . . not governed by any fixed rules or standard'"). An unconscionable decision is one "showing no regard for conscience" or "affronting the sense of justice, decency, or reasonableness." *Black's* (11th ed. 2019). An unconscionable decision also may be characterized as "[s]hockingly unjust or unfair." *Id.* Moreover, when reviewing for an abuse of discretion, appellate courts must not substitute their judgment for that of the trial court. *E.g.*, *State v. Grate*, 2020-Ohio-5584, ¶ 187; *In re Jane Doe 1*, 57 Ohio St.3d 135, 137-138 (1991).

{¶56} The abuse-of-discretion standard of review does not apply, however, if a defendant fails to object to the jury pool

at trial. See *State v. Gordon*, 2018-Ohio-259, ¶ 22 (plain-error, not abuse-of-discretion, standard of review applied when defendant failed to seek severance under Crim.R. 14 or to object to joint trials). Instead, failing to object to the jury pool at trial means that the defendant forfeits "all but plain error" on appeal. *State v. Graham*, 2020-Ohio-6700, ¶ 31 ("defense counsel failed to object to the jury pool at trial and thus forfeited all but plain error").

{157} Likewise, a defendant who failed to exhaust the allotted peremptory challenges forfeits all but plain error. *State v. Trimble*, 2009-Ohio-2961, ¶ 61 (defendant forfeited argument that trial court erred by overruling motion to change venue due to "his failure to exhaust his peremptory challenges"); *State v. Hale*, 2008-Ohio-3426, ¶ 89, quoting *State v. Carter*, 21 Ohio St.2d 212, 214 (1970) (because defendant "did not exhaust his peremptories," he "acquiesced in the jury that was finally selected"); *State v. Lynch*, 2003-Ohio-2284, ¶ 37 ("The absence of defense challenges for pretrial publicity and the failure to exhaust defense peremptory challenges indicate that the defense was not particularly troubled by the jury's exposure to pretrial publicity once voir dire was completed.").

{¶58} In the case at bar, after the parties completed voir dire, they had selected 12 petit jurors and 4 alternate jurors. After the jury was seated, appellant did not raise any further concerns that he would be unable to receive a fair trial in Meigs County. Moreover, he did not exhaust all of his allotted peremptory challenges. Additionally, toward the end of voir dire, appellant's counsel agreed that the court should attempt to seat a jury using the prospective jurors who remained. Under these circumstances, we believe that appellant failed to preserve his argument that the trial court abused its discretion by failing to change the venue of the trial. We therefore will review this assignment of error using the plain-error standard of review.

{¶59} Appellate courts have discretion to consider "[p]lain errors or defects affecting substantial rights." Crim.R. 52(B); e.g., *State v. Jones*, 2020-Ohio-3051, ¶ 17, quoting *State v. Rogers*, 2015-Ohio-2459, ¶ 23 ("An appellate court has discretion to notice plain error and therefore 'is not required to correct it.'"). A party asserting plain error must demonstrate the following: (1) an error occurred; (2) the error was obvious; and (3) a reasonable probability that the error affected the outcome of the proceeding. *State v. Echols*, 2024-Ohio-5088, ¶ 50. However, even when a defendant demonstrates that a plain

error or defect affected the defendant's substantial rights, the Ohio Supreme Court repeatedly has emphasized that courts should "notice plain error 'with the utmost caution, under exceptional circumstances and only to prevent a manifest miscarriage of justice.'" *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002), quoting *State v. Long*, 53 Ohio St.2d 91 (1978), paragraph three of the syllabus; e.g., *State v. Bailey*, 2022-Ohio-4407, ¶ 14 ("the plain-error doctrine is warranted only under exceptional circumstances to prevent injustice").

{¶60} As we explain below, we do not believe that the record establishes that the trial court plainly erred by maintaining the venue of the trial in Meigs County.

2

**Pretrial Publicity**

{¶61} A panel of impartial, indifferent jurors is a necessary predicate to a fair trial. See *Irvin*, 366 U.S. at 722. Thus, "when it appears that a fair and impartial trial cannot be held in the court in which the action is pending," a criminal defendant may request the trial court to transfer the action to an appropriate tribunal. See Crim.R. 18(B); accord R.C. 2901.12(K); *State v. Mammone*, 2014-Ohio-1942, ¶ 53.

{¶62} Pretrial publicity may impair a jury's ability to be fair and impartial. *Mammone* at ¶ 53. Trial courts thus have "a

'duty to protect' criminal defendants from 'inherently prejudicial publicity' that renders a jury's deliberations unfair." *Id.* at ¶ 54, quoting *Sheppard v. Maxwell*, 384 U.S. 333, 363 (1966).

{163} Pretrial publicity does not, however, automatically establish that a fair and impartial trial cannot be held in the court in which the action is pending. *State v. Frazier*, 2007-Ohio-5048, ¶ 235; accord *Skilling v. United States*, 561 U.S. 358, 380 (2010), quoting *Murphy v. Florida*, 421 U.S. 794, 798-799 (1975) ("our decisions, however, 'cannot be made to stand for the proposition that juror exposure to . . . news accounts of the crime . . . alone presumptively deprives the defendant of due process'"). "Prominence does not necessarily produce prejudice, and juror impartiality . . . does not require ignorance." (Emphasis in original.) *Skilling*, 561 U.S. at 381; see *Irvin*, 366 U.S. at 722 (jurors need not be "totally ignorant of the facts and issues involved"); *Reynolds v. United States*, 98 U.S. 145, 155-156 (1898) ("[E]very case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits."). Accordingly, "even pervasive,

adverse [pretrial] publicity does not inevitably lead to an unfair trial." *Nebraska Press Assn.*, 427 U.S. at 554.

{¶64} "[T]he best test of whether prejudicial pretrial publicity has prevented obtaining a fair and impartial jury from the locality' is 'a careful and searching voir dire.'" *Mammone*, 2014-Ohio-1942, at ¶ 55, quoting *State v. Bayless*, 48 Ohio St.2d 73, 98 (1976). Thus, a trial court ordinarily should make "'a good faith effort . . . to impanel a jury before . . . grant[ing] a motion for change of venue.'" *State v. Warner*, 55 Ohio St.3d 31, 46 (1990), quoting *State v. Herring*, 21 Ohio App.3d 18 (9th Dist.1984), syllabus.

{¶65} In rare cases, however, courts should presume that pretrial publicity prejudiced the jury against the defendant. See *Roberts*, 2006-Ohio-3665, at ¶ 117, citing *State v. Treesh*, 90 Ohio St.3d 460, 464 (2001). To prevail on a claim of presumed prejudice, a defendant must make "'a clear and manifest showing . . . that pretrial publicity was so pervasive and prejudicial that an attempt to seat a jury would be a vain act.'" *Warner*, 55 Ohio St.3d at 46, quoting *Herring* at syllabus. Notably, this presumption "attends only the extreme case." *Skilling*, 561 U.S. at 381; accord *Clinton*, 2017-Ohio-9423, at ¶ 64.

{¶66} When a defendant claims that a trial court erred by denying a motion for a change of venue based on pretrial publicity, a reviewing court first must "determine whether the record shows pretrial publicity of such a degree and kind as to trigger a presumption that the jury was prejudiced against the defendant." *Mammone*, 2014-Ohio-1942, at ¶ 57. If the record fails to show this presumption, the court next must "determine whether the defendant has established that any juror was actually prejudiced against him." *Id.*

{¶67} In the case sub judice, as we explain below, nothing in the record suggests that the trial court obviously erred by failing to determine that pervasive pretrial publicity had tainted the jury pool so as to warrant a prejudice presumption. Additionally, the record does not indicate that any juror actually was prejudiced against appellant. We therefore do not believe that the trial court plainly erred by failing to transfer the venue of the trial.

a

#### ***Presumed Prejudice***

{¶68} The United States Supreme Court has presumed that pretrial publicity resulted in prejudice in rare cases. For example, the court applied the presumption when, before a defendant's arraignment, the defendant confessed to the crime

while being filmed for a televised broadcast. *Rideau v. Louisiana*, 373 U.S. 723 (1963). The televised confession aired three times, *id.* at 725, fn. 2, and showed the defendant, "in jail, flanked by the sheriff and two state troopers, admitting in detail the commission of the robbery, kidnapping, and murder, in response to leading questions by the sheriff," *id.* at 725. Tens of thousands of community members "had been exposed repeatedly and in depth to the spectacle of [the defendant] personally confessing in detail to the crimes with which he was later to be charged." *Id.* at 726.

{¶69} After his arraignment, the defendant asked the trial court to change the venue for the trial. The trial court denied the motion, and a jury later convicted the defendant of murder and sentenced him to death.

{¶70} The state supreme court later affirmed the defendant's conviction, and the defendant successfully sought review in the United States Supreme Court. The Court reversed the state supreme court's judgment. The Court found that the televised "spectacle . . . in a very real sense was [the defendant]'s trial—at which he pleaded guilty to murder." *Id.* The Court determined that "[a]ny subsequent court proceedings in a community so pervasively exposed to such a spectacle could be but a hollow formality." *Id.* The Court thus concluded that due

process "required a trial before a jury drawn from a community of people who had not seen and heard [the defendant]'s televised" confession. *Id.* at 727.

{171} The Court also applied the prejudice presumption when "a barrage" of media reporting, *Irvin*, 366 U.S. at 725, had led two-thirds of the seated jurors to form an opinion that the defendant was guilty, *id.* at 728. In *Irvin*, during the months before the defendant's murder trial, the "barrage" of publicity "unleashed against him" included "curbstone opinions, not only as to [the defendant's] guilt but even as to what punishment he should receive." *Id.* at 725. A "roving reporter" "solicited and recorded" these opinions, and they "later were broadcast over the local stations." *Id.*

Furthermore, news reporting

revealed the details of [the defendant's] background, including a reference to crimes committed when a juvenile, his convictions for arson almost 20 years previously, for burglary and by a court-martial on AWOL charges during the war. He was accused of being a parole violator. The headlines announced his police line-up identification, that he faced a lie detector test, had been placed at the scene of the crime and that the six murders were solved but petitioner refused to confess. Finally, they announced his confession to the six murders and the fact of his indictment for four of them in Indiana. They reported [the defendant's] offer to plead guilty if promised a 99-year sentence, but also the determination, on the other hand, of the prosecutor to secure the death penalty, and that petitioner had confessed to 24 burglaries (the modus operandi of these robberies was

compared to that of the murders and the similarity noted). One story dramatically relayed the promise of a sheriff to devote his life to securing [the defendant's] execution by the State of Kentucky, where petitioner is alleged to have committed one of the six murders, if Indiana failed to do so. Another characterized petitioner as remorseless and without conscience but also as having been found sane by a court-appointed panel of doctors. In many of the stories [the defendant] was described as the 'confessed slayer of six,' a parole violator and fraudulent-check artist. . . . On the day before the trial the newspapers carried the story that [the defendant] had orally admitted the murder of Kerr (the victim in this case) as well as 'the robbery-murder of Mrs. Mary Holland; the murder of Mrs. Wilhelmina Sailer in Posey County, and the slaughter of three members of the Duncan family in Henderson County, Ky.'"

*Id.* at 725-726.

{172} The Court determined that this extensive pretrial publicity prejudiced the jury pool and that the trial court should have transferred the venue to another county. The Court explained, "With his life at stake, it is not requiring too much that [the defendant] be tried in an atmosphere undisturbed by so huge a wave of public passion and by a jury other than one in which two-thirds of the members admit, before hearing any testimony, to possessing a belief in his guilt." *Id.* at 728.

{173} Additionally, the Court presumed that publicity caused prejudice when the trial atmosphere resembled a "carnival," *Sheppard v. Maxwell*, 384 U.S. 333, 358 (1966), and when the "media's overzealous reporting efforts," *Estes v. Texas*, 381

U.S. 532, 538 (1965), "utterly corrupted" the trial atmosphere, *Murphy v. Florida*, 421 U.S. 794, 798-799 (1975), citing *Sheppard* at 353 ("bedlam reigned at the courthouse during the trial and newsmen took over practically the entire courtroom," which thrust jurors "into the role of celebrities").

{¶74} In the case sub judice, the record does not demonstrate a degree of pretrial publicity sufficient to trigger a presumption that the jury was prejudiced against appellant. We first observe that although appellant's counsel referred to published media reports regarding the murder—both shortly after it occurred and after appellant's arrest—the record does not contain any copies of these published media reports or otherwise establish that Meigs County citizens were inundated with news stories about the case. Nothing in the record suggests that the media had unleashed a barrage of pretrial publicity, the trial resembled a "carnival atmosphere," or the media had "utterly corrupted" the trial atmosphere.

{¶75} Moreover, unlike the damaging publicity that inheres when a news organization broadcasts a defendant's televised confession, in the case at bar, appellant has not presented evidence that the news media or individuals on social media saturated the community with similar incriminating information. See *Skilling*, 561 U.S. at 382 (rejecting the defendant's

argument that pretrial publicity prejudiced jury when, "although news stories about Skilling were not kind, they contained no confession or other blatantly prejudicial information of the type readers or viewers could not reasonably be expected to shut from sight"). Thus, "[n]o evidence of the smoking-gun variety invited prejudgment of his culpability." *Id.* at 383, quoting *United States v. Chagra*, 669 F.2d 241, 251-252, n. 11 (C.A.5 1982) ("A jury may have difficulty in disbelieving or forgetting a defendant's opinion of his own guilt but have no difficulty in rejecting the opinions of others because they may not be well-founded."). Additionally, nothing in the record shows that the media presented "the kind of vivid, unforgettable information" that the United States Supreme Court has "recognized as particularly likely to produce prejudice . . . ." *Id.* at 384.

{176} Furthermore, the voir dire transcript does not indicate that the jury pool was exposed to extensive adverse, pretrial publicity. During voir dire, many prospective jurors stated that they had heard at least some information about the case. The vast majority of them, however, had not heard a substantial amount of pretrial publicity. Most of the prospective jurors who had heard some pretrial publicity had not heard more than a couple of news stories about the case, and

those stories simply reported that a murder occurred and that an arrest had been made.

{¶77} In addition, many prospective jurors who had exposure to pretrial publicity—whether in traditional news media or social media—stated that they had not formed any opinions based upon the news reports. Thus, “[a]lthough most prospective jurors had heard or read something about the facts of the case, knowing something about media accounts of the crimes is not dispositive.” *Clinton*, 2017-Ohio-9423, at ¶ 66, citing *State v. Thompson*, 2014-Ohio-4751, ¶ 102; see also *Mu’Min v. Virginia*, 500 U.S. 415, 427-30 (1991) (“substantial” amount of pretrial publicity was not sufficient to warrant a prejudice presumption). Indeed, neither the Ohio Supreme Court nor the United States Supreme Court has extended the prejudice presumption to “even the most highly publicized cases that are covered step-by-step and scoop-by-scoop in evening newscasts and front page stories.” *State v. Martin*, 2017-Ohio-7556, ¶ 35, quoting 6 LaFare, Israel, King & Kerr, *Criminal Procedure*, Section 23.2(a), at 307-308 (4th Ed.2015), and citing *Rideau*, 373 U.S. 723; see also *State v. Lundgren*, 73 Ohio St.3d 474, 478 (1995) (rejecting argument that trial court should have presumed prejudice and changed venue when the discovery of five dead bodies “resulted in massive, inflammatory, statewide publicity,”

including approximately 350 printed news articles with more than 90 front-page news articles and almost 350 televised news broadcasts).

{¶78} Additionally, appellant's counsel questioned jurors whether they had seen "Justice for [K.R.]" signs throughout the community. A few prospective jurors stated that they were prevalent throughout the community, while a few others had not seen them. Most jurors did not interpret the signs as a call to find appellant guilty. Instead, some prospective jurors interpreted the signs as being critical of law enforcement or simply as a call for the victim's family to have a resolution. Other prospective jurors stated that they were curious about the signs but did not know what message they were intended to convey.

{¶79} Moreover, we again note that defense counsel did not exercise all of his allotted peremptory challenges. Additionally, after the jury had been seated, appellant did not renew his motion to change venue based on pretrial publicity. His failure to do so suggests that defense counsel was satisfied with the jurors who had been selected. See *Lynch*, 2003-Ohio-2284, at ¶ 37.

{¶80} Thus, appellant has not established that this case is the rare case that warrants a presumption of prejudice, and the

trial court did not obviously err by failing to conclude that pretrial publicity warranted this presumption.

*b*

***Actual Prejudice***

{181} Having determined that appellant has not established that the prejudice presumption applies, we next consider whether appellant has shown that one or more jurors actually were prejudiced against him. See *Martin*, 2017-Ohio-7556, at ¶ 44.

{182} In the case at bar, the record does not suggest that pretrial publicity actually prejudiced any juror against appellant. The State and defense counsel questioned each prospective juror to discover whether prospective jurors had heard any media coverage about the case and whether they had formed any preconceived ideas about appellant's guilt. The court excused prospective jurors who appeared unable to set aside any outside information and to decide the case based solely upon the evidence presented at trial. Moreover, unless other cause existed, the court did not excuse jurors who stated that they could be fair and impartial and decide the case based solely upon the evidence presented at trial. *Mammone*, 2014-Ohio-1942, at ¶ 71, quoting *Irvin*, 366 U.S. at 723 (a juror is unbiased "if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in

court'"). "The trial court was in the best position to judge each juror's demeanor and ability to be fair and decide whether to credit the juror's assurance that [the juror] would set aside any prior knowledge and preconceived notions of guilt." *Grate*, 2020-Ohio-5584, at ¶ 59, citing *State v. Trimble*, 2009-Ohio-2961, ¶ 64; see also *Patton v. Yount*, 467 U.S. 1025, 1031 (1984), quoting *Irvin*, 366 U.S. at 723 (trial court's findings of juror impartiality may "be overturned only for 'manifest error'").

{¶83} We again note that appellant did not exercise all of his peremptory challenges. Had appellant thought that any of the jurors selected to hear the case actually harbored prejudice as a result of pretrial publicity, he could have exercised his remaining peremptory challenge. Appellant's failure to challenge the remaining jurors constitutes "strong evidence that he was convinced the [other] jurors were not biased and had not formed any opinions as to his guilt." *Skilling*, 561 U.S. at 396, quoting *Beck v. Washington*, 369 U.S. 541, 557-558 (1962).

{¶84} Appellant further claims that "[e]very single person on the jury stated during voir dire that they knew information about the case from an outside source in some way." The record does not, however, contain a list of the 12 jurors who

ultimately were seated. The verdict form contains the signature of all 12 jurors, but only 7 of those signatures are legible.

{185} Furthermore, the transcript of the final stage of the jury-selection process does not clearly identify the 12 jurors who ultimately were seated. Additionally, the record plainly shows that appellant exercised peremptory challenges to excuse three of the jurors who he claimed were seated as jurors: Ka., Th., and Mc. Thus, the record does not support appellant's implication that Ka., Th., and Mc. were seated as jurors. Moreover, without a list of all 12 jurors, this court cannot accurately evaluate appellant's assertion that all 12 jurors had heard about the case from an outside source. See *Ewert v. Holzer Clinic, Inc.*, 2013-Ohio-5609, ¶ 18 (4th Dist.) (an appellant "has the burden of providing this court with a record of the facts, testimony, and evidentiary matters necessary to support [an] assignment of error"). Even if all 12 jurors had heard about the case from an outside source, however, having knowledge about the case does not equate to being prejudiced against a defendant. See, e.g., *Thompson*, 2014-Ohio-4751, at ¶ 102 ("jurors need not be totally ignorant about the facts of a case").

{¶86} We also observe that the record indicates that at least five of the prospective jurors did not have any pre-existing knowledge about the case: L., P., G., Am., and St.

{¶87} L. stated that although she saw the "Justice for [K.R.]" signs, the signs did not make any impression on her because she was unaware that a murder had occurred until learning about it during voir dire.

{¶88} P. stated that she did not know anything about the case. She saw the "Justice for [K.R.]" signs but did not know what they meant.

{¶89} G. likewise did not know anything about the case. She saw the signs and thought that "people wanted to make sure [K.R.] got justice." Until being called for jury duty, however, she did not know who K.R. was or that a person named K.R. had been murdered.

{¶90} Am. also had not heard any information about the case. He saw the "Justice for [K.R.]" signs but did not know who K.R. was.

{¶91} St. explained that she did not know anything about the case. She saw the signs, but she did not know what they meant and did not know that a murder had occurred until she reported for jury duty.

{¶92} Other prospective jurors had little knowledge about the case. Ta. heard about the murder shortly after it happened but did not have any other knowledge about the case. He saw the "Justice for [K.R.]" signs, and they did not cause him to form any preconceived notions. He emphasized that "everybody is innocent until proven guilty." Ta. recognized that the prevalence of the signs in the community suggested that K.R. had an impact on the community. He further stated, however, that knowing about K.R.'s community impact would not affect his ability to be impartial.

{¶93} W. heard about the murder after it had occurred and also heard when a person had been arrested. He saw the signs but indicated that he had become oblivious to them given the length of time.

{¶94} Ha. knew little about the case. He heard that a murder had occurred, and he later heard a news story when officers had arrested an individual. Other than that, he did not know anything about the case and did not have an opinion whether appellant had "done something wrong."

{¶95} Hy. knew that K.R. had been shot and that officers had arrested a suspect. She did not know anything else about the case. She saw the signs and thought that they were aimed at "awareness."

{196} Ha.1 heard about a shooting on the news. He saw the "Justice for [K.R.]" signs, but they did not cause him to form any impressions.

{197} Lu. had discussed the case "in passing." He knew that a crime had occurred and that K.R. was the name of the victim. He later read in a news article that appellant is from Charleston.

{198} Another prospective juror read news articles when they were published and recalled reading that K.R. had been murdered. She saw the signs and thought "that it was nice that people still care to have that out." She believed that the signs intended to convey that the family will not forget about it and would like to have justice served. This prospective juror felt that community pressure existed to obtain a conviction, but she stated that she did not feel pressure. She further indicated that if the State did not prove its case beyond a reasonable doubt, she would not hesitate to find appellant not guilty.

{199} In short, nothing in the voir dire testimony indicates that the jurors who remained displayed any conduct or made any comments to suggest that they actually were prejudiced against appellant. Appellant thus has failed to establish "that actual bias infected the jury that tried him." *Skilling*, 561 U.S. at 398.

**Racial Makeup**

{¶100} Appellant also contends that he could not receive a fair trial in Meigs County due to a dearth of African American citizens and undercurrents of racism detected during voir dire.

{¶101} Although appellant does not cite authority to support this argument, we observe that "[t]he Sixth Amendment to the United States Constitution does not require that petit juries 'mirror the community and reflect the various distinctive groups in the population.'" *State v. Jackson*, 2005-Ohio-5981, ¶ 64, quoting *Taylor v. Louisiana*, 419 U.S. 522, 538 (1975). Consequently, "[d]efendants are not entitled to a jury of any particular composition." *Taylor* at 538. The selection of jury panels must not, however, "systematically exclude distinctive groups in the community and thereby fail to be reasonably representative thereof." *Id.*

{¶102} In the case at bar, even if Meigs County is predominantly white, as appellant alleges, appellant has not shown that African Americans were systemically excluded. Furthermore, a lack of African Americans does not, on its own, "create a presumption that discrimination has occurred." *State v. Glenn*, 28 Ohio St.3d 451, 454 (1986) ("The mere fact that only one black appeared in the array of prospective jurors

neither indicates that minorities were systematically excluded, nor does it create a presumption that discrimination has occurred.”).

{¶103} Regarding appellant’s claim that some prospective jurors expressed concerns about racism, we note that the record indicates that the trial court excused any jurors who displayed racist tendencies. Moreover, nothing indicates that “the entire jury pool was tainted simply because [some] prospective jurors made racist comments.” *Graham*, 2020-Ohio-6700, at ¶ 47; see also *State v. Hairston*, 2007-Ohio-4159, ¶ 14 (4th Dist.) (appellant failed to establish that prospective jurors’ racist comments “biased or prejudiced the empaneled jurors”).

{¶104} Additionally, we again note that appellant did not exercise all of his peremptory challenges. His failure to do so suggests that he was satisfied with the empaneled jurors and did not harbor concerns that any of the empaneled jurors were racists.

{¶105} Accordingly, based upon the foregoing reasons, we overrule appellant’s first assignment of error.

C

**Second Assignment of Error**

{¶106} In his second assignment of error, appellant argues that the trial court deprived him of his right to a fair and

impartial jury under the Ohio and United States constitutions by removing for cause L.G., "the only African-American juror willing to sit" on the jury. Appellant contends that the court's explanation for dismissing L.G. was unreasonable and arbitrary. Appellant observes that the court stated that L.G. "probably has very strong feelings about the judicial system because of her brother," who is a convicted felon. Appellant asserts that the trial court did not "apply this principle evenly across the entire jury venire." Appellant notes that five days before dismissing L.G., the court allowed another juror, O., to sit on the jury even though the juror's brother also was a convicted felon. Appellant complains that the court did not, however, express any misgivings about allowing O. to sit on the jury. Appellant states that "[w]hen a court dismisses one juror for a supposed deficiency but allows another with the same deficiency to be seated, that is the definition of arbitrary."

{¶107} Appellant also recognizes that the court (1) referred to L.G.'s "obvious connection with people" who had relationships with appellant or the victim and (2) pointed out that the victim may have been in L.G.'s house. Appellant notes that the court further stated that "[L.G.] may have seen [appellant] at one point speaking with her friends." Appellant nevertheless

asserts that the juror's limited connections with the victim and appellant were insufficient to show that she would not be fair and impartial. Appellant observes that L.G. stated that she could be fair and impartial. Appellant thus claims that the trial court abused its discretion by dismissing her.

{¶108} The State contends that the trial court did not abuse its discretion by excusing L.G. for cause. The State maintains that the trial court acted reasonably by dismissing the juror given her family's connection to the victim and her previous observation of appellant with a group of friends. The State further argues that the trial court did not act arbitrarily. The State points out that the court had "dismissed dozens of prospective jurors who had less of a connection to the victim or [a]ppellant for any number of reasons, including particularly those who knew some about the case, knew the victim, worked with the victim's mother, or even who merely had a spouse who worked with the victim's mother."

1

**Standard of Review**

{¶109} A reviewing court will not disturb a trial court's ruling regarding a challenge for cause "unless it is manifestly arbitrary and unsupported by substantial testimony, so as to constitute an abuse of discretion.'" *State v. Jackson*, 2005-

Ohio-5981, ¶ 38, quoting *State v. Williams*, 79 Ohio St.3d 1, 8 (1997); accord *State v. Thompson*, 2014-Ohio-4751, ¶ 83 (trial courts have discretion to determine whether a prospective juror should be disqualified for cause). Thus, reviewing courts will not reverse a trial court's decision regarding a challenge for cause unless the trial court abused its discretion. *State v. Madison*, 2020-Ohio-3735, ¶ 20 ("a trial court's resolution of a challenge for cause will be upheld unless it is unsupported by substantial testimony, so as to constitute an abuse of discretion").

2

**Challenges for Cause**

{¶110} Crim.R. 24(C) and R.C. 2945.25 contain a list of reasons for challenging a juror for cause. Crim.R. 24(C)(9) and R.C. 2945.25(B) allow a juror to be challenged for cause if the juror "is possessed of a state of mind evincing enmity or bias toward the defendant or the state." The rule and the statute further provide, however that "no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused" if the examination of the juror or other evidence satisfies the court "that the juror will render an impartial verdict according to the law and the evidence submitted to the

jury at the trial." Crim.R. 24(C)(9); R.C. 2945.25(B). Both the rule and the statute also contain catchall provisions that allow a juror to be challenged for cause if the juror is otherwise "unsuitable for any other cause to serve as a juror." Crim.R. 24(C)(14); R.C. 2945.25(O); accord *State v. Thompson*, 2014-Ohio-4751, ¶ 83.

{¶111} A trial court that is evaluating a challenge for cause should consider whether the juror can set aside any personal opinions and decide the case based solely on the evidence presented at trial. See *State v. Madison*, 2020-Ohio-3735, ¶ 42. The court also must assess the juror's credibility and decide whether to believe any attestations of impartiality. See *id.* Indeed, the trial court's duty is "to determine which statements of the prospective juror reflect that individual's true state of mind and ability to follow the law." *State v. Williams*, 79 Ohio St.3d 1, 7-8 (1997). For this reason, a reviewing court generally must defer "to the trial judge who sees and hears the juror.'" *Id.* at 8, quoting *Wainwright v. Witt*, 469 U.S. 412, 426 (1985).

{¶112} In the case at bar, we do not believe that the trial court abused its discretion by dismissing L.G. for cause. When explaining the rationale for dismissing L.G., the trial court cited L.G.'s connections to appellant and the victim. L.G.

disclosed that her son and nephews were friends with the victim and that the victim had visited her home "quite a bit." L.G. further explained that she never met the victim because she was at work during the times that he had been visiting her home. The prosecutor asked L.G., given her son's and nephews' friendship with the victim, how they would react if she were selected for the jury and voted to acquit appellant. L.G. stated that she did not have any concerns that her family would react in a negative manner, as long as she "told the truth."

{¶113} L.G. also stated that she had seen appellant on a prior occasion, although she does not recall when she saw him. L.G. explained that she had been in a vehicle with some friends, and they stopped to talk to a group of people. Appellant was in that group of people. L.G. did not, however, speak to appellant.

{¶114} We recognize that "[w]hether a prospective juror knew the victim of an offense or had previously seen the accused is not, *per se*, a basis for dismissal for cause." *State v. Sheppard*, 84 Ohio St.3d 230, 235 (1998). The trial court nevertheless reasonably could have concluded that L.G.'s connections raised questions about whether she would be fair and impartial, despite her attestations that she would. Moreover, as the State notes, the court also had dismissed other

prospective jurors who otherwise had tangential or direct relationships with the victim's family.

{¶115} In further explaining its decision to dismiss L.G., the court observed that the Meigs County Common Pleas Court had convicted L.G.'s brother of a felony and, at the time of voir dire, he remained imprisoned. L.G. denied that her brother's experience would cause her to feel prejudiced against the State or law enforcement. She stated, "Right is right and wrong is wrong." The trial court believed, however, that this previous experience with the judicial system might influence L.G.'s feelings.

{¶116} The court thus concluded that the foregoing collection of factors rendered L.G. unsuitable to serve impartially, despite her assurances to the contrary. We again note that the trial court's duties are to assess the credibility of prospective jurors and to determine whether to believe a juror's statement that the juror will be fair and impartial. The trial court judge actually saw and heard L.G.'s responses to questions and notably remarked that L.G. has known the judge "her whole life." We, as a court reviewing a written record, thus are unable to conclude that the trial court abused its discretion by deciding to excuse L.G. for cause.

{¶117} Appellant also appears to suggest that the juror's race may have been a factor in the court's decision to excuse her for cause. Appellant states that L.G. was the only viable African American prospective juror called in a predominantly white county. Nothing in the record indicates that the trial court's decision to excuse L.G. was based on race, however. Moreover, appellant specifically states that he does not ask this court to review the court's dismissal of L.G. under *Batson v. Kentucky*, 476 U.S. 79 (1986).<sup>5</sup>

{¶118} Additionally, even if we presume that the trial court erred by excusing L.G., appellant has not shown how this alleged error prejudiced him. Crim.R. 52(A) provides: "Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." In other words, the error must have been prejudicial, i.e., it must have affected

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<sup>5</sup> "The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits purposeful discrimination in the form of a prosecutor's use of a peremptory challenge to excuse a prospective juror based on his or her race or gender." *State v. Stalder*, 2023-Ohio-2359, ¶ 16. "Under *Batson*, once a prima facie case of discrimination has been shown by a defendant, the State must provide race-neutral reasons for its peremptory strikes. The trial judge must determine whether the prosecutor's stated reasons were the actual reasons or instead were a pretext for discrimination." *Flowers v. Mississippi*, 588 U.S. 284, 298 (2019). However, "*Batson* applies only to prospective jurors removed by peremptory challenge." *State v. Adams*, 2015-Ohio-3954, ¶ 158.

the outcome of the trial. *State v. Fisher*, 2003-Ohio-2761, ¶ 7.

{¶119} In the case sub judice, appellant has not explained how L.G.'s dismissal affected the outcome of the trial. Any argument that L.G. would have voted to acquit would be pure speculation. See *State v. Coonrod*, 2012-Ohio-6302, ¶ 31 (4th Dist.) (assertion that excused juror would have voted to acquit was speculative); See *State v. Brown*, 2012-Ohio-1848, ¶ 53 (2nd Dist.) (observing that appellant's claim that juror excused during deliberations was "likely favorable" to him was "wholly speculative"). Therefore, even if the trial court somehow erred when it excused L.G., appellant fails to demonstrate how the error is anything other than harmless error.

{¶120} Furthermore, appellant has not shown that the empaneled jury harbored any prejudice toward him or failed to be fair and impartial. We again observe that appellant waived his final peremptory challenges and thus indicated his satisfaction with the empaneled jurors.

{¶121} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error.

D

Third Assignment of Error

{¶122} In his third assignment of error, appellant argues that the trial court deprived him of his due process right to a fair trial by allowing the victim's mother to wear, on the first day of individual voir dire, a shirt that read, "Justice for [K.R.]." Appellant contends that this shirt created an impression of guilt and prejudiced the jury against him. He asserts that the shirt served as a stark reminder of the community's sentiment and the victim's family's grief. Appellant claims that the mother's shirt could have influenced the jurors to sympathize with the victim's family and, consequently, to convict appellant based on emotion rather than evidence.

{¶123} Appellant submits that the presence of the shirt during voir dire was particularly prejudicial because it could have affected the jurors' ability to remain impartial before the trial even began. He states that one of the petit jurors saw the victim's mother wearing the shirt and that this juror "was no doubt affected by the shirt and sympathetic to [the victim's mother's] grief and desire for justice for her son." Appellant claims that "[j]urors decided [a]ppellant was guilty because they sympathized with the grieving mother wearing the Justice for [K.R.] t-shirt, not because of the evidence presented by [a]ppellee."

{¶124} The State does not agree that the shirt affected the jury's impartiality. The State maintains that nothing in the record suggests that the shirt had any actual impact on the jury's ability to remain fair and impartial. The State disputes appellant's assertion that the shirt affected the petit juror. The State observes that the juror "ultimately indicated he could be fair and impartial" and states that if the shirt had affected this juror to the extent that the juror "could not be fair and impartial," then a reasonable belief is that the juror would have informed the court that he could not be fair and impartial, like "many others had." The State further contends that the victim's mother's shirt "in no way urged jurors to assuage [her] grief with a conviction" and notes that the victim's parents ultimately agreed not to wear the shirts during trial.

{¶125} We first observe that "[t]he impact of emotional outbursts at trial by witnesses or spectators cannot be judged by an appellate court on a cold record." Whether the jury was "'disturbed, alarmed, shocked or deeply moved'" are questions that "'necessarily depend on facts which no record can reflect.'" *State v. Hill*, 75 Ohio St.3d 195, 204 (1996), quoting *State v. Bradley*, 3 Ohio St.2d 38, 40 (1965). For this reason, whether a murder trial spectator's conduct, which may include emotional outbursts, improperly influenced the jury

against the defendant "so as to deprive the accused of a fair trial [is a question] of fact to be resolved by the trial court.'" *State v. Clinton*, 2017-Ohio-9423, ¶ 220, quoting *Bradley*, 3 Ohio St.2d 38, at syllabus. Thus, reviewing courts should not disturb the trial court's factual finding "in the absence of evidence contrary to that determination clearly and affirmatively appearing on the face of the record.'" *Id.*, quoting *Bradley*, 3 Ohio St.2d 38 at syllabus.

{¶126} In *Clinton*, 2017-Ohio-9423, for example, the court determined that a murder victim's brother's emotional showing during individual voir dire did not deprive the defendant of a fair trial. In that case, the defendant stood charged with multiple offenses, including the aggravated murders of a young mother and her two young children. During individual voir dire, the murdered mother's brother was glaring at the defendant and wearing a shirt that listed the victims' names. The trial court advised the brother and other family members who had been wearing the shirt that they could not wear them while in the courtroom. Rather than forcing the family members to leave for the day, the court stated that they could wear the shirts inside out.

{¶127} The defendant's counsel also asked the trial court to instruct the brother not to glare at the defendant while the

jurors were present. The trial court indicated that it had spoken to the brother and asked him to refrain from glaring at the defendant.

{¶128} Later that day, the defendant's counsel pointed out that, when the trial court informed the family members that they could not wear the shirt, the brother "literally stood up in the courtroom and took off the shirt and turned it inside-out and put it back on." *Id.* at ¶ 216. The defendant's counsel further stated that when the brother started glaring at the defendant, the defendant stated, "'I don't want to be in here. I don't want to be subjected to this.'" *Id.*

{¶129} After his conviction, the defendant appealed and argued, in part, that the trial court erred by failing to hold a hearing to determine whether the brother's conduct caused any of the jurors to be biased against him. The defendant claimed that one of the prospective jurors, while being questioned, had witnessed the brother's conduct and later was seated as a petit juror. *Id.* at ¶ 219.

{¶130} The Ohio Supreme Court did not agree with the defendant. The court noted that the "brother's behavior occurred during voir dire" and that "the trial court took corrective action to ensure" that the brother's behavior did not continue. *Id.* at ¶ 221. The court also observed that the

defendant's counsel failed to challenge the prospective juror who was present in the courtroom during the brother's conduct and who later was seated on the jury; and the defendant's counsel did not challenge any other juror who may have witnessed the brother's conduct. *Id.* The court stated that the defendant's failure to challenge these jurors "indicate[d] that the defense was satisfied with the trial court's corrective action." *Id.*

{¶131} The court additionally recognized that the brother's conduct occurred during voir dire—i.e., before a jury was empaneled—and that the record did not indicate whether the prospective juror who had been seated as a petit juror had even observed the brother's behavior. *Id.* at ¶ 225. The court thus found that "it would be speculative to conclude that [the defendant] was denied a fair trial." *Id.*

{¶132} Similarly, in the case at bar, the record shows that the victim's mother wore the shirt during the first day of individual voir dire. After the parties finished questioning the third prospective juror, appellant objected to the mother's shirt. The trial court initially overruled his objection. After examining two other prospective jurors, the court advised the victim's parents that they should not wear the shirts. The record does not indicate whether the mother immediately

complied, but it also does not indicate that the mother failed to abide by the trial court's request. Thus, the record suggests that the mother wore the shirt, at most, only during the first day of individual voir dire.

{¶133} Although appellant claims that a petit juror saw the shirt and that it had influenced him, we observe that during voir dire, when the prosecutor asked the juror whether he had seen any "Justice for [K.R.]" shirts, the juror stated that he had not noticed any. Appellant's counsel also questioned this juror and did not ask him any questions regarding the victim's mother wearing the shirt or if seeing her wearing the shirt would influence his decision. Instead, appellant's counsel asked this juror if he would have "any reservation in reaching a not guilty verdict if the State failed to meet its burden of proof in this case." The juror responded that if he believed that "the State did not prove beyond a shadow of a doubt," then he would "say not guilty." The juror stated that he would not have any worries about "community sentiment."

{¶134} After the parties had finished questioning this juror, neither one asked the court to excuse the juror for cause. Furthermore, if this juror was in fact one of the petit jurors,<sup>6</sup>

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<sup>6</sup> As we noted earlier, the record does not contain a list of the petit jurors.

appellant could have chosen to exercise his remaining peremptory challenge to excuse the juror if he believed that the victim's mother's shirt had influenced the juror.

{¶135} Moreover, appellant's reliance on *State v. Montgomery*, 2022-Ohio-2211, is misplaced. In that case, before trial, the trial court introduced the victim as the state's representative. And, during trial, the court permitted the victim to sit at the prosecutor's table. The error in *Montgomery* thus occurred during the trial, not during individual voir dire. In *Montgomery*, every petit juror had witnessed the victim seated at the prosecution's table. In the case at bar, by contrast, appellant has not pointed to anything in the record to establish that any petit jurors saw the victim's mother wearing the shirt. Indeed, one of the jurors stated that he had not seen any "Justice for [K.R.]" shirts at all-not even the mother's shirt-even though the mother had been wearing the shirt during this particular juror's individual voir dire questioning.

{¶136} Accordingly, based upon the foregoing reasons, we overrule appellant's third assignment of error.

## II

### Fourth Assignment of Error

{¶137} In his fourth assignment of error, appellant asserts that the trial court violated his Fifth Amendment privilege

against self-incrimination by allowing the State to introduce evidence that allegedly improperly commented on his pre-arrest and post-arrest silence. Appellant cites three instances when the State allegedly improperly commented on his pre-arrest right to remain silent: (1) during opening statement, the prosecutor referred to appellant's declaration-made to police officers while hospitalized in Charleston, West Virginia, as a purported victim of a shooting-that he did not want to cooperate with law enforcement officers who were investigating the cause of appellant's gunshot wound; (2) Ohio Bureau of Criminal Investigation Special Agent Jonathan Jenkins testified that appellant did not want to cooperate with the Charleston officers who were investigating the cause of his gunshot wound; and (3) Meigs County Sheriff's Deputy Joe Barnhart testified that appellant did not appear for a meeting that officers had arranged.

{¶138} Appellant cites one instance when the State introduced testimony that allegedly improperly commented on his post-arrest right to remain silent: Deputy Spiker testified that he retrieved appellant from jail and reminded appellant that his *Miranda* rights still applied. Appellant asserts that because Deputy "Spiker reported no further statements by [appellant], the jury was left with the impression that [appellant] refused

to waive his constitutional rights and must have had something to hide."

{¶139} The State contends that neither its opening statement's reference to appellant's assertion made while hospitalized nor Agent Jenkins's testimony regarding that assertion violated appellant's privilege against self-incrimination. The State submits that when the Charleston police spoke with appellant while he was hospitalized, appellant's Fifth Amendment privilege against self-incrimination had not yet attached. The State observes that the Charleston police spoke with appellant as a purported victim of a shooting, not as a suspect in the victim's murder. The State contends that because the officers did not speak with appellant as a criminal suspect, appellant was not entitled to *Miranda* warnings or to protection from the self-incrimination privilege. The State thus argues that it did not violate appellant's privilege against self-incrimination by (1) referring, in its opening statement, to appellant's statement that he did not wish to cooperate with the Charleston police or (2) eliciting Agent Jenkins's testimony that appellant stated that he did not want to cooperate with the officers who were investigating appellant's shooting.

{¶140} The State also disputes appellant's argument that Deputy Barnhart's testimony that a scheduled meeting with appellant did not occur violated appellant's privilege against self-incrimination. The State asserts that Deputy Barnhart's testimony simply explained officers' investigative steps and did not improperly comment on appellant's privilege against self-incrimination. The State thus contends that it did not use the deputy's statement as substantive evidence.

{¶141} The State further argues that the deputy's statement did not necessarily indicate that appellant had failed to appear or canceled the meeting; instead, the deputy stated that the meeting "did not ever happen." The State also observes that the trial court sustained appellant's objection to Deputy Barnhart's testimony and gave the jury a curative instruction. The State contends, however, that rather than sustaining appellant's objection and instructing the jury to disregard the testimony, the court should have concluded that the deputy's testimony simply described "the course of his investigation, which is permissible testimony."

{¶142} The State additionally disputes appellant's assertion that Deputy Spiker's testimony that he re-advised appellant of his *Miranda* rights violated appellant's privilege against self-incrimination.

## A

## Privilege Against Self Incrimination

{¶143} The Fifth Amendment provides that no person "shall be compelled in any criminal case to be a witness against himself."<sup>7</sup> "The privilege against self-incrimination . . . is a fundamental trial right of criminal defendants." *United States v. Verdugo-Urquidez*, 494 U.S. 259, 264 (1990). The privilege protects a person from (1) "being involuntarily called as a witness against himself in a criminal prosecution" and (2) "answer[ing] official questions put to him in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings." *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973); accord *Vega v. Tekoh*, 597 U.S. 134, 141 (2022); *State v. Gideon*, 2020-Ohio-6961, ¶ 8. The Fifth Amendment also "forbids either comment by the prosecution on the accused's silence or instructions by the court that such silence is evidence of guilt." (Footnote omitted.) *Griffin v. California*, 380 U.S. 609, 615 (1965). "The object of the Amendment is "to insure that a person should not be compelled, when acting as a witness in any investigation, to give testimony which might tend

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<sup>7</sup> The self-incrimination clause of the Fifth Amendment applies to the states via the Fourteenth Amendment. *Malloy v. Hogan*, 378 U.S. 1, 6 (1964).

to show that he himself had committed a crime.'" *Lefkowitz*, 414 U.S. at 77, quoting *Counselman v. Hitchcock*, 142 U.S. 547, 562 (1892).

{¶144} A person does not, however, have an "absolute right to invoke the Fifth Amendment.'" *State v. Arnold*, 2016-Ohio-1595, ¶ 43, quoting *State v. Arnold*, 2014-Ohio-1134, ¶ 22 (3d Dist.), quoting *In re High Fructose Corn Syrup Antitrust Litigation*, 293 F.Supp.2d 854, 859 (C.D.Ill.2003). Instead, the privilege against self-incrimination is limited "to instances where the witness has reasonable cause to apprehend danger from a direct answer." *Hoffman v. United States*, 341 U.S. 479, 486 (1951); accord *Ohio v. Reiner*, 532 U.S. 17, 20-21 (2001); see also *Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt Cty.*, 542 U.S. 177, 189 (2004) ("To qualify for the Fifth Amendment privilege, a communication must be testimonial, incriminating, and compelled."); see generally *Davis v. Washington*, 547 U.S. 813, 832 (2006) (recognizing that a witness's statement given to officers who were making initial inquiries at an alleged crime scene may be testimonial for purposes of the Confrontation Clause). A witness has reasonable cause to apprehend danger from a direct answer when "the implications of the question, in the setting in which it is asked, [manifest] that a responsive answer to the question or an

explanation of why it cannot be answered might be dangerous because injurious disclosure could result." *Hoffman*, 341 U.S. at 486-87.

{¶145} In order to safeguard a suspect's Fifth Amendment privilege against self-incrimination, law enforcement officers seeking to perform a custodial interrogation first must warn the suspect "that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." *Miranda v. Arizona*, 384 U.S. 436, 479 (1966). If a person, after receiving *Miranda* warnings, invokes the right to remain silent, the State may not, as a matter of fundamental fairness under the Due Process Clause, use the person's silence as evidence of guilt. See *Wainwright v. Greenfield*, 474 U.S. 284, 292 (1986) ("[I]t is fundamentally unfair to promise an arrested person that his silence will not be used against him and thereafter to breach that promise by using the silence to impeach his trial testimony."); *Doyle v. Ohio*, 426 U.S. 610, 619 (1976) ("[T]he use for impeachment purposes of [a defendant's] silence, at the time of arrest and after receiving *Miranda* warnings, violated the Due Process Clause of the Fourteenth Amendment."); compare *Jenkins v.*

*Anderson*, 447 U.S. 231, 240 (1980) (impeaching defendant by using evidence of his pre-arrest, pre-Miranda silence was not fundamentally unfair and did not violate due process under the Fourteenth Amendment when "no governmental action induced petitioner to remain silent").

{¶146} Moreover, the Ohio Supreme Court held that the State may not use evidence of an accused's pre-arrest, pre-Miranda silence as substantive evidence of guilt. See *State v. Leach*, 2004-Ohio-2147, ¶ 37. In *Leach*, a law enforcement officer testified that he called the defendant to inform him that one of the alleged victims indicated that the defendant wished to speak with police. The defendant advised the officer that he would meet the officer later that same day. The defendant, however, did not keep the appointment. Instead, the defendant called the officer's phone number and left a message that he wished to speak with an attorney before talking to the police.

{¶147} The Ohio Supreme Court determined that allowing the officer to testify that the defendant had invoked his right to an attorney violated "the policies behind the Fifth Amendment." *Id.* at ¶ 30. In doing so, the court noted that the United States Supreme Court had not yet considered whether admitting evidence of an accused's pre-arrest, pre-Miranda silence violates the Fifth Amendment. The court thus looked to the

federal appellate courts for guidance. The court found a Sixth Circuit case, *Combs v. Coyle*, 205 F.3d 269, 272 (6th Cir. 2000), "[m]ost relevant." In *Combs*, the appellate court concluded that using the defendant's statement that he made to an officer at the crime scene (i.e., "[t]alk to my lawyer") as substantive evidence of his guilt violated his privilege against self-incrimination.

{¶148} Ten years after *Leach*, however, the Sixth Circuit recognized that, since its *Combs* decision, the United States Supreme Court ruled in *Salinas v. Texas*, 570 U.S. 178, 183 (2013) (plurality opinion), that "prosecutors may use a defendant's pre-arrest silence as substantive evidence of his guilt if the defendant did not expressly invoke his right to remain silent." *Abby v. Howe*, 742 F.3d 221, 228, (6th Cir. 2014), citing *Salinas* at 183. The *Abby* court thus concluded that because the defendant had not invoked his right to remain silent, "the prosecutor's comments regarding [the defendant]'s pre-arrest silence would be permissible under *Salinas*." *Id.*

{¶149} In *Salinas*, the defendant claimed that introducing evidence of his pre-arrest silence violated his privilege against self-incrimination. In that case, the prosecutor introduced evidence that the defendant, during a non-custodial interview, had refused to answer questions posed by officers who

were investigating a murder with which the defendant later was charged. A three-justice plurality concluded that the defendant could not assert that using his pre-arrest silence violated his privilege against self-incrimination because he had failed to invoke the privilege during the police interview.

{¶150} Some Ohio appellate courts since have concluded that *Salinas* allows the State to use a defendant's pre-arrest, pre-*Miranda* silence as substantive evidence of guilt without violating the privilege against self-incrimination, "if the defendant fails to expressly invoke the privilege." *State v. Speis*, 2023-Ohio-1422, ¶ 17 (12th Dist. ), citing *Salinas*; accord *State v. Bender*, 2024-Ohio-1750, ¶ 48 (3d Dist.); see also *State v. Lowery*, 2023-Ohio-4444, ¶ 14 (2nd Dist.), quoting *Salinas*, 570 U.S. at 189 ("'[P]opular misconceptions notwithstanding, the Fifth Amendment guarantees that no one may be 'compelled in any criminal case to be a witness against himself'; it does not establish an unqualified 'right to remain silent.' A witness' constitutional right to refuse to answer questions depends on his reasons for doing so, and courts need to know those reasons to evaluate the merits of a Fifth Amendment claim.'").

{¶151} In the case at bar, we need not decide whether *Salinas* governs and allowed the State to comment upon and introduce

evidence regarding appellant's pre-arrest, pre-Miranda silence in the absence of an express invocation of his privilege against self-incrimination.<sup>8</sup> Instead, we presume "that prosecutorial comment on the defendant's pre-custodial silence violates the Fifth Amendment." *United States v. Zarauskas*, 814 F.3d 509, 515-16, (1st Cir. 2016); see *State v. Slusarczyk*, 2024-Ohio-4790, ¶ 31 (8th Dist.) (testimony that, before his arrest, the defendant "voluntarily came into the police station, began to fill out a general statement form, crumpled up the form, and then left" violated the defendant's privilege against self-incrimination); *State v. Pence*, 2013-Ohio-1388, ¶ 17 (12th Dist.) (introducing testimony violated the defendant's privilege against self-incrimination when detective testified that, before the defendant had been arrested or given *Miranda* warnings, the defendant's attorney, not the defendant, returned a phone call placed to the defendant, and the defendant never gave officers a statement); *State v. Trusty*, 2013-Ohio-3548, ¶ 19 and 24 (1st Dist.) (the State's substantive use of the defendant's pre-arrest, pre-Miranda silence violated the defendant's privilege against self-incrimination; the State introduced testimony during its case-in-chief that, after an officer contacted the

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<sup>8</sup> Moreover, we observe that the Ohio Supreme Court has not overruled *Leach*.

defendant to request an interview, an attorney contacted the officer to notify the officer that the defendant "was going to exercise his constitutional right to remain silent"); *State v. Estepp*, 2007-Ohio-2596, ¶ 32 (2d Dist.) (detective's testimony that defendant failed to return phone calls and cancelled police interviews violated defendant's right not to incriminate himself). But see *State v. Register*, 2025-Ohio-106, ¶ 40 (8th Dist.) (testimony that the defendant volunteered, but failed, to bring police officers a written statement and photographs depicting sexual conduct between a mother and her son did not violate the defendant's privilege against self-incrimination when testimony concerned the defendant's actions before "being accused or charged with a crime"). The question then becomes whether the error merits reversal. *Zarauskas*, 814 F.3d at 516; see also *Neder v. United States*, 527 U.S. 1, 18 (1999), quoting R. Traynor, *The Riddle of Harmless Error* 50 (1970) ("Reversal for error, regardless of its effect on the judgment, encourages litigants to abuse the judicial process and bestirs the public to ridicule it.").

B

**Pre-arrest Silence**

1

**Appellant's Statement That He Did Not Want to Cooperate**

{¶152} During the State's opening statement, the prosecutor stated, "They had a person claiming to be a victim of a shooting, but that person did not want to cooperate, so there was nothing else for them to do." Although appellant did not contemporaneously object during the State's opening statement, after the prosecutor completed his opening statement, appellant requested a mistrial and asserted that the prosecutor improperly commented on appellant's "right to remain silent and to not cooperate with the police while he was at the hospital in Charleston, West Virginia." The State argued that nothing prohibited it from stating that appellant did not want to cooperate with the officers who had questioned him not as a criminal suspect but as an alleged crime victim. The trial court did not immediately rule on appellant's motion for a mistrial and instead delayed ruling on it until the next day to allow the court sufficient time to research the issue.

{¶153} The next day, the trial court overruled appellant's motion for a mistrial. The court cautioned the State, however, not to mention appellant's "lack of cooperation with any law enforcement in regards to this case, unless or until he takes the stand." After defense counsel finished his opening statement, the trial court also instructed the jury that appellant "has the absolute right not to be forced to testify

against himself" and that "[i]f he elects not to testify at trial, his silence cannot be used against him in any attempt to prove his [guilt]."

{¶154} Agent Jenkins testified that an individual, later identified as appellant, had presented to the Charleston Area Medical Center with a gunshot wound to his upper right arm. Agent Jenkins indicated that this individual "gave a fake name and . . . didn't want to . . . be interviewed." At that point, the prosecutor interjected that he was "going to stop [the testimony] right there." The prosecutor asked the court for permission to approach the bench, but the record does not contain any information about what the parties may have discussed at the bench. The trial transcript indicates that the prosecutor next asked the agent to explain any other information gathered from appellant's hospital stay.

{¶155} Appellant did not contemporaneously object to the prosecutor's comment during opening statement or to Agent's Jenkins's testimony. We thus review these two alleged errors for plain error.

{¶156} We again note that appellate courts have discretion to consider "[p]lain errors or defects affecting substantial rights." Crim.R. 52(B); e.g., *State v. Jones*, 2020-Ohio-3051, ¶ 17, quoting *State v. Rogers*, 2015-Ohio-2459, ¶ 23 ("An appellate

court has discretion to notice plain error and therefore 'is not required to correct it.'"). A party asserting plain error must demonstrate the following: (1) an error occurred; (2) the error was obvious; and (3) a reasonable probability that the error affected the outcome of the proceeding. *State v. Echols*, 2024-Ohio-5088, ¶ 50.

{¶157} In the case at bar, even if the prosecutor's comment was an obvious error, any error did not affect the outcome of the proceedings. First, as indicated above, defense counsel moved for a mistrial based upon the prosecutor's comment, and the trial court later gave the jury a curative instruction to inform the jurors that appellant's silence could not be used to prove his guilt. Additionally, the prosecutor's comment was a brief reference to appellant's statement that he did not want to cooperate with the Charleston police and did not suggest that appellant's statement indicated his guilt. See generally *State v. Treesh*, 90 Ohio St.3d 460, 480 (2001), citing *Meeks v. Havener*, 545 F.2d 9, 10 (6th Cir. 1976) ("A single comment by a police officer as to a suspect's silence without any suggestion that the jury infer guilt from the silence constitutes harmless error."); *Meeks* at 10 (an officer's statement that the defendant informed the officer that "he would not care to speak of this case" constituted harmless error when neither the officer nor

the prosecution, during closing argument, used the defendant's comment "to suggest that the jury draw an implication of guilt from silence"). Moreover, as we explain in our discussion of appellant's sixth assignment of error, the record otherwise contains overwhelming evidence to support appellant's conviction. Thus, even absent the prosecutor's comment, the result of the trial would not have been different.

{¶158} Likewise, even if Agent Jenkins's testimony was an obvious error, any error did not affect the outcome of the proceedings. The agent's testimony was a brief reference to appellant's statement that he did not want to cooperate with the Charleston police and did not suggest that appellant's statement indicated his guilt. See generally *Treesh; Meeks* at 10. Furthermore, nothing indicates that the result of the trial would have been different if Agent Jenkins had not testified that appellant did not wish to be interviewed.

{¶159} Consequently, we do not agree with appellant that any error that may have occurred requires a reversal.

2

**Deputy Barnhart's Testimony**

{¶160} When responding to the prosecutor's question about investigative steps, Deputy Barnhart stated that "we had set a meeting for [appellant] to come in and talk to us. Um, which

did not ever happen." Appellant objected, and the trial court sustained the objection. The court also instructed the jury "to disregard any statement made by anybody, law enforcement, witness, or anybody else, about, us, where or not [appellant], uh, took part in the investigation." The court advised the jury that appellant "had the absolutely [sic] right to remain silent and in no way make any statements to law enforcement" and instructed the jury "to disregard that statement for any purpose."

{¶161} Because appellant objected when Deputy Barnhart testified that a meeting that officers had arranged with appellant did not occur, we review this claimed error for harmless error. See *Neder v. United States*, 527 U.S. 1, 18 (1999) ("The erroneous admission of evidence in violation of the Fifth Amendment's guarantee against self-incrimination . . . [is] subject to harmless-error analysis."); *State v. Powell*, 2012-Ohio-2577, ¶ 162 (a violation of a defendant's privilege against self-incrimination is subject to harmless-error review). An error is harmless if the record demonstrates "beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error[.]" *Neder v.*, 527 U.S. at 18; *id.* at 19, quoting *Chapman v. California*, 386 U.S. 18, 22 (1967) (harmless errors are "small errors or defects that have little,

if any, likelihood of having changed the result of the trial'"); *State v. Smith*, 49 Ohio St.3d 137, 143 (1990) ("Unless there is a reasonable possibility that the improperly admitted evidence contributed to the conviction, reversal is not required"); see also Crim.R. 52(A) ("Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded."); *State v. Graham*, 2020-Ohio-6700, ¶ 55 (under the harmless-error standard, "the state bears the burden of demonstrating that the error did not affect the substantial rights of the defendant").

{¶162} The State's use of a defendant's pre-arrest silence constitutes harmless error when any comments were not extensive, the State did not emphasize that the defendant's pre-arrest silence constituted evidence of guilt, and the evidence otherwise overwhelmingly establishes the defendant's guilt. See *State v. Wiley*, 2022-Ohio-2131, ¶ 46 (8th Dist.) (the State's use of the defendant's pre-arrest silence was harmless error when "the prosecutor's questions were not extensive, the state did not stress to the jury that [the defendant]'s prearrest silence demonstrated guilt, and there was other overwhelming evidence of [the defendant]'s guilt, including [the defendant]'s admissions that he shot [the victim] in the back as he ran away, he is a drug dealer, and all of the items the police found in

his backpack, including the gun, were his"); see also *State v. Powell*, 2012-Ohio-2577, ¶ 162 (improper comment on a defendant's privilege against self-incrimination constitutes harmless error when the "improper comments were brief and isolated").

Conversely, the State's use of a defendant's pre-arrest silence constitutes reversible error when the State's case against the defendant "contain[s] no physical evidence and rest[s] solely on the credibility of the state's witnesses." *Leach*, 2004-Ohio-2147, at ¶ 29.

{¶163} In the case at bar, we believe that Deputy Barnhart's testimony that a scheduled meeting with appellant did not occur constituted harmless error. First, we observe that the deputy's testimony does not indicate why the meeting did not occur, and thus, whether the testimony actually comments on appellant's privilege against self-incrimination is questionable. Even if the deputy's testimony was, however, an improper comment on appellant's privilege against self-incrimination, that comment was not specific or direct, meaning that the deputy did not state that the officers had scheduled a meeting with appellant and that he failed to appear. Furthermore, even if the jury inferred that the meeting did not occur because appellant failed to appear, we observe that, after the deputy testified that the meeting did not occur, appellant objected, and the trial court

instructed the jury to disregard the testimony. See *Powell*, 2012-Ohio-2577, at ¶ 162 (prosecutor's improper comment on the defendant's privilege against self-incrimination constituted harmless error when, inter alia, "the trial court immediately sustained a defense objection to the prosecutor's argument and ordered the jury to disregard it"). We presume that the jury followed the court's curative instruction. See *State v. Loza*, 71 Ohio St.3d 61, 75 (1994); *State v. Zuern*, 32 Ohio St.3d 56, 61 (1987). We also note that neither the State's opening statement nor closing argument commented upon the meeting's nonoccurrence or suggested that the nonoccurrence was indicative of appellant's guilt. Additionally, as we explain in our discussion of appellant's sixth assignment of error, the evidence of appellant's guilt otherwise is overwhelming. Therefore, the record establishes beyond a reasonable doubt that a rational jury would have found appellant guilty even without the deputy's statement that a scheduled meeting did not occur.<sup>9</sup>

C

**Post-arrest Silence**

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<sup>9</sup> We note that the State contends that the trial court should have allowed the testimony as testimony regarding the course of the officers' investigation. See *Leach*, 2004-Ohio-2147, at ¶ 32. Given our discussion above, however, we do not address this argument.

{¶164} Deputy Spiker testified that he retrieved appellant from jail and drove him to the hospital for medical attention. The deputy indicated that appellant had a "bullet [that] had begun working itself out of the arm." The deputy stated that during his interaction with appellant, the deputy advised appellant that "his *Miranda* Rights . . . still apply and that anything that he said could be used against him in [c]ourt." After this statement, the prosecutor asked the deputy to identify a photograph that depicted appellant's right arm with "a bullet projectile type sticking out of the skin about halfway." Appellant claims that the absence of testimony between the deputy's response and the State's next question suggested to the jury that appellant exercised his right to remain silent after receiving *Miranda* warnings.

{¶165} The prosecution's use of a defendant's post-arrest, post-*Miranda* silence to impeach the defendant or as substantive evidence of the defendant's guilt violates a defendant's due process rights. See *Vega v. Tekoh*, 597 U.S. 134, 146-47 (2022); *Wainwright v. Greenfield*, 474 U.S. 284, 291 (1986); *Doyle v. Ohio*, 426 U.S. 610, 617-619 (1976). The rationale for this rule is based upon the prophylactic rule set forth in *Miranda* that informs a defendant that the defendant has the right to remain silent and the right to an attorney. Using a defendant's post-

Miranda silence would be contrary to the *Miranda* warnings and allow the State to take advantage of a defendant who chooses to remain silent when the *Miranda* warnings specifically gave the defendant the right to do so. See *Wainwright* at 291 ("breaching the implied assurance of the *Miranda* warnings is an affront to the fundamental fairness that the Due Process Clause requires"); *Doyle* at 618 (although "the *Miranda* warnings contain no express assurance that silence will carry no penalty, such assurance is implicit to any person who receives the warnings").

{¶166} In the case at bar, Deputy Spiker's testimony did not improperly comment on appellant's decision to remain silent after the deputy re-advised appellant of his *Miranda* rights. After the deputy stated that he re-advised appellant of his *Miranda* rights, the deputy did not state that appellant then chose to remain silent. Instead, the prosecutor changed the line of questioning and asked the deputy to identify some photographs that depicted the bullet protruding from appellant's arm. Thus, the State did not use appellant's post-arrest, post-*Miranda* silence as substantive evidence of the defendant's guilt.

{¶167} Even if the deputy's testimony suggested that appellant remained silent and thus constituted an improper comment, we note that appellant did not contemporaneously object

to the deputy's testimony. Appellant's failure to object at a time when the trial court could have corrected any error means that he forfeited all but plain error for purposes of appeal. Nothing in the record suggests that the outcome of the trial would have been different if Deputy Spiker had not stated that he re-advised appellant of his *Miranda* rights. Moreover, the record does not establish that the case at bar is one of the rare cases in which failing to recognize the alleged error would result in a manifest miscarriage of justice.

{¶168} Accordingly, based upon the foregoing reasons, we overrule appellant's fourth assignment of error.

### III

#### Fifth Assignment of Error

{¶169} In his fifth assignment of error, appellant argues that the trial court deprived him of due process and a fair trial by allowing the State to introduce allegedly improper victim-impact evidence. Appellant asserts that this evidence started during the prosecution's opening statement, when the prosecutor stated the following:

[The victim] was a young man who was only twenty five (25) years old, um, he was in the prime of his life. He graduated from Wahama High School. He excelled in football there and that helped him continue with his education at the University of Charleston, where he played football and graduated with a degree in Business Marketing. He lived here in Pomeroy at 108

Legion Terrace. Uh, he was working with his father and his concrete business, and his plan one day was to take over that concrete business from his father once his father retired.

{¶170} Appellant contends that the victim-impact evidence continued during Agent Jenkins's testimony, when he stated that the victim was "tough" and had the "will to live." Agent Jenkins further testified that the victim was "very well-liked" in the community, and an "all-star athlete, uh, just one of those guys that everyone liked, everybody wanted to know, everybody wanted to be around."

{¶171} Appellant asserts that neither the prosecution's opening statement nor Agent Jenkins's testimony was "relevant to any of the issues before the jury." Instead, appellant contends that the information served to remind the jury that the victim "was a good person," his death was tragic, and his family wanted justice. Appellant claims that the prosecution's opening statement and Agent Jenkins's testimony made the jury biased against him and made "it unlikely that they could fairly consider whether [appellant] was actually guilty." Appellant contends that the "evidence was substantially outweighed by unfair prejudice under Evid.R. 403(A), and should have been excluded."

{¶172} Appellant further observes that his trial counsel did not object to the prosecution's opening statement or to Agent Jenkins's testimony. He nevertheless asks this court to review this assignment of error for plain error or to consider whether trial counsel provided ineffective assistance of counsel by failing to object.

{¶173} The State does not agree that it presented improper victim-impact evidence. The State first asserts that its opening statement was not evidence and that it offered relevant information regarding the victim to provide background about the case, not to impermissibly appeal to the jury's emotions. The State contends that the opening statement simply offered personal characteristics of the victim and did not comment on any emotional impact on the victim's family.

{¶174} The State further argues that its opening statement "did not serve to remind the jury what a good person the victim was, how tragic it was that he died, or how the victim's parents wanted justice." The State asserts that its opening statement did not "seek to direct the jury away from the facts of the case and towards feelings of sympathy to the victim's family and anger towards Appellant." The State also disagrees with appellant that the trial court should have excluded the comments made during opening statement. The State again asserts that

opening statements are not evidence and that Evid.R. 403(A) thus does not apply to opening statements.

{¶175} The State additionally disputes appellant's argument that Agent Jenkins's testimony contained improper victim-impact evidence. The State contends that the agent's testimony did not relate to the emotional impact of the crime on the victim's family. The State argues that Agent Jenkins's testimony was relevant to show the victim's path from his home to his neighbor's home and to illustrate the investigative steps law enforcement officers took to try to identify a suspect who may have had a motive for the murder. The State asserts that the agent's testimony "did not seek to direct the jury away from the facts of the case and towards feelings of sympathy to the victim's family and anger towards [a]ppellant."

A

Standard of Review

{¶176} We first observe that appellant failed to contemporaneously object to the prosecutor's opening statement and to Agent Jenkins's testimony. He therefore forfeited all but plain error for purposes of appeal. We again observe that to establish that plain error occurred, appellant must show that "an error occurred, that the error was obvious, and that there is 'a reasonable probability that the error resulted in

prejudice,' meaning that the error affected the outcome of the trial." *State v. McAlpin*, 2022-Ohio-1567, ¶ 66, quoting *State v. Rogers*, 2015-Ohio-2459, ¶ 22. As we explain below, we do not believe that the trial court erred by allowing improper victim-impact testimony. Furthermore, even if the trial court obviously erred by allowing improper victim-impact evidence, the error did not affect the outcome of the trial.

**B****Victim-impact Evidence**

{¶177} "Victim-impact evidence includes evidence relating to the victim's personal characteristics and the impact that the crimes had on the victim's family." *State v. Graham*, 2020-Ohio-6700, ¶ 113; accord *McAlpin* at ¶ 113. "Victim-impact testimony is admissible during the guilt phase of the proceedings only when it is relevant to the commission of the offense and it is not overly emotional." *Graham* at ¶ 136; accord *State v. Gross*, 2002-Ohio-5524, ¶ 62 (victim-impact testimony is relevant and admissible during the guilt phase of a death-penalty trial when the testimony concerns the circumstances surrounding the commission of the murder); *State v. Beuke*, 38 Ohio St.3d 29, 40 (1988) ("victim-background evidence may be relevant to establishing facts of consequence or otherwise necessary to prove an element of the crime"); see also *State v. Fautenberry*,

72 Ohio St.3d 435, 440 (1995) ("[e]vidence relating to the facts attendant to the offense, however, is clearly admissible during the guilt phase."); Evid.R. 401 (defining relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence").

{¶178} "Testimony is overly emotional when it is likely to inflame the passions of the jurors and elicit a purely emotional response that would inhibit the jurors from making an objective and rational determination regarding the defendant's guilt and/or the appropriate punishment." *Graham*, 2020-Ohio-6700, at ¶ 123. Courts that are deciding whether testimony is overly emotional may consider the following factors: (1) "'the length of the victim-impact testimony'"; (2) "'whether witnesses, jurors, and audience members showed physical signs of emotion during the testimony'"; (3) "'the detail and depth of the victim-impact testimony with regard to the murder victim[s]'" ; and (4) "'whether the victim-impact witness used emotionally charged language.'" *McAlpin*, 2022-Ohio-1567, at ¶ 114, quoting *Graham* at ¶ 126; accord *State v. Nicholson*, 2024-Ohio-604, ¶ 194.

{¶179} Even if victim-impact evidence is relevant and not overly emotional, however, Evid.R. 403(A) prohibits its admission if the "probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." Victim-impact evidence carries a risk of prejudice because it "serves to inflame the passion of the jury with evidence collateral to the principal issue at bar." *State v. White*, 15 Ohio St. 2d 146, 151 (1968). Additionally, the improper admission of victim-impact evidence "increases the likelihood that arbitrary factors will influence the jury's decisions, which increases the possibility that a reversal will be required." *Graham*, 2020-Ohio-6700, at ¶ 136.

{¶180} Moreover, "[i]n the event that evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair, the Due Process Clause of the Fourteenth Amendment provides a mechanism for relief." *Payne v. Tennessee*, 501 U.S. 808, 825 (1991). Courts "have defined the category of infractions that violate 'fundamental fairness' very narrowly," however. *Dowling v. United States*, 493 U.S. 342, 352 (1990).

{¶181} In the case at bar, an obvious error did not occur when the prosecutor introduced the case to the jury by citing background information about the victim. The prosecutor's brief description of the victim in his opening statement simply

pointed out the victim's age and provided context that explained that he had been living in Meigs County before his death. See *State v. Williams*, 2003-Ohio-4164, ¶43, quoting *State v. Lorraine*, 66 Ohio St.3d 414, 420 (1993) ("the 'circumstances of the victims are relevant to the crime as a whole. The victims cannot be separated from the crime."); *State v. McKnight*, 2005-Ohio-6046, ¶ 102 (trial court did not plainly err by allowing prosecutor to comment, during opening statement, upon the victim's age and college attendance); see *id.* at ¶ 103 (plain error did not result from prosecutor's "brief and not overly emotional" statements during closing argument that described the victim "as a nice, kind-hearted, and helpful person to point out the likelihood that [the victim] provided a ride to [the defendant] on the night she disappeared").

{¶182} To the extent that the prosecutor improperly commented upon victim-impact evidence, we note that the trial court instructed the jury that opening statements are not evidence, and this instruction "cured any error," *Nicholson*, 2024-Ohio-604, at ¶ 199, citing *State v. Treesh*, 90 Ohio St.3d 460, 480 (2001). Furthermore, nothing suggests that allowing the prosecutor to begin the opening statement with a short description of the victim was so extremely unfair that allowing the comment violated fundamental notions of justice so as to

violate appellant's due process rights. Consequently, we do not believe that the trial court plainly erred by failing to interrupt the State's opening statement to instruct the jury to disregard the statement relating to the victim's background. Nothing in the State's opening statement was laden with emotion or sought solely to appeal to the jury's sympathies.

{¶183} Moreover, Agent Jenkins's testimony that the victim was "very well-liked" in the community, and an "all-star athlete, uh, just one of those guys that everyone liked, everybody wanted to know, everybody wanted to be around" helped explain the circumstances that led officers to a suspect. Before the agent testified about the victim's background and relationships, he had stated that "in any murder investigation, especially when [officers] don't automatically know who the suspect is" officers "try to gain as much knowledge about that victim as [they] can." Agent Jenkins stated that this inquiry involves considering the victim's activities, friends, family, spouse, children, and any other significant individuals. He explained that once an officer gathers background information about a victim, then the officer "can start piecing together what might have been going on in [the victim]'s life" and what motivated a person to kill the victim.

{¶184} Agent Jenkins's testimony thus did not serve as victim-impact evidence. Instead, the agent stated that exploring the victim's background and relationships helped him understand whether anyone had a motive to kill him. See *State v. Allard*, 75 Ohio St.3d 482, 500 (1996) ("testimony concerning [the victim]'s plan to remarry was relevant to [the defendant]'s motive to commit the murders"); see generally *State v. Maxwell*, 2014-Ohio-1019, ¶ 137 (testimony about the victim's "family and her divorce provided background information about [the victim]'s relationship with [the defendant] and the witnesses who testified" and was not prejudicial victim-impact testimony when it was not overly emotional).

{¶185} Additionally, even if Agent Jenkins's testimony that the victim was "tough" and had the "will to live" did not relate to the facts and circumstances of the crime or to officers' investigation, the agent's testimony was brief and not overly emotional. See *Nicholson*, 2024-Ohio-604, at ¶ 197 (testimony that the victims "had been 'good kids' or 'respectful' or 'polite'" did not constitute improper victim-impact testimony when testimony was "brief, served to establish the existence of the victims, and provided the jury with a backdrop against which to view the relationships between [the defendant] and each of the victims"); *State v. Wilks*, 2018-Ohio-1562, ¶ 78 (testimony

that the victim "had a beautiful heart," "was smart, caring, funny," "loved to make people laugh," "commanded attention," and was "the best thing since sliced bread" did not constitute improper victim-impact testimony when it was brief, not overly emotional, and did not mention the effect that the victim's death had on the families). Compare *Graham*, 2020-Ohio-6700, at ¶105, ¶ 117, ¶ 133, and ¶ 134 (trial court erred by allowing victim's father's testimony, spanning 10 pages of the transcript, about the victim's "life and the impact his death has had upon [the] father, especially when that testimony provided the jury with no relevant facts attendant to the offense and the jury had already received evidence that [the victim] had been a living person," but the testimony was not overly emotional, so the error was not prejudicial); *McKnight* at ¶ 99 (father's statement that "his daughter's disappearance was 'like somebody hit [him] in the stomach with a sledgehammer' was of questionable relevance").

{¶186} We therefore do not believe that the trial court plainly erred by allowing Agent Jenkins's testimony regarding the victim's "tough[ness]," "will to live," background, or reputation in the community.

{¶187} To the extent appellant alternatively asserts that trial counsel rendered ineffective assistance of counsel by

failing to object to the State's opening statement or to Agent Jenkins's testimony, appellant cannot establish that counsel's failure to object was anything other than legitimate trial strategy.<sup>10</sup> See *State v. Conway*, 2006-Ohio-2815, ¶ 103 (trial counsel's "failure to make objections is not alone enough to sustain a claim of ineffective assistance of counsel"); accord *State v. Sowell*, 2016-Ohio-8025, ¶ 144 (rejecting argument that failing to preserve error is inherently prejudicial and stating, "[i]t is not enough that an alleged error resulted in a disadvantage for an accused"). And even if counsel's failure to object was deficient, appellant cannot establish prejudice. See *State v. Fears*, 86 Ohio St.3d 329, 347 (1999) (defendant must "show that any particular failure to object substantially violated [an] essential duty [and] was prejudicial"); accord *State v. Holloway*, 38 Ohio St.3d 239, 244 (1988) (stating that failure to object insufficient on its own to establish ineffective assistance of counsel; instead, a defendant still must demonstrate that counsel substantially violated an essential duty and that counsel's performance materially prejudiced the defense).

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<sup>10</sup> We include the legal principles that apply to an ineffective-assistance-of-counsel claim in our discussion of appellant's seventh assignment of error.

{¶188} Accordingly, based upon the foregoing reasons, we overrule appellant's fifth assignment of error.

IV

Sixth Assignment of Error

{¶189} In his sixth assignment of error, appellant argues that the record does not contain sufficient evidence to support his conviction and that his conviction is against the manifest weight of the evidence. Appellant claims that the State failed to prove beyond a reasonable doubt that he "purposely cause[d] the death of another."<sup>11</sup> Appellant contends that (1) the accomplice testimony of Richard Walker that implicated appellant was not credible, (2) the State failed to establish a proper chain of custody for several items of physical evidence and otherwise failed to establish that law enforcement officers followed proper protocols when collecting and logging evidence, and (3) the State did not properly authenticate the letters that appellant purportedly wrote while in jail.

{¶190} As we explain below, we believe that the record contains sufficient evidence to support appellant's conviction and that his conviction is not against the manifest weight of the evidence.

## A

**Sufficiency and Manifest Weight of the Evidence**

{¶191} Initially, we observe that "sufficiency" and "manifest weight" present two distinct legal concepts. *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 23 ("sufficiency of the evidence is quantitatively and qualitatively different from the weight of the evidence"); *State v. Thompkins*, 78 Ohio St.3d 380 (1997), syllabus. A claim of insufficient evidence invokes a due process concern and raises the question whether the evidence is legally sufficient to support the verdict as a matter of law. *Thompkins*, 78 Ohio St.3d at 386; see *Jackson v. Virginia*, 443 U.S. 307, 316 (1979) (stating that one of the essential guarantees of the due process protections under the Fourteenth Amendment is "that no person shall be made to suffer the onus of a criminal conviction except upon sufficient proof—defined as evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense"). Appellate review of a sufficiency-of-the-evidence challenge is de novo. *Thompkins* at 386 ("Whether the evidence is legally sufficient to sustain a verdict is a question of

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<sup>11</sup> We recognize that appellant has not challenged the prior-calculation-and-design element needed to prove aggravated

law.'"); accord *State v. Bertram*, 2023-Ohio-1456, ¶ 8 ("A challenge to the sufficiency of the evidence is reviewed de novo."); see *Painter and Pollis, Ohio Appellate Practice*, Appendix G (2023) (sufficiency challenge "trigger[s] de novo review").

{¶192} When reviewing the sufficiency of the evidence, an appellate court's inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of guilt beyond a reasonable doubt. *Thompkins* at syllabus. The "critical inquiry" on appeal "is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson*, 443 U.S. at 318-319; e.g., *State v. Dean*, 2015-Ohio-4347, ¶ 150; *State v. Jenks*, 61 Ohio St.3d 259, 273 (1991), superseded by state constitutional amendment on other grounds as stated in *State v. Smith*, 80 Ohio St.3d 89, 102 (1997), fn. 4. Furthermore, the sufficiency-of-the-evidence inquiry does not permit a reviewing court to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would murder. We limit our review accordingly.

support a conviction." *Thompkins*, 78 Ohio St.3d at 390 (Cook, J., concurring); accord *State v. Pountney*, 2018-Ohio-22, ¶ 19.

{¶193} Thus, when reviewing a sufficiency-of-the-evidence claim, an appellate court must construe the evidence in a light most favorable to the prosecution. *E.g.*, *State v. Hill*, 75 Ohio St.3d 195, 205 (1996); *State v. Grant*, 67 Ohio St.3d 465, 477 (1993). A reviewing court will not overturn a conviction on a sufficiency-of-the-evidence claim unless reasonable minds could not reach the conclusion that the trier of fact did. *State v. Tibbetts*, 92 Ohio St.3d 146, 162 (2001); *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001); see also *In re Z.C.*, 2023-Ohio-4703, ¶ 13, quoting *Bryan-Wollman v. Domonko*, 2007-Ohio-4918, ¶ 3, quoting *Thompkins* at 386, 678 N.E.2d 541, quoting *Black's* at 1433 ("When applying a sufficiency-of-the-evidence standard, a court of appeals should affirm a trial court when "the evidence is legally sufficient to support the jury verdict as a matter of law.'"""); *Burks v. United States*, 437 U.S. 1, 16 (1978) (reversal for insufficient evidence "means that the government's case was so lacking that it should not have even been submitted to the jury" [emphasis sic]).

{¶194} "Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is

against the weight of the evidence." *Thompkins*, 78 Ohio St.3d at 387. Appellate review under the manifest-weight-of-the-evidence standard is deferential. See *Z.C.* at ¶ 15 ("the phrase 'some competent, credible evidence' can be helpful in describing the reviewing court's deferential role in the manifest-weight analysis"); *Black's* (12th ed. 2024) (the phrase "manifest weight of the evidence" "denotes a deferential standard of review under which a verdict will be reversed or disregarded only if another outcome is obviously correct and the verdict is clearly unsupported by the evidence").

{¶195} A manifest-weight challenge involves an inquiry into the persuasiveness of the evidence. See *State v. Martin*, 2022-Ohio-4175, ¶ 26, quoting *Eastley*, 2012-Ohio-2179, at ¶ 19 ("The term 'manifest weight of the evidence' . . . relates to persuasion."); *State v. Wilson*, 2007-Ohio-2202, ¶ 25 (manifest-weight inquiry asks "whose evidence is more persuasive"). A court that is considering a manifest-weight challenge must "review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses." *State v. Beasley*, 2018-Ohio-493, ¶ 208, quoting *State v. McKelton*, 2016-Ohio-5735, ¶ 328. In conducting this review, "the appellate court sits as a 'thirteenth juror'" and may disagree with the jury's resolution of the conflicting

testimony. *Tibbs v. Florida*, 457 U.S. 31, 42 (1982); accord *Thompkins*, 78 Ohio St.3d at 387. The reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. *State v. Issa*, 93 Ohio St.3d 49, 67 (2001); *State v. Murphy*, 2008-Ohio-1744, ¶ 31 (4th Dist.).

"Because the trier of fact sees and hears the witnesses and is particularly competent to decide "whether, and to what extent, to credit the testimony of particular witnesses," we must afford substantial deference to its determinations of credibility."

*Barberton v. Jenney*, 2010-Ohio-2420, ¶ 20, quoting *State v. Konya*, 2006-Ohio-6312, ¶ 6 (2d Dist.), quoting *State v. Lawson*, 1997 WL 476684 (2d Dist. Aug. 22, 1997). As the *Eastley* court explained:

"[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts. . . .

If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment."

*Id.* at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984), fn.3, quoting 5 Ohio Jurisprudence 3d, Appellate Review, § 60, at 191-192 (1978); accord *Z.C.*, 2023-Ohio-4703, at ¶ 14, quoting *Eastley* at ¶ 21 (when "weighing the

evidence, the court of appeals must always be mindful of the presumption in favor of the finder of fact").

{¶196} Thus, an appellate court will "leave the issues of weight and credibility of the evidence to the fact finder, as long as there is a rational basis in the record for [its] decision." *State v. Picklesimer*, 2012-Ohio-1282, ¶ 24 (4th Dist.); accord *State v. Howard*, 2007-Ohio-6331, ¶ 6 (4th Dist.) ("We will not intercede as long as the trier of fact has some factual and rational basis for its determination of credibility and weight."); see also *Tibbs v. Florida*, 457 U.S. 31, 45 (1982) (suggesting that a verdict is not against the weight of the evidence when the evidence "rationally supports [the] verdict").

{¶197} Accordingly, if the prosecution presented substantial, credible evidence upon which the trier of fact reasonably could conclude, ~~beyond a reasonable doubt, that the essential elements~~ of the offense had been established, the judgment of conviction is not against the manifest weight of the evidence. *E.g.*, *State v. Eley*, 56 Ohio St.2d 169 (1978); see also *Eastley* at ¶ 12, quoting *Thompkins*, 78 Ohio St.3d at 387, quoting *Black's* (6th ed.1990) (judgment not against the manifest weight of evidence when ""the greater amount of credible evidence"" supports it); see also *State v. Leonard*, 2004-Ohio-6235, ¶ 81, quoting *State v. Getsy*, 84 Ohio St.3d 180, 193-194 (1998), citing *Eley* at

syllabus ("The question to be answered when a manifest-weight issue is raised is whether 'there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt.'" [emphasis in original.])). A court may reverse a judgment of conviction only if it appears that the fact finder, when it resolved the conflicts in evidence, "'clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.'" *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). A reviewing court should find a conviction against the manifest weight of the evidence only in the "'exceptional case in which the evidence weighs heavily against the conviction.'" *Id.*, quoting *Martin*, 20 Ohio App.3d at 175; accord *State v. Clinton*, 2017-Ohio-9423, ¶ 166; *State v. Lindsey*, 87 Ohio St.3d 479, 483 (2000).

B

**Walker's Testimony**

{¶198} Appellant first questions the credibility of Walker's testimony that appellant shot the victim. Appellant argues that Walker's testimony that appellant shot the victim is not worthy of belief because, if appellant had been present at the crime scene, as Walker claimed, then the victim would have identified

appellant when the victim's neighbor asked the victim who shot him. He claims that the victim instead identified the assailant as "some black guy." Appellant states that the victim's statement that "some black guy" shot him is not sufficient evidence to convict him of purposely killing the victim and that the jury lost its way by crediting Walker's testimony.

{¶199} Appellant also contends that Walker's testimony is not worthy of belief because (1) Walker entered into a plea bargain with the State that allowed him to escape a life sentence in exchange for his testimony, and (2) he admitted that he had given law enforcement officers multiple stories.

{¶200} Appellant also asserts that the physical evidence, or lack thereof, does not corroborate Walker's testimony.

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"Some black guy"

{¶201} Appellant first contends that the State's "entire case" rested on Walker's testimony and that the jury should not have believed Walker's testimony. Appellant observes that, before the victim died, the victim identified the person who shot him as "some black guy." Appellant asserts that the evidence shows that appellant and the victim knew each other. He thus suggests that if appellant truly had hit the victim with the butt of the shotgun, as Walker claimed, then appellant would

have identified appellant as the "black guy" who shot him. Appellant argues that the victim's failure to identify appellant as the person who hit him or shot him indicates that Walker did not tell the truth about appellant's involvement. He claims that the victim identifying the assailant as "some black guy" is thus insufficient to convict appellant and that the jury lost its way by crediting Walker's testimony.

{¶202} Appellant additionally claims that a reasonable juror could not have believed Walker's testimony that, when the victim opened the door, appellant hit the victim and caused him to stumble back into the house. Appellant questions whether appellant, "lurking out of sight along the side of the door," could have "muster[ed] enough force to knock a college football player off-balance." He states, "If [appellant] was close enough to hit [the victim] with the butt of a shotgun, why didn't [the victim] tell anybody?" Appellant disputes the State's assertion that the victim did not know that appellant "was the one who hit him with the butt of the shotgun because [appellant] was hiding along the side of the door when [the victim] answered and was hit." Appellant claims that the record contradicts the State's suggestion and contends that Walker testified that appellant hit the victim in his chest in a manner that caused the victim to "stumble[] back."

{¶203} The State does not agree with appellant that the victim's failure to name appellant as the person who shot him shows that the jury lost its way when crediting Walker's testimony that appellant shot the victim. The State contends that the evidence established that Nelson, an African American male, shot the victim and that the victim did not know Nelson. The State argues that the evidence further showed that, after Nelson shot the victim, appellant "approached [the victim] from behind and shot him with a shotgun multiple times in the back." The State asserts that the victim most likely did not see who shot him in the back. According to the State, therefore, the victim's statement that "some black guy" shot him likely referred to Nelson.

{¶204} The State further argues that the victim's failure to specify appellant as one of the persons who shot him could be due to "any number of reasons." The State suggests that the victim may not have seen who hit him with the butt of the shotgun "because Nelson knocked on the door and [appellant] was hiding along the side of the door when [the victim] answered and was hit." The State also points out that the victim had sustained gunshot and shotgun wounds that proved to be fatal and was struggling to survive when he advised his neighbor that "some black guy" shot him. The State asserts that, given the

victim's dire situation, his lack of specificity about who shot him and who ransacked his house was perfectly reasonable.

{¶205} Regarding appellant's argument that the victim identifying the assailant as "some black guy" is insufficient evidence to convict appellant, we observe that the State's case did not rest solely upon the victim's statement that "some black guy" shot him. Instead, the State presented other evidence to suggest that appellant was the individual who shot the victim in the back with the shotgun. Walker testified that, after Nelson shot the victim, he and Nelson ran to the car, and appellant stayed behind. Walker then heard two shotgun blasts. Appellant did not have any shotgun wounds, and the only other person in the vicinity who displayed evidence of being shot with a shotgun was the victim. The circumstantial evidence thus indicates that appellant was the individual who shot the victim with the shotgun.

{¶206} Additionally, the State presented evidence that appellant wrote letters that suggested he had attempted to concoct a story to attempt to prove that he did not shoot the victim. Appellant also sustained a gunshot wound to his arm, and the bullet removed from his arm matched the bullet retrieved from the victim's body. We therefore do not agree with

appellant that the State's case rested solely upon the victim identifying the individual who shot him as "some black guy."

{1207} Moreover, if the victim was shot from behind, then, as the State asserts, the victim most likely did not see who shot him in the back with the shotgun. His identification of "some black guy" who shot him may have referred to Nelson. The victim did not know Nelson, and Walker testified that Nelson shot the victim with a .45-caliber weapon. The victim's statement that "some black guy" shot him thus may have referred to Nelson's act of shooting the victim with the .45-caliber weapon.

{1208} With respect to appellant's assertion that Walker testified that appellant hit the victim in the chest, we observe that the record does not support appellant's assertion. Instead, the prosecutor asked Walker if he recalled where appellant hit the victim with the butt of the shotgun. Walker stated, "I guess like his chest." The prosecutor pressed Walker for a more definitive answer and asked him whether he knew where appellant hit the victim. Walker stated that he did not. He clarified that he saw appellant hit the victim but did not recall which part of the victim's body appellant hit. Walker did, however, recall that, after appellant hit the victim, the victim "stumbled back" into his house.

{¶209} Furthermore, none of the evidence presented at trial indicates whether the victim even had an opportunity to view appellant's face to be able to identify him by name. During his testimony, Walker did not (1) explain why the victim failed to identify appellant by name or (2) give any indication that the victim had the opportunity to see appellant's face. Walker stated that Nelson knocked on the door and asked the victim if he could use the phone. Before knocking on the door, Walker and appellant had been standing toward the right side of the door, potentially out of the victim's line of sight. When the victim opened the door, appellant hit him with the butt end of the shotgun. The record does not indicate that the victim saw appellant's face before appellant hit him with the butt of the shotgun or that he had the opportunity to view appellant's face. Even if he had, as the State observes, after the victim was shot, he was struggling for his life. Thus, any failure to specifically identify appellant as the individual who hit him with the butt of the shotgun would be eminently understandable.

{¶210} Moreover, as the State notes, the shotgun wounds indicate that the assailant shot the victim in the back. Thus, the victim most likely did not have any opportunity to turn around and see who shot him with the shotgun. Plus, the shooting occurred in the dark of night, and neither party

presented any evidence regarding the lighting conditions at the time of the victim's shooting to suggest that he would have been able to identify appellant if he had seen his face. Consequently, the victim's failure to identify appellant as the individual who shot him, or to otherwise state that appellant was present, does not suggest that the jury clearly lost its way by crediting Walker's testimony.

2

**Walker's Plea Bargain and Lies**

{¶211} Appellant next claims that Walker's testimony was not credible because he "had a very clear reason to lie to [the] jury and minimize his own culpability in the murder of [the victim]." Appellant notes that Walker agreed to cooperate with the State and, in exchange, received a prison sentence of 15 to 21½ years.

{¶212} Appellant further argues that lies besieged Walker's testimony and made his testimony unworthy of belief. Appellant contends that Walker's testimony shows that "he is good at lying" and that he even admitted that he told lies. Appellant states that Walker gave officers several stories about what transpired, yet the prosecution urged the jury to believe that Walker told the truth at trial. He asserts that the jury lost its way by crediting Walker's testimony.

{¶213} We again note that the trier of fact sits in the best position to determine whether a witness is credible and whether the witness's testimony is reliable. See *Seasons Coal Co.*, 10 Ohio St.3d at 80. The trier of fact has "the benefit of actually seeing the witnesses testify," observing facial expressions and body language, hearing voice inflections, and discerning "qualities such as hesitancy, equivocation, or candor (or the lack of it)." *State v. Fell*, 2012-Ohio-616 (6th Dist.), ¶ 14; accord *State v. Pinkerman*, 2024-Ohio-1150, ¶ 26 (4th Dist.). Thus, when assessing a witness's credibility, the trier of fact "should consider the demeanor of the witness and the manner in which he testifies, his connection or relationship with the prosecution or the defendant, and his interest, if any, in the outcome." *State v. Antill*, 176 Ohio St. 61, 67 (1964); see also *Ohio Jury Instructions*, CR § 207.05 (Rev. Dec. 10, 2011) (instructing jurors to consider the following factors when determining the credibility of each witness: "the appearance of each witness upon the stand; the witness' manner of testifying; the reasonableness of the testimony; the opportunity the witness had to see, hear, and know the things about which the witness testified; and the witness' accuracy of memory, frankness or lack of it, intelligence, interest, and bias, if any, together

with all the facts and circumstances surrounding the testimony").

{¶214} Appellate courts do not share the trier of fact's same perspective and cannot replicate "[t]he intimate and evanescent nature of observed testimony." *Fell*, 2012-Ohio-616, at ¶ 14 (6th Dist.). For this reason, appellate courts largely defer to the trier of fact's credibility determinations so long as all of the evidence in the record "reveals no inconsistencies or other conflicts in the evidence" to suggest that the jury clearly lost its way by finding a defendant guilty, see *State v. Montgomery*, 2016-Ohio-5487, ¶ 79.

{¶215} In the case sub judice, we do not agree with appellant that the jury lost its way by crediting Walker's testimony. Defense counsel made the jury well aware of Walker's plea agreement and, during cross examination, thoroughly tested Walker's credibility by pointing out that Walker had given law enforcement officers multiple stories before settling on the one that he told at trial. During closing arguments, defense counsel further urged the jury not to believe Walker's testimony.

{¶216} Additionally, the trial court instructed the jurors that their job was to assess the credibility of the witnesses who testified. The court informed the jurors to evaluate the

truthfulness of witness testimony by considering (1) each witness's appearance and mannerisms, (2) the reasonableness of the witness's testimony, (3) the witness's knowledge of the facts, or opportunity to perceive the facts, stated in the witness's testimony, (4) the accuracy of the witness's memory, (5) the witness's frankness or lack of it, (6) the witness's intelligence, (7) the witness's interest or bias, if any, and (8) all of the facts and circumstances surrounding the witness's testimony. The court also advised the jurors that they could "believe or disbelieve all or any part of the testimony of any witness."

{¶217} The court further instructed the jurors that an accomplice's testimony, like Walker's, may be subject to "grave suspicion." The jury thus had the opportunity to weigh the competing concerns regarding Walker's testimony, and we do not find anything in the record to suggest that the jury clearly lost its way by crediting Walker's testimony. See *State v. Webster*, 2021-Ohio-3218, ¶ 74 (10th Dist.) (jury may believe witnesses' testimony even if those witnesses admitted their involvement in the offenses and entered into plea agreements with the State). Furthermore, even if Walker's testimony suffered from any credibility problems, appellant has not shown that this case is an "exceptional case in which the evidence

weighs heavily against the conviction," " *State v. Clinton*, 2017-Ohio-9423, ¶ 176, quoting *Thompkins*, 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio App.3d at 175.

## 3

**Lack of Corroborating, Physical Evidence**

{¶218} Appellant next contends that the jury lost its way by crediting Walker's testimony when no physical evidence corroborated his testimony. Appellant submits that if Walker had been telling the truth when he testified that appellant ransacked the victim's house after hitting him with the butt of the shotgun, then officers would have discovered appellant's fingerprints in the victim's house. Appellant states that the lack of fingerprint evidence to place him inside the victim's home indicates that Walker did not tell the truth. He additionally submits that officers did not discover any gunshot residue on appellant's person or vehicle and that the absence of this type of physical evidence supports his contention that he did not shoot the victim.

{¶219} In the case at bar, even if officers did not locate appellant's fingerprints inside the victim's home or gunshot residue on his person, "no rule of law" requires "a witness's testimony [to] be corroborated by physical evidence such as fingerprints, for example, or the weapon allegedly used by the

accused." *State v. Nix*, 2004-Ohio-5502, ¶ 67 (1st Dist.); see *State v. Whitt*, 2025-Ohio-424, ¶ 24 (3rd Dist.) ("the absence of a fingerprint analysis in a case does not render a conviction against the manifest weight of the evidence"); see also *State v. Williams*, 2019-Ohio-10, ¶ 22 (8th Dist.) ("[p]hysical evidence is not required to sustain a conviction."); *State v. Jeffries*, 2018-Ohio-2160, ¶ 72 (1st Dist.) (concluding that "the state is not required to present corroborating DNA test results or other corroborating physical evidence to meet its burden of proof, even in a rape case."); *State v. Martin*, 2016-Ohio-802, ¶ 22 (1st Dist.) ("[w]hile the absence of DNA evidence is probative, it is not dispositive."); *State v. Peeples*, 2014-Ohio-4064, ¶ 21 (10th Dist.) ("a lack of physical evidence, standing alone, does not render appellant's conviction against the manifest weight of the evidence"). Rather, "the testimony of one witness, if believed by the jury, is enough to support a conviction." *State v. Strong*, 2011-Ohio-1024, ¶ 42 (10th Dist.); see also *State v. J.M.*, 2015-Ohio-5574, ¶ 17 (10th Dist.) (testimony identifying the defendant as the assailant was sufficient to support the defendant's conviction even without conclusive DNA evidence); *State v. Garner*, 2008-Ohio-944, ¶ 13 (10th Dist.) ("the state was not required to provide physical evidence placing appellant at the scene of the crime, nor was it required to establish any

connection between appellant and the victims. The state could have carried its burden of proof solely through identification testimony."); *State v. Jackson*, 2009-Ohio-6407, ¶ 16 (7th Dist.) ("If [the witness's] testimony is believed then the lack of fingerprints, DNA, footprints or any other type of physical evidence does not render the conviction against the manifest weight of the evidence."). Thus, even if the State did not present physical evidence to corroborate Walker's testimony, Walker's testimony is sufficient evidence to place appellant at the scene and to implicate appellant in the victim's murder. See, e.g., *Strong*, 2011-Ohio-1024, at ¶ 42 (10th Dist.).

{¶220} Moreover, at the crime scene, officers discovered a pair of shorts with appellant's DNA on them, along with a Crown Royal bag that contained Nelson's and appellant's DNA. In addition, as we noted above, appellant had sustained a gunshot wound on the same date as the victim's murder, and the bullet removed from appellant's arm matched the bullet recovered from the victim's body. Thus, a logical inference is that appellant was present at the crime scene.

{¶221} Furthermore, while appellant sat in jail awaiting trial, he sent a letter that attempted to convince his codefendant to concoct a story to help appellant avoid a life sentence. Appellant also wrote "BURN NOTICE" on this letter,

which suggests that he was conscious that the letter contained damaging information.

{¶222} For all of the foregoing reasons, we do not agree with appellant's argument that an absence of fingerprint or other physical evidence shows that the jury clearly lost its way by crediting Walker's testimony.

C

**Authentication and Chain of Custody**

{¶223} Appellant next contends that the State's physical evidence was unreliable due to authentication and chain-of-custody issues.

{¶224} A proponent of evidence must authenticate or identify the evidence before a court may admit the item into evidence. Dickinson, *Ohio Trial Practice* § 22:2 (2024 ed.), citing 7 Wigmore, *Evidence* § 2128-69 (3d ed.). "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Evid.R. 901(A). The proponent need only establish a prima facie showing "of authenticity, not a full argument on admissibility." *State ex rel. Montgomery v. Villa*, 101 Ohio App.3d 478, 484 (10th Dist. 1995), quoting *United States v. Reilly*, 33 F.3d 1396, 1404 (3d Cir. 1994). "This low threshold

standard does not require *conclusive* proof of authenticity, but only sufficient foundational evidence for the trier of fact to conclude that the [evidence] is what its proponent claims it to be." (Emphasis in original.) *State v. Easter*, 75 Ohio App.3d 22, 25 (4th Dist.1991), citing 1 Weissenberger, *Ohio Evidence* (1991) 4-5, § 901.2. Once a proponent satisfies the authentication threshold for admitting the evidence, "[t]he ultimate decision on the weight to be given to that piece of evidence is left to the trier of fact." *State v. Brown*, 2002-Ohio-5207, ¶ 35 (7th Dist.).

{¶225} "Chain of custody is a part of the authentication and identification mandate set forth in Evid.R. 901, and the state has the burden of establishing the chain of custody of a specific piece of evidence.'" *State v. Corder*, 2012-Ohio-1995, ¶ 15 (4th Dist.), quoting *State v. Brown*, 107 Ohio App.3d 194, 200 (3d Dist. 1995). The State need not, however, "prove a perfect, unbroken chain of custody." *State v. Keene*, 81 Ohio St.3d 646, 662 (1998). Thus, "[a] strict chain of custody is not always required in order for physical evidence to be admissible." *State v. Wilkins*, 64 Ohio St.2d 382, 389 (1980). Instead, "[a]s long as it is reasonably certain that no tampering or substitution occurred regarding the particular item of evidence, the state need not negate all possibilities of

tampering or substitution." *State v. Barzacchini*, 96 Ohio App.3d 440, 458 (6th Dist. 1994), citing *State v. Moore*, 47 Ohio App.2d 181, 183 (9th Dist.1973). Any breaks in the chain of custody "go to the weight to be afforded the evidence, not to the admission of the evidence." (Emphasis in original.) *State v. Gross*, 2002-Ohio-5524, ¶ 57 (arguments that an officer failed to change gloves and that a second round of testing found previously undiscovered genetic material on evidence at issue related to the weight, not the admission, of the evidence); see also *State v. Richey*, 64 Ohio St.3d 353, 360 (1992), overruled on other grounds, *State v. McGuire*, 80 Ohio St.3d 390, 402-404 (1997) ("The possibility of contamination goes to the weight of the evidence, not its admissibility").

1

**Crown Royal Bag**

{¶226} Appellant first asserts that the jury clearly lost its way by according any weight to the DNA evidence discovered on the Crown Royal bag. He contends that the State completely failed to establish a chain of custody for the Crown Royal bag. He observes that no one could identify how the Crown Royal bag ended up on a law enforcement officer's cruiser.

{¶227} Appellant further argues that even if the evidence obtained from the Crown Royal bag was admissible, the existence

of appellant's DNA on the outside of the bag does not establish that he was present at the scene when the victim was shot or that he otherwise participated in the murder. Appellant claims that if he had shot the victim with a shotgun, then his DNA would have been on the box of shells inside the bag, not simply on the outside of the bag. He further notes that the State's DNA expert testified that appellant's "DNA could have gotten on the outside of the Crown Royal Bag from Nelson. . . transferring [appellant]'s DNA."

{¶228} The State contends that it properly authenticated the Crown Royal bag and that any breaks in the chain of custody go to weight, not admissibility. The State argues that nothing required it to present evidence showing how the Crown Royal bag ended up on the law enforcement officer's cruiser. The State observes that, in appellant's codefendant's appeal, this court concluded that the lack of evidence regarding who may have placed the Crown Royal bag on the law enforcement officer's cruiser did not render the evidence discovered on the Crown Royal bag inadmissible. See *State v. Nelson*, 2023-Ohio-3566, ¶¶ 26-27 (4th Dist.).

{¶229} The State further disputes appellant's argument that if he had shot the victim with a shotgun, then his DNA would have been discovered on the box of shells inside the Crown Royal

bag. The State claims that appellant's argument "illustrates a misunderstanding as to how touch DNA is found and how DNA is left on items. Just because a person touches an item, there is no guarantee that DNA, or a sufficient amount of DNA for testing, would be left behind."

{¶230} In the case at bar, we do not agree with appellant that the jury clearly lost its way by according weight to the DNA evidence discovered on the Crown Royal bag. The State properly authenticated the Crown Royal bag and established that no tampering or substitution occurred from the time that officers discovered it through the date of the trial. Even though no one saw anyone place the bag on Deputy Spiker's cruiser, multiple witnesses stated that officers discovered the bag sitting on Deputy Spiker's cruiser. Contrary to appellant's belief, nothing required the State to prove the bag's "chain of custody" before officers discovered it.

{¶231} Furthermore, appellant does not cite any authority for his novel proposition that the State must prove how an item came to be at a crime scene. As we noted in *Nelson*, nothing requires the State to prove an item's "chain of custody" before officers discovered it at a crime scene, "an onerous and impossible" burden, 2023-Ohio-3566, ¶ 26 (4th Dist.). We further observed that "when law enforcement arrived at the scene, they had no way

of knowing how various evidentiary items came to be strewn about in the various locations in which they were found." *Id.*

{¶232} Additionally, we pointed out that "Nelson's counsel could and did argue against the jury giving it much weight."

*Id.* Likewise, in the case before us, appellant's trial counsel could and did argue that the jury should not give the Crown Royal bag much weight:

But they ignored the fact that there was a mystery surrounding this crown royal bag. Where did it come from? How did it get on Spiker's vehicle? Did you hear any testimony about them trying to find out where that crown royal bag came from? Was there any investigation as to where it came from, how it got there, interviewing witnesses, interviewing individuals around the crime scene as to where that crown royal bag came from?

{¶233} Consequently, appellant's trial counsel made the jurors well aware of his belief that they should afford the DNA evidence found on the Crown Royal bag little weight. Although we do not know what weight the jury gave this evidence, nothing suggests that the jury clearly lost its way if it did, in fact, favorably weigh this evidence when deciding to convict appellant.

{¶234} Appellant further contends that even if the bag was admissible,<sup>12</sup> the bag does not prove that appellant was at the crime scene or that he shot the victim with a shotgun. He observes that his DNA was not located on the drawstring of the bag or on the box of shotgun shells found inside the bag. Appellant contends that if he had shot the victim with a shotgun, then "his DNA would have been on the box of shells in the bag, not just the outside."

{¶235} Assuming, arguendo, that this one piece of evidence does not prove that appellant was at the crime scene or that he shot the victim with a shotgun, appellant's focus on one piece of evidence does not establish that the jury clearly lost its way and committed a manifest miscarriage of justice. A manifest-weight review requires a court to consider all of the evidence admitted at trial, not one piece of evidence in isolation. See *Beasley*, 2018-Ohio-493, at ¶ 208, quoting *McKelton*, 2016-Ohio-5735, at ¶ 328 (a court that is considering a manifest-weight challenge must "'review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses'"); see also *State v. Payne*, 2019-Ohio-4218, ¶ 17 (9th Dist.) ("a challenge to the manifest weight

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<sup>12</sup> We note that appellant has not raised an assignment of error that asserts that the trial court erred by admitting into

of the evidence nonetheless requires this [c]ourt to not just review selected portions of evidence in isolation, but to instead review the entire record [emphasis sic.]); *State v. Johnson*, 2007-Ohio-3332, ¶ 23 (7th Dist.) ("A review of the manifest weight of the evidence involves all of the evidence and the reasonable inferences to be drawn from this evidence, and not just one piece of evidence in isolation."). Even without the DNA evidence found on the Crown Royal bag, as we explain below, the record otherwise contains substantial evidence to support appellant's conviction.

2

#### Mishandled Evidence

{¶236} Appellant also argues that "all of the [S]tate's evidence was improperly handled." Appellant points out that Meigs County Sheriff's Deputy Thomas Dillard admitted that he had not been fully trained regarding evidence-logging procedures and that not all of the evidence had been checked in properly. Appellant states that Deputy Dillard's testimony "casts doubt on every piece of evidence collected and used by the State at trial" and that the jury lost its way by relying on the State's evidence.

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evidence the Crown Royal bag.

{¶237} Appellant additionally faults Sergeant Mohler for removing two shotgun rounds and a pair of shorts from the roadway and then placing ink pens in their place without photographing the evidence or marking them with cones. He asserts that the sergeant "destroyed the integrity of the crime scene because there was no way to tell where the items originally were found."

{¶238} Appellant also criticizes officers for not recalling specific details about the evidence-collection procedure and for some inconsistencies between the officers' testimony. For example, appellant states that Sergeant Mohler testified that he secured the shotgun rounds and shorts in Meigs County Sheriff's Deputy Marty Hutton's vehicle, but Deputy Hutton did not recall these items being placed in his car. Appellant also contends that Deputy Myers testified that he obtained the shotgun rounds and shorts from Sergeant Mohler, but Ohio Bureau of Criminal Investigation Special Agent Austin testified that he gave the evidence to Meigs County Sheriff's Deputy Jimmy Riley. Appellant asserts that "[t]his haphazard notation and collection of evidence spoiled that evidence, and no reasonable juror would afford any weight to it at all."

{¶239} The State argues that nothing suggests that Deputy Dillard's lack of training or Sergeant Mohler's evidence-

— collection procedure rendered the State's evidence unworthy of belief. The State observes that the jury heard evidence regarding Deputy Dillard's lack of training and Sergeant Mohler's evidence-collection procedure and could assign it appropriate weight.

{¶240} We do not find any merit to appellant's argument that the jury lost its way by relying on the State's evidence. As with his argument regarding the Crown Royal bag, in his closing argument, defense counsel asserted that the jury should not trust the State's evidence due to evidence-collection and chain-of-custody issues:

Think for a moment about how all the evidence in this case was handled. It wasn't handled very well, was it? You got things at the crime scene that weren't documented that were moved, you got things going out of the evidence locker without any documentation, you got the crown royal bag and the ~~mystery surrounding it, all of those things that in a~~ case like this, you're supposed to be specific about and definite about and careful with was handled with I'm . . . I'm just the new trainee and I didn't know, no one trained me. Those logs, the chain of custody logs, all of them, all over the place. But nothing really at that crime scene indicates that Jaquan Hall did anything in this case.

{¶241} Consequently, appellant's trial counsel made the jurors well aware of his belief that the State's evidence bore little weight. Nothing suggests that the jury clearly lost its

way by crediting the State's evidence when deciding to convict appellant.

D

Letters

{¶242} Appellant next argues that the jury lost its way by relying on letters that the State claimed appellant had written. Appellant asserts that the State failed to properly authenticate the letters and that Agent Jenkins's testimony that Nelson told the agent that appellant sent the letters to him was hearsay. Appellant further contends, without elaboration, that allowing Agent Jenkins to testify that Nelson stated that appellant sent the letters to Nelson "violat[ed] *Bruton v. U.S.*, 391 U.S. 123 (1968)." Appellant additionally claims that the trial court improperly allowed Meigs County Sheriff's Sergeant Frank Stewart to testify about the origin of the letters without an adequate foundation or establishing a chain of custody.

{¶243} The State contends that "multiple witnesses testified about the letters" and established that "the letters were what they purported to be—letters written by Appellant—which is the requirement for authentication." The State asserts that it need not prove that anyone saw appellant write the letters or that the handwriting belonged to appellant. The State argues that it

proved that appellant wrote the letters "based upon how they were obtained and the contents of the letters."

1

**Hearsay**

{¶244} We first summarily reject appellant's argument that Agent Jenkins's testimony violated *Bruton v. United States*. This summary argument tucked inside an assignment of error regarding the manifest weight of the evidence is outside the scope of the assignment of error. Because appellant has not raised this issue as a separate assignment of error, we decline to address it. See *State v. Harlow*, 2014-Ohio-864, ¶ 10 (4th Dist.) (appellate courts "sustain or overrule only assignments of error and not mere arguments").

2

**Authentication**

{¶245} Evid.R. 901(B)(4) states that a proponent may authenticate evidence by showing that the "[a]ppearance, contents, substance, internal patterns, or other distinctive characteristics" of the evidence, "taken in conjunction with circumstances," support a finding that the matter in question is what its proponent claims. Thus, "a letter may be authenticated by evidence of its distinctive contents such as facts contained in the missive that only the writer may know."

*Brown*, 2002-Ohio-5207, at ¶ 39 (7th Dist.), quoting *State v. Chamberlain*, 1991 WL 144181, \*4 (8th Dist. July 25, 1991); see *State v. Schulman*, 2020-Ohio-4146, ¶ 38 (10th Dist.), quoting Staff Note, Evid.R. 901(B)(4) (a letter may be connected to a defendant "'by the very fact that the matters set forth in the letter . . . were known peculiarly to a particular person," or "'by its linguistic patterns and characteristics'"); *State v. Hernandez*, 1991 WL 44362, \*5 (7th Dist. Mar. 29, 1991) ("A letter may be related to a particular person by the fact that the matters set forth in the letter were known peculiarly to a particular person."). Indeed, "a document may be properly authenticated and admissible against a particular criminal defendant even when the author of the document is unknown, if the circumstances demonstrate that, for instance, the document must have been authored by the defendant or a co-conspirator."

(Citations omitted.) *Brown*, 2002-Ohio-5207, at ¶ 40 (7th Dist.). Whether a defendant in fact authored a letter and the weight to afford the evidence are questions for the trier of fact. See *State v. Giles*, 2021-Ohio-2865, ¶ 35 (6th Dist.) (the weight of the evidence is separate determination from the authentication requirement and is reserved for the trier of fact).

{¶246} In the case at bar, we do not agree with appellant that the State did not present adequate evidence to prove that he wrote the letters or that the letters were not entitled to any weight. As we explain below, both Agent Jenkins and Sergeant Stewart testified that the letters contained distinctive contents that suggested appellant wrote the letters.

a

*Agent Jenkins*

{¶247} Agent Jenkins stated that he received an email from the Washington County jail that contained two attachments: (1) an envelope addressed to Trevon Jones with a return address for the Washington County Jail that included appellant's last name and first initial; and (2) a letter. The prosecutor asked Agent Jenkins if he could identify any information on the envelope or in the letter that led him to believe that the letter originated from appellant. He responded, "Absolutely," and then identified the following information that suggested appellant wrote the letter. The envelope contained appellant's last name and first initial, along with the initials, "BNT," which the agent knew to be "some type of music company" that appellant started. The letter contained details about the crime and indicated that the author had knowledge about those details. The letter stated that the murder "was not planned," but was a

"bad drug deal." The author indicated that the victim shot the author, and the victim "and someone fought for his gun." The letter also named the victim and listed the offenses with which appellant had been charged: "murder, aggravated murder, complicity to murder, conspiracy." The letter further contained the author's explanation for the events that led to the victim's death. It stated, "Quan never went inside. [The victim] shot him." The letter continued to suggest that Nelson shot the victim. The letter indicated that a shotgun had been used, but the author did not "remember who shot the [shotgun]."

{¶248} The agent additionally identified what he believed to be code words in the letter, such as, "get little bro with guy." Agent Jenkins stated that officers believed "little bro" was the third individual involved in the victim's death (i.e., Richard Walker), and "guy" referred to appellant's attorney. The letter instructed "little bro" to "lay low," meaning do not talk to the police.

{¶249} Agent Jenkins further explained that officers at the jail discovered the letter shortly after Nelson's arrest, and the author instructed the recipient to "figure out who his lawyer is." The agent interpreted the letter to refer to discovering the identity of Nelson's lawyer.

{¶250} The letter also contained the words "burn notice," written in large capital letters, "with a line over top of burn notice and a line below burn notice." Agent Jenkins stated that this phrase clearly indicated that the recipient of the letter should "set fire to it."

{¶251} Agent Jenkins thus gave the jury adequate information to conclude that appellant wrote the letter. Appellant's last name and first initial appeared on the envelope, and the return address was the Washington County jail, where appellant had been housed while awaiting trial. See *State v. Townsend*, 2005-Ohio-6945, ¶ 55 (7th Dist.) ("the court can consider the envelope and contents" when ascertaining the authenticity of a letter and "the return address can be relevant to the determination of authenticity"). The contents of the letter further suggested that appellant wrote the letter: it contained details of the crime, the victim's name, appellant's name, and code names for appellant's codefendant and attorney. See *State v. Gaines*, 2003-Ohio-6855, ¶ 12 (8th Dist.) (letters "were very clearly written by" the defendant when the letters used the defendant's first name or an abbreviated first name and referred to "a number of other facts that were peculiar to [the defendant]"); see generally *Giles*, 2021-Ohio-2865, at ¶ 26-37 (6th Dist.) (letter properly authenticated when evidence showed that the

defendant authored the letter using his street name, addressed it to his codefendant using the codefendant's street name, and the letter included details about the defendant's trial).

Furthermore, the trial court admitted into evidence the envelope and the letter so that the jury could examine it more closely to decide whether appellant wrote the letter.

{¶252} Based upon all of the facts and circumstances, the jury quite reasonably could have determined that appellant wrote the letter.

b

*Sergeant Stewart*

{¶253} Sergeant Stewart testified that Nelson's mother gave him some letters that he believed appellant had authored. The sergeant recited the contents of the letters as follows:

I need you to give this to little K. You all sit together until everything is done and burn this. Then the first paragraph there starts this doesn't need to be delayed no more. It's fucked the amount of stress this has been on me, my mom, my family in general. Today you're going to have to call this lawyer and speak to him or his secretary. 304-485-0990, George Cosenza, top lawyer in the state. Nothing you should be scared of. They just need you to tell them what happened. Don't tell the cop, tell George. We went up there for some weed, when you and dude from UC went into the house, the white boy thought that he was trying to rob him, so he grabbed his gun and made ya'll start emptying ya'll's pockets. Thought ya'll took money. When his dog started barking, he opened the door, you was standing by the door and saw it was Quan. Next thing he let off a shot and Quan hit the

ground. You fought for the gun then shot him. You went to grab me from lying near the front of the garage and helped me back to the car. You turned around and didn't see the dude from UC, thought he was still in the house. When you got back to the car, you heard two loud shots and that's when me and you left. We left dude up there and headed back to Charleston. You dropped me off on the west side near the Woo, Quan was out of it the whole time, bleeding bad. You went home and you didn't know if I went to the hospital or not. You just don't want Quan to go down for something that he didn't do. And we'll go back up here to the left side of this letter. It says rewrite this word for word, our story has to match up. They know he shot me . . . they know he shot me first, they know I didn't shot him. I just need a witness. Do this now on the extra piece of paper. And page two, write i[t] as when me and dude from UC made us start emptying our pockets and then it says write this. Went up there for some weed. When me and dude from UC went into the house, the white boy thought we was trying to rob him. He thought one of us took his money. His dog started barking and then opened the door. I was standing by the door and saw it was Quan. He let a shot off and then Quan hit the ground. I fought him for his gun and shot him. I went to go help Quan and we headed to the car. I didn't see dude from UC, he must have been in the house or something. ~~When we got close to the car, I heard two loud shots.~~ That's when me and Quan left dude up there. When we got back to Charleston, I dropped Quan off on the west side and went home. I just don't want Quan to go down for something he didn't do. And then next to the last paragraph it says write this with an arrow pointed over. The dude from UC looked like he was six, two, low taper haircut, looked like he worked out, wore a black Nike jumpsuit. He was in the car when you got picked up. Don't remember what time picked you up from the bottom of the hill, dude was probably two hundred pounds, I think that's what that says. Uh, says nigga, I'm facing twenty five (25) to life. You don't come through for a nigga, that's some real pussy shit. Boy, you're not facing no jail time, no prison time, all you have to do is call this number and tell him you need a lawyer. Tell him that story word for

word, rewrite it so you don't forget. Nigga, there is nothing to be scared of. I just need a witness and by November I'm going to have to say something. Don't put me in this situation where I'm going to have to name drop. If you get your lawyer now and tell him today, they won't come and arrest you. I done told my family already, so they know. My cousin might come see you, but probably not. I need this done now though. . . . I need this done now though, boy. Not next week, not next month. I'm facing life, you can give me one day, dude. Call this number now until you get ahold of someone and rewrite this letter. Burn everything but your paper. Keep your letter. There can't be no fuck ups, shit has to hold water. Word for word. Don't fuck up, everything else is on hold, write this down and talk to George. Hi, my name is Keontae Nelson. I need a lawyer for a murder case. My friend, say my name in [parentheses], is locked up right now and I don't want to see him spend the rest of his life behind bars. Basically, this happened then tell him the story. Any questions you don't know, say you can't remember right now. Don't make shit up. . . . [W]ent up there for some smoke with little K and a dude from UC, K and the dude went into the house. I heard someone yell chill, chill then I went up to the door. [The victim] seen me and shot me for some reason. I later found out that dude was trying to take some money. I guess he might have assumed I was in on it. I hit the ground and rolled out into the street. Keontae helped me up and we went to the car and left dude from UC up there. I remember waking up in Charleston and had Keontae drop me off at my brother in law's house. He left and I went to the hospital. This is my story. Keep it to the script. Everything has to match. Rewrite your story, call George now. This is what I'm saying in November. Then the final page says burn.

{¶254} Sergeant Stewart identified multiple parts of the letter that led him to believe that appellant had authored it. For instance, the letter contained the name and phone number of appellant's attorney. The letter also contained appellant's

name and nickname in a manner that suggested he had authored the letter. At one point, the letter purports to be written from Nelson's perspective, and then, the author of the letter writes in parentheses, "say my name" (meaning appellant's name) "is locked up." The previous sentence had stated, again from Nelson's perspective, that he was appellant's codefendant. The letter also referred to the author in the first person as going to the hospital, and appellant had gone to the hospital to seek treatment for his gunshot wound.

{¶255} The letter further implored Nelson to ensure that his story matched the author's story. The letter emphasized appellant's lack of fault and instructed the recipient to rewrite the story word for word to match the author's version. This story appeared to blame the "dude from UC" for the victim's death. ~~The sergeant stated that officers believed that the~~ "dude from UC" referred to Richard Walker and that "UC" meant the University of Charleston. The letter also included a description of Walker and stressed the urgency of contacting the appellant's lawyer to provide testimony to help save appellant from a life sentence. The letter concluded with instructions to burn the letter after reading it.

{¶256} We find nothing in the sergeant's testimony to indicate that the jury should have disregarded the letter or

determined that the State had not sufficiently established that appellant wrote it. As we noted above, the letter's contents contained multiple indicators that appellant wrote it and wanted Nelson to tell a story that would prevent appellant from serving a life sentence in prison. See *Gaines*, 2003-Ohio-6855, at ¶ 12 (8th Dist.); see generally *Giles*, 2021-Ohio-2865, at ¶ 26-37 (6th Dist.); *State v. Williams*, 2021-Ohio-443, ¶ 47, 54 (5th Dist.) (letter properly authenticated when evidence showed that an unsigned note used the "first person to refer to the defendant in the trial, who could only be [the defendant]," and discussed the details of the defendant's trial and the events that occurred on the day of the shooting).

{¶257} Moreover, during closing arguments, defense counsel did not appear to dispute that appellant wrote the letters. He instead suggested that the letters indicated that appellant was not guilty and that he was "a scared kid sitting in jail charged with a murder he didn't commit." Defense counsel proposed that appellant had been "[r]eaching out in fear . . . and telling those people you better come forward and help me and tell the damn truth about it."

{¶258} Furthermore, both Agent Jenkins and Sergeant Stewart explained how they obtained the letters. Agent Jenkins stated that a corrections officer from the jail sent him via email a

letter and an envelope. Sergeant Stewart explained that he obtained the letter from Nelson's mother. Even if the officers did not obtain the letters directly from appellant, appellant has not cited any authority that indicates that law enforcement officers must obtain evidence directly from a defendant in order to link the evidence to the defendant. The jury heard all of the evidence that explained how the officers came to be in possession of the letters, along with the contents of the letters, which strongly indicated that appellant wrote the letters.

{¶259} Based upon the foregoing, we do not believe that the jury clearly lost its way by choosing to believe that appellant wrote the letters.

E

Conclusion

{¶260} In sum, our review of the record does not support appellant's argument that the record fails to contain sufficient evidence to support his conviction or that his conviction is against the manifest weight of the evidence. The State presented substantial evidence to establish, beyond a reasonable doubt, that appellant purposely caused the victim's death. For instance, the State's evidence shows, inter alia, the following: (1) appellant's DNA was located at the crime scene; (2) a few

hours after the victim's murder, appellant appeared at a hospital with a gunshot wound; (3) at the hospital, appellant gave personnel a false name and stated that he had been shot at a party he had attended in Charleston, West Virginia; (4) Charleston police were unable to find any evidence to corroborate appellant's statement that he had been shot while attending a party; (4) the bullet recovered from appellant's wound matched a bullet recovered from the victim; (5) appellant wrote incriminating letters that implored one of his codefendants to testify that appellant did not shoot the victim and to blame the victim's murder on the "dude from UC," i.e., Walker; (6) Walker testified that appellant planned to kill the victim; (7) Walker stated that on the date of the victim's murder, he, Nelson, and appellant drove to the victim's home; (8) once at the victim's home, appellant retrieved a shotgun from the vehicle; (9) Nelson shot the victim with the .45-caliber weapon and also accidentally shot appellant; (10) after Nelson shot the victim, Walker and Nelson ran to the car, while appellant remained behind; and (11) Walker testified that appellant fired two shotgun blasts.

{1261} Even if the State's evidence had some gaps, some witnesses had credibility issues, or the evidence collection was not perfect, these gaps, credibility issues, and imperfections

do not indicate that this case is an ""exceptional case in which the evidence weighs heavily against the conviction,"" *State v. McKelton*, 2016-Ohio-5735, ¶ 330, quoting *Thompkins*, 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio App.3d at 175, 485 N.E.2d 717; see generally *United States v. Hasting*, 461 U.S. 499, 508 (1983) ("there can be no such thing as an error-free, perfect trial").

{¶262} Accordingly, based upon the foregoing reasons, we overrule appellant's sixth assignment of error.

V

**Seventh Assignment of Error**

{¶263} In his seventh assignment of error, appellant argues that he did not receive the effective assistance of counsel. He asserts that trial counsel was ineffective for failing to (1) file a written motion for a change of venue, (2) preserve an argument that the jury was not composed of a fair cross section of the community, (3) object to references to appellant's incarceration, (4) object to narrative testimony and allegedly improper opinion testimony, and (5) object to the trial court's questioning of jurors and witnesses. As explained below, we do not find any merit to appellant's arguments.

A

**Ineffectiveness Standard**

{¶264} The Sixth Amendment to the United States Constitution, and Article I, Section 10 of the Ohio Constitution, provide that defendants in all criminal proceedings shall have the assistance of counsel for their defense. The United States Supreme Court has generally interpreted this provision to mean a criminal defendant is entitled to the "reasonably effective assistance" of counsel. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); accord *Hinton v. Alabama*, 571 U.S. 263, 272 (2014) (the Sixth Amendment right to counsel means "that defendants are entitled to be represented by an attorney who meets at least a minimal standard of competence").

{¶265} To establish constitutionally ineffective assistance of counsel, a defendant must show that (1) trial counsel's performance was deficient and (2) the deficient performance prejudiced the defense and deprived the defendant of a fair trial. *E.g.*, *Strickland*, 466 U.S. at 687; *State v. Myers*, 2018-Ohio-1903, ¶ 183; *State v. Powell*, 2012-Ohio-2577, ¶ 85.

"Failure to establish either element is fatal to the claim." *State v. Jones*, 2008-Ohio-968, ¶ 14 (4th Dist.). Therefore, if one element is dispositive, a court need not analyze both. See *State v. Madrigal*, 87 Ohio St.3d 378, 389 (2000) (a defendant's failure to satisfy one of the ineffective-assistance-of-counsel elements "negates a court's need to consider the other"); see

also *Strickland*, 466 U.S. at 700 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.").

{¶266} The deficient performance part of an ineffectiveness claim "is necessarily linked to the practice and expectations of the legal community: 'The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.'" *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010), quoting *Strickland*, 466 U.S. at 688; accord *Hinton*, 571 U.S. at 273. Prevailing professional norms dictate that "a lawyer must have 'full authority to manage the conduct of the trial.'" *State v. Pasqualone*, 2009-Ohio-315, ¶ 24, quoting *Taylor v. Illinois*, 484 U.S. 400, 418 (1988).

{¶267} Furthermore, "[i]n any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances.'" *Hinton*, 571 U.S. at 273, quoting *Strickland*, 466 U.S. at 688. Accordingly, "[i]n order to show deficient performance, the defendant must prove that counsel's performance fell below an objective level of reasonable representation." *State v. Conway*, 2006-Ohio-2815, ¶ 95.

{¶268} Moreover, when considering whether trial counsel's representation amounts to deficient performance, "a court must

indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance."

*Strickland*, 466 U.S. at 689. Thus, "the defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy." *Id.*

Additionally, "[a] properly licensed attorney is presumed to execute his duties in an ethical and competent manner." *State v. Taylor*, 2008-Ohio-482, ¶ 10 (4th Dist.), citing *State v. Smith*, 17 Ohio St.3d 98, 100 (1985). Therefore, a defendant bears the burden to show ineffectiveness by demonstrating that counsel's errors were "so serious" that counsel failed to function "as the 'counsel' guaranteed . . . by the Sixth Amendment." *Strickland*, 466 U.S. at 687; e.g., *State v. Gondor*, 2006-Ohio-6679, ¶ 62; *State v. Hamblin*, 37 Ohio St.3d 153, 156 (1988).

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{¶269} To establish prejudice, a defendant must demonstrate that a reasonable probability exists that "'but for counsel's errors, the result of the proceeding would have been different.'" *Hinton*, 571 U.S. at 275, quoting *Strickland*, 466 U.S. at 694; e.g., *State v. Short*, 2011-Ohio-3641, ¶ 113; *State v. Bradley*, 42 Ohio St.3d 136 (1989), paragraph three of the syllabus; accord *State v. Spaulding*, 2016-Ohio-8126, ¶ 91 (prejudice component requires a "but for" analysis). "A

reasonable probability is a probability sufficient to undermine confidence in the outcome.'" *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011), quoting *Strickland*, 466 U.S. at 694. This reasonable-probability standard requires a "substantial" likelihood of a different result and not simply a "conceivable" likelihood of a different result. *Harrington v. Richter*, 562 U.S. 86, 111 (2011) ("In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently."). Furthermore, courts ordinarily may not simply presume the existence of prejudice but instead must require a defendant to affirmatively establish prejudice. *State v. Clark*, 2003-Ohio-1707, ¶ 22 (4th Dist.); *State v. Tucker*, 2002 WL 507529 (4th Dist. Apr. 2, 2002); accord *State v. Powell*, 2012-Ohio-2577, ¶ 86 (purely speculative argument cannot serve as the basis for ineffectiveness claim).

## B

## Motion to Change Venue

{¶270} Appellant first argues that trial counsel was ineffective for failing to file a written motion to support his oral motion to change venue. He asserts that trial counsel should have submitted a written motion that included "news

articles, social media posts, pictures of shirts and bumper stickers[,] and other evidence." Appellant suggests that if defense counsel had submitted written evidence of pretrial publicity, then a reasonable probability exists that the trial court would have determined that pretrial publicity was so pervasive and prejudicial that an attempt to seat a jury would be a vain act. We do not agree.

{¶271} In the case at bar, defense counsel's voir dire questioning ensured that the trial court was well aware of pretrial publicity. The prosecutor and defense counsel specifically asked prospective jurors about their exposure to the different types of pretrial publicity that had appeared in the community, including news broadcasts, social media posts, and "Justice for [K.R.]" signs, bumper stickers, and shirts. These questions thus made the trial court well aware of the pretrial publicity that existed in the community. Even if defense counsel did not submit written proof of the pretrial publicity, defense counsel's failure to do so was not objectively unreasonable given counsel's targeted questions regarding pretrial publicity.

{¶272} Additionally, even if counsel's performance was deficient, appellant has not established a reasonable probability that the trial court would have presumed prejudice

and changed venue if counsel had submitted written evidence of pretrial publicity. See *State v. Cunningham*, 2004-Ohio-7007, ¶ 97 (concluding that defendant failed to establish that defense counsel provided ineffective assistance of counsel by failing to submit written evidence of pretrial publicity when voir dire questioning made trial court "well aware of the extent of media coverage and pretrial publicity"). Thus, counsel's failure to document the pretrial publicity through the use of newspaper articles, social media posts, and the like did not prejudice appellant. See *State v. Davis*, 2008-Ohio-2, ¶ 50 ("The trial court was well aware of the extent of pretrial publicity because many prospective jurors acknowledged that they had heard something about the case. Thus, [the defendant] has failed to show how trial counsel's failure to submit newspaper clippings and other media stories was prejudicial."); *State v. Froman*, 2022-Ohio-2726, ¶ 77 (12th Dist.) ("the trial court was aware of the pretrial publicity about [the defendant]'s case, and the mere fact that trial counsel failed to submit some published articles about the case in support of [the defendant]'s motion for a change of venue does not, by itself, amount to ineffective assistance"); *State v. McKnight*, 2008-Ohio-2435, ¶ 31 (4th Dist.), citing *State v. Moreland*, 2000 WL 5933, \*8 (2d Dist. Jan. 7, 2000) ("counsel's failure to include every piece of

publicity surrounding a case does not amount to ineffective assistance of counsel when the trial court is well aware of the level of publicity).

{¶273} We also note that fully evaluating the impact of submitting written evidence of pretrial publicity depends upon evidence that is not in the record. "On direct appeal, we are restricted to facts that are apparent in the record." *State v. Russell*, 2009-Ohio-5145, ¶ 26 (4th Dist.), citing *State v. Davis*, 2007-Ohio-3944, ¶ 19 (4th Dist.). "A reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings." *State v. Ishmail*, 54 Ohio St.2d 402 (1978), paragraph one of the syllabus. Thus, ineffectiveness claims that depend upon evidence outside the trial record are not appropriate to consider on direct appeal. Instead, a postconviction action, rather than a direct appeal, is the proper mechanism for asserting an ineffectiveness claim that is based on evidence dehors the record. See *State v. Blanton*, 2022-Ohio-3985, ¶ 41, citing *State v. Smith*, 17 Ohio St.3d 98, 101, fn. 1 (1985) ("claims that rely on evidence outside the record may be heard on postconviction review"); *State v. Cooperrider*, 4 Ohio St.3d 226, 228 (1983) (postconviction procedure appropriate when ineffectiveness claims "are based on facts not appearing in the record"); *State*

v. *Burchfield*, 2025-Ohio-867, ¶ 14 (4th Dist.) (considering evidence outside of the record "is not appropriate in a direct appeal"); *State v. Weathersbee*, 2019-Ohio-5307, ¶ 29 (11th Dist. ) (an ineffective-assistance claim that is based on evidence dehors the record cannot be reviewed on direct appeal); *State v. Curtis*, 2008-Ohio-916, ¶ 8 (8th Dist.) ("The law is well-settled that when allegations of ineffective assistance of counsel hinge on facts not appearing in the record, the proper remedy is a petition for postconviction relief rather than direct appeal.").

{¶274} Consequently, we cannot conclude that trial counsel was ineffective for failing to file a written motion to change venue with documents to illustrate the extent of pretrial publicity.

C

**Fair Cross Section**

{¶275} Next, appellant contends that trial counsel was ineffective for failing to assert that trying his case in Meigs County would violate the fair-cross-section requirement under the Sixth Amendment to the United States Constitution. Appellant argues that trial counsel should have raised this issue before trial and requested an evidentiary hearing. Appellant claims that a hearing would have allowed counsel to present evidence regarding the demographics of Meigs County and

to establish that African American citizens were systemically excluded.

{¶276} The State asserts that nothing in the record indicates the "systematic exclusion of African Americans in the jury-selection process."

{¶277} Appellant counters that the lack of evidence in the record means that this court cannot determine whether African Americans were systemically excluded. Appellant observes that the State claims that including two African Americans in the jury venire was "not unfair or unreasonable given the Meigs County population." Appellant responds: "That unsupported claim is exactly the problem; we do not know because defense counsel failed to file a proper motion and attach proper documentation. Appellee is simply speculating."

{¶278} "[T]he selection of a petit jury from a representative cross section of the community is an essential component of the Sixth Amendment right to a jury trial." *Taylor v. Louisiana*, 419 U.S. 522, 528 (1975). Thus, "the Sixth Amendment affords the defendant in a criminal trial the opportunity to have the jury drawn from venires representative of the community." *Id.* at 537. To establish a violation of the fair-cross-section requirement, a defendant must demonstrate all of the following:

- (1) "the group alleged to be excluded is a 'distinctive' group

in the community"; (2) "the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community"; and (3) "this underrepresentation is due to systematic exclusion of the group in the jury-selection process." *Duren v. Missouri*, 439 U.S. 357, 364 (1979); accord *Berghuis v. Smith*, 559 U.S. 314, 327 (2010). The second part of this test requires the defendant to "demonstrate the percentage of the community made up of the group alleged to be underrepresented, for this is the conceptual benchmark for the Sixth Amendment fair-cross-section requirement." *Duren*, 439 U.S. at 364. Under the third part of the test, a defendant "must do more than show that his particular panel was unrepresentative." *State v. Jones*, 91 Ohio St.3d 335, 339-41 (2001); *State v. McNeill*, 83 Ohio St.3d 438, 444 (1998) ("underrepresentation on a single venire is not systematic exclusion" [emphasis in original]).

{¶279} In the case at bar, even if defense counsel performed deficiently by failing to properly preserve the issue, appellant cannot demonstrate a reasonable probability that the trial court would have found a violation of the fair-cross-section requirement. Had appellant's counsel raised the issue, the trial court likely would have concluded that appellant satisfied

the first part of the *Duren* test: "For purposes of [a] fair-cross-section analysis, African-Americans are a distinctive group." *State v. Jones*, 91 Ohio St.3d 335, 340 (2001).

{¶280} A reasonable probability does not, however, exist that the trial court would have concluded that appellant established the second and third parts of the *Duren* test. Appellant has not pointed to any evidence that documents (1) the percentage of African Americans in Meigs County or (2) the systematic exclusion of African Americans from the jury-selection process used in Meigs County. See *State v. Jones*, 2024-Ohio-4538, ¶ 61 (3d Dist.), citing *State v. Purvis-Mitchell*, 2018-Ohio-4032, ¶ 77 (4th Dist.) (both rejecting ineffectiveness claims based upon failure to properly raise fair-cross-section issue when the record did not contain any evidence to support allegations that African Americans were underrepresented or systemically excluded); see generally *Duren*, 439 U.S. at 366 (finding systemic exclusion when "discrepancy between the percentage of women in jury venires and the percentage of women in the community" occurred "not just occasionally, but in every weekly venire for a period of nearly a year").

{¶281} Furthermore, to the extent that appellant's argument relies on evidence outside the record, we again note that on direct appeal, this court is limited to the record and cannot

add any material to it. See *State v. Harris*, 2002-Ohio-2411, ¶ 31 (7th Dist.) (stating that ineffectiveness claim based upon failure to preserve fair-cross-section issue that relies upon evidence outside of the record may be an appropriate matter to raise in a postconviction petition).

{¶282} Consequently, based upon the record before us, we cannot conclude that trial counsel was ineffective for failing to properly preserve the fair-cross-section issue.

D

**Failure to Object to Jail References**

{¶283} Appellant next argues that trial counsel was ineffective for failing to object to the following testimony regarding his pretrial incarceration: (1) appellant's ex-girlfriend testified that appellant called her from jail; (2) Deputy Spiker testified that he retrieved appellant from jail to take him to the hospital to have the bullet removed from his arm; and (3) Sergeant Stewart testified that he received letters that appellant sent from jail. He contends that counsel's failure to object to these statements eroded his presumption of innocence and prejudiced the jury against him. Appellant claims that the references to his pretrial incarceration "left the jury with the impression he must be guilty if he was still locked up" and "gave the jury the impression that he was a dangerous person

who needed to be locked up because he was guilty of the crime for which he was on trial."

{¶284} The State argues that defense counsel was not ineffective for failing to object to the foregoing references to appellant's pretrial incarceration. The State contends that Deputy Spiker's testimony that he retrieved appellant from jail and drove him to the hospital helped explain why appellant did not drive himself to the hospital. The State asserts that testimony that appellant sent letters from jail helped authenticate the letters and establish a chain of custody for the letters. The State further argues that appellant cannot establish a reasonable probability that the outcome of the trial would have been different if trial counsel had objected to the foregoing testimony.

{¶285} We initially observe that trial counsel's "failure to make objections is not alone enough to sustain a claim of ineffective assistance of counsel." *State v. Conway*, 2006-Ohio-2815, ¶ 103; accord *State v. Sowell*, 2016-Ohio-8025, ¶ 144 (rejecting argument that failing to preserve error is inherently prejudicial and stating, "[i]t is not enough that an alleged error resulted in a disadvantage for an accused"). Instead, a defendant still must "show that any particular failure to object substantially violated an[] essential duty [and] was

prejudicial." *State v. Fears*, 86 Ohio St.3d 329, 347 (1999); accord *State v. Holloway*, 38 Ohio St.3d 239, 244 (1988) (stating that failure to object insufficient on its own to establish ineffective assistance of counsel; instead, a defendant still must demonstrate that counsel substantially violated an essential duty and that counsel's performance materially prejudiced the defense).

{¶286} Additionally, trial counsel's decision to object, or not to object, may be a legitimate trial strategy or tactical decision for the reason that "each potentially objectionable event could actually act to [the defendant]'s detriment.'" *State v. Johnson*, 2006-Ohio-6404, ¶ 140, quoting *Lundgren v. Mitchell*, 440 F.3d 754, 774 (C.A. 6, 2006). Thus,

any single failure to object usually cannot be said to have been error unless the evidence sought is so prejudicial . . . that failure to object essentially defaults the case to the state. Otherwise, defense counsel must so consistently fail to use objections, despite numerous and clear reasons for doing so, that counsel's failure cannot reasonably have been said to have been part of a trial strategy or tactical choice.

*Id.*, quoting *Lundgren*, 440 F.3d at 774; cf. *United States v. Cronin*, 466 U.S. 648, 656 (1984) (describing the right to the effective assistance of counsel as "the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing"). We further recognize,

however, that testimony regarding a defendant's incarceration generally is not proper and is "potentially prejudicial because [it] erode[s] the presumption of innocence, for the same reason that wearing prison or jail clothing does." *State v. Stoermer*, 2018-Ohio-4522, ¶ 35 (2d Dist.).

{¶287} In the case at bar, defense counsel may have determined that not objecting to each reference to appellant's pretrial incarceration was a reasonable strategy designed to minimize the impact of the testimony. See *State v. Jones*, 2015-Ohio-4116, ¶ 68 (2d Dist.) ("Not objecting to testimony is a reasonable trial strategy that counsel may use to avoid attracting a jury's attention to a matter.").

{¶288} Furthermore, even if counsel had objected, appellant has not established a reasonable probability that the outcome of the trial would have been different. If the jury had not heard testimony that appellant was in jail before trial, as we explained in our discussion of appellant's sixth assignment of error, the remaining evidence constitutes ample evidence of appellant's guilt. Thus, any deficient performance did not prejudice appellant.

{¶289} Moreover, "[e]ven if defense counsel did not perform as perfectly as appellant would have preferred, the Sixth Amendment right to counsel does not guarantee an error-free,

perfect trial, but simply, a fair trial, i.e., one whose result was reliable." *State v. Carroll*, 2016-Ohio-7218, ¶ 35 (4th Dist.), citing *In re Smith*, 2001 WL 1627641 (4th Dist. Dec. 12, 2001), quoting *United States v. Hasting*, 461 U.S. 499, 508-509 (1983) ("there can be no such thing as an error-free, perfect trial, and . . . the Constitution does not guarantee such a trial."); cf. *Cronic*, 466 U.S. at 659 (explaining that trial is unfair "if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing").

{¶290} Consequently, we do not agree with appellant that trial counsel was ineffective for failing to object to testimony regarding his pretrial incarceration.

#### E

#### Failure to Object to Narrative and Opinion Testimony

~~{¶291}~~ Appellant next contends that trial counsel was ineffective for failing to object to narrative and opinion testimony. He argues that his ex-girlfriend offered irrelevant and speculative testimony when she stated that (1) after she spoke with appellant after the murder, "her first instinct was that [appellant] did it" and (2) she "assumed" that appellant knew that she had been "messing around with" the victim.

{¶292} Appellant further asserts that Agent Jenkins testified in "narrative form for pages and pages before defense counsel

finally uttered an objection, which was sustained but not stricken." Appellant claims that "Agent Jenkins basically reiterated the entire investigation, even where he did not have firsthand knowledge." Appellant argues that Agent Jenkins "repeated irrelevant but prejudicial victim impact hearsay from [the victim]'s parents about how well liked in the community he was, how he was a star athlete, and how everyone wanted to be around him." He additionally complains that Agent Jenkins summarized Runyon and appellant's relationship even though he lacked firsthand knowledge.

{¶293} Appellant next contends that the trial court improperly allowed Agent Jenkins to offer his lay opinion regarding appellant's reasons for writing the letter.

{¶294} Appellant additionally claims that Deputy Barnhart offered speculative and improper lay opinion testimony.

Appellant argues that Deputy Barnhart repeated hearsay from appellant's "mother and sister that [appellant] went to Maryland after the incident, which in his opinion made [appellant] a suspect."

{¶295} Appellant also states that the deputy offered improper opinion testimony when he stated that people do not normally turn off their phone "for a set period and then turn it back

on," but instead turn their phones off "when they have something to hide."

{¶296} In addition, appellant contends that Sergeant Stewart offered improper opinion testimony when he testified that appellant authored the letters.

{¶297} Appellant asserts that the foregoing allegedly improper testimony "allowed the prosecution to bolster other witnesses with testimony from those who had no foundation" and who "relied on hearsay and speculation." He contends that these witnesses testified "to the ultimate issue for the jury." Appellant thus contends that trial counsel performed deficiently by failing to object to the testimony and that this failure to object prejudiced his right to a fair trial.

1

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Narrative Testimony

{¶298} In the case at bar, we initially observe that appellant does not cite any authority to suggest that narrative testimony is inadmissible or that defense counsel provides ineffective assistance of counsel by failing to object to narrative testimony or by failing to ask the court to strike narrative testimony. Appellant's failure to cite legal authority means that we could summarily reject this argument. See *In re Application of Columbus S. Power Co.*, 2011-Ohio-2638,

¶ 14 (failure to cite legal authority or present argument that a legal authority applies is grounds to reject a claim); *Robinette v. Bryant*, 2015-Ohio-119, ¶ 33 (4th Dist.) (court has "discretion to disregard any assignment of error that fails to present any citations to cases or statutes in support"); see also *State v. Holloway*, 2024-Ohio-3189, ¶ 37 (8th Dist.) (court may summarily reject an argument when defendant fails to support it "with any legal authority demonstrating error"); *Frye v. Holzer Clinic, Inc.*, 2008-Ohio-2194, ¶ 12 (4th Dist.) (court "may disregard any assignment of error that fails to present any citations to case law or statutes in support of its assertions").

{¶299} We further observe that defense counsel did object to Agent Jenkins's testimony on the basis that it constituted narrative testimony rather than responses to specific questions. The trial court then instructed Agent Jenkins to wait for the prosecutor to ask questions rather than testifying in narrative format. Thus, appellant cannot claim that counsel was deficient for failing to object to this testimony when the record establishes that counsel did.

{¶300} We also observe that "[t]rial courts have considerable discretion under Evid.R. 611(A) with respect to the method and mode by which evidence is introduced in a proceeding." *State v.*

*Williams*, 1998 WL 290240, \*5 (4th Dist. May 18, 1998). Evid.R. 611(A) explicitly gives trial courts "reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to . . . make the interrogation and presentation effective for the ascertainment of the truth. . ." Trial courts thus have discretion "'to control the form of examination to the end that the facts may be clearly and expeditiously presented" and "'may permit either'" narrative testimony or testimony in response to specific questions. *Seventh Urban, Inc. v. Ann's Wig Shop.*, 1980 WL 354666, \*4 (8th Dist. Apr. 24, 1980), quoting *McCormick, Evidence*, § 5 at 8 (2d Ed. 1972); see *Giannelli, Ohio Evidence*, § 611.3 (4th ed.) ("Testimony may be elicited by specific interrogation (question and answer) or by free narrative"); *United States v. Beckton*, 740 F.3d 303, 306 (4th Cir. 2014) ("[q]uestions of trial management are quintessentially" within trial courts' "province").

{¶301} Because trial courts have discretion to allow narrative testimony, appellant cannot establish that defense counsel's decision not to ask the court to strike Agent Jenkins's narrative testimony was objectively unreasonable.

{¶302} Furthermore, even if counsel performed deficiently by failing to ask the court to strike Agent Jenkins's narrative testimony, appellant cannot establish a reasonable probability

that the outcome of the trial would have been different if counsel had made this request. If the trial court had decided to strike the testimony, then the State may have obtained the same essential testimony by engaging in a question-and-answer format.

{¶303} We therefore do not believe that appellant can establish that trial counsel was ineffective for failing to object to, or to ask the court to strike, Agent Jenkins's narrative testimony.

2

#### Opinion Testimony

{¶304} Appellant additionally asserts that trial counsel was ineffective for failing to object to improper lay opinion testimony.

{¶305} As with his argument regarding narrative testimony, appellant fails to cite any authority to support his argument that Runyon, Agent Jenkins, Deputy Barnhart, or Sergeant Stewart gave improper opinion testimony or that defense counsel provides ineffective assistance of counsel by failing to object to testimony of a similar nature. Appellant's failure to cite legal authority means that we could summarily reject this argument. Nevertheless, in the interest of justice, we briefly address it.

{¶306} Evid.R. 701 permits a nonexpert witness to offer "testimony in the form of opinions or inferences" if those opinions or inferences "are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue." If a lay witness's opinion is not "rationally based upon first-hand perceptions by the witness," "the opinion is speculation, and as such cannot be 'helpful to a . . . determination of a fact in issue.'" *State v. Hall*, 2004-Ohio-663, ¶ 8 (2d Dist.), quoting Evid.R. 701.

{¶307} In the case at bar, even if trial counsel performed deficiently by failing to object to the allegedly improper opinion testimony, appellant cannot establish a reasonable probability that the outcome of the trial would have been ~~different if counsel had objected.~~ Even if the trial court had agreed that the witnesses offered improper lay opinion testimony and had instructed the jury to disregard that testimony, as we explained in our discussion of appellant's sixth assignment of error, the record otherwise contains ample evidence to establish appellant's guilt. Thus, trial counsel's failure to object did not prejudice appellant. Appellant thus cannot establish that trial counsel failed to provide the effective assistance of

counsel by failing to object to the allegedly improper opinion testimony.

3

**Failure to Object to the Court Asking Questions**

{¶308} Appellant further argues that trial counsel was ineffective for failing to object to questions that the court asked Deputy Dillard. Appellant observes that the court asked Dillard "whether any of the evidence Dillard took out of the evidence locker for trial . . . appeared to have been tampered, destroyed, or mutilated or changed in any way." Dillard stated that it had not. Appellant claims that the court's question and Dillard's answer "made the very important and critical point for the State, a point the prosecution had not brought out prior to the trial court's question. It established that the evidence was as it was when it was collected." Appellant asserts that "[t]he trial court destroyed [appellant's] defense by obtaining crucial testimony that the evidence was not tampered, destroyed, mutilated or changed." He thus contends that trial counsel should have objected and asked the court to strike the deputy's testimony.

{¶309} Evid.R. 614(B) allows a trial court to "interrogate witnesses, in an impartial manner, whether called by itself or by a party." The rule "exists because the trial court has an

"obligation to control proceedings, to clarify ambiguities, and to take steps to insure substantial justice."" State v. Skerkavich, 2019-Ohio-4973, ¶ 13 (8th Dist.), quoting State v. Stadnir, 2003-Ohio-873, ¶ 26 (8th Dist.), quoting State v. Kay, 12 Ohio App.2d 38, 49 (8th Dist. 1967). Under this rule, "a trial court is permitted to question witnesses called by a party as long as the questions are relevant and the questioning is done impartially." In re Myers, 2004-Ohio-539, ¶ 8 (3d Dist.).

{¶310} Additionally, under Evid.R. 611(A), the trial court "has discretion to control the flow of the trial" and may ask witnesses questions "in a search for truth." State v. Prokos, 91 Ohio App.3d 39, 44 (4th Dist.1993), citing Evid.R. 614; accord State v. Redon, 2009-Ohio-5966, ¶ 8 (8th Dist.). Accordingly, "[t]he right to question a witness, pursuant to Evid.R. 614(B), rests within the sound discretion of the trial court." State v. Vanloan, 2009-Ohio-4461, ¶ 8 (12th Dist.).

{¶311} In the case at bar, even if trial counsel performed deficiently by failing to object to the trial court's questioning of Deputy Dillard, we do not agree with appellant that this failure affected the outcome of the case. Defense counsel argued to the jury that the State mishandled evidence and that the jury should not rely upon the evidence. Moreover, even without Deputy Dillard's response to the court's

questioning, the record still contains ample evidence of appellant's guilt. Therefore, appellant cannot establish that trial counsel was ineffective for failing to object to the court's questions.

F

**Conclusion**

{¶312} Accordingly, based upon the foregoing reasons, we overrule appellant's seventh assignment of error.

VI

**Eighth Assignment of Error**

{¶313} In his eighth assignment of error, appellant argues that the prosecutor committed misconduct that deprived him of his constitutional rights to due process and to a trial by an impartial jury. Appellant alleges that the prosecutor engaged in misconduct by (1) introducing, during opening statements, irrelevant and prejudicial victim-impact evidence; (2) vouching for Walker's credibility by (a) explaining the prosecutor's thought process when offering him a plea deal and (b) suggesting that the crime scene evidence supported Walker's story; (3) arguing that Nelson (a) gave law enforcement officers information that led to Walker's arrest and (b) helped them with the letters that appellant allegedly wrote while incarcerated;

and (4) by commenting on appellant's privilege against self-incrimination.

## A

## Prosecutorial Misconduct

{¶314} "Prosecutorial misconduct constitutes reversible error only in rare instances." *State v. Edgington*, 2006-Ohio-3712, ¶ 18 (4th Dist.), citing *State v. Keenan*, 66 Ohio St.3d 402, 405 (1993). Accordingly, courts ordinarily will not reverse a judgment on the basis of prosecutorial misconduct unless "the prosecutor's conduct 'so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *State v. Belton*, 2016-Ohio-1581, ¶ 125, quoting *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). A prosecutor's improper conduct "'so infect[s] the trial with unfairness as to make the resulting conviction a denial of due process'" when "it prejudicially affect[s] the defendant's substantial rights." *State v. Wilks*, 2018-Ohio-1562, ¶ 172, citing *State v. Maxwell*, 2014-Ohio-1019, ¶ 243. Courts assess prejudice by examining "the effect of the misconduct ' . . . in the context of the entire trial.'" *Wilks* at ¶ 172, quoting *Keenan*, 66 Ohio St.3d at 410.

{¶315} We further note that "[t]he benchmark of the prosecutorial misconduct analysis is 'the fairness of the trial,

not the culpability of the prosecutor.'" *State v. Obermiller*, 2016-Ohio-1594, ¶ 99, quoting *Smith v. Phillips*, 455 U.S. 209, 219 (1982). Accordingly, "[n]ot every intemperate remark by counsel can be a basis for reversal." *State v. Landrum*, 53 Ohio St.3d 107, 112 (1990). Instead, "[t]he test for prosecutorial misconduct is whether the conduct complained of deprived the defendant of a fair trial." *State v. Jackson*, 92 Ohio St.3d 436, 441 (2001), citing *State v. Apanovitch*, 33 Ohio St.3d 19, 24 (1987). Therefore, "[t]he touchstone of the analysis 'is the fairness of the trial, not the culpability of the prosecutor.'" *State v. Garrett*, 2022-Ohio-4218, ¶ 144, quoting *Smith v. Phillips*, 455 U.S. 209, 219 (1982).

{¶316} In the case at bar, appellant recognizes that trial counsel did not object to the prosecutor's (1) opening statement regarding the victim's background, (2) statements allegedly vouching for Walker's credibility, or (3) comments regarding Nelson's involvement. He thus agrees that plain-error review applies to these alleged instances of prosecutorial misconduct. We therefore review these claims to determine whether the prosecutor obviously engaged in misconduct so as to affect the outcome of the trial. See *State v. Whitaker*, 2022-Ohio-2840, ¶ 85 (defendant's failure to contemporaneously object to alleged prosecutorial misconduct forfeits all but plain error).

{¶317} Appellant did, however, object when he believed that the prosecutor improperly commented upon appellant's privilege against self-incrimination. This prosecutorial misconduct claim thus is not subject to plain-error review.

B

**Victim-impact Evidence**

{¶318} Appellant first argues that the prosecutor engaged in misconduct by introducing victim-impact evidence during opening statement. Appellant asserts that the prosecutor "should not have commented on what type of person [the victim] was." He claims that the prosecutor's comments about the victim's character served only to generate "sympathy" for the victim and "anger" toward appellant.

{¶319} The State contends that opening statements are not evidence and further asserts that the prosecutor's opening statement did not contain any improper victim-impact evidence.

{¶320} "Opening statements serve to inform the jury about the nature of the case and to outline the facts that each party intends to prove." (Emphasis in original) *State v. Nicholson*, 2024-Ohio-604, ¶ 282. "Prosecutors have wide latitude in opening statement but cannot use that opportunity to introduce evidence." *State v. Fannon*, 2018-Ohio-5242, ¶ 58 (4th Dist.). The prosecution may, however, "refer to evidence it intends to

present during trial." *State v. Gilbert*, 2005-Ohio-5536, ¶ 16 (10th Dist.). The prosecution thus may "summarize," "describe," or "anticipate evidence," but it "risks a mistrial when it engages in an attempt to actually introduce evidence." *Id.*

{¶321} Moreover, "opening statements should not include matters that attempt to influence or sway the jury by making statements that counsel knows will not be supported by competent or admissible evidence." *State v. Wuensch*, 2017-Ohio-9272, ¶ 34 (8th Dist.), citing *Maggio v. Cleveland*, 151 Ohio St. 136, 140-141 (1949). However, "unless . . . counsel 'deliberately attempt[ed] to influence and sway the jury by a recital of matters foreign to the case,' remarks made during opening statements cannot form the basis of a misconduct claim." *Nicholson*, 2024-Ohio-604, at ¶ 282, quoting *Maggio* at paragraph two of the syllabus.

{¶322} As we determined in our discussion of appellant's fifth assignment of error, the prosecutor's opening statement did not reference improper victim-impact testimony. For this reason, we cannot state that the trial court obviously erred by not sua sponte striking as prosecutorial misconduct the prosecutor's opening statement that gave the jury background information about the victim.

{¶323} We further note that the trial court instructed the jury that opening statements are not evidence. The court informed the jury that each party begins with an opening statement that "outlines what they expect their evidence will be." The court specifically advised the jury that opening statements "will not be evidence." The court continued to explain that opening statements "are a preview of the claims of each party designed to help [the jury] follow the evidence as it is presented."

{¶324} Under these circumstances, we cannot state that the prosecutor committed misconduct during opening statement by giving the jury context and background information about the victim, especially when the State presented evidence to support the assertions contained in its opening statement. See *Nicholson, 2024-Ohio-604*, at ¶ 283 (concluding that defendant failed to show plain error when the trial court had instructed the jury that opening statements are not evidence and when the evidence supported the assertions that the defendant claim constituted misconduct).

C

**Vouching for Witnesses**

{¶325} Appellant also contends that the prosecutor improperly vouched for Walker's credibility. Appellant complains that the

prosecutor "inject[ed] himself and his credibility into the case" when the prosecutor "emphasized" that offering Walker a plea deal "was his decision" and that he would not have offered Walker a deal if the prosecutor thought that Walker was lying.

{¶326} Appellant additionally asserts that the prosecutor's statement that he "consulted the victim's parents and law enforcement officers" before accepting Walker's plea deal gave Walker's testimony credibility by suggesting that "others approved" using Walker's testimony at trial.

{¶327} Appellant further argues that the prosecutor committed misconduct by stating that the prosecutor agreed to a plea agreement with Walker because the crime scene evidence supported Walker's story. Appellant claims that the prosecutor's statements improperly bolstered Walker's credibility.

{¶328} As a general matter, a prosecutor may not vouch for a witness by expressing a personal belief or an opinion as to the credibility of a witness. *State v. Myers*, 2018-Ohio-1903, ¶ 145; *State v. Williams*, 79 Ohio St.3d 1, 12 (1997). Improper vouching occurs when a prosecutor implies knowledge of facts outside the record or places the prosecutor's personal credibility in issue. *Myers*, 2018-Ohio-1903, at ¶ 145; *State v. Jackson*, 2005-Ohio-5981, ¶ 117; *State v. Keene*, 81 Ohio St.3d 646, 666 (1998). By preventing the prosecutor from giving the

jury the impression that evidence particularly known to the prosecutor but kept from the jury "supports the charges against the defendant," the rule seeks to avoid jeopardizing a "defendant's right to be tried solely on the basis of the evidence presented to the jury." *United States v. Young*, 470 U.S. 1, 18 (1985). Moreover, the rule prohibits prosecutors from expressing their own opinions to avoid inducing "the jury to trust the Government's judgment rather than its own view of the evidence." *Id.* at 18-19.

{¶329} Although prosecutors cannot express an opinion regarding the credibility of witnesses or evidence, they may argue that the fact finder should consider "the character, quality, or consistency of particular evidence or witnesses . . . when assessing credibility.'" *State v. Hostacky*, 2014-Ohio-2975, ¶ 47 (8th Dist.), quoting *State v. Cody*, 2002-Ohio-7055, ¶ 35 (8th Dist.). Thus, "[a] prosecutor does not improperly vouch for a witness's credibility by arguing, based upon the evidence, that a witness was 'a reliable witness to the simple events she witnessed, that she lacked any motive to lie, [or] that her testimony was not contradictory.'" *State v. Reine*, 2007-Ohio-7221, ¶ 63 (4th Dist.), quoting *State v. Green*, 90 Ohio St.3d 352, 373-374 (2000). Additionally, "[a] prosecutor may argue facts in evidence to support a witness's credibility and may

respond to defense attacks on the witness's credibility and mental abilities." *Id.*, citing *Green*, 90 Ohio St.3d at 374, and *State v. Woodard*, 68 Ohio St.3d 70, 76 (1993).

{¶330} Furthermore, even if a prosecutor improperly vouches for a witness, courts will uphold the conviction when the record indicates "beyond a reasonable doubt that the jury would have returned a verdict of guilty" in the absence of the improper remarks. *State v. Knuff*, 2024-Ohio-902, ¶ 238, quoting *United States v. Hasting*, 461 U.S. 499, 511-512 (1983).

{¶331} In the case sub judice, we do not believe that appellant has established that the prosecutor obviously vouched for Walker or that any improper vouching affected his substantial rights. During opening statement, the prosecutor stated the following:

In order to obtain [Walker]'s cooperation, the State had to claim a deal and that was my decision. I made that decision in consultation with [the victim]'s parents and with law enforcement. Um, the reason the deal was made with [Walker] and not [Nelson] is because the physical evidence at the scene supported [Walker]'s story.

{¶332} The prosecutor's statement that the crime scene evidence supported Walker's testimony did not constitute improper vouching. The assertion did not imply knowledge of facts outside the record or place the prosecutor's own credibility at issue. Instead, the prosecutor used facts in

evidence—the crime scene evidence—to argue that Walker's testimony was credible. See generally *State v. Graham*, 2020-Ohio-6700, ¶ 97 (no improper vouching occurred when prosecutor stated that witnesses eventually decided to tell the truth; prosecutor simply "discussed the circumstances leading to [the witnesses'] eventual decision to cooperate with police, and the testimony at trial supported [the prosecutor's] statements"); *id.* at ¶ 99 (prosecutor did not improperly vouch for witnesses when arguing that (1) the witnesses' testimonies were consistent with each other, (2) the victims' testimonies corroborated the witnesses' testimony, and (3) the witnesses "were motivated to tell the truth").

{1333} Moreover, even if the prosecutor's comments that Walker's plea agreement was the prosecutor's decision and that he consulted the victim's parents and law enforcement officers constituted an obvious error that the trial court should have sua sponte struck, see *State v. Waddy*, 63 Ohio St.3d 424, 435-436 (1992) (prosecutor may not "invite[] the jury to substitute the prosecutor's experience for its own evaluation"), the record does not suggest that these comments affected the outcome of the trial. Rather, given the overwhelming evidence of appellant's guilt, as we discussed in appellant's sixth assignment of error, any improper comments did not affect appellant's substantial

rights. See *Knuff*, 2024-Ohio-902, at ¶ 240 (prosecutorial misconduct constitutes harmless error when the record contains "overwhelming evidence of [the defendant]'s guilt"). Viewed in the context of the entire trial, the prosecutor's statements, even if improper, did not "undermine the fundamental fairness of the trial and contribute to a miscarriage of justice." *Young*, 470 U.S. at 16; see *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 240 (1940) (when the record indicates that improper "statements were minor aberrations in a prolonged trial and not cumulative evidence of a proceeding dominated by passion and prejudice, reversal would not promote the ends of justice").

{¶334} Consequently, appellant has not established that we must reverse his conviction based upon the argument that the prosecutor engaged in misconduct by improperly vouching for Walker.

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D

**Improper Argument**

{¶335} Appellant next asserts that the prosecutor introduced improper argument by referring to statements that his nontestifying codefendant, Nelson, made during interviews with law enforcement officers. Appellant contends that *Bruton v. United States*, 391 U.S. 123 (1968), prohibits the prosecution from introducing a nontestifying codefendant's confession into

evidence, because admitting the nontestifying codefendant's confession would violate a defendant's right to confront and cross-examine the witnesses against him.

{¶336} Appellant observes that, during opening statements, the prosecutor stated the following:

At that time, during those interviews, he was denying that he was the person who shot [the victim]. Now Keontae has not agreed to testify in this case, and I won't anticipate that he will testify in this case, so I can't really tell you what he said about or did not say about the Defendant, but he did say something incredibly important during his fourth (4th) interview that led to the arrest of a third suspect. Keontae claimed that a young man by the name of Richard Walker shot [the victim] with the forty five (45) caliber handgun. Keontae did not state that he shot [the victim] with a shotgun, and he did not state that Richard shot [the victim] with a shotgun, but he did indicate that Richard Walker is the one who shot [the victim] with the forty five (45). Keontae's story of how Richard Walker allegedly shot [the victim], however, did not match the physical evidence at the scene. Nonetheless, agents obtained an arrest warrant for Richard Walker. Richard Walker was arrested, and he also readily agreed to give a statement.

{¶337} Appellant further asserts that, during closing argument, the prosecutor stated the following:

[Agent Jenkins's] investigation, along with the Major Crimes Task Force, led to Keontae Nelson. Keontae Nelson gave a total of five separate interviews. Five interviews. Not just five statements at one time, five separate interviews on five different dates. Not until the fourth interview did he reveal any information about Richard Walker. He was holding out as long as he could. He did not want to give up Richard Walker's name. It took four

interviews. When he gave up that name, Agent Jenkins and agents from the Task Force tracked down Richard Walker and they interviewed Richard Walker. Prior to that, Keontae had made mention of letters that he had received from the Defendant and Keontae's mother, upon request, provided those letters to law enforcement.

{¶338} Appellant contends that the prosecutor's assertions improperly "suggest[ed] that anything Nelson said or did would be or was evidence when he did not testify." He thus claims that the State could not use this line of argument "as evidence against [him]" and further complains that he did not have any "way to confront or cross-examine this argument."

{¶339} Appellant next argues that, during closing argument, the prosecutor improperly referred to two witnesses who did not testify at trial. The prosecutor stated the following:

[T]wo witnesses that the State had anticipated calling were unavailable to testify. One was Amanda Brumfield with the Middleport Police Department, who is one of the first officers on scene. She was unable to testify due to a medical situation. And Sergeant Fields was unable to testify, um, he is with Charleston Police Department and, if you recall during my opening statement, I said that there would be a video that you could watch, and that was his body cam, um, so we were not able to get that into evidence without his testimony. So, that's why you didn't see that.

{¶340} Appellant asserts that because these two witnesses did not testify, "there was no evidence to reference, and it was improper for the prosecutor to explain why the State did not present their testimony."

{¶341} The State argues that the prosecutor's statements regarding Nelson were not improper references to a nontestifying codefendant's confession. The State instead claims that the statements related the testimony that the prosecution expected from law enforcement officers regarding their investigative efforts. The State asserts that nothing in the prosecutor's statements suggested that it would introduce evidence or testimony obtained from Nelson.

{¶342} The State next claims that nothing that the prosecutor stated regarding the two witnesses who ultimately did not testify constituted prosecutorial misconduct. The State indicates that, during its opening statement, the prosecutor informed the jury that these two witnesses would testify and related their expected testimony. Although the State admits that, during closing argument, explaining the witnesses' absence may not have been necessary, it does not agree that discussing their absence constituted prosecutorial misconduct.

{¶343} As we noted above, during opening statement, the prosecution may "refer to evidence it intends to present during trial," but it "risks a mistrial when it engages in an attempt to actually introduce evidence." *Gilbert*, 2005-Ohio-5536, at ¶ 16.

{¶344} "During closing arguments, the prosecution generally has wide latitude to convincingly advance its strongest arguments and positions." *State v. Gibson*, 2003-Ohio-4910, ¶ 35 (4th Dist.), citing *State v. Phillips*, 74 Ohio St.3d 72, 90 (1995). The prosecution "may freely address what the evidence has shown and what reasonable inferences may be drawn from that evidence." *State v. Wuensch*, 2017-Ohio-9272, ¶ 38 (8th Dist.). The prosecution must, however, avoid going beyond the evidence presented in order to obtain a conviction. *E.g.*, *State v. Smith*, 14 Ohio St.3d 13, 14 (1984) (stating that prosecutor has a duty "to avoid efforts to obtain a conviction by going beyond the evidence which is before the jury"). "[P]rosecutors must be diligent in their efforts to stay within the boundaries of acceptable argument and must refrain from the desire to make outlandish remarks, misstate evidence, or confuse legal concepts." *State v. Fears*, 86 Ohio St.3d 329, 332 (1999).

{¶345} Additionally, a court that is reviewing claims of prosecutorial misconduct during closing argument must not focus on isolated comments but must examine the prosecution's closing argument in its entirety to determine whether the prosecutor's comments prejudiced the defendant. *E.g.*, *State v. Keenan*, 66 Ohio St.3d 402, 410 (1993). "A conviction will be reversed only where it is clear beyond a reasonable doubt that, absent the

prosecutor's comments, the jury would not have found appellant guilty." *State v. Benge*, 75 Ohio St.3d 136, 141-42 (1996), citing *State v. Loza*, 71 Ohio St.3d 61, 78 (1994).

{¶346} In the case at bar, we do not believe that appellant established that the prosecution engaged in misconduct during opening statement or closing argument. Contrary to appellant's belief, the prosecution's opening statement did not refer to a nontestifying codefendant's confession. The prosecutor never stated that Nelson, the nontestifying codefendant, confessed. Furthermore, during opening statement, the prosecutor explained that he would not be introducing Nelson's actual statements. Instead, the prosecutor referred to the information that law enforcement officers—who would be testifying—learned from interviewing Nelson. Thus, referring to the information that officers gathered during their interviews with Nelson did not violate appellant's right to confront and cross-examine Nelson. We additionally note that appellant had a full opportunity to cross-examine the officers who testified about the interviews with Nelson.

{¶347} We likewise disagree with appellant that, during closing argument, the prosecutor committed misconduct by explaining the reason for the absence of two witnesses who ultimately did not testify. Even if the explanation was

unnecessary, appellant does not explain how any error affected the outcome of the trial.

{¶348} Consequently, we do not agree with appellant that the prosecutor committed misconduct by introducing improper argument.

E

**Miranda Violations**

{¶349} Appellant also argues that the prosecutor engaged in misconduct by introducing evidence that improperly commented upon his privilege against self-incrimination.

{¶350} In appellant's fourth assignment of error, we determined that even if the State improperly commented on appellant's privilege against self-incrimination, appellant cannot show that the State's comments affected the outcome of the case. See Crim.R. 52 ("Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded"); *State v. Jones*, 2020-Ohio-3051, ¶ 18 (an error impacts a defendant's substantial rights if "it affected the outcome of the trial"); see also *Knuff*, 2024-Ohio-902, at ¶ 240 (prosecutorial misconduct constitutes harmless error when the record contains "overwhelming evidence of [a defendant]'s guilt"); *State v. Clark*, 38 Ohio St.3d 252, 259 (1988) (prosecutorial misconduct constitutes harmless error when

misconduct does not deprive a defendant of a fair trial). Thus, appellant cannot establish that we must reverse his conviction due to the prosecutor's allegedly improper statements.

## F

**Cumulative Impact**

{¶351} Appellant additionally contends that, even if each instance of prosecutorial misconduct does not individually warrant reversal, the cumulative effect of the prosecutor's misconduct deprived him of a fair trial. As we concluded above, however, appellant has not identified any instances of prosecutorial misconduct that deprived him of a fair trial. See *Nicholson*, 2024-Ohio-604, at ¶ 316 (rejecting cumulative prosecutorial misconduct argument when defendant failed to identify any instances of misconduct). Moreover, the case at bar is not one of the "rare" cases in which the prosecutor's conduct affected the outcome of the trial. See *State v. Garrett*, 2022-Ohio-4218, ¶ 173 ("when the evidence is viewed in context of the entire trial, it does not show that the prosecutor's conduct prejudicially affected [the defendant]'s substantial rights").

{¶352} Accordingly, based upon the foregoing reasons, we overrule appellant's eighth assignment of error.

**Supplemental Assignment of Error**

{¶353} In his supplemental assignment of error, appellant argues that the indictment charging him with conspiracy to commit aggravated murder or murder is fatally defective because it does not allege a substantial overt act performed in furtherance of the conspiracy. Appellant notes that in *State v. Nelson*, 2023-Ohio-3566 (4th Dist.), this court held that a similarly worded indictment was insufficient to charge conspiracy. He asserts that based upon our *Nelson* decision, we should reverse and vacate his conspiracy conviction. The State does not contest appellant's supplemental assignment of error.

{¶354} We agree with appellant that his indictment suffers from the same flaw as the indictment in *Nelson*. Accordingly, based upon the authority of *Nelson*, we sustain appellant's supplemental assignment of error, reverse the trial court's judgment convicting appellant of conspiracy, and vacate appellant's conspiracy conviction.<sup>13</sup> In all other respects, we affirm the trial court's judgment.

JUDGMENT AFFIRMED IN PART,  
REVERSED IN PART AND VACATED  
IN PART.

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<sup>13</sup> The trial court merged the offenses for sentencing purposes and sentenced appellant on the aggravated-murder offense. We therefore need not remand this matter to the trial court for resentencing.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed in part, reversed in part and vacated in part. Appellee shall recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal. It is ordered that a special mandate issue out of this Court directing the Meigs County Common Pleas Court to carry this judgment into execution.

If a stay of execution of sentence and release upon bail has been previously granted, it is continued for a period of 60 days upon the bail previously posted. The purpose of said stay is to allow appellant to file with the Ohio Supreme Court an application for a stay during the pendency of the proceedings in that court. The stay as herein continued will terminate at the expiration of the 60-day period.

The stay will also terminate if appellant fails to file a notice of appeal with the Ohio Supreme Court in the 45-day period pursuant to Rule II, Sec. 2 of the Rules of Practice of the Ohio Supreme Court. Additionally, if the Ohio Supreme Court dismisses the appeal prior to the expiration of said 60 days, the stay will terminate as of the date of such dismissal.

A certified copy of this entry shall constitute that mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Wilkin, J.: Concur in Judgment & Opinion

For the Court

By: 

Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

# APPENDIX A

# APPENDIX B

MEIGS CO. COMMON PLEAS COURT  
SAMANTHA MUGRAGE  
CLERK OF COURTS  
11/10/2022 09:19 AM  
CASE 21-CR-104

IN THE COMMON PLEAS COURT OF MEIGS COUNTY, OHIO

STATE OF OHIO, :  
 :  
Plaintiff, : Case No. 21 CR 104  
 :  
v. :  
 :  
JAQUAN HALL, : ENTRY  
 :  
Defendant. :

On October 4, 2022 a jury found the Defendant guilty of all counts and specification in the Indictment. Defendant filed a Motion for a New Trial on October 17, 2022. On November 1, 2022, the State of Ohio filed a Memorandum Contra to Defendant's Motion for a New Trial. A hearing was set, and held on November 9, 2022, on the Motion and Memorandum Contra. Present in Court were James Stanley, the Prosecuting Attorney for Meigs County, George Cosenza, attorney for the Defendant, and the Defendant, Jaquan Hall.

At the November 9, 2022 hearing, the Defendant explained that most of the issues raised by him had been discussed and ruled upon by the Court during the course of the trial and that he mainly wanted to discuss item 2 of the Motion, which was the dismissal of an African American potential juror for cause. Even though the oral hearing dealt mainly with issue 2, each issue will be discussed in this entry.

First, Defendant asserts in paragraph 1 that the denial of a Motion for a Change of Venue prevented the Defendant from having a fair and impartial jury. The Defendant made an oral Motion, part way through jury selection for a change of venue. Defendant was told that the Motion was premature as we were in the process of attempting to seat a fair and impartial jury. The Court felt that the only way to see if an impartial jury could be seated is to go through the process of attempting to seat the jury. The Court specifically finds that the jurors who were seated all swore they could be fair and impartial. Many jurors were excused, in an abundance of caution, to make sure both the State of Ohio and the Defendant had a group of fair and impartial jurors with either no pretrial knowledge of the situation or little pretrial knowledge of the situation at issue. Therefore, the basis for a new trial in paragraph 1 is DENIED.

Page 1 of 4

In the Second assertion, the Defendant asserts that the only African American prospective juror was improperly excused for cause. Through the week-long jury selection, it was clear that the Meigs County prospective jurors (with two exceptions) were not concerned about or would not make decisions based upon any prejudice or bias regarding race when serving as a juror. Throughout the days of jury selection there were at least two apparent African American prospective jurors. One of the African American prospective jurors became very emotion when the Court announced what type of case the jurors would hear, and that juror was unable to even "sit in the same room" with an accused murderer. He explained that his brother had only recently been murdered. The Court excused that gentleman.

The Court specifically found that that the other African American juror, who was individually questioned, had significant out of court and pretrial information about both the victim and the Defendant. The juror's children spent significant time with the victim at the juror's home, stating that the victim had been to the prospective juror's house on multiple occasions. Also, that prospective juror had personally witnessed Defendant Hall under a vaguely described situation where people giving the prospective juror a ride stopped in a remote location in Mason County West Virginia to meet with the Defendant. Additionally, the prospective juror made various comments about things she had "heard" about the victim and the Defendant. Finally, the brother of the prospective juror in question had recently been prosecuted by the same Prosecuting Attorney and was currently serving a term in prison.

The Court carefully observed and listened to this prospective juror, as with all the jurors, and determined that the prospective juror in question had the closest and most familiar relationship with both the victim and the Defendant as compared to most all of the other prospective jurors. The Court specifically finds that the prospective juror at issue would not be able to render an impartial verdict in this particular case. The juror in question clearly needed to be dismissed for cause. Just because she happened to be African American does not mean her qualifications or disqualifications to sit as a juror in the case are determined in any way differently than a non-African American person. The Court specifically found, based upon all of her answers and her demeanor during jury selection, that she could not be fair and impartial as a juror in this matter.

Based upon the Court's observations of the prospective juror, the juror at issue clearly possessed a state of mind evincing enmity or bias towards the Defendant or State and despite her answering in the affirmative to the question of whether she could be fair and impartial, the Court finds that the juror cannot render an impartial verdict according to the law and therefore was properly excused for cause. Therefore, the basis for a new trial asserted in paragraph 2 is DENIED.

Next, the Defendant asserts that the Court erred in denying the Motion for a Mistrial after the prosecutor stated in opening statement that the Defendant exercised his right to remain silent during the investigation by the Charleston City Police concerning the Defendant having a gunshot wound to his arm. The State asserts that the reference to the lack of cooperation was strictly in the context of the investigation into the shooting of

11/10/2022 09:19 AM

CASE # 22CR00104  
the Defendant, with the Defendant only being questioned as a victim of a shooting. The questioning of the Defendant all took place prior to the Charleston City Police having any knowledge of or potential connection to the Meigs County, Ohio murder earlier that same day. The Court denied the Motion for a Mistrial. The Court did elect to again remind the jurors that all statements of the attorneys in the opening statements are not evidence and that the Defendant had an absolute right to remain silent in this matter, including in the investigation of this matter and that the exercise of his right to remain silent should not be considered for any purpose. The jury is presumed to have followed those instructions. The Motion for New Trial in item 3 is hereby DENIED.

Next, Defendant asserts in issue 4 that the Court's admission of the letters written by the Defendant was without proper authentication or foundation. The Court specifically finds that there was sufficient evidence for authenticity of the letters. The letters were produced either through the Washington County Jail officers in the case of one set of letters and through a co-defendant's family in the case of the other group of letters. There was no dispute that they were what they purported to be, letters from the sources named. Just as was determined in the trial, the Court again finds there was sufficient foundation laid for the admission of those properly authenticated letters. Therefore, the Defendants Motion in item 4 for a new trial is DENIED.

In item 5, the Defendant asserts that the Court erred in denying the Defendant's Motion to Suppress. The Court previously explained the basis for the denial of the Motion to Suppress and incorporates that explanation herein as if fully rewritten. For the reasons set forth in the earlier decision, item 5 basis for a new trial is also DENIED.

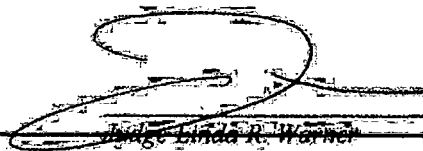
Also, in item 6 of the Defendant's Motion for New Trial, Defendant asserts that the Court erred in allowing the victim's parents to be present during the individual voir dire and the failure to order the mother of the victim to not wear a tee shirt stating "Justice for Kane" during one day of the individual voir dire process. First, the Court specifically finds that the surviving family members of the deceased victim, pursuant to Marsy's Law, had an absolute right to be present during the voir dire process, both in open court and in the individual voir dire in chambers. The victims were not permitted to speak during the process and their seats were situated behind the Prosecuting Attorney's seats. There was no indication to the jury that the victims were anything other than the parents of the person murdered. The parents being present, to ascertain any relationships potential jurors may have with the victim or the family of the victim, was a large part of the reason Defendant requested individual voir dire. Defendant asserted that the Defendant's family was too well known to have questions about family connections discussed in the open jury selection. The Court finds that the viewing of the prospective jurors in the presence of the victim's parents was the best way to ascertain whether a prospective juror should be qualified or disqualified to serve. As for the victim's mother's choice of tee shirts, the Court found that the parents had a first amendment right to have writing on their shirt, provided it was not creating a distraction or obstruction of the trial process. The Court finds that the tee shirt was not and did not cause a disruption or obstruction of the jury selection. In fact, jurors said they had not noticed what was on the mother's tee shirt until it was pointed out to the prospective juror. Nevertheless, again as

a courtesy and in an abundance of caution, the Court did ask the victim's mother not to wear the tee shirt during subsequent days. In response the mother indicated she would not wear anything similar throughout the rest of the trial and she did not wear a tee shirt with writing the rest of the trial. Issue number 6 raised by the Defendant as a basis for a new trial is therefore **DENIED**.

Finally, in the final paragraph, paragraph 7, the Defendant asserts that he should have a new trial because of the Court's confirmation of the Defendant's trial date of May 16, 2022. There was a jury trial scheduled to commence in this matter on May 16, 2022. At the pretrial hearing on May 13, 2022, the Court was informed of the State's recent naming of co-defendants DNA testing and interviews that were just disclosed to the Defendant. Based upon this new information the Defendant stated he could not proceed to trial on May 16, 2022, as scheduled. The Defendant asserted that he needed additional time to work with his client about the new information before going to trial. At that hearing, on May 13, 2022, the Court offered to give Defendant an extra week for the State and Defendant to review the information, DNA results and statements of new co-defendants. The Court stated that the trial could be continued, one week, to allow the attorneys time for such preparation. The Defense stated that a week would do no good and that he would need substantially longer than one week to investigate where the new information would lead him in the preparation of his Defendant's case. Defendant specifically asked for the trial to be continued until September 19, 2022. Therefore, the Defendant's 7<sup>th</sup> issue raised in the Motion for a New Trial should also be **DENIED**.

This matter shall proceed to sentencing on Monday, November 14, 2022 at 2:30 p.m.

**SO ORDERED!**



Judge Linda R. Warner

cc: Prosecutor  
Defendant  
Defense Counsel

MEIGS CO COMMON PLEAS COURT  
SAMANTHA MUGRAGE  
CLERK OF COURTS  
11/17/2022 08:03 AM  
CASE 21-CR-104

IN THE COURT OF COMMON PLEAS, MEIGS COUNTY, OHIO  
GENERAL DIVISION

State of Ohio,

Case No: 21 CR 104

Plaintiff,

Honorable Linda R. Warner

-vs-

Jaquan Hall,

JUDGMENT ENTRY

Defendant.

This matter came before the Court on November 14, 2022 for a Sentencing Hearing. Present were James Stanley, Prosecuting Attorney, representing the State of Ohio and the Defendant, Jaquan Hall, represented by George Cosenza.

On October 4, 2022, a jury found Defendant **GUilty** of Count One, Aggravated Murder, a violation of section 2903.01(A) of the Ohio Revised Code, an unclassified felony, as well as the gun specification for count one; Count Two, Murder, a violation of section 2903.02(A) of the Ohio Revised Code and, an unclassified felony, as well as the gun specification for count two; Count Three, Complicity to Aggravated Murder or Murder, a violation of section 2923.03(A)(2) of the Ohio Revised Code, an unclassified felony; and Count Four, Conspiracy, a violation of section 2903.01(A)(2) of the Ohio Revised Code, a felony of the first degree. The Court finds the verdicts to be appropriate and notified the Defendant of the verdicts and findings and that the matter was set for sentencing on November 14, 2022. The attorneys stipulated and the Court agrees that the convictions of aggravated murder, murder, complicity to aggravated murder and conspiracy merged for purposes of sentencing.

The Defendant was afforded all rights pursuant to the criminal rules. The Defendant was also informed that his convictions will result in mandatory prison sentences, including a mandatory 3-year sentence for the firearms specification which must be served prior to and consecutive to the mandatory life sentence for the aggravated murder.

The Court afforded counsel an opportunity to speak on behalf of the Defendant, a number of witnesses were also given an opportunity to address the Court prior to sentencing and the Court addressed the Defendant personally, affording the Defendant an opportunity to make a statement on the Defendant's own behalf in the form of mitigation and/or to present any information regarding the imposition of sentence, and/or to address the existence or nonexistence of the factors that the Court has considered and weighed.

The Court has considered the record, any oral statements, the victim impact statement, as well as the principles and purposes of sentencing under Ohio Revised Code Section 2929.11 and has balanced the relevant seriousness and recidivism factors set forth in Ohio Revised Code Section 2929.12 as well as weighed factors set forth in applicable provisions of sections 2929.13 and 2929.14 of the Revised Code.

For reasons stated on the record, the Court also finds and explained to the Defendant that a prison sentence is mandatory and is consistent with the purposes of the Ohio Revised Code Section 2929.11.

**IT IS THEREFORE, ORDERED** that the Defendant be sentenced to the Ohio Department of Rehabilitation and Correction for an initial period of three (3) years for the gun or firearm specification findings, followed immediately by life in prison without the possibility of parole as to Count One, Aggravated Murder, a violation of section 2903.01(A) of the Ohio Revised Code, an unclassified felony, as all counts will merge for purposes of sentencing.

The Court advised the Defendant that he has a right to appeal this conviction. The Defendant was advised that if she is unable to pay the cost of an appeal, he has a right to appeal without payment; that if the Defendant is unable to obtain counsel for an appeal, counsel will be appointed without cost; that if the Defendant is unable to pay the costs of documents necessary to an appeal, the documents will be provided without cost; and Defendant has a right to have a notice of appeal timely filed on his behalf.

It is further ordered that the Defendant be conveyed to the correctional facility. Defendant is credited for jail time served in the amount of four hundred ninety (490) days as of November 14, 2022.

MEIGS CO COMMON PLEAS COURT  
SAMANTHA MURAGE  
CLERK OF COURTS  
11/17/2022 08:03 AM  
CASE 21-CR-164

It is further Ordered that the Defendant pay all costs of prosecution, including Court costs, for which judgment is rendered and execution may issue.

It is hereby ORDERED that any bond not already forfeited, heretofore posted is released after all fines, costs, payments required or permitted by law are fully satisfied, unless it shall have been posted by a person other than the Defendant, in which instance, said bond shall be released to such person, less any payments or charges required or permitted by law, due and owing to the Clerk of Courts.

It is hereby ORDERED that the Defendant shall have a lifetime firearms disability.

Entrance into Intensive Program Prison and any transitional control programs will be denied.

Defendant shall not be eligible for judicial release or release on transitional control.

Any finding herein deemed to be in conflict with State v. Foster, 109 Ohio St. 3d 1, is considered to be advisory by this Court.

The Court hereby notifies the Meigs County Sheriff's Department and the Ohio Department of Rehabilitation and Correction to not commingle the Defendant in this case with Defendants Keontae Nelson, Meigs County Case number 22 CR 112 and Richard Walker, Meigs County Case number 22 CR 113.

SO ORDERED.

  
LINDA R. WARNER, JUDGE

The Clerk is directed to furnish a copy of the foregoing to James Stanley, Prosecuting Attorney; George Cosenza, Attorney for Defendant; Meigs County Sheriff's Department; Correctional Reception Center, P.O. Box 300, Orient, Ohio 43146; and Bureau of Sentencing Computation, P.O. Box 450, Orient, Ohio 43146.

**FILED**  
**COURT OF APPEALS**  
2023 APR 10 AM 8:24

**IN THE COMMON PLEAS COURT**  
**MEIGS COUNTY, OHIO**

SAMANTHA MUGRAGE  
CLERK OF COURTS  
**FILED**  
03/25/2024-01:59 PM  
**COURT**  
CASE 21-CR-104  
2023 APR 10 AM 8:23

SAMANTHA MUGRAGE  
CLERK OF COURTS  
MEIGS COUNTY, OHIO

**PLAINTIFF,**

:  
:

**CASE NO. 21 CR 104**

**VS**

:

**JAQUAN HALL,**

:

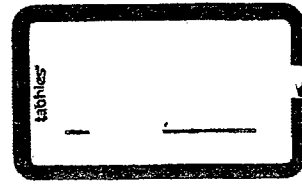
**NOTICE OF FILING**

**DEFENDANT.**

:

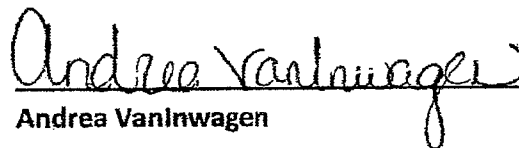
Please be advised the following transcripts have been filed in the above-captioned matter:

- Arraignment Hearing held on July 16, 2021
  - Initial Pretrial held on August 19, 2021
  - Final Pretrial held on September 7, 2021
  - Motions Hearing held on October 19, 2021
  - Status Hearing held on December 13, 2021
- 
- Motions Hearing held on March 25, 2022
  - Final Pretrial/Motions Hearing held on April 28, 2022
  - Motions Hearing held on May 13, 2022
  - Offer before Trial Began held on September 19, 2022
  - Jury Trial held on September 19, 2022
- 
- Individual Voir Dire held on September 19, 2022
  - Jury Trial held on September 20, 2022



SAMANTHA MUGRAGE  
CLERK OF COURTS  
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CASE 21-CR-104

- Individual Voir Dire held on September 20, 2022
  - Individual Voir Dire held on September 21, 2022
  - Motions Hearing held on September 22, 2022
  - Jury Trial held on September 23, 2022
  - Individual Voir Dire held on September 23, 2022
  - Jury Trial held on September 26, 2022
  - Individual Voir Dire held on September 26, 2022
  - Jury Trial held on September 27, 2022
  - Jury Trial held on September 28, 2022
  - Jury Trial held on September 29, 2022
  - In Chambers Hearing held on September 29, 2022
  - Jury Trial held on September 30, 2022
  - Jury Trial held on October 3, 2022
  - Jury Trial held on October 4, 2022
  - Motions Hearing held on November 9, 2022
- 
- Victim Impact Statement held on November 14, 2022
  - Sentencing Hearing held on November 14, 2022



Andrea VanInwagen  
Court Reporter

# APPENDIX C

GARPENTER LIPPS LLP

TELEPHONE: (614) 365-4100

180 NORTH LASALLE  
SUITE 2105  
CHICAGO, ILLINOIS 60601  
TELEPHONE (312) 777-4300

1025 CONNECTICUT AVENUE N.W.  
SUITE 1000  
WASHINGTON, DC 20036-5417  
TELEPHONE (202) 365-2808

ATTORNEYS AT LAW

280 PLAZA, SUITE 1300

280 NORTH HIGH STREET

COLUMBUS, OHIO 43215

WWW.CARPENTERLIPPS.COM

WRITER'S DIRECT NUMBER:

(614) 365-4100

gatterdam@carpenterlipps.com

January 6, 2026

Jaquan Hall  
A808049  
Ross Correctional Institution  
P. O. Box 7010  
16149 State Route 104  
Chillicothe, OH 45601

RE: State of Ohio v. Jaquan Hall  
Supreme Court of Ohio  
Case No. 25 AP 182 (21CR104)

Dear Jaquan:

Enclosed please find a copy of the Supreme Court Entry we received in the above referenced case. Please call me to discuss your next steps.

Very truly yours,



Kort Gatterdam

Enclosure

050-1563:946564

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

JAQUAN HALL,

Defendant-Appellant.

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Case No. \_\_\_\_\_

On Appeal from the Meigs  
County Court of Appeals  
Fourth Appellate District  
Case No. 22 CA 012

---

NOTICE OF APPEAL OF APPELLANT, JAQUAN HALL

---

James Stanley (0082250)  
Prosecuting Attorney  
Meigs County Prosecutor's Office  
117 West Second Street  
Pomeroy, Ohio 45769  
Telephone: (740) 992-6371  
Facsimile: (740) 992-6567  
jstanley@meigscountyprosector.com

COUNSEL FOR PLAINTIFF-APPELLEE

Kort Gatterdam\* (0040434)  
\*Counsel of Record  
Michael Rogers (0098948)  
CARPENTER LIPPS LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Telephone: (614) 365-4100  
Facsimile: (614) 365-9145  
gatterdam@carpenterlipps.com  
rogers@carpenterlipps.com

COUNSEL FOR DEFENDANT-APPELLANT

**NOTICE OF APPEAL OF APPELLANT, JAQUAN HALL**

Appellant, Jaquan Hall, hereby gives notice of appeal to the Ohio Supreme Court from a decision of the Meigs County Court of Appeals, Fourth Appellate District, journalized on August 29, 2025, in Case No. 22 CA 012.

This case involves a felony and, for the reasons set forth in the accompanying Memorandum in Support of Jurisdiction, raises substantial constitutional questions and involves matters of public or great general interest.

Respectfully submitted,

/s Kort Gatterdam

Kort Gatterdam\* (0040434)

*\*Counsel of Record*

Michael Rogers (0098948)

CARPENTER LIPPS LLP

280 Plaza, Suite 1300

280 North High Street

Columbus, Ohio 43215

Telephone: (614) 365-4100

Facsimile: (614) 365-9145

gatterdam@carpenterlipps.com

rogers@carpenterlipps.com

COUNSEL FOR DEFENDANT-APPELLANT

**CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the foregoing Notice of Appeal was sent on October \_\_, 2025, via U.S. mail to James Stanley, Prosecuting Attorney, Meigs County Prosecutor's Office, 117 W. Second Street Street, Pomeroy, Ohio 45769.

/s Kort Gatterdam

Kort Gatterdam

050-1561-940419

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, : Case No. \_\_\_\_\_  
 :  
 Plaintiff-Appellee, :  
 :  
 vs. : On Appeal from the Meigs  
 : County Court of Appeals  
 : Fourth Appellate District  
 JAQUAN HALL, : Case No. 22 CA 012  
 :  
 :  
 Defendant-Appellant. :

---

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT

---

James Stanley (0082250)  
Prosecuting Attorney  
Meigs County Prosecutor's Office  
117 West Second Street  
Pomeroy, Ohio 45769  
Telephone: (740) 992-6371  
Facsimile: (740) 992-6567  
jstanley@meigscountyprosector.com  
  
Counsel for Plaintiff-Appellee

Kort Gatterdam\* (0040434)  
*\*Counsel of Record*  
Michael Rogers (0098948)  
CARPENTER LIPPS LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Telephone: (614) 365-4100  
Facsimile: (614) 365-9145  
gatterdam@carpenterlipps.com  
  
Counsel for Defendant-Appellant

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**STATEMENT OF SUBSTANTIAL CONSTITUTIONAL QUESTION AND  
MATTER OF GREAT PUBLIC OR GENERAL INTEREST, AND WHY LEAVE TO  
APPEAL SHOULD BE GRANTED**

The murder of K.R. was the biggest news story of 2021 in Meigs County. It sprouted a grassroots “Justice for [K.R.]” movement—both on social media, and on the ground—to raise awareness of the crime. This pressure led to an unfair trial riddled with substantial constitutional errors, meriting acceptance and reversal. But there is more reason for this Court to accept the case. It presents multiple novel issues that this Court should consider to assist lower courts in the future.

*First*, it is well-settled that trial courts should change the venue of a trial where pervasive adverse publicity results in prejudice, and in some cases, prejudice may be presumed. *See, e.g., Skilling v. United States*, 561 U.S. 358, 382 (2010); *Rideau v. Louisiana*, 373 U.S. 723 (1963); *Irvin v. Dowd*, 366 U.S. 717, 722 (1961). But not all publicity is created equal. A grassroots campaign to raise public awareness of a murder in a county with more than a million residents and hundreds of murders every year may allow a court to find an unbiased jury through “careful and searching voir dire.” *State v. Mammon*, 2014-Ohio-1942, ¶ 55. But the same campaign in a county with less than 25,000 residents to raise awareness of the only murder in the county that year is very different. The Court should accept this case to instruct lower courts that such differences matter in determining whether a presumption of prejudice arises in change of venue motions.

*Second*, *Batson v. Kentucky* applies to peremptory jury challenges. 476 U.S. 79 (1986). Courts in Ohio simply reject discrimination claims in for-cause challenges without analysis. *See State v. Adams*, 2015-Ohio-3954, ¶ 158. This Court should accept the case to fill this analytical gap, and create a test for lower courts to use in cases “in which the facts undoubtedly suggest that the prosecutor has challenged for cause a juror for racially discriminatory reasons, and the trial court has erred in granting the motion.” *State v. Bowers*, 482 N.W.2d 774, 776 (Minn. 1992).

## STATEMENT OF THE CASE AND FACTS

On June 17, 2021, the Meigs County grand jury returned a four-count indictment against Defendant-Appellant Jaquan Hall (“Hall”). It alleged that on April 4, 2021, Hall committed aggravated murder, murder and conspiracy in the death of K.R. The state alleged that Hall and two others shot and killed K.R. while robbing his house.

Trial commenced on September 19, 2022. On October 4, 2022, the jury found Hall guilty of all charges. The trial court sentenced Hall to 3 years for the firearm specification consecutive to a prison sentence of life without parole for aggravated murder. A timely appeal followed with eight assignments of error. On August 29, 2025, the Fourth District Court of Appeals affirmed Hall’s convictions for aggravated murder and murder but reversed his conviction for conspiracy.

**FIRST PROPOSITION OF LAW: THE SIZE AND CHARACTERISTICS OF A JURY POOL MUST BE CONSIDERED WHEN ANALYZING WHETHER PERVASIVE, ADVERSE PUBLICITY REQUIRES A CHANGE OF VENUE.**

In the eighth smallest county in the State of Ohio, the murder of local football hero K.R. caused an uproar in the community. The victim’s family began a Facebook campaign—“Justice for [K.R.]”—that attracted widespread local media attention, including from both local newspapers and the local news channel. The campaign had a physical presence too, posting signs, and making t-shirts and bumper stickers. For months after K.R.’s death, people in Meigs county pressured law enforcement, the prosecutor, even the common pleas judge to get “Justice for [K.R.]”

This community pressure had a profound effect on jury selection in Hall’s trial. The vast majority of prospective jurors had pre-existing knowledge about the case. They saw the Facebook posts, bumper stickers, and signs; they read the newspapers, watched the news stories. On the first day of voir dire, the victim’s mother wore a t-shirt emblazoned with “Justice for [K.R.]” in front of the prospective jurors. Together, in a county with a population of just over 20,000 residents and

virtually no other exposure to homicides, this made it impossible for Hall to get a fair trial. This Court should accept this case to provide lower courts with more guidance on grappling with how the size and characteristics of a county's jury pool impacts pretrial publicity analyses.

"A fair trial in a fair tribunal is a basic requirement of due process." *Irvin v. Dowd*, 366 U.S. 717, 722 (1961). Constitutional due process requires a change of venue where adverse pretrial publicity is so pervasive that a defendant cannot receive a fair trial. *Id.* The Supreme Court has provided a non-dispositive list of factors to consider when determining whether prejudice should be presumed. *Skilling v. United States*, 561 U.S. 358, 382 (2010); *see also State v. Mammone*, 2014-Ohio-1942, ¶ 59. The first of these factors that the Court "emphasized" is "the size and characteristics of the community in which the crime occurred." *Skilling*, 561 U.S. at 382. The Court explained that pervasive adverse pretrial publicity "in a parish of only 150,000 residents" produces a much greater danger of tainting a jury pool than it does in Houston, "the fourth most populous city in the Nation," where "4.5 million individuals eligible for jury duty reside[]." *Id.*

The Court in *Skilling* did not expressly explain what it meant by the "characteristics" of a community, something this Court could shed greater light on for courts below. However, the Supreme Court did note with approval that the jury pool in Houston was both "large" and "diverse." *Id.* For "large," the Court cited *Rideau v. Louisiana*, 373 U.S. 723 (1963), where prejudice was presumed in a parish with only 150,000 residents. *Id.* And the Court's use of the word "diverse" in *Skilling* implies that the demographics of a jury pool matter, and that the less diverse a jury pool is, the more this first factor weighs in favor of presumed prejudice.

Another clue to the Supreme Court's use of the word "characteristics" may be found in *Mu'Min v. Virginia*, 500 U.S. 415, 429 (1991). The Court distinguished that case from *Dowd* based on the differences in the communities the jury was drawn from. *Id.* In doing so, the *Mu'Min* Court

noted that for *Dowd*, the relevant community “had a population in 1988 of 182,537, and this was one of nine murders committed in the county that year.” *Id.* But in *Mu’Min*, the relevant jury pool pulled from “the metropolitan Washington statistical area, which has a population of over 3 million, and in which, unfortunately, hundreds of murders are committed each year.” *Id.* Taken together, the population size, number of annual murders, and diversity are all important considerations when examining the “characteristics” of a community under *Skilling*.

Here, the population of Meigs County was 22,210 in the 2020 census, less than 15% of the 150,000 population the United States Supreme Court found significantly small even back in 1963. *Skilling*, 561 U.S. at 382 (citing *Rideau*, 373 U.S. 723). It is just north of 12% of the 182,537 population found significantly small in *Dowd* in 1988. *Mu’Min*, 500 U.S. at 429. Hall was the only person in the entire county indicted on a murder charge in 2022, compared to the nine murders the Supreme Court found significantly small in *Dowd*. *Id.* Lastly, Meigs County is not a “diverse” jury pool. *Skilling*, 561 U.S. at 382. As of the 2020 census, Meigs County is 95.36% white. In Hall’s case specifically, only two of the prospective jurors from the 250 called to service were Black.

These should have been key data points in analyzing Hall’s motions for a change in venue, both at trial and on appeal. But neither the trial court nor the Fourth District adequately considered the size or characteristics of the jury pool before discarding Hall’s constitutional claim. Accepting petitioner’s first proposition of law would allow this court to examine the significance of community sizes and characteristics with greater depth. It would also provide lower courts—particularly those in small counties like Meigs—better guidance on how to analyze motions to transfer venue in cases with pervasive adverse publicity.

The Supreme Court in *Skilling* also listed as nondispositive factors “whether the passage of time lessened media attention,” and “whether the jury’s conduct was inconsistent with a

presumption of prejudice.” *Mammone*, 2014-Ohio-1942 at ¶ 59. Neither the trial court nor the Fourth District considered either of these factors, but they both weigh in favor of Hall. The passage of time did not lessen the pretrial publicity. The “Justice for [K.R.]” initiative persisted from the time of the incident in April 2021 and through to trial. Prospective jurors stated that they had seen the “Justice for [K.R.]” signs since the previous year. Well-known local citizens made Facebook posts about the case that multiple prospective jurors read.

The jury’s conduct was not inconsistent with a presumption of prejudice. The Court in *Skilling* found it significant that the jury in that case acquitted the defendant of several counts. 561 U.S. at 383-84. Conversely, here, Hall was not acquitted of any counts. Thus, the Court’s comment in *Skilling* that “[i]t would be odd for an appellate court to presume prejudice in a case in which jurors’ actions run counter to that presumption” does not apply, and favors Hall. The courts below did not consider either of these factors, to Hall’s prejudice. This Court should accept the first proposition of law, illuminate the significance of the “size and characteristics” of a community, and instruct lower courts to consider it as a factor in change of venue motions.

**SECOND PROPOSITION OF LAW: A TRIAL COURT ABUSES ITS DISCRETION AND COMMITS STRUCTURAL ERROR WHEN IT ARBITRARILY REMOVES FOR CAUSE THE ONLY WILLING BLACK PROSPECTIVE JUROR IN A MURDER TRIAL AGAINST A BLACK DEFENDANT.**

When it comes to a trial court’s exercise of discretion, what’s good for the goose must be good for the gander. If one prospective juror is permitted to sit on a jury despite her brother’s incarceration, a second prospective juror should not be excused for cause based on her brother’s incarceration. To hold otherwise is the definition of arbitrary, and an arbitrary decision is an abuse of discretion. *See Mammone*, 2014-Ohio-1942 at ¶ 78: And when the arbitrarily excused juror is the only Black juror willing to serve on the jury in a murder trial against a Black defendant in a county that is more than 95% white, it is unconstitutional discrimination.

“The Constitution forbids striking even a single prospective juror for a discriminatory purpose.” *Flowers v. Mississippi*, 588 U.S. 284, 303 (2019); *see also Batson v. Kentucky*, 476 U.S. 79 (1986). When determining “whether racial discrimination occurred,” courts should consider “side-by-side comparisons of black prospective jurors who were struck and white prospective jurors who were not struck in the case.” *Id.* at 301-02. This Court has stated in passing that *Batson* does not apply to for cause challenges. *State v. Adams*, 2015-Ohio-3954, ¶ 158. Other courts have agreed, but at least one state has analyzed constitutional challenges to discriminatory for-cause juror exclusions nevertheless. *See State v. Bowers*, 482 N.W.2d 774, 776 (Minn. 1992) (“[A] case may arise in which the facts undoubtedly suggest that the prosecutor has challenged for cause a juror for racially discriminatory reasons, and the trial court has erred in granting the motion.”).

The Court should accept this proposition of law to reconsider its view expressed in *Adams*, and fashion a mode of analysis for lower courts to determine whether a for-cause challenge to a juror is pre-text for discrimination. Hall suggests this Court adopt “*Batson-plus*” analysis. In essence, such an analysis would allow an appellate court to examine for-cause challenges under *Batson* only if it finds the trial court abused its discretion in excluding a juror for cause.

R.C. 2945.25(B) permits a juror to be challenged for cause if she “is possessed of a state of mind evincing enmity or bias toward the defendant or the state.” But a juror may not be excused for cause “if the court is satisfied, from examination of the juror or from other evidence, that [s]he will render an impartial verdict according to the law and the evidence submitted to the jury at the trial.” *See also* Crim.R. 24(C)(9). A court’s exclusion of a juror for cause is subject to abuse of discretion review. *State v. Madison*, 2020-Ohio-3735, ¶ 20.

In this case, there were two prospective jurors who were Black. One was excused because of a recently murdered family member. The trial court excused the other Black juror under R.C.

2945.25(B), and abused its discretion in doing so. The court proffered two reasons dismissal: 1) her brother is convicted felon, and the court believed she had “very strong feelings about the judicial system”; and 2) her potential connections with the victim and Hall. The first reason is arbitrary because another juror was able to sit on the jury even though *her* brother was a convicted felon too. The second reason also fails. The court admitted that the juror “never directly talked” to either K.R. or Hall. And the juror stated several times that she would be fair and impartial.

In its recitation of the arguments, the Fourth District acknowledged this arbitrary reasoning from the trial court, but found no abuse of discretion notwithstanding. *Hall*, 2025-Ohio-3199 at ¶¶ 106, 112-16. The appellate court indicated that the trial court “concluded that the foregoing collection of factors rendered L.G. unsuitable to serve impartially, despite her assurances to the contrary,” implying that the trial court found the stricken juror not credible. *Id.* at ¶ 116. But this is belied by the record. The trial court explicitly made statements that bolstered the juror’s credibility, and it never once stated that it did not find the juror credible.

The Fourth District also found that even if excluding the juror was error, it was harmless under Crim.R. 52(A). *Id.* at ¶ 118. But if this Court adopts a “*Batson-plus*” analysis, harmless error does not apply because *Batson* violations are structural error. *State v. Garrett*, 2022-Ohio-4218, ¶ 70 (citing *United States v. McFerron*, 163 F.3d 952, 955-56 (6th Cir. 1998)). This Court should accept this proposition, adopt the “*Batson-plus*” framework, and reverse.

**THIRD PROPOSITION OF LAW: A DEFENDANT’S RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE OHIO AND UNITED STATES CONSTITUTIONS IS VIOLATED WHEN THE VICTIM’S MOTHER IS PERMITTED TO WEAR A T-SHIRT SEEKING JUSTICE FOR THE VICTIM DURING VOIR DIRE.**

“Central to the right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments, is the principle that ‘one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of ... circumstances not

adduced as proof at trial.’ “ *Holbrook v. Flynn*, 475 U.S. 560, 567, (1986) (quoting *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978)). When a courtroom “condition presents ‘an unacceptable risk ... of impermissible factors coming into play’ in the jury’s consideration of the case,” it violates the United States Constitution. *Flynn*, 475 U.S. at 570 (quoting *Estelle v. Williams*, 425 U.S. 501 (1976)). “[T]here is no serious question that [this standard applies to] the behavior of spectators,” and “the trial judge has an affirmative obligation to control the courtroom and keep it free from improper influence.” *Carey v. Musladin*, 549 U.S. 70, 82 (2006) (Souter, J., concurring).

This Court recently held that victims can create the kind of impermissible courtroom condition prohibited under *Estelle* and *Flynn*, and that the bar is not particularly high. *State v. Montgomery*, 2022-Ohio-2211, ¶ 19. Even where a victim has a right to be present, courts “must be vigilant to ward against scenarios that undermine a jury’s impartiality, erode the presumption of innocence, and allow for a setting that transmits too great an impression of guilt and that offends due process as being fundamentally unfair because of the inherent potential for prejudice.” *Id.*

In this case, the victim’s mother wore a “Justice for [K.R.]” t-shirt on the first day of jury voir dire. This t-shirt constitutes the exact kind of unfairly prejudicial courtroom condition that *Flynn*, *Estelle*, and *Montgomery* forbid. The state primarily argued that the victim’s mother should be allowed to wear the “Justice for [K.R.]” t-shirt “to express her grief[f].” But as Justice Souter warned, that expression of grief urged jurors to assuage that grief with a conviction.

The trial court stated it could not impinge on the victim’s mother’s freedom of expression, but this is absolutely false. When fair trial rights are at risk, the First Amendment rights of spectators must be curtailed. *Richmond Newspapers Inc. v. Virginia*, 448 U.S. 555, 564 (1980). The trial court has a duty to control its courtroom and guarantee due process and a fair trial. *Montgomery*, 2022-Ohio-2211 at ¶ 19; *Flynn*, 475 U.S. at 570. Here, the trial court chose the right

to grieve over Hall's right to a fair trial. The United States Supreme Court has reversed courts that have made similar decisions. This Court should accept the case to do the same.

**FOURTH PROPOSITION OF LAW: A DEFENDANT'S RIGHTS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND *MIRANDA V. ARIZONA*, 384 U.S. 436 (1966) ARE VIOLATED WHEN EVIDENCE OF A DEFENDANT'S POST-MIRANDA SILENCE WAS ADMITTED INTO EVIDENCE BY THE STATE.**

The Fifth Amendment to the Constitution of the United States provides that no person "shall be compelled in any criminal case to be a witness against himself." This Amendment is incorporated against the states. *Malloy v. Hogan*, 378 U.S. 1, 6 (1964).

A defendant's decision to exercise his right to remain silent is inadmissible at trial either for the purpose of impeachment or substantive evidence of guilt. *State v. Leach*, 2004-Ohio-2147, ¶¶ 16-18; *see also Doyle v. Ohio*, 426 U.S. 610, 616-18 (1976). Furthermore, evidence introduced regarding the defendant's exercise of his right to remain silent during interrogation violates the Due Process Clause of both the state and federal constitutions. *Leach*, 2004-Ohio-2147 at ¶18.

The state violated *Doyle/Leach* and the Ohio and United States Constitutions:

1. In opening statement, the prosecution stated Hall did not give more specifics about what happened and said *he would not cooperate* in their investigation.
2. A deputy testified that he reminded Hall that his *Miranda* rights still apply, and anything he said could be used against him, then testified that Hall made no further statements.
3. A BCI agent testified that Hall came in with a gunshot wound, used a fake name, and *did not want to be interviewed*.
4. Another deputy testified that police set up a meeting for Hall to come and talk to them but it never happened.

Through the statements of the prosecutor and law enforcement, the jury was asked to use Hall's silence against him, which the United States Constitution absolutely forbids. *Doyle*, 429 U.S. at 619. The Court should accept this proposition of law to instruct lower courts that repeated violations of a defendant's right to remain silent constitute plain error.

**FIFTH PROPOSITION OF LAW: IT IS IMPROPER TO PRESENT VICTIM-IMPACT EVIDENCE THAT INFLAMES THE JURY AND AFFECTS THE OUTCOME OF DEFENDANT'S TRIAL CONTRARY TO HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND A FAIR TRIAL.**

According to this Court, "[v]ictim-impact evidence that relates only to the personal characteristics of the victim and the emotional impact of the crimes on the victim's family, is generally inadmissible at the trial phase, but such evidence can be admissible if it also relates to the facts attendant to the offense." *State v. McKelton*, 2016-Ohio-5735.

Here, during the prosecutor's opening statement, without objection, the prosecutor stated:

[K.R.] was a young man who was only twenty five (25) years old, um, he was in the prime of his life. He graduated from Wahama High School. He excelled in football there and that helped him continue his education at the University of Charleston, where he played football and graduated with a degree in Business Marketing. He lived here in Pomeroy ... Uh, he was working with his father and his concrete business, and his plan one day was to take over that concrete business from his father once his father retired.

One BCI agent provided victim impact during his recap of his investigation. He testified that [K.R.] was "tough" and had the "will to live." He testified that according to his parents, K.R. was "very well-liked" in the community, an "all-star athlete, uh, just one of those guys that everyone liked, everybody wanted to know, everybody wanted to be around."

The improper introduction of this evidence deprived Hall of due process and the right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution and corresponding rights under the Ohio Constitution. *Payne v. Tenn.*, 501 U.S. 808, 825 (1991).

**SIXTH PROPOSITION OF LAW: THE TRIAL COURT VIOLATED DEFENDANT'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED A JUDGMENT OF CONVICTION BASED ON INSUFFICIENT EVIDENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF DEFENDANT'S RIGHTS UNDER THE UNITED STATES AND OHIO CONSTITUTIONS.**

A conviction based on legally insufficient evidence constitutes a denial of due process. *Tibbs v. Florida*, 457 U.S. 31, 45 (1982). To satisfy due process, a criminal conviction must be supported by evidence leaving no reasonable doubt about the defendant's guilt. *Jackson v. Virginia*, 443 U.S. 307, 316-18 (1979). When a court reviews a record for sufficiency, "[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

"The question to be answered when a manifest weight issue is raised is whether 'there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt.'" *State v. Sims*, 2022-Ohio-3365, ¶ 117 (4th Dist.). A challenge to the manifest weight of the evidence attacks the credibility of the evidence presented, and the reviewing court sits as a "thirteenth juror" and makes an independent review of the record. *State v. Thompkins*, 78 Ohio St.3d 380, 386-87 (1997). In performing this function, this Court must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine if the jury clearly lost its way. *State v. Martin*, 20 Ohio App.3d 172, 175, (1st Dist. 1983); *State v. Mattison*, 23 Ohio App.3d 10, 14 (8th Dist. 1985).

For the reasons below, the state did not present sufficient evidence of guilt, and Hall's conviction was against the manifest weight of the evidence.

1. **The Jury Should Not Have Relied on Co-defendant Richard Walker's Testimony.**

The state's entire case rested on co-defendant Richard Walker. At trial, Walker spun a story of Jaquan Hall's plot for revenge against [K.R.], supposedly because he snitched on Hall for selling marijuana but there was insufficient evidence that Hall was a drug dealer. [K.R.] identified his shooter only as "some black guy" but [K.R.] and Hall had known each other for years, he was not just some black guy. Walker's testimony was filled with lies and inconsistencies, all to guarantee him a deal with the state in exchange for his testimony.

On top of this, the physical evidence does not support Walker's story. There was no evidence that Hall's fingerprints were on the shell casings, bullets or any items in the house or near the scene. If Walker told the truth about Hall ransacking the place, where were the fingerprints? There was no evidence linking Hall to the crime found in his car, on his cell phone or on social media. There was no gunshot residue in the car or on Hall when he was questioned. The only physical evidence tying Hall to this crime was a pair of shorts and a Crown Royal bag.

2. **Chain of Custody and Authentication Issues Preclude Conviction.**

The state's case suffered from numerous chain of custody and authentication issues that show the state failed to present sufficient evidence of guilt. The most important was the lack of chain of custody of the Crown Royal bag that mysteriously appeared on the hood of a deputy's car. More generally, all the state's evidence was improperly handled, and could not be relied upon.

3. **The Jury Should Not Have Been Presented Letters Purportedly Written by Hall.**

Letters purportedly written by Hall were presented to the jury as evidence of guilt despite a lack of authentication that Hall wrote the letters and a lack of chain of custody for the letters.

The state did not present sufficient evidence of guilt. The state was so blinded by the need to get "Justice for [K.R.]," it ignored demonstrable falsehoods in its star witness Walker. In pursuit

of "Justice for [K.R.]," the state rushed its investigation, making sloppy mistakes in collecting and securing evidence, and drew bad conclusions from bad evidence. And because of the pressure that "Justice for [K.R.]" from the community, the state failed to present sufficient evidence of guilt.

**SEVENTH PROPOSITION OF LAW: A DEFENDANT MUST RECEIVE THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN ACCORDANCE WITH THE DEFENDANT'S RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTION 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION.**

The Sixth and Fourteenth Amendments to the U.S. Constitution, and corresponding rights under the Ohio Constitution, guarantee a criminal defendant the right to the effective assistance of counsel. Pursuant to *Strickland v. Washington*, 466 U.S. 668, 687 (1984), to prevail on an ineffective assistance of counsel claim, the appellant must demonstrate both (1) deficient performance, *i.e.*, performance fallen below an objective standard of reasonable representation, and (2) resulting prejudice, *i.e.*, errors on the part of counsel of a nature so serious that there exists a reasonable probability that, in the absence of those errors, the result of the trial court would have been different. *State v. Bradley*, 42 Ohio St.3d 136, (1989). A reasonable probability is one sufficient to undermine confidence in the outcome, which is less than a preponderance of the evidence. *Strickland*, 466 U.S. at 694.

Here, defense counsel performed deficiently, to Hall's prejudice, in several instances, any one of which warrants acceptance and reversal. Specifically, counsel performed deficiently by 1) failing to file a written motion for change of venue with evidentiary support; 2) failing to investigate or object to the jury venire under *Taylor v. Louisiana*, 419 U.S. 522 (1975); 3) failing to object to references to Hall's incarceration; 4) failing to object to narrative testimony and improper opinions; and 5) failing to object to the trial court's questioning of jurors and witnesses. It should be noted that "[t]he prejudice required for ineffective assistance of counsel is somewhat

less than that required for plain error.” *State v. Richmond*, 2006-Ohio-4518, ¶ 163 (2d Dist.).

Singularly or collectively, these errors deprived Hall of the effective assistance of counsel.

**EIGHTH PROPOSITION OF LAW: PROSECUTORIAL MISCONDUCT DEPRIVES A DEFENDANT OF HIS RIGHTS TO DUE PROCESS AND TO TRIAL BY AN IMPARTIAL JURY CONTRARY TO THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE OHIO CONSTITUTION.**

A defendant is entitled to a determination of guilt without prosecutorial misconduct rendering the proceeding fundamentally unfair. *Donnelley v. DeChristoforo*, 416 U.S. 637, 643 (1974). As the government’s representative, the prosecutor’s “obligation to govern impartially is as compelling as its obligation to govern at all.” *Berger v. United States*, 295 U.S. 78, 88 (1935). The test for prosecutorial misconduct is whether the improper conduct prejudicially affected the accused’s substantial rights and denied a fair trial. *Smith v. Phillips*, 455 U.S. 209, 219 (1982); *State v. Lott*, 51 Ohio St.3d 160, 165 (1990); *State v. Apanovitch*, 33 Ohio St.3d 19, 24 (1987). While a prosecutor “may strike hard blows, he is not at liberty to strike foul ones,” and must “refrain from improper methods.” *Berger*, 295 U.S. at 88.

The prosecutor committed misconduct in the following ways:

1. Initially during opening statement the prosecutor introduced victim impact evidence of all the good qualities about the victim.
2. The prosecutor also vouched for witnesses during both opening and closing. He also injected himself as a witness by telling the jury he believed a testifying co-defendant, and explaining why he made a deal with the witness, going as far as to say the witness would not get his deal if the prosecutor thought he lied on the stand.
3. The prosecutor also introduced improper argument contrary to *Bruton v. United States*, 391 U.S. 123 (1968). In opening the prosecutor said that a non-testifying co-defendant said

something incredibly important during one of his interviews that led to the arrest of third suspect. The prosecutor also said the same co-defendant helped the state with letters Hall sent him. The prosecutor repeated some of this evidence in closing argument.

4. The prosecution repeatedly introduced evidence contrary to *State v. Leach*, 2004-Ohio-2147 ¶16-18; *see also Doyle v. Ohio*, 426 U.S. 610, 616-18 (1976). The prosecution encouraged the jury to use Hall's exercise of his rights against him.

Singularly or collectively, the prosecutorial misconduct deprived Hall of his State and Federal Constitutional rights to due process and an impartial jury.

#### CONCLUSION

For the foregoing reasons, this matter presents substantial constitutional questions, and also is a matter of great public or general interest. Accordingly, Defendant-Appellant Jaquan Hall respectfully asks this Court to accept jurisdiction for this appeal, and ultimately for this Court to reverse the Fourth District.

Respectfully submitted,

/s/ Kort Gatterdam  
Kort Gatterdam\* (0040434)  
*\*Counsel of Record*  
Michael Rogers (0098948)  
CARPENTER LIPPS LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Telephone: (614) 365-4100  
Facsimile: (614) 365-9145  
gatterdam@carpenterlipps.com

Counsel for Defendant-Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the foregoing Memorandum in Support of Jurisdiction was served October 10, 2025 via U.S. mail upon: James Stanley, Prosecuting Attorney, Meigs County Prosecutor's Office, 117 W. Second Street Street, Pomeroy, Ohio 45769.

/s Kort Gatterdam

Kort Gatterdam

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,

Plaintiff-Appellee,

vs.

JAQUAN HALL,

Defendant-Appellant.

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Case No. \_\_\_\_\_

On Appeal from the Meigs  
County Court of Appeals  
Fourth Appellate District  
Case No. 22 CA 012

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APPENDIX TO MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT

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*State v. Hall*, 2025-Ohio-3199 (4th Dist.), Opinion and Judgment Entry, filed  
August 29, 2025 .....

Exhibit A

IN THE COURT OF APPEALS OF OHIO  
FOURTH APPELLATE DISTRICT  
MEIGS COUNTY

**FILED**  
COURT OF APPEALS  
2025 SEP 25 AM 10:33

Case No. 22CA12  
SAMANTHA HUBRAGE  
CLERK OF COURTS  
MEIGS COUNTY, OHIO

State of Ohio,

Plaintiff-Appellee,

v.

Jaquan Hall,

Defendant-Appellant.

**MAGISTRATE'S ORDER**

Appellant, Jaquan Hall, requested counsel be appointed for purposes of filing an appeal with the Supreme Court of Ohio. Upon consideration, the motion is **GRANTED**. Attorney Kort Gatterdam, 280 North High Street, Suite 1300, Columbus, OH 43215, is appointed to represent appellant.

The clerk is **ORDERED** to serve a copy of this order on all counsel of record and unrepresented parties at their last known addresses by ordinary mail. **IT IS SO ORDERED.**

**FOR THE COURT**



Tasha R. Ruth  
Magistrate

# APPENDIX D

# The Supreme Court of Ohio

OFFICE OF THE CLERK

65 SOUTH FRONT STREET, COLUMBUS, OH 43215-3431

CHIEF JUSTICE  
SHARON L. KENNEDY

CLERK OF THE COURT  
JUSTIN T. KUDELA

JUSTICES  
PATRICK F. FISCHER  
R. PATRICK DEWENE  
JENNIFER BRUNNER  
JOSEPH T. DETERS  
DANIEL R. HAWKINS  
MEGAN E. SHANAHAN

TELEPHONE 614.387.9530

[www.supremecourt.ohio.gov](http://www.supremecourt.ohio.gov)

January 29, 2026

Jaquan L. Hall A808049  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, OH 45601

Re: Supreme Court of Ohio Case No. 2025-1340  
*State of Ohio v. Jaquan Hall*

Dear Mr. Hall:

The enclosed motion for reconsideration was not filed because it is untimely. Pursuant to Rule 18.02(A), any motion for reconsideration must be filed within ten days after the date of the Supreme Court's decision. As the enclosed copy of the docket indicates, the court's decision in your case was issued on December 23, 2025. Therefore, your motion for reconsideration was due in the clerk's office no later than January 2, 2026, but it was not received until January 29, 2026.

For additional information, please refer to the copy of the Rules of Practice on file with your institution's library.

Sincerely,  
Clerk's Office

Enclosures

## CASE INFORMATION

## GENERAL INFORMATION

Case: **GEN-2025-1340** Jurisdictional AppealFiled: **10/10/2025**

Case is disposed

State of Ohio  
v.  
Jaquan Hall

## PRIOR JURISDICTION

<u>Jurisdiction Information</u>	<u>Prior Decision Date</u>	<u>Case Number(s)</u>
Meigs County, 4th District Court of Appeals	08/29/2025	22CA12

## PARTIES and ATTORNEYS

Jaquan Hall; Appellant

Represented by: Kort Gatterdam, Counsel of Record

Represented by: Michael Rogers

State of Ohio; Appellee

Represented by: James Stanley, Counsel of Record

## DOCKET ITEMS

10/10/25 Notice of appeal of Jaquan Hall  
*Filed by: Jaquan Hall*

10/10/25 Memorandum in support of jurisdiction  
*Filed by: Jaquan Hall*

10/10/25 Lower court decision  
*Filed by: Jaquan Hall*

10/10/25 Financial disclosure form  
*Filed by: Jaquan Hall*

10/10/25 Copy of entry of appointment of counsel  
*Filed by: Jaquan Hall*

10/10/25 Copy of notice of appeal sent to clerk of court

11/10/25 Notice of appearance of James K. Stanley as counsel of record  
*Filed by: State of Ohio*

11/10/25 Memorandum in response to jurisdiction  
*Filed by: State of Ohio*

12/23/25 **DECISION: Jurisdiction declined. See announcement at 2025-Ohio-5661.**

01/05/26 Copy of entry sent to lower court clerk

\*\*\*\*\* End of case information \*\*\*\*\*

IN THE OHIO SUPREME COURT

STATE OF OHIO, : Case No.: 2025-1340  
Plaintiff-Appellee, :  
v. : On Appeal from the Meigs  
 : County Court of Appeals  
 : Fourth Appellate District  
 : Court of Appeals  
 : Case No.: 22CA12  
JAQUAN L HALL :  
Defendant-Appellant :

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MOTION FOR RECONSIDERATION PURSUANT TO  
S.CT.PRAC.R. 18.02(A)

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Now comes the **Appellant-Defendant** JAQUAN L. HALL respectfully asking that this Court to grant a delayed reconsideration pursuant to S.Ct.Prac.R. 18.02(A) from the Court decision/judgment entry dated December 23, 2025. Further details will be explained in attached memorandum in support.

*Peace. Love. Positivity,*

JaQuan L. Hall

*JaQuan L. Hall # 808-049*  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, Ohio 45601

RECEIVED  
JAN 29 2026  
CLERK OF COURT  
SUPREME COURT OF OHIO

**MEMORANDM IN SUPPORT**

The defendant was served a copy of the ruling January 16, 2026, so the date this reconsideration has been sent falls within the guidelines presented in this motion. This court has an obligation to ensure justice is carried out through the entire state of Ohio, at all levels. The case presented today is indeed a seminal case. The questions that the public would need answered are:

1. How are law enforcement agencies allowed to take evidence from a crime scene, prior to documenting what they claimed to be there, and introduce evidence into the crime scene hours later? And the State of Ohio can use this to convict someone?
2. If a State actor committed crimes to illegally obtain warrants, evidence, and an indictment, where does that leave the defendant? And how could the higher courts make a true decision based upon illegal documentation and evidence?
3. When a defendant is sentenced to Life, without the possibility of parole, was convicted of aggravated murder without establishing a motive or prior calculation, is this a miscarriage of justice?
4. If the location of a crime is two blocks, (less than .2miles) away from the trial court, is this not prejudicial and an unfair towards the defendant?
5. And lastly, when a defendant is a minority in a county, and their group is excluded or available from sitting on trial, how does the court justify that the defendant was judged by his or her peers? Especially when the majority of the jurors (as the court may see, their "peers") stated that the defendant needs to try their case somewhere else?

JaQuan L. Hall – A#808-049

Exhibit A

State v. Hall, Case No. 21 CR 104

JaQuan Hall underwent a trial in which he had no opportunity to receive even a measure of justice. This is not a matter of opinion, but fact. The officers who responded to the shooting in the early morning hours of April 4, 2021, undermined the integrity of the investigation from the outset. Critical and crucial evidence was removed from the scene before it was documented, photographed, or marked, thereby depriving both the victim and his family of a fair and reliable inquiry into what occurred.

Officer Mohlar testified that he personally removed several items from the scene. He was unable to recall where he placed them afterward and stated that he was “not thinking” because the situation felt “extreme.” If an officer admits that he was not thinking clearly and that his actions were influenced by the intensity of the moment, then his recollection of how evidence was located, handled, or observed cannot reasonably be trusted. His conduct compromised the integrity of the entire crime scene and the reliability of the evidence presented at trial.

Hall was convicted on the basis of compromised evidence and a coerced, unreliable “plea-deal” testimony from Richard Walker Jr., who was himself a suspect in this case. In Walker initial interview with lead Detective Stewart, he stated that Hall “Did not have a gun” and that the victim “Shot JaQuan” before the subsequent events unfolded. After Walker indicated, “I want to tell you the story you want to hear,” Detective Stewart proceeded to feed him details about the crime scene.

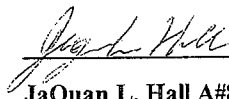
At trial, Walker testified that he was not attempting to protect Hall during the interview, he admitted that he gave statements because he knew his “life was on the line.” Walker had originally been charged with Aggravated Murder through a criminal-complaint indictment. The State of Ohio never presented his case to a grand jury, because there was no evidence linking him to the offense under conspiracy or complicity theory. Despite this, he was charged with Aggravated Murder and never once asserted actual innocence. Knowing he was facing a life-ending sentence, he sought a deal that would guarantee him the possibility of freedom- and his testimony against Hall, became the price of that deal.

Throughout Walkers' testimony, no plan was described, no coordinated conversation was mentioned, and he demonstrated no knowledge that the victim was a large-scale drug dealer. Detectives repeatedly state that evidence showed the victim fired back at his attackers, establishing that the victim had and used a gun. Yet, Walkers' testimony directly contradicted this: in his version, the victim never even touched a gun. So what changed between Walkers' initial statement-Where he said Hall did not have a gun and that the victim shot JaQuan, which did aligned with the physical evidence-and the version gave on the stand? The answer is simple: he received a plea deal.

Is this what the judicial process in Ohio is meant to look like? Should anyone be sentence to life without the possibility of parole after a process tainted by compromised evidence and serious due process failures? Should those responsible for misconduct-whether through negligence, coercion, or manipulation-be allowed to walk away without accountability?

These Question can only be answered by the leadership of the State of Ohio. I am asking for your commitment to meaningful justice reform. Stand for Justice, transparency, and true reform-Not only for JaQuan L. Hall, but for all individuals whose rights depends on a fair, and truthful, legal system.

*Peace. Love. Positivity.*



JaQuan L. Hall A#808-049

Ross Correctional Insitution

P.O. Box 7010 \* Chillicothe, OH 45601

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## ASSIGNMENTS OF ERROR PRESENTED FOR REVIEW

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**THE TRIAL COURT ERRED IN REFUSING TO CHANGE VENUE. SAID ERROR DEPRIVED APPELLANT OF HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR AND IMPARTIAL JURY AND DUE PROCESS OF LAW.** (R. 353, 354, 355, Transcript Notebooks 1-3, 9/19/22, 9/20/22, 9/21/22, 9/23/22, 9/26/22, 9/27/22; R. 353, Book 1, 9/19/22 at 111-114; R. 354, Book 2, 9/20/22, 9/21/22, R. 355, Book 3, 9/23/22, 9/26/22, 9/27/22; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial)

### SECOND ASSIGNMENT OF ERROR

**APPELLANT WAS DEPRIVED OF HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR AND IMPARTIAL JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS WHEN THE ONLY AFRICAN-AMERICAN JUROR WILLING TO SIT WAS IMPROPERLY REMOVED FOR CAUSE.** (R. 353, Book 1, 9/19/22 at 254; R. 355, Book 3, 9/26/22, at 89-126; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial)

### THIRD ASSIGNMENT OF ERROR

**THE TRIAL COURT DEPRIVED APPELLANT OF HIS RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE OHIO AND UNITED STATES CONSTITUTIONS WHEN THE COURT ALLOWED THE MOTHER OF THE VICTIM TO WEAR A "Justice for Kane" T-SHIRT DURING INDIVIDUAL VOIR DIRE IN CHAMBERS.** (R. 353, Book 1, 9/19/22 at 58, 78-9, 2-299; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial)

### FOURTH ASSIGNMENT OF ERROR

**APPELLANT'S RIGHTS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND *MIRANDA V. ARIZONA*, 384 U.S. 436 (1966) WERE VIOLATED WHEN EVIDENCE OF APPELLANT'S POST-*MIRANDA* SILENCE WAS ADMITTED INTO EVIDENCE BY THE STATE.** (R. 355, Book 3, 9/27/22 at 143-4; 163-8; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial)

#### **FIFTH ASSIGNMENT OF ERROR**

**THE PROSECUTION PRESENTED IMPROPER VICTIM-IMPACT EVIDENCE THAT INFLAMED THE JURY AND AFFECTED THE OUTCOME OF APPELLANT'S TRIAL CONTRARY TO APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND A FAIR TRIAL.** (R. 355, Book 3, 9/27/22 at 128; R. 357, Book 5, 9/30/22 at 223, 225)

#### **SIXTH ASSIGNMENT OF ERROR**

**THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED A JUDGMENT OF CONVICTION BASED ON INSUFFICIENT EVIDENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE UNITED STATES AND OHIO CONSTITUTIONS.** (R. 355, Book 3, 9/27/22; R. 356, Book 4, 9/28/22, 9/29/22; R. 357, Book 5, 9/30/22, 10/3/22, 10/4/22, 11/9/22; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial; R. 331, Sentencing Entry)

#### **SEVENTH ASSIGNMENT OF ERROR**

**APPELLANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTION 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION.** (R. 353, 354, 355, Transcript Notebooks 1-3, 9/19/22, 9/20/22, 9/21/22, 9/23/22, 9/26/22, 9/27/22; R.356, Book 4, 9/28/22 at 217; R. 357, Book 5, 9/30/22 at 202; R. 357, Book 5, 10/3/22 at 146; R. 357, Notebook 5, 10/4/22 at 13, 44-45; R. 356, Book 4, 9/28/22 at 212-214; R. 357, Notebook 5, 9/30/22 at 222-233; R. 357, Notebook 5, 10/3/22 at 70; R. 357, Book 5, 10/3/22 at 28; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial)

#### **EIGHTH ASSIGNMENT OF ERROR**

**PROSECUTORIAL MISCONDUCT DEPRIVED APPELLANT OF HIS RIGHTS TO DUE PROCESS AND TO TRIAL BY AN IMPARTIAL JURY CONTRARY TO THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE OHIO CONSTITUTION.** (R. 355, Book 3, 9/27/22 at 128-9, 147, 157; R. 357, Book 5, 10/4/22 at 10-11; R. 355, Book 3, 9/27/22 at 143-4; 163-8; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial)

## STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

1. Did the trial court err in refusing to change venue when the community was saturated with pretrial publicity such that Appellant could not obtain a fair trial?
2. Did the trial court err in excusing the only African American juror when she consistently stated she could be fair and impartial?
3. Did the trial court err in allowing the victim's mother to wear a "Justice for Kane" t-shirt during individual voir dire?
4. Was it error to admit evidence that Appellant refused to speak to police?
5. Was it error to admit victim impact evidence as to the victim's good character traits?
6. Did the State of Ohio present sufficient evidence to convict Appellant, and were the convictions against the manifest weight of the evidence?
7. Was Appellant deprived of the effective assistance of counsel?
8. Did prosecutorial misconduct deprive Appellant of a fair trial?

## STATEMENT OF THE CASE

On June 17, 2021, the Meigs County grand jury returned a four-count indictment against Defendant-Appellant Jaquan Hall (“Hall”). (R. 2, Indictment.) The indictment alleged that on April 4, 2021, Hall committed the offenses of aggravated murder contrary to R.C. 2903.01(A), murder contrary to R.C. 2903.02(A), complicity to aggravated murder or murder contrary to R.C. 2923.03(A)(2), and conspiracy contrary to R.C. 2923.01(A)(2). Further, the indictment included a firearm specification for both the aggravated murder and murder counts.

Prior to trial, Hall filed a series of suppression motions on February 15, 2022. (R. 91 to 101, Suppression Motions.) After a hearing held March 25, 2022, the trial court denied each motion. (R. 170, Journal Entry.) Hall later filed another motion to suppress DNA evidence (R. 183, Motion to Suppress), which the trial court also denied following a hearing held April 28, 2022. (R. 204, Journal Entry.)

Trial commenced on September 19, 2022. The trial court conducted individual voir dire of potential jurors in chambers to explore issues of pretrial publicity. (R. 353, Book 1, 9/19/2022.) During voir dire, attorney George Cosenza—counsel for Hall—made two oral motions for change of venue, but never filed a written motion. (*See Id.* at 112-13; R. 354, Book 2, 9/20/22 at 3). The court denied the oral motion both times. (R. 353, Book 1, 9/19/22 at 113-14; R. 354, Book 2, 9/20/22 at 14.)

On October 4, 2022, the jury found Hall guilty of all charges. (R. 331, Judgment Entry.) On November 10, 2022, the trial court denied Hall’s motion for a new trial. (R. 325, Journal Entry.) At the sentencing hearing held November 14, 2022, the parties stipulated, and the trial court agreed, that the four counts merged. (R. 331, Judgment Entry.) The trial court subsequently sentenced Hall to 3 years for the firearm specification consecutive to a prison

sentence of life without parole for aggravated murder. (R. 331, Judgment Entry.)

On December 9, 2022, Hall timely filed a notice of appeal. (R. 339, Notice of Appeal.)<sup>1</sup>

### **STATEMENT OF FACTS**

#### **1. Facts Related to Incident.**

On April 4, 2021, Kane Roush (“Roush”) died after receiving four gunshot wounds and four shotgun wounds during a home invasion. (R. 356, Book 4, 9/28/22 at 174.) Before his death, an injured Roush fled towards Dave Berry’s (“Berry”) residence—his neighbor. *Id.* at 45. *Id.* When Berry asked Roush who shot him, Roush said “*I don’t know, some black guy.*” *Id.* at 24 (emphasis added). But to Kane Roush, Jaquan Hall was not just “some black guy.” The two of them played football together at the University of Charleston. *Id.* at 203. Further, Hall “was buying smoke and all that stuff off Kane.” *Id.* The testimony of Sgt. Brandy King of the Meigs County Sheriff Office supported this. After searching Roush’s home with BCI, King found a long gun and numerous bags of marijuana. *Id.* at 147-149. Based on experience, Sgt. King opined the occupant (Roush) was trafficking in marijuana. *Id.* at 163.

When EMS arrived on the scene, Roush only said “don’t let me die.” *Id.* at 58. EMS person Steven Vincent testified that Roush went unresponsive after they loaded him in the ambulance, and was never responsive again. *Id.* at 61.

#### **2. The Investigation of the Scene.**

Sgt. Donald Mohler was one of the first officers on the scene. *Id.* at 69. He testified that Roush’s house was in disarray with rounds of ammunition, some spent, scattered on the floor. *Id.* at 70. Sgt. Mohler stated he removed a pair of shorts and shotgun rounds from the roadway where they were found. *Id.* at 71-72. He admitted he had a cell phone camera, but did not use it

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<sup>1</sup> Other motions filed, hearings held, or other facts are discussed more fully in the applicable argument sections, *infra*.

to take pictures of the shotgun rounds and shorts before removing them. *Id.* at 95-96. Instead, he replaced them with ink pens. *Id.* Sgt. Mohler testified that he saw a Crown Royal bag<sup>2</sup> on top of Deputy Scott Spikers car, but had no idea how it got there. *Id.* at 70.

Deputy Marty Hutton testified that contrary to Sgt. Mohler's testimony, he did not see Sgt. Mohler place any evidence in Deputy Hutton's car. *Id.* He never saw the Crown Royal bag anywhere. *Id.* at 120. Sgt. Frank Stewart also testified nobody knew how the Crown Royal bag got on Deputy Spiker's cruiser. (R. 357, Book 5, 10/3/22 at 126.) Deputy Spiker testified that he saw a Crown Royal bag laying on the hood of his cruiser. *Id.* at 199. He stated he did not know who placed it there and did not see anyone around his cruiser. *Id.* at 201.

BCI Agent Matthew Austin testified to numerous pieces of evidence he collected. (R. 356, Book 4, 9/29/22 at 14-236.) He said he secured the Crown Royal bag in the back of his car. *Id.* at 25. He said there were no signs of forced entry into Roush's home. *Id.* at 37. Agent Austin attempted to place the pair of shorts and two shotgun shells Sgt. Mohler removed back in the same spot marked by the ink pens and then photographed them. *Id.* at 47, 61. He gave the items to Deputy Riley. *Id.* at 51. Agent Austin testified nobody knew how the Crown Royal bag, with the empty box of shells inside, got on Deputy Spiker's cruiser. *Id.* at 251. No fingerprints were found on Roush's door. *Id.* at 260.

### 3. The Examination of Evidence.

The state brought forth only two pieces of evidence from the crime scene it claims contained Hall's DNA: a pair of shorts, and the Crown Royal bag. Logan Schepeler did the DNA testing. He testified the shorts found in the roadway near Roush's house were consistent with Hall's DNA. *Id.* at 291. He testified the outside of the Crown Royal bag had a mixture of

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<sup>2</sup> The whiskey brand Crown Royal sells its bottles in draw-string bags.

two persons, Hall and co-defendant Keontae Nelson ("Nelson"). *Id.* at 299. Mr. Schepeler stated he never handled the Crown Royal bag. *Id.* at 303. He agreed that Nelson could have transferred Hall's DNA to the Crown Royal bag. *Id.* at 304. He also agreed Hall's DNA was not on the drawstring of the Crown Royal bag but Nelson's was. *Id.* at 305. Further, Hall's DNA was not on the empty box of shotgun shells inside the Crown Royal bag. *Id.* There was no DNA found on the 2 shotgun shells or other casings found in the roadway. *Id.* at 310. Finally, there was no blood found on the shorts in the roadway. *Id.* at 309.

Deputy Andy Myers testified to chain of custody issues. He received over 100 pieces of evidence. (R. 357, Book 5, 9/30/22 at 120.) Deputy Myers admitted he did not prepare the chain of custody report. *Id.* at 171. The report listed 18 items, yet 45 items were recovered from the crime scene according to Agent Austin's report. *Id.* at 171-72. Deputy Myers agreed the reports show Austin released the 45 items to Deputy Riley. *Id.* at 172-73. Myers agreed there was a discrepancy between chain of custody reports. One stated Sgt. Mohler turned evidence into the evidence room, while another says Agent Austin turned it over to Deputy Riley. *Id.* at 177-80.

Deputy Thomas Dillard was an evidence technician too. (R. 357, Book 5, 10/3/22 at 21-24.) He testified that in May, 2021, when evidence items were brought to the evidence room, some items were not checked in properly. *Id.* at 27. Deputy Dillard testified he was new, and had not received proper training on evidence collection, checking in, and storage. *Id.* at 28. He admitted he overlooked things in this case. *Id.* at 27-28. He admitted he failed to make a record of what was given to him. *Id.* at 49. He simply took the box and put it in the evidence locker without logging the items in. *Id.* Dillard admitted that at the time of trial, he still was not properly trained on how to handle evidence or to interpret the reports. *Id.* at 51.

4. Community Reaction to the Incident.

Although the record does not contain the actual news publications and Facebook posts themselves, questions by the State during voir dire and the prospective jurors' answers demonstrate that there was widespread publicity for this case in Meigs County leading up to the trial. Almost immediately after the shooting, a campaign in Meigs County began called "Justice for Kane." The campaign involved making and distributing yard signs stating "Justice for Kane" in Spring of 2021. (R. 353, Book 1, 9/19/22 at 170.) Nine prospective jurors noted that these signs were "everywhere," and the vast majority of prospective jurors stated they had seen these signs. *Id.* at 18 (Grubb); *Id.* at 89 (Tuttle); *Id.* at 181 (Amberger); *Id.* at 243 (Epling); R. 354, Book 2, 9/20/22 at 93 (Brown); *Id.* at 129 (Short); *Id.* at 273 (Handley); R. 354, Book 2, 9/21/22 at 94 (Hill); R. 355, Book 3, 9/26/22 at 57 (Brickles). Additionally, the campaign involved a Facebook hashtag bringing attention to the case. (*See, e.g.*, R. 354, Book 2, 9/20/22 at 38; R. 354, Book 2, 9/21/22 at 21.) Finally, the "Justice for Kane" initiative created bumper stickers and t-shirts. Indeed, Mrs. Roush—the victim's mother—wore a "Justice for Kane" t-shirt to the jury voir dire on the first day of trial. (R. 353, Book 1, 9/19/22 at 58.)

Outside the "Justice for Kane" initiative, this case received widespread media attention in Meigs County. An individual with a wide following in the county named Chuck Knight discussed the death of Kane Roush at length on Facebook. (*See, e.g.*, R. 354, Book 2, 9/20/22 at 193 (prospective juror noting Chuck Knight "has a reputation ... people like to [] enjoy"); R. 354, Book 2, 9/21/22 at 159-60 (prospective juror stating he "obviously" knew who Chuck Knight is, and Knight "always posts something about State versus Hall").) Further, two local newspapers—the Meigs Independent and the Daily Sentinel—ran stories on the case. (*See* R. 354, Book 2, 9/20/22 at 247.) Finally, the local news on Channel 3 ran stories about the incident.

(See R. 353, Book 1, 9/19/22 at 68.)

**5. Facts Related to Jury Selection.**

When the case proceeded to trial, the parties individually voir dired prospective jurors. (R. 353, Book 1, 9/19/22.) Each juror was questioned at length about the publicity of the death of Roush. Every single person on the jury stated during voir dire that they knew information about the case from an outside source in some way. *See Id.* at 119-24 (Juror Hannum); R. 354, Book 2, 9/20/22 at 19-20 (Juror Lukowski); *Id.* at 37-42, 45-46 (Juror Hayman); *Id.* at 63 (Juror Frith); *Id.* at 72, 75-76 (Juror Rosler); *Id.* at 109-10, 116 (Juror Kauff); *Id.* at 206-08 (Juror Thomas); *Id.* at 217 (Juror McMillin); R. 354, Book 2, 9/21/22 at 5-11, 14 (Juror Oldaker); *Id.* at 32-46 (Juror Rees); *Id.* at 53-56 (Juror Anderson); *Id.* at 77-86 (Juror Ohlinger); *Id.* at 154-64, 167 (Juror Bechtle); R. 355, Book 3 9/26/22 at 130-31 (Juror Ball); *Id.* at 152-53 (Juror Filkins).

During individual voir dire conducted in the trial court's small chambers, both of Kane Roush's parents were present, sitting very close to prospective jurors. (R. 353, Book 1, 9/19/22 at 58.) During the first day with prospective jurors, Mrs. Roush wore a t-shirt stating "Justice for Kane." *Id.* Upon discovering the t-shirt, defense counsel objected. *Id.* In response, the state argued that "[i]t's her right to express her grie[f] ... She's just wanting... it's just her expression of the desire to get justice for her son. She's just lost her son, she's expressing her desire for justice to be reached in this case." *Id.* The trial court overruled the objection, finding that Ms. Roush "ha[d] the right to free[] expression to wear what she wants to." *Id.* at 59.

Only two African American jurors were called to serve, and one was immediately excused because the juror's son in law had recently been murdered. (R. 353, Book 1, 9/19/22 at 254.) Prospective Juror Garnes was the only African-American juror to be called for service able to serve. (R. 355, Book 3, 9/26/22 at 125.) She was questioned at length. She stated nothing

going on in her personal life would affect her ability to serve. *Id.* at 90-91. The court noted it had known Juror Garnes “all my life,” and told her to bring up her brother, who was convicted of kidnapping and was in prison. *Id.* at 91, 110. When asked if this affected her views about law enforcement, Garnes stated, “No. Right is right and wrong is wrong.” *Id.* at 92.

Juror Garnes was asked several times whether she believed she could be a fair and impartial juror, and each time, she answered affirmatively. Garnes indicated she overheard others discussing the case, but she had not discussed it. *Id.* at 92. She recalled when others brought it up, she said “nobody has really nothing to say, not yet, not until the Court comes in.” *Id.* at 97. Juror Garnes stated she never formed an opinion about any aspect of the case. *Id.* at 98. She could not even recall anything specific others had said in her presence. *Id.*

Juror Garnes recalled that family members and friends showed her opinions about the case on Facebook. *Id.* at 100. But she was clear that nothing she saw on Facebook would affect her ability to be a juror, and it would not sway her any way. *Id.* at 102. She had not seen the “Justice for Kane” Facebook page, though like many other jurors, she had seen yard signs. *Id.* Friends and family had offered to show her things but she declined. *Id.* at 103. The prosecutor again asked her if there is anything she could think of that would prevent her from being fair and impartial, and again she said no. *Id.* at 109.

Garnes stated that Roush had been over to her house before, although she had never met him. *Id.* at 111-112. She stated Roush spent time at her house with her son because they were friends, but she was not there because she was working. *Id.* at 114. Juror Garnes also described a time when she saw Hall, but again, she never met him. Garnes was in a car with friends, and they had to make a stop. *Id.* at 118. Her friends got out to talk to a person she believed was Hall. *Id.* at 119. She said Hall did not converse much with her friends, and never with her. *Id.* at 120.

Juror Garnes averred that nothing about her friends talking to Hall would affect her ability to be fair and impartial. *Id.* Further, nothing about Roush coming to her house while she was not home would cause her to be unfair. *Id.* at 121. She stated she just listens, pays attention and is honest. *Id.* She stated she had no concerns with being a juror.

The prosecution moved to excuse Juror Garnes and the defense objected. *Id.* at 125. The defense noted that Garnes was the only African American juror interviewed. *Id.* The defense noted she never met Roush and said she could be fair and impartial. *Id.* The prosecution stated only that others excused because they worked with Roush's mother should be unexcused for cause. *Id.* The prosecution also sought removal because Roush was in her home. *Id.* at 126.

The trial court granted the prosecution's motion. *Id.* at 126. The trial court stated it was "as concerned as anything about her brother." *Id.* The trial court opined "she probably has very strong feelings about the judicial system because of her brother." *Id.* The trial court then referenced the connections with Roush and Hall. *Id.*

#### 6. Testimony of Richard Walker.

At trial, the State's star witness was co-defendant Richard Walker ("Walker"). He admitted he was facing a life sentence for killing Roush, but in exchange for testifying, he received a 15-21 ½ year sentence. (R. 357, Book 5, 10/3/22 at 173.) Walker stated he used to hang out with Hall and knew him a little bit. *Id.* at 165-66. He testified it was Hall's idea to kill Roush because he was telling on Hall for selling marijuana, despite the evidence that Hall *got* marijuana *from* Roush. *Id.* at 178, 180.

Walker testified that a week after the plan was supposedly made, Hall, Walker, and Nelson went to Roush's house the early morning hours of April 4, 2021. Walker said Nelson had the 45 caliber handgun, and Walker testified that Hall had a shotgun. *Id.* at 183. According

to Walker, Hall gave Walker a pink and black gun, but it did not work. *Id.* at 185. Nelson knocked on the door and asked to use Roush's phone. *Id.* at 187. Walker claimed that neither Nelson nor Walker knew Roush. *Id.* at 188. After Roush agreed to let Nelson use the phone, Walker testified that Hall came and hit him with the butt of the shotgun. *Id.* at 189. According to Walker, Roush stumbled inside and the 3 followed. Walker stated that Nelson and Hall searched the house for money and drugs while Walker held Roush at gunpoint. *Id.* at 190-91.

After they finished their search, Walker said Hall told Nelson, "You know what to do." *Id.* at 194. Nelson then shot Roush 3 or 4 times. *Id.* at 195. Walker claimed that Nelson accidentally shot Hall in the arm while leaving. *Id.* at 196. Walker and Nelson ran back to the car. *Id.* at 197. Hall allegedly shot Roush two times with a shotgun, though Walker admitted he did not see Hall shoot Roush. *Id.* at 199-200.

Walker admitted he never told anyone of the plan to kill Roush. *Id.* at 207. Walker initially told the police he was not there, then that he was there but stayed in the car. *Id.* at 212, 216. He admitted lying to the police multiple times about multiple topics. *Id.* at 212-228.<sup>3</sup> He told the police Hall did not have a gun. *Id.* at 217. He told the police at least 4 stories. *Id.* at 221. He agreed his story at trial was completely different from the stories he told police. *Id.* at 217.

## ARGUMENT

### FIRST ASSIGNMENT OF ERROR

**THE TRIAL COURT ERRED IN REFUSING TO CHANGE VENUE. SAID ERROR DEPRIVED APPELLANT OF HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR AND IMPARTIAL JURY AND DUE PROCESS OF LAW.** (R. 353, 354, 355, Transcript Notebooks 1-3, 9/19/22, 9/20/22, 9/21/22, 9/23/22, 9/26/22, 9/27/22; R. 353, Book 1, 9/19/22 at 111-114; R. 354, Book 2, 9/20/22, 9/21/22, R. 355, Book 3, 9/23/22, 9/26/22, 9/27/22; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial).

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<sup>3</sup> The extent of Walker's lies will be further set forth in the Sixth Assignment of Error.

The Sixth Amendment to the United States Constitution guarantees to the accused a public trial by an *impartial* jury. According to the United States Supreme Court:

In essence, the right to a jury trial guarantees to the criminally accused a fair trial by a panel of impartial, "indifferent" jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process. "A fair trial in a fair tribunal is a basic requirement of due process."

*Irvin v. Dowd*, 366 U.S. 717, 722 (1961) (citations omitted). Thus, a juror's verdict "must be based upon the evidence developed at trial," which "is true, regardless of the heinousness of the crime charged, the apparent guilt of the offender, or the station in life which he occupies." *Id.*

The Fifth Amendment guarantees that no man shall be deprived of life, liberty, or property, without due process of law. The U.S. Supreme Court has stated that "due process alone has long demanded that, if a jury is to be provided the defendant, regardless of whether the Sixth Amendment requires it, the jury must stand impartial and indifferent to the extent commanded by the Sixth Amendment." *Morgan v. Illinois*, 504 U.S. 719, 727 (1992). The Court has given practical meaning and definition to these Constitutional provisions as they apply to pretrial publicity in the landmark decisions of *Irvin v. Dowd*, 366 U.S. 717 (1961); *Rideau v. Louisiana*, 373 U.S. 723, 725-27 (1963) (defendant denied due process without change of venue after confession was televised); and *Sheppard v. Maxwell*, 384 U.S. 333, 352-53 (1966) (presumed prejudice from pretrial publicity on totality of circumstances).

In *Dowd*, the Supreme Court held that the defendant's right to an impartial jury was denied by a presumption of prejudice arising from extensive pretrial publicity. The Court found the trial judge erred in only changing venue to an adjoining county when adverse publicity in the six to seven months preceding a well-known murder trial was overwhelming. *Dowd*, 366 U.S. at 725-26. The Court opined that while jurors need not be totally ignorant of facts or issues, they cannot be expected to forget media reports that have saturated their minds.

How can fallible men and women reach a disinterested verdict based exclusively on what they heard in court when, before they entered the jury box, their minds were saturated by press and radio for months preceding by matter designed to establish the guilt of the accused. A conviction so secured obviously constitutes a denial of due process of law in its most rudimentary conception.

*Id.* at 729–30 (Frankfurter, J., concurring). The Court also held that juror assurances of impartiality should be regarded with skepticism:

No doubt, each juror was sincere when he said that he would be fair and impartial to petitioner, but psychological impact requiring such a declaration before one's fellows is often its father. Where so many, so many times, admitted prejudice, such a statement of impartiality can be given little weight. As one of the jurors put it, "you can't forget what you hear and see."

*Id.* at 728 (majority opinion).

In *Rideau*, the Supreme Court found voir dire occurring prior to trial irrelevant to the Court's decision that the pretrial publicity had tainted the jury pool. *Rideau*, 373 U.S. at 727. As in *Dowd*, all the jurors declared they would accord the defendant the presumption of innocence and set aside anything they might have seen or heard about the case. This was not satisfactory to the Supreme Court because the damage had already been done prior to trial. *Id.*

In *Sheppard*, the Supreme Court set forth principles still applicable today:

[W]here there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates, or transfer it to another county not so permeated with publicity. . . . [W]e must remember that reversals are but palliatives: the cure lies in those remedial measures that will prevent the prejudice at its inception.

*Sheppard*, 384 U.S. at 362–63. In short, the *Sheppard* Court advocated a change of venue prior to trial and not to try and seat a jury first. The Supreme Court reaffirmed the *Sheppard* principles in *Patton v. Yount*, 467 U.S. 1025 (1984), where the Court held "adverse pretrial publicity can create such *a presumption of prejudice* in a community that the jurors' claims that they can be impartial *should not be believed*." *Id.* at 1031 (Emphasis added).

In Ohio, venue is controlled by Crim.R. 18(B) and R.C. 2901.12(K). Pursuant to Crim.R. 18(B), a party may move for a change of venue “when it appears that a fair and impartial trial cannot be held in the court in which the action is pending.” R.C. 2901.12(K) similarly provides for change of venue “when it appears that a fair and impartial trial cannot be held in the jurisdiction in which trial otherwise would be held.”

A biased juror is unable to apply the facts to the law and deliberate under the constitutionally required burden of proof. See *In re Winship*, 397 U.S. 358 (1970). The trial judge has a duty to protect the accused from “inherently prejudicial publicity” that renders the jury unfair in its deliberations. *Sheppard*, 384 U.S. at 363. The likelihood of conviction in another venue is irrelevant. The right to a fair and impartial jury is fundamental.

As in *Dowd*, prejudice from the weight of adverse publicity must be presumed in this case. No case in recent Meigs County history has received the kind of publicity as Hall’s case. Jurors questioned revealed stories seen on television, in the newspapers and on social media. (R. 353, 354, 355, Books 1-3, 9/19/22, 9/20/22, 9/21/22, 9/23/22, 9/26/22, 9/27/22.) Signs seeking “Justice for Kane” were plastered all over the county. Residents criticized the Sheriff’s Office for acting too slowly. Bumper stickers and t-shirts were distributed to persons throughout the county. Indeed, every person seated on the jury had exposure to the publicity:

Juror Harnum had “seen the signs around,” and remembered hearing about the case on the radio. (R. 353, Book 1, 9/19/22 at 119.) Juror Harnum stated the signs have been up “over a year. A year or so.” *Id.* at 124. Juror Harnum further stated that they “asked a few people” about the case. *Id.* at 122.

Juror Lukowski had also “seen the signs” as far back as “[p]robably last year.” (R. 354, Book 2, 9/20/22 at 19-20.)

Juror Hayman read an article about the incident, and “thought it was crazy that something like that happened in our small, little town.” *Id.* at 37. Asked about the “Justice for Kane” signs, Juror Hayman speculated that the signs’ authors “will not forget about it and would like to have justice served on.” *Id.* at 40-41. She admitted she felt “community pressure to get a conviction in this case.” *Id.* at 42. Juror Hayman based this feeling on “what [she’s] seen on Facebook is people are still going strong for wanting Justice and that they will not let it rest until they do. ... The people are persistent about still posting it to keep it, uh, relevant to people.” *Id.* And although Juror Hayman did not think *she* was biased in anyway, she admitted that community pressure “might” influence other jurors. *Id.* at 46.

Juror Frith “saw one of the signs” while driving down route seven. *Id.* at 63.

Juror Rosler saw a “Justice for Roush” bumper sticker “on the back of somebody’s car.” *Id.* at 72. He read “the news article when they had a suspect.” *Id.* When Juror Rosler learned a suspect had been apprehended, he thought, “[W]ow, they’re actually making progress on that case.” He also admitted he “wanted to make sure the family got the resolution.” *Id.* at 75-76.

Juror Kauff “heard someone was killed,” and heard “about the Kane thing” on Facebook. *Id.* at 109-10. Further, Juror Kauff “took it for granted after [seeing] all of those signs, you know, like the community backing them up or whatever.” *Id.* at 116.

Juror Thomas heard other people discussing the case “back when it happened.” *Id.* at 206. Juror Thomas “might have” seen something on TV about the case, and saw “Justice for Kane” signs, stating “it’s kind of common knowledge, you know. Around here that everybody knew what it was about, you know.” *Id.* at 207-08.

Juror McMillin remembered “seeing the signs and like when it happened.” *Id.* at 217.

Juror Oldaker saw a TV story on the case “when it first happened,” “[p]ossibly” saw the “Justice for Kane” Facebook page, and saw “Justice for Kane” yard signs and bumper stickers. (R. 354, Book 2, 9/21/22 at 5-7.) Juror Oldaker stated “it was sad that he passed,” and on the community sentiment for the case said, “It happened in our town, so it’s kind of scary.” *Id.* at 14.

Juror Rees became aware of the homicide “by word of mouth,” “[p]robably” saw something on Facebook regarding “Justice for Kane”, and saw “signs in people’s yards.” *Id.* at 32-35. When asked for her feelings on “Justice for Kane”, Juror Rees said she “just can’t imagine being in this situation,” and that “it just breaks [her] heart.” *Id.* at 35-36.

Juror Anderson “saw it on the news” and had “seen signs.” *Id.* at 53, 56.

Juror Ohlinger “probably discussed [the case] a bit at home” with his wife. *Id.* at 77. He had “seen some things posted about the proceedings, uh, on social media” by Chuck Knight. He admitted that he “read probably most of them,” and he knew Hall was the defendant, and Nelson and Walker were involved. *Id.* at 78-80. Juror Ohlinger also “recall[ed] seeing a comment that said, uh, uh, ‘Justice for Kane.’” *Id.* at 80. Juror Ohlinger first saw the “Justice for Kane” signs “not very long after [he] first read of the case.” *Id.* at 82. Finally, Juror Ohlinger admitted it was “probably correct” that there is a community sentiment about this case “that there was a victim of murder that, uh, there’s, um, an effort to bring the perpetrator to justice.” *Id.* at 85-86.

Juror Bechtle stated “everybody talked about [the case],” and that she spoke about it with her husband and coworkers. *Id.* at 154. The conversations included things like, “you can’t believe that it happened here.” Juror Bechtle knew of Kane Roush as “a star football player for Wahama.” *Id.* 155-56. Juror Bechtle also knew about the case from Facebook, seeing “people just posting ‘Justice for Kane,’” reading posts from Chuck Knight, and comments on those posts.

*Id.* at 159-60. Juror Bechtle agreed “[t]here’s a lot of community sentiment out there about this case,” and that she read an article that Mr. Hall had been arrested for the murder. *Id.* at 164, 167.

Juror Ball read of the case in the Daily Sentinel. (R. 355, Book 3, 9/26/22 at 130.) Juror Ball also saw “Justice for Kane” signs, and thought, “I would hope justice is served.” *Id.* at 131.

Juror Filkins saw news coverage about the case, stating it “caught my attention that it was local and there was a murder.” *Id.* at 152. Juror Filkins also saw yard signs. *Id.* at 153.

Excluding these jurors would not have solved the greater problem in this case. The publicity was so great that the trial court conducted individual voir dire for 3 days. Numerous potential jurors were excluded for cause. Towards the end of voir dire, the Sheriff’s Office had to serve more jurors to appear the next day because so many were excluded. (R.355, Book 3, 9/23/22 at 31.) This case could not possibly produce a fair trial in Meigs County.

Nor can the defendant’s race be ignored. Jaquan Hall is a black man who faced trial for the death of a white man in a predominantly white county. Several prospective juror’s brought up Hall’s race as an issue in the case. Juror Tuttle called Hall “a coco puff in a bowl of milk.” He did not think it was fair to try Hall in Meigs County because Hall is black. He opined Meigs County is a tight knit community, and a fair trial is not possible because of the victim’s family and the community. (R. 353, 9/19/22, Book 1 at 93-112.) Juror Tuttle based his opinion on “[l]ife in Meigs County,” stating that “[i]f they’ve lived in this county most of their life, they have [racial tendencies].” When the State asked Juror Tuttle how he could “foresee us seating a jury,” he replied, “Well, that’s what I... that’s what I’m wondering about, you know.” *Id.* at 96.

Juror Nelson saw a picture of a young black man and assumed that drugs were involved, saying, “of course, your race issue too. It has to come into it.” (R. 354, Notebook 2, 9/20/22 at 171-77.) Citing the lack of diversity in the county, Juror Taylor asked incredulously, “[W]hy

would this man, um, and his counsel not plead or do whatever they needed to do ... to protect him from a jury trial in Meigs County?" (R. 354, Notebook 2, 9/21/22 at 140.) Juror Garnes heard racist remarks about the case at a local Walmart. (R. 355, Notebook 3, 9/26/22 at 93-97.)

Meigs County was saturated with publicity about the case for nearly six months, and the publicity had not abated. Many prospective jurors knew each other, court staff, the victim's family or had seen or heard repeated information about the facts of the case. Many could not put it aside. Many believed community sentiment favored conviction.

Twice during the voir dire, the defense moved for a change of venue. (R.353, Book 1, 9/19/22 at 111-112; Book 2, 9/20/22 at 3.) Both times, the motion was denied. The trial court was duty bound after hearing the jurors answers to change venue to protect Hall's rights to due process and a fair trial. Meigs County jurors were too affected and impacted by this crime to render a fair and just verdict. "Adverse pretrial publicity can create such a presumption of prejudice in a community that the jurors' claims that they can be impartial *should not be believed.*" *Id.* at 1031 (Emphasis added); *Patton v. Yount*, 467 U.S. 1025 (1984). Hall was just such a case. Those few jurors who claimed they could be fair did not ring true given what they had been exposed to. A new trial in a new county is warranted.

## SECOND ASSIGNMENT OF ERROR

**APPELLANT WAS DEPRIVED OF HIS STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO A FAIR AND IMPARTIAL JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS WHEN THE ONLY AFRICAN-AMERICAN JUROR WILLING TO SIT WAS IMPROPERLY REMOVED FOR CAUSE.** (R. 353, Book 1, 9/19/22 at 254; R. 355, Book 3, 9/26/22, at 89-126; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial).

The Sixth and Fourteenth Amendments to the Constitution guarantee a criminal defendant the right to an impartial jury. *Morgan v. Illinois*, 504 U.S. 719 (1992). *See also*

Article One, Section 10, Ohio Constitution. The Supreme Court has held “that ‘the central concern’ of the Fourteenth Amendment ‘was to put an end to governmental discrimination on account of race.’” *Flowers v. Mississippi*, 139 S.Ct. 2228, 2240-41 (2019) (quoting *Batson v. Kentucky*, 476 U.S. 79 (1986)). The Court has made an “unceasing effort[] to eradicate racial discrimination in the procedures used to select the venire from which individual jurors are drawn.” *Batson*, 476 U.S. at 85.<sup>4</sup>

R.C. 2945.25(B) states in relevant part that a juror may be challenged for cause on the basis “that he is possessed of a state of mind evincing enmity or bias toward the defendant or the state; but no person summoned as a juror shall be disqualified by reason of a previously formed or expressed opinion with reference to the guilt or innocence of the accused, if the court is satisfied, from examination of the juror or from other evidence, that he will render an impartial verdict according to the law and the evidence submitted to the jury at the trial.” *See also* Criminal Rule 24(C)(9).

“Fairness requires impartial, indifferent jurors.” *State v. Sheppard*, 84 Ohio St.3d 230, 703 N.E. 2d 286, 292 (1998). “Yet jurors need not be totally ignorant of the facts and issues involved. *Id.* (citing *Murphy v. Florida*, 421 U.S. 794 (1975)). “*Whether a prospective juror knew the victim of an offense or had previously seen the accused is not, per se, a basis for dismissal for cause.*” *Sheppard*, 84 Ohio St.3d at 292 (emphasis added). In *Sheppard*, the Supreme Court upheld the trial court’s reliance on the prospective juror’s statements of impartiality and to decide the case on the facts.

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<sup>4</sup> Hall acknowledges that some districts have held that the *Batson* burden-shifting analytical framework applies only to peremptory challenges, and therefore Hall does not ask this court to examine the case under that framework. *See, e.g., State v. Lewis*, 2005-Ohio-2699, ¶ 60 (7th Dist.). But *Batson* and its progeny also stand for the broader proposition that courts must take great care to guard against potential racial prejudice at *all* points of the jury selection process.

The question a reviewing court must ask is whether the juror said she could set aside any opinion she might hold, and whether her statement of impartiality should be believed. *Patton v. Yount*, 467 U.S. 1025, (1984). The decision of whether to excuse a juror for cause is reviewed for an abuse of discretion. *State v. Quinn*, 2017 Ohio 7000, 95 N.E.3d 664, ¶ 17. An abuse of discretion is “a decision that is unreasonable, arbitrary, or unconscionable.” *Id.* (citing *Huffman v. Hair Surgeon, Inc.*, 19 Ohio St.3d 83, 87, 482 N.E.2d 1248 (1985)).

In this case, the trial court abused its discretion by dismissing Juror Garnes without cause. Importantly, the court never stated that it did not find Juror Garnes to be credible, and nothing in the record suggests Garnes’ answers should not be believed. Indeed, the court called her “a very compassionate person,” and stated “I’d like to keep her.” *Id.* at 123, 126. Far from finding Garnes’ numerous statements of impartiality unbelievable, the court made statements that bolster Garnes’ credibility.

Instead, the court articulated two reasons for dismissing Garnes. First, it believed Juror Garnes “probably has very strong feelings about the judicial system because of her brother,” who is a convicted felon. (R. 355, Book 3, 9/26/22 at 126.) This explanation is both unreasonable and arbitrary because the court failed to apply this principle evenly across the entire jury venire. Just five days before dismissing Juror Garnes, the court allowed Juror Oldaker to sit on the case despite the fact that *his* brother is a convicted felon too. (R. 354, Book 2, 9/21/22 at 3.) The court did not express an opinion that Sitting Juror Oldaker might have strong feelings about the judicial system because *his* brother was convicted of a crime.

And the record plainly contradicts the court’s opinion that Juror Garnes would harbor any bias one way or the other. She was questioned about whether her brother’s conviction could

affect her judgment, and she said "No. Right is right and wrong is wrong." *Id.* at 92.<sup>5</sup> There is no basis to say Garnes had strong feelings about the judicial system because of her brother. On this basis alone, the excusal of the only African American juror deprived Hall of due process and the right to a fair trial.

Second, the court justified dismissing Garnes because of "her obvious connection with people that ... had relationships with Kane and/or with Mr. Hall, uh, prior to Kane's death and that's as close as we've ever had." The court here referred to the fact that Roush may have been in Garnes house at one point, and that Garnes may have seen Hall at one point speaking with her friends. But that does not form a basis to excuse Garnes for cause. For one thing, the court was sure to clarify that Garnes "never directly talked" to either Hall or Roush. *Id.* at 122. Garnes' connection with Roush may have been a basis for the *defense* to seek excusal for cause since Hall could argue Garnes' son was friends with Roush. But Hall was satisfied with Garnes' answers that this fact would not impact her ability to be fair and impartial. Garnes never met Roush, and the fact that he was in her house did not impact her ability to be fair and impartial. As to Hall, the fact that Garnes saw Hall for a brief moment talking to her friends does not provide a basis to excuse her for cause. Garnes did not speak to Hall, and she was not even sure he saw her. It did not impact her ability to be fair and impartial in any way.

R.C. 2945.25 allows a trial court to excuse a juror for cause only for the reasons specifically enumerated in the statute. The only relevant justification in this case is under R.C. 2945.25(B): "That the juror evinces enmity or bias towards the defendant or the state." *See also*

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<sup>5</sup> Hall does not suggest that Garnes' inclusion on the jury would have led to a fair trial, nor that a juror's assertion that she can be impartial should overcome the presumption of adverse publicity. To the contrary, as explained in the First Assignment of Error, a fair trial in Meigs County for this case was impossible due to the adverse publicity surrounding it. That notwithstanding, what is good for the goose is good for the gander. If Juror Oldaker's promise to be impartial sufficed to earn him a spot on the jury, Juror Garnes' promise was good enough too.

Crim. R. 24(C)(9). Even if such enmity or bias existed, excusal for cause is not permitted if voir dire shows the juror will render an impartial verdict. There is not a shred of evidence that Juror Barnes had a bias against either the defendant or the state. She repeatedly said she would be fair and impartial. Particularly in this trial, where race was clearly a factor, the trial court should not have excused Juror Barnes. The trial court's ruling was an abuse of discretion and deprived Hall of his state and federal constitutional rights to due process and a fair trial.

### THIRD ASSIGNMENT OF ERROR

#### **THE TRIAL COURT DEPRIVED APPELLANT OF HIS RIGHT TO DUE PROCESS AND A FAIR TRIAL UNDER THE OHIO AND UNITED STATES CONSTITUTIONS WHEN THE COURT ALLOWED THE MOTHER OF THE VICTIM TO WEAR A "Justice for Kane" T-SHIRT DURING INDIVIDUAL VOIR DIRE IN CHAMBERS.**

(R. 353, Book 1, 9/19/22 at 58, 78-9, 2-299; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial).

"Central to the right to a fair trial, guaranteed by the Sixth and Fourteenth Amendments, is the principle that 'one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial.' " *Holbrook v. Flynn*, 475 U.S. 560, 567, (1986) (quoting *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978)). When a courtroom "condition presents 'an unacceptable risk ... of impermissible factors coming into play' in the jury's consideration of the case," that condition violates the Sixth and Fourteenth Amendments. *Flynn*, 475 U.S. at 570 (quoting *Estelle v. Williams*, 425 U.S. 501, 96 S.Ct. 1691 (1976)). "[T]here is no serious question that [this standard applies to] the behavior of spectators," and "the trial judge has an affirmative obligation to control the courtroom and keep it free from improper influence." *Carey v. Musladin*, 549 U.S. 70, 82, 127 S. Ct. 649, 657 (2006) (Souter, J., concurring).

In *Musladin*, spectators during a murder trial wore buttons with the victim's photo while watching the trial. *Id.* at 72 (majority opinion). In his concurring opinion, Justice Souter describes the clearly apparent unfair prejudice that occurs when spectators wear paraphernalia in support of a victim to a criminal trial:

The display is no part of the evidence going to guilt or innocence, and the buttons are at once an appeal for sympathy for the victim (and perhaps for those who wear the buttons) and a call for some response from those who see them. On the jurors' part, that expected response could well seem to be a verdict of guilty, and *a sympathetic urge to assuage the grief or rage of survivors with a conviction would be the paradigm of improper consideration.*

*Musladin*, 549 U.S. at 82–83 (Souter, J., concurring) (emphasis added).

Last year, the Ohio Supreme Court held that victims present under Marsy's Law can create the kind of impermissible courtroom condition prohibited under *Estelle* and *Flynn*, and that the bar is not particularly high. *State v. Montgomery*, 169 Ohio St.3d 84, 2022-Ohio-2211, ¶ 19. In *Montgomery*, the prosecution designated the victim as the state's representative, the trial court introduced her as such, and allowed her to sit at the state's counsel table throughout the trial. *Id.* at ¶ 5. The Supreme Court acknowledged that the introduction of the victim as the state's representative was brief and limited. *Id.* at ¶¶ 18-19. But despite that, the Court *still* found that the mere designation was error. *Id.* at ¶ 19. The Court cautioned that courts "must be vigilant to ward against scenarios that undermine a jury's impartiality, erode the presumption of innocence, and allow for a setting that transmits too great an impression of guilt and that offends due process as being fundamentally unfair because of the inherent potential for prejudice." The Court concluded that designating a victim as a party representative "triggers these factors." *Id.* The Court held this to be a structural error, and reversed the defendant's conviction. *Id.* at ¶ 32.

In this case, the victim's mother wore a "Justice for Kane" t-shirt on September 19th, 2022—the first day of jury voir dire. This t-shirt constitutes the exact kind of unfairly prejudicial

courtroom condition that *Flynn, Estelle, and Montgomery* forbid. The state primarily argued that Ms. Roush should be allowed to wear the “Justice for Kane” t-shirt “to express her grief[f]” (R. 353, Book 1, 09/19/2022 Transcript at 58.) But as Justice Souter warned, that expression of grief urged jurors to assuage that grief with a conviction. That is exactly what occurred here.

The reason for individual voir dire was because all the publicity had possibly tainted Hall’s right to a fair trial. Meigs County was saturated with pretrial publicity from media outlets and social media. “Justice for Kane” signs were placed all over the county. As if the pretrial publicity was not enough, Ms. Roush’s t-shirt starkly reminded the prospective jurors during individual voir dire of her pain and desire that Hall be convicted to provide “Justice for Kane.” Community sentiment cried out for a conviction.

A number of jurors had seen yard signs, bumper stickers and shirts. Prospective Juror Wolfe stated he did not think spectators would be allowed to wear t-shirts expressing “Justice for Kane.” *Id.* at 75. Prospective Juror Haye saw Ms. Roush wearing the shirt before being questioned and then realized it was Roush’s mother. *Id.* at 289. Juror Haye thought because he was charged, Hall might have some involvement. *Id.* at 291.

Most importantly, Sitting Juror Hannum also was questioned the first day. *Id.* at 115-129. Because of this, Juror Hannum was exposed to the grieving mother of the victim wearing a t-shirt mirroring signs plastered all over the county, sitting very close to him while he answered voir dire questions. He was no doubt affected by the shirt and sympathetic to Ms. Roush’s grief and desire for justice for her son. This impacted at least one juror before he heard any evidence.

The Court’s statement that it could not impinge on Mrs. Roush’s freedom of expression is absolutely false. When fair trial rights are at significant risk, the First Amendment rights of trial attendees must be curtailed at the courthouse door. *Richmond Newspapers Inc. v. Virginia*, 448

U.S. 555, 564 (1980); *Estes v. Texas*, 381 U.S. 532, 539 (1965); *Levine v. United States District Court*, 764 F.2d 590, 597-98 (9th Cir. 1985). The trial court has a duty to control its courtroom and to guarantee the defendant due process and a fair trial. *Montgomery*, 2022-Ohio-2211 at ¶ 19; *Flynn*, 475 U.S. at 570. When something is happening in the courtroom (or chambers) that impacts a defendant's rights, the trial court must act. Here, the trial court chose the victim's mother's right to free expression over Hall's right to a fair trial. The United States Supreme Court has reversed courts that have made similar decisions. This court should do the same.

#### FOURTH ASSIGNMENT OF ERROR

**APPELLANT'S RIGHTS GUARANTEED BY THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND *MIRANDA V. ARIZONA*, 384 U.S. 436 (1966) WERE VIOLATED WHEN EVIDENCE OF APPELLANT'S POST-MIRANDA SILENCE WAS ADMITTED INTO EVIDENCE BY THE STATE.** (R. 355, Book 3, 9/27/22 at 143-4; 163-8; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial).

The Fifth Amendment to the Constitution of the United States provides that no person "shall be compelled in any criminal case to be a witness against himself." This Amendment is made applicable to the states through the due process clause of the Fourteenth Amendment. *Malloy v. Hogan*, 378 U.S. 1, 6 (1964).

A defendant's decision to exercise his right to remain silent during police interrogation is generally inadmissible at trial either for the purpose of impeachment or as substantive evidence of guilt. *State v. Leach*, 102 Ohio St.3d 135, 2004-Ohio-2147, 807 N.E.2d 335, ¶16-18; *see also Doyle v. Ohio*, 426 U.S. 610, 616-18 (1976); *Wainwright v. Greenfield*, 474 U.S. 284, 291 (1986) ("*Doyle* and subsequent cases have thus made clear that breaching the implied assurance of the *Miranda* warnings is an affront to the fundamental fairness that the Due Process Clause requires."). Furthermore, evidence introduced by the state during its case-in-chief regarding the

defendant's exercise of his right to remain silent during interrogation violates the Due Process Clause of both the state and federal constitutions. *Leach*, 2004-Ohio-2147 at ¶18. This rule enforces one of the underlying policies of the Fifth Amendment: to avoid having the jury assume that a defendant's silence equates with guilt. *Id.* at ¶ 30 (citing *Murphy v. Waterfront Comm. of New York Harbor*, 378 U.S. 52, 55 (1964)).

Because "the actual administration of *Miranda* warnings . . . triggers the constitutional protection of *Doyle*," law enforcement testimony regarding failure to cooperate clearly violates due process rights. *State v. Ospina*, 81 Ohio App.3d 644, 650, 611 N.E.2d 989 (10th Dist. 1992). "Silence in the wake of these warnings may be nothing more than the arrestee's exercise of these *Miranda* rights. Thus, every post-arrest silence is insolubly ambiguous because of what the State is required to advise the person arrested." *Doyle*, 429 U.S. at 617.

The State's initial *Doyle/Leach* violation came in opening statement. The prosecutor stated the evidence would show that Hall went to a hospital in West Virginia to treat a bullet wound in his arm. (R.355, Book 3, 9/27/22 at 143-44.) The prosecutor said the police arrived and spoke to him about how he got shot. *Id.* The prosecution stated the Hall did not give more specifics about what happened and said *he would not cooperate* in their investigation. *Id.*

The prosecutor's comments were a clear violation of *Doyle* and *Leach*. Through these comments, the prosecution suggested that Hall was not telling the truth about how he was injured, and that his invocation of his Fifth Amendment right to remain silent meant he had something to hide.

Defense counsel objected to the violation at the end of the prosecution's opening and asked for a mistrial. *Id.* at 163. The objection was overruled after the Court heard arguments and gave the parties overnight to submit memoranda. (R. 356, Book 4, 9/28/22 at 7-11, 18.) The

Court overruled the motion for a mistrial, choosing only to instruct the jury that openings are not evidence. *Id.* at 18. Unfortunately, this was not the only *Doyle/Leach* violation.

The next violation of Hall's rights occurred when Deputy Scott Spiker testified about his contact with Hall. (R. 357, Book 5, 9/30/22 at 202.) Spiker stated he picked up Hall from jail, and he reminded Hall that his *Miranda* rights still apply, and anything he said could be used against him. *Id.* at 202. Since Spiker reported no further statements by Hall, the jury was left with the impression that Hall refused to waive his constitutional rights and must have had something to hide. This is plainly in violation of *Doyle/Leach*. The constitution prohibits penalizing a criminal defendant for exercising his rights but that is what happened in this case.

The next *Doyle/Leach* violation came through the testimony of BCI Agent Jenkins. Jenkins recounted Hall's stay at a West Virginia hospital. (R. 357, Book 5, 9/30/22 at 226.) Jenkins testified that Hall came in with a gunshot wound, used a fake name, and ***did not want to be interviewed.*** *Id.* Hall has a right to remain silent, he used it, and was penalized for it.

The last time *Doyle/Leach* were violated was through the testimony of Deputy Joe Barnhart. Deputy Barnhart testified that police set up a meeting for Hall to come and talk to them but it never happened. (R. 357 Book 5, 10/3/22. at 75). The Court told the jury to disregard the statement and that Hall had an absolute right to remain silent. *Id.* Unfortunately, the damage was already done. The Court could not unring the bell.

Hall's trial counsel failed to object, move to strike, or move for mistrial after the Deputy Spiker and Agent Jenkins statements, thus those *Doyle* violations must be reviewed for plain error.<sup>6</sup> Under Crim. R. 52 (B), plain errors may be noticed if (1) there was an error, i.e., a deviation for a legal rule; (2) the error was plain or obvious; and (3) the error affected substantial

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<sup>6</sup> Alternatively, the error can also be considered as ineffective assistance of counsel as discussed in the Seventh Assignment of Error.

rights. *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002). It should be noted, however, that in *State v. Rogers*, 32 Ohio St.3d 70, 73, 512 N.E.2d 581 (1987), the Ohio Supreme Court stated that “federal courts, in applying the plain or harmless error analysis in cases where there had been *Doyle* violations, with near unanimity, have held such to be violative of due process and therefore prejudicial, requiring a reversal.”

Further, a review of other Ohio cases reveals plain error can be found, particularly in cases such as Hall where the evidence does not overwhelmingly support the conviction. *State v. Leach*, 150 Ohio App.3d 567, 2002-Ohio-6654, 782 N.E.2d 631, ¶ 43 (1st Dist.) (*Doyle* violation combined with other evidentiary errors rises to level of plain error), *affirmed Leach*, 2004-Ohio-2147; *State v. Geboy*, 145 Ohio App.3d 706, 714–16, 764 N.E.2d 451 (3d Dist. 2001) (finding plain error where “the questions and comments regarding appellant’s failure to profess his innocence were made during the prosecutor’s opening and closing statements, and, most important, during the direct examination of the investigating officers” and the evidence was not overwhelming); *State v. Sabbah*, 13 Ohio App.3d 124, 468 N.E.2d 718 (6th Dist. 1982) (Court must reverse conviction for *Doyle* violation since court could not say that the defendant would have been convicted in spite of the violation).

Through the statements of the prosecutor and law enforcement, the jury was asked to use Hall’s silence against him, which the United States Constitution absolutely forbids:

“[I]t seems to me that it does not comport with due process to permit the prosecution during trial to call attention to his silence at the time of arrest and to insist that because he did not speak about the facts of the case at that time, as he was told he need not do, an unfavorable inference might be drawn as to the truth of his testimony.”

*Doyle*, 429 U.S. at 619 (quoting *United States v. Hale*, 422 U.S. 171 (1975) (White, J., concurring)).

Factors relevant in making that determination include, but are not limited to, “the length of the victim-impact testimony,” “whether witnesses, jurors, and audience members showed physical signs of emotion during the testimony,” “the detail and depth of the victim-impact testimony with regard to the murder victim,” “whether the victim-impact witness used emotionally charged language,” and “the number of victim-impact witnesses.” *Graham*, 2020-Ohio-6700, ¶ 126.

Before addressing the specific victim impact evidence, it must first be remembered the publicity all the jurors were exposed to. *See* First Assignment of Error. The media saturated the county with stories about Roush’s murder, how tragic it was, and what a good person he was, and who the suspect was. Signs were posted proclaiming the community’s demand for “Justice for Kane.” It is against this backdrop which the victim impact evidence must be considered.

In this case, the victim impact evidence began during the prosecutor’s opening statement.

Without objection, the prosecutor stated:

Kane Roush was a young man who was only twenty five (25) years old, um, he was in the prime of his life. He graduated from Wahama High School. He excelled in football there and that helped him continue his education at the University of Charleston, where he played football and graduated with a degree in Business Marketing. He lived here in Pomeroy at 108 Legion Terrace. Uh, he was working with his father and his concrete business, and his plan one day was to take over that concrete business from his father once his father retired.

(R. 355, Book 3, 9/27/22 at 128.)

BCI agent Jonathan Jenkins provided victim impact during his recap of his investigation. He testified that Roush was “tough” and had the “will to live.” (R. 357, Book 5. 9/30/22 at 223.) Jenkins testified that according to his parents, Roush was “very well-liked” in the community, an “all-star athlete, uh, just one of those guys that everyone liked, everybody wanted to know, everybody wanted to be around.” *Id.* at 225.

The jury was told in opening statement and through 3 separate police officers that Hall exercised his right to remain silent. No instructions could cure these errors. The Ohio and United States Constitution prohibit such argument and testimony. Telling the jury Hall refused to talk suggested he had something to hide. The repeated violations deprived Hall of due process and a fair trial. Reversal and remand for a new trial is warranted.

### **FIFTH ASSIGNMENT OF ERROR**

**THE PROSECUTION PRESENTED IMPROPER VICTIM-IMPACT EVIDENCE THAT INFLAMED THE JURY AND AFFECTED THE OUTCOME OF APPELLANT'S TRIAL CONTRARY TO APPELLANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS TO DUE PROCESS AND A FAIR TRIAL.** (R. 355, Book 3, 9/27/22 at 128; R. 357, Book 5, 9/30/22 at 223, 225)

According to the Ohio Supreme Court, “[v]ictim-impact evidence that relates only to the personal characteristics of the victim and the emotional impact of the crimes on the victim’s family, is generally inadmissible at the trial phase, but such evidence can be admissible if it also relates to the facts attendant to the offense.” *State v. McKelton*, 148 Ohio St.3d 261, 2016-Ohio-5735, 70 N.E.3d 508, ¶ 259 (internal quotes omitted).

Victim-impact evidence “should not be overly emotional or directed to the penalty to be imposed.” *State v. McAlpin*, Slip Opinion No. 2022-Ohio-1567, ¶ 113; *see also* Evid.R. 403(A). “Testimony is overly emotional when it is likely to inflame the passions of the jurors and elicit a purely emotional response that would inhibit the jurors from making an objective and rational determination regarding the defendant’s guilt and/or the appropriate punishment.” *State v. Graham*, 164 Ohio St.3d 187, 2020-Ohio-6700, 172 N.E.3d 841, ¶ 123; *see also State v. Wade*, 8th Dist. Cuyahoga No. 90145, 2008-Ohio-4870, ¶ 17. Victim impact testimony tends to inflame the passions of the jury and risk conviction on facts unrelated to guilt. *Wade*, at ¶ 17; citing *State v. White*, 15 Ohio St.2d 146 (1968).

The opening statement and testimony were not relevant to any of the issues before the jury. They did, however, serve to remind the jury what a good person Roush was, how tragic it was that he died, and how his parents wanted justice. It served to bias the jury against Hall and made it unlikely that they could fairly consider whether Hall was actually guilty. Thus, the probative value of this evidence was substantially outweighed by unfair prejudice under Evid. R. 403(A), and should have been excluded. The State sought to use this evidence to direct the jury away from the facts of the case and towards feelings of sympathy to Roush's family and anger towards Hall.

Because defense counsel failed to object to this victim-impact evidence, this issue must be reviewed for plain error or as ineffective assistance counsel, discussed *infra*. Under Crim.R. 52(B), plain errors may be noticed if (1) there was an error, i.e., a deviation for a legal rule; (2) the error was plain or obvious; and (3) the error affected substantial rights. *State v. Barnes*, 94 Ohio St.3d 21, 27, 2002-Ohio-68, 759 N.E.2d 1240. For the reasons stated herein, Hall submits the plain error standard has been met, and the introduction of this evidence cannot be considered harmless. The improper introduction of this evidence deprived Hall of due process and the right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution and corresponding rights under the Ohio Constitution. *Payne v. Tenn.*, 501 U.S. 808, 825 (1991) (stating that victim impact evidence may be so unduly prejudicial that it renders the trial fundamentally unfair, and that the Due Process Clause provides a mechanism for relief); *Evitts v. Lucey*, 469 U.S. 387, 401 (1985); *Bugh v. Mitchell*, 329 F.3d 496, 512 (6th Cir. 2003).

## SIXTH ASSIGNMENT OF ERROR

**THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED A JUDGMENT OF CONVICTION BASED ON INSUFFICIENT EVIDENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE UNITED STATES AND OHIO CONSTITUTIONS.** (R. 355, Book 3, 9/27/22; R. 356, Book 4, 9/28/22, 9/29/22; R. 357, Book 5, 9/30/22, 10/3/22, 10/4/22, 11/9/22; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial; R. 331, Sentencing Entry)

A conviction based on legally insufficient evidence constitutes a denial of due process. *Tibbs v. Florida*, 457 U.S. 31, 45 (1982) (citing *Jackson v. Virginia*, 443 U.S. 307 (1979)). To satisfy due process, a criminal conviction must be supported by evidence leaving no reasonable doubt about the defendant's guilt. *Jackson*, 443 U.S. at 316–18. When a court reviews a record for sufficiency, “[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus (citing *Jackson*).

“The question to be answered when a manifest weight issue is raised is whether ‘there is substantial evidence upon which a jury could reasonably conclude that all the elements have been proved beyond a reasonable doubt.’” *State v. Sims*, Athens App. No. 21 CA 15, ¶ 117 (4th Dist. 4/3/23) (citing *State v. Leonard* 104 Ohio St.3d 54, 2004-Ohio-6235, 818 N.E.2d 229, ¶ 81). A challenge to the manifest weight of the evidence attacks the credibility of the evidence presented, and the reviewing court sits as a “thirteenth juror” and makes an independent review of the record. *State v. Thompkins*, 78 Ohio St.3d 380, 386–87, 678 N.E.2d 541 (1997). In performing this function, this Court must weigh the evidence and all reasonable inferences, consider the credibility of witnesses, and determine if the jury clearly lost its way. *State v.*

*Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist. 1983); *State v. Mattison*, 23 Ohio App.3d 10, 14, 490 N.E.2d 926 (8th Dist. 1985).

Hall incorporates the Statement of Facts, *supra*, as to this Assignment of Error.

1. **The Jury Should Not Have Relied on Co-defendant Richard Walker's Testimony.**

The state's entire case rested on co-defendant Richard Walker. At trial, Walker spun a story of Jaquan Hall's plot for revenge against Kane Roush, supposedly because Roush snitched on Hall for selling marijuana. (R. 357, Book 5, 10/3/22 at 178-79.) According to Walker, Hall showed them how to get to the house. *Id.* at 184. The plan was for Walker to knock on the door because Roush knew Hall. *Id.* at 188. Walker testified that after Roush opened the door, Hall hit him with the butt of the shotgun. *Id.* at 189. Walker testified he held a gun on Roush while Hall and Nelson rummaged around the house for drugs and money. *Id.* at 191.

The very first witness for the State epitomizes the insufficient evidence and demonstrates that the jury clearly lost its way in relying on Walker's testimony. Dave Berry—Roush's neighbor—testified that Roush had the perfect opportunity to identify Hall if he were really the shooter. When Roush lay on the side of Berry's stairs, Berry asked him who shot him. Roush answered, "*I don't know, some black guy.*" (R. 356, Book 4, 9/28/22 at 24 (emphasis added).) Deputy Scott Spiker asked Roush what happened, and Roush said he did not know. (R. 357, Book 5, 9/30/22 at 194.)

But the evidence presented shows Hall was not just "some black guy" to Roush. Rather, the two were very well known to each other. Danielle Runyon, the ex-girlfriend of both Hall and Roush, testified that they played football for the University of Charleston together. (R. 356, Book 4, 9/28/22 at 203.) She said she knew Hall was buying "smoke" off Roush. *Id.* Roush told her he gave weed to Hall a few times. *Id.* She knew Hall had been to Roush's house. *Id.* Runyon

had multiple conversations with Hall after Roush's death and she believed he did not kill him. *Id.* at 215. She continued to sleep with Hall after Roush's death, which she would not have done if she thought he had harmed Roush. *Id.* at 217. She never heard Hall threaten Roush. *Id.* at 223.

If Jaquan Hall was close enough to hit Roush with the butt of a shotgun, why didn't Roush tell anybody? While lying on the ground fighting for his life, Roush had multiple opportunities to identify his teammate and customer, Jaquan Hall. He could have told his neighbor Dave Berry, any one of the multiple EMS personnel, or any one of numerous law enforcement personnel. Agent Jenkins testified that Kane Roush was a "fighter"—that he was strong—but Roush never identified Hall. To the contrary, Roush affirmatively told Dave Berry he did not know the identity of his killer apart from the fact that it was "some black guy." He was communicating with these people until being loaded into the ambulance. And the evidence presented made it clear that even if he did not see who fired the shotgun, he clearly saw the person that hit him with a shotgun and the two people ransacking his house. The jury clearly lost its way because if Walker was telling the truth, and Hall was in the house, Roush would have been able to at least identify him. "Some black guy" is not sufficient evidence to convict Hall.

Further, the jury also clearly lost its way in relying on co-defendant Richard Walker in general. Walker had a very clear reason to lie to that jury and minimize his own culpability in the murder of Kane Roush. Instead of facing a life sentence, Walker took a deal and got a sentence of 15-21 ½ years. (R. 357, Book 5, 10/3/22 at 171.) Walker's testimony reveals he is good at lying. He claimed on direct-examination he only lied to police once, but even then he failed to tell the whole story. On cross-examination, Walker was forced to reveal numerous other lies to police. Walker lied: (1) about taking money and things from Roush's house. *Id.* at 212; (2) when he said he was not even at the house. *Id.*; (3) about where he was picked up from.

*Id.* at 215; (4) when he said he never saw anyone with a gun. *Id.* 216; (5) when he said he was asleep in the car and was awakened by gunshots. *Id.*; (6) when he said he was never in Roush's house that morning. *Id.*; (7) when he told the police 3 stories that were all different than his trial testimony. *Id.* at 218; (8) when he told police Roush had a gun and they took it away during a struggle. *Id.* at 220; (9) when he told inconsistent stories about how Hall was. *Id.* at 222; (10) about how much money he took from Roush. He told police he took \$500 (or \$100) from Roush; told the prosecutor in the proffer he took all the money and in trial said he took \$200. *Id.* at 223. Walker was motivated to lie once again so he could get a deal, so he told the story the State wanted to hear. The jury clearly lost its way relying on Walker.

On top of this, the physical evidence does not support Walker's story. There was no evidence that Hall's fingerprints were on the shell casings, bullets or any items in the house or near the scene. If Walker told the truth about Hall ransacking the place, where were the fingerprints? There was no evidence linking Hall to the crime found in his car, on his cell phone or on social media. There was no gunshot residue in the car or on Hall when he was questioned. The only physical evidence tying Hall to this crime was a pair of shorts and a Crown Royal bag. As discussed below, these items are inconsequential and inadmissible.

2. **Chain of Custody and Authentication Issues Preclude Conviction.**

The State's case suffered from numerous chain of custody and authentication issues that make the verdicts not worthy of confidence and show that the jury clearly lost its way.

Evid.R. 901(A) provides "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." "Chain of custody is part of the authentication and identification mandate set forth in Evid.R. 901, and the state has the burden of

establishing the chain of custody of a specific piece of evidence. *State v. Corder*, 2012-Ohio-1995, ¶ 15 (4th Dist.); *State v. Thompson*, 2020-Ohio-67, ¶ 93 (11th Dist.).

The State must establish that it is reasonably certain that substitution, alteration or tampering did not occur. *Corder*, 2012-Ohio-1995 at ¶15; *State v. Blevins*, 36 Ohio App.3d 147, 150, 521 N.E.2d 1105 (10<sup>th</sup> Dist. 1987); *State v. Guyton*, 2016-Ohio-8110, ¶ 31 (11th Dist.). Breaks in the chain of custody go not to admissibility of evidence, but the weight afforded to it. *Corder*, 2012-Ohio-1995 at ¶ 15, citing *Blevins*, 36 Ohio App.3d at 150; *Thompson*, 2020-Ohio-67 at ¶ 93.

One of the most important pieces of evidence introduced at trial was a Crown Royal bag that contained an empty box of Remington shotgun shells. The bag supposedly had both Hall and co-defendant Nelson's DNA on it, and the state argued that the presence of Hall's DNA proved he was at the scene of the crime.

The State *utterly failed* to establish a chain of custody for the Crown Royal bag. Deputy Spiker described what evidence he collected at the scene. He said after he was done, he was relieved of his duty and walked to his car. (R. 357, Book 5, 9/30/22 at 199.) He stated he then saw a Crown Royal bag laying on the hood of his cruiser. *Id.* He knew the bag was not there when he left his car to collect evidence. *Id.* He had no idea who placed it on the hood of his cruiser. *Id.* at 201.

Nobody else knew where the bag came from, yet the trial court, over objection, admitted the evidence. First on scene Sgt. Mohler saw the bag on Spiker's car but had no idea how it got there. (R. 356, Book 4, 9/28/22 at 70.) BCI Agent Austin secured the Crown Royal bag in his car but offered no testimony as to how it got to be on Deputy Spiker's car. (R. 356, Book 4, 9/29/22 at 25.) Agent Austin agreed nobody knew how it got there. *Id.* at 251.

The chain of custody was further broken at the DNA lab. The analyst who testified to the DNA results from the Crown Royal bag, Logan Schepeler, never actually saw or handled that bag. *Id.* at 303. Another analyst obtained the sample from the bag.

The defense objected to the admission of the Crown Royal bag. (R. 357, Book 5, 10/3/22 at 126.) There is no dispute that not one person can say how it got on Deputy Spiker's car. The most important link was broken with the most critical piece of evidence. Nobody could authenticate the bag because nobody knew how it got there, so it never should have been admitted as evidence. Whether the jury improperly weighed the significance of evidence wracked with chain of custody issues, or the evidence should have been excluded altogether, the result is the same: Hall's convictions must be reversed. The jury clearly lost its way in relying on this piece of evidence.

But even if the Crown Royal bag was admissible, it still fails to prove either that Hall was at the scene of the crime, or that he participated in it. The state could only argue that Hall's DNA was on the outside of the Crown Royal bag. Hall's DNA was *not* on the drawstring *or* the empty box of Remington shells found inside. (R. 356, Book 4, 9/29/22, 304-305.) This is critical because the State argued that Hall used a shotgun to shoot Roush. If Hall had really shot Roush with a shotgun, his DNA would have been on the box of shells *in* the bag, not just the outside. On the other hand, DNA expert Logan Schepeler testified that Hall's DNA could have gotten on the outside of the Crown Royal bag from Nelson (whose DNA was *also* on the bag) transferring Hall's DNA. *Id.* at 304.

More generally, all of the state's evidence was improperly handled, and could not be relied upon. Deputy Thomas Dillard was a critical link in the chain of custody. He checked the evidence into the evidence locker and logged it in through OHLEG. *Id.* at 18-54. However, he

candidly testified that he was not appropriately trained. *Id.* at 28, 48. As a result, some of the evidence was not checked in appropriately. *Id.* at 27. Deputy Dillard was handed items by Deputy Myers, but Deputy Dillard does not know what items he received, and there are no records verifying what was delivered. *Id.* at 49. As of the time of trial, Deputy Dillard still had not received proper training. *Id.* at 51. His testimony casts doubt on every piece of evidence collected and used by the State at trial. The jury lost its way in relying on any of this evidence.

Sgt. Mohler was one of the first officers to arrive at the crime scene. (R. 355, Book 3, 9/27/22 at 64-108.) He saw 2 shotgun rounds and a pair of shorts laying in the roadway. *Id.* at 71-2. Instead of photographing the items and collecting them or marking them with cones before BCI could arrive, Sgt. Mohler picked the items up and replaced them with ink pens. *Id.* at 71-2. This destroyed the integrity of the crime scene because there was no way to tell where the items originally were found.

Moreover, Sgt. Mohler said he secured the items in Deputy Hutton's car but Deputy Hutton did not recall the shells or shorts ever being placed in his car. *Id.* at 103, 118. Further inconsistency occurred when Deputy Myers testified he got the items from Sgt. Mohler. (R. 357, Book 5, 9/30/22 at 139-40, 188.) Agent Austin testified he turned the evidence over to Deputy Riley. (R. 356, Book 4, 9/29/22 at 51; R. 357, Book 5, 9/30/22 at 139, 177-78.) This haphazard notation and collection of evidence spoiled that evidence, and no reasonable juror would afford any weight to it at all. The jury should not have relied on the police work in this case. Even the prosecutor conceded in closing that not all the evidence was handled as he wanted it to be. (R. 357, Book 5, 10/4/22 at 51.)

3. **The Jury Should Not Have Relied on Letters Purportedly Written by Hall.**

The prosecution used letters supposedly written by Hall to Trevon Banks who then provided them to co-defendant Nelson. The purpose was to show Hall was trying to get Nelson to exonerate him. The letters were very damaging to Hall. The letters were read almost verbatim by Sgt. Frank Stewart. (R. 357, Book 5, 10/3/22 at 117-126.) They were also testified to by Agent Jenkins. (R. 357, Book 5, 9/30/22 at 238-255.) Defense counsel objected on chain of custody and authentication grounds. *Id.*

Agent Jenkins was able to testify that Nelson told him that Hall sent letters to him. *Id.* at 238. This was hearsay and Nelson never testified, so that does not meet the authentication requirements, as well as violating *Bruton v. U.S.*, 391 U.S. 123 (1968). Jenkins got letters from the jail administrator purporting to be from Hall to Trevon Banks. *Id.* at 241. Without objection, Jenkins was able to opine his view that Hall authored the letters. *Id.* at 246.

Sgt. Stewart, over objection, was able to testify that he learned of the letters from Nelson (hearsay), and they were brought to Stewart by Nelson's mother. *Id.* at 117. Further, without first-hand knowledge, Sgt. Stewart said Trevon Jones brought the letters to Nelson. *Id.* at 118.

The defense correctly argued there was no foundation or chain of custody for admission of the letters. *Id.* at 120-126. The first problem is that nobody testified to seeing Hall write the letters. Nobody testified that it was Hall's handwriting. Nobody testified that Hall admitted writing the letters. Trevon Banks did not testify to receiving the letters from Hall or taking them to anyone. Nelson's mother did not testify to receiving the letters from the jail or Banks. Nelson did not testify that he received the letters, nor that he recognized Hall's handwriting.

The prejudicial effect of the letters was great. It created a substantial danger that the jury would believe Hall was attempting to manufacture a defense to the murder by telling Nelson

what to do and what to say. Before admitting such a critical piece of evidence, the Court should have required a foundation and chain of custody sufficient to prove Hall wrote the letters.

The State did not present sufficient evidence of guilt and the evidence was against the manifest weight. The entire case was about "Justice for Kane." The state was so blinded by the need to get "Justice for Kane," it ignored the demonstrable falsehoods in the chimerical, ever-shifting story of its star witness Richard Walker. In pursuit of "Justice for Kane," the state rushed its investigation, making sloppy mistakes in collecting and securing evidence, and drew bad conclusions from bad evidence. And because of the pressure that "Justice for Kane" exerted on the community, the jury clearly lost its way. As the thirteenth juror, removed from all that community pressure, Hall implores this Court to reverse his convictions.

#### SEVENTH ASSIGNMENT OF ERROR

**APPELLANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTION 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION.** (R. 353, 354, 355, Transcript Notebooks 1-3, 9/19/22, 9/20/22, 9/21/22, 9/23/22, 9/26/22, 9/27/22; R.356, Book 4, 9/28/22 at 217; R. 357, Book 5, 9/30/22 at 202; R. 357, Book 5, 10/3/22 at 146; R. 357, Notebook 5, 10/4/22 at 13, 44-45; R. 356, Book 4, 9/28/22 at 212-214; R. 357, Notebook 5, 9/30/22 at 222-233; R. 357, Notebook 5, 10/3/22 at 70; R. 357, Book 5, 10/3/22 at 28; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial).

The Sixth and Fourteenth Amendments to the U.S. Constitution, and corresponding rights under the Ohio Constitution, guarantee a criminal defendant the right to the effective assistance of counsel. Pursuant to *Strickland v. Washington*, 466 U.S. 668, 687 (1984), to prevail on an ineffective assistance of counsel claim, the appellant must demonstrate both (1) deficient performance, *i.e.*, performance fallen below an objective standard of reasonable representation, and (2) resulting prejudice, *i.e.*, errors on the part of counsel of a nature so serious that there exists a reasonable probability that, in the absence of those errors, the result of the trial court

would have been different. *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). A reasonable probability is a probability sufficient to undermine confidence in the outcome, which is less than a preponderance of the evidence. *Strickland*, 466 U.S. at 694.

Here, defense counsel performed deficiently, to Hall's prejudice, in several instances, any one of which warrants reversal and remand. Specifically, counsel performed deficiently by 1) failing to file a written motion for change of venue; 2) failing to investigate or object to the jury venire under *Taylor v. Louisiana*, 419 U.S. 522, (1975); 3) failing to object to references to Hall's incarceration; 4) failing to object to narrative testimony and improper opinions; and 5) failing to object to the trial court's questioning of jurors and witnesses. It should be noted that "[t]he prejudice required for ineffective assistance of counsel is somewhat less than that required for plain error." *State v. Richmond*, 2d Dist. Greene No. 2005-CA-105, 2006-Ohio-4518, ¶ 163.

1. **Counsel Failed to Submit Evidence in Support of the Motion for Change of Venue.**

The pretrial publicity was unlike any case in recent history. The presumption of prejudice applied. *Sheppard v. Maxwell*, 384 U.S. 333, 352-53 (1966) (presumed prejudice from pretrial publicity on totality of circumstances). Although arguing for a change of venue during individual voir dire, defense counsel failed to file a formal motion for a change of venue. Defense counsel should have attached news articles, social media posts, pictures of shirts and bumper stickers and other evidence that warranted a change of venue without needing to try to pick a jury. Due to counsel's failure, the record of the pretrial saturation lacks the weight it should really hold on appeal, though the voir dire does convey enough evidence that the change of venue should have been granted on the oral motions alone.

2. **Counsel Failed to Properly Preserve the Fair Cross Section Issue.**

In *Taylor v. Louisiana*, 419 U.S. 522, 526-531 (1975), the United States Supreme Court

held that systemic exclusion of women from jury pools resulting in jury pools not reasonably representative of the community denies a defendant of his right, under the Sixth and Fourteenth Amendments, to a jury from a fair cross section of the community. In order to establish a prima facie violation of the fair cross-section requirement, the defendant must show:

1. That the group alleged to be excluded is a "distinctive" group in the community;
2. That the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and
3. That this underrepresentation is due to systematic exclusion of the group in the jury-selection process.

*Duren v. Missouri*, 439 U.S. 357, 364. See also *State v. Fulton*, 57 Ohio St.3d 120 (1991).

The defense sought a change of venue due to pretrial publicity and that Hall could not get a fair trial in Meigs County due to racial issues. Before voir dire started, defense counsel noted that it would be an all-white jury. (R. 353, Book 1, 9/19/22 hearing at 11.) The court agreed there was a limited chance there would be any African Americans. *Id.* at 11-12. The court commented that it did not know that "we're a very racist community as such." *Id.*

The first day of individual voir dire, a prospective juror opined that Hall would not get a fair trial because he is black and everyone else is white. (R. 353, Book 1, 9/19/22 individual voir dire at 93-4.) The juror called Hall a coco puff in a bowl of milk. *Id.* Defense counsel moved for a change of venue, but it was denied. *Id.* at 113-14. The venue motion was renewed on the second day of voir dire. (R. 354, Book 2, 9/20/22 at 3.) Counsel noted that there was not a single person of color questioned yet. *Id.* He requested a change of venue to a county with more diversity. *Id.* at 4. Prospective Juror Taylor opined that Hall should just plead out because this was not a diverse county and he was afraid some of the jury might be racist. (R. 354, Book 2, 9/21/22 at 140.) Prospective Juror Garnes raised the race issue during her voir dire. (R. 355, Book 3, 9/26/22 at 89-126.) In general voir dire, a prospective juror opined that there are racist

people in Meigs County who would judge Hall with those views. (R. 355, Book 3, 9/27/22 at 70-71.)

The point defense counsel was attempting to argue was that trying Hall's case in Meigs County would violate the fair cross section requirements of the Constitution. Defense counsel should have known that to properly preserve this issue, a pretrial motion and request for an evidentiary hearing was required. At the hearing, the issue would have been fleshed out with statistical analysis of the demographics of Meigs County and the fact that people of color are under-represented. Since counsel knew there were racial issues and raised them in court, it cannot be said that he was unaware or did not believe that it was a valid issue to raise.

Hall, who is African American, was tried for the murder of a white man. He was tried before an all-white jury. Only two African American's were even in the panel of jurors questioned for a week. The failure to adequately address and preserve the argument that there was a systemic exclusion of African Americans in petit juries in Meigs County is deficient performance which prejudiced Hall's rights under the Sixth and Fourteenth Amendments.

### 3. **Counsel Failed to Object to Jail References.**

Numerous times throughout trial, the jury heard references to the fact that Hall was in jail prior to trial.

"Every person accused of an offense is presumed innocent until proven guilty beyond a reasonable doubt." R.C. 2901.05 (A). The presumption of innocence is a basic component of the fundamental right to a fair trial. *See Coffin v. United States*, 156 U.S. 432, 453 (1895); *Taylor v. Kentucky*, 436 U.S. 478 (1978). "[T]he Supreme Court has consistently held that a defendant's right to be presumed innocent until proven guilty is central to our system of criminal justice, and that actions that impinge upon this presumption are to be taken only when absolutely necessary."

*Ruimveld v. Birkett*, 404 F.2d 1006, 1015 (6th Cir. 2005). "As a result, the Court has clearly required close scrutiny of any sort of error that would in any way harm a defendant's right to the presumption of innocence." *Id.*

The United States Supreme Court has previously cautioned against trying criminal defendants while shackled and wearing prison clothing. *Illinois v. Allen*, 397 U.S. 337 (1970); *Estelle v. Williams*, 425 U.S. 501 (1976). The Court has held that the Sixth and Fourteenth Amendments require convictions to be based solely on the evidence at trial, not grounds of suspicion, indictment, continued custody or other circumstances not adduced as proof at trial. *Holbrook v. Flynn*, 475 U.S. 560, 567 citing *Taylor v. Kentucky*, 436 U.S. at 485.

Throughout the trial, witnesses repeatedly testified in a manner that made it clear that Hall was in jail pending trial. The jail references came in through at least 4 State's witnesses. Danielle Runyon, Hall's ex-girlfriend testified that Hall called her from jail. (R.356, Book 4, 9/28/22 at 217.) The fact that Hall was in jail was unnecessary for Runyon's testimony.

Deputy Scott Spiker testified that when he picked Hall up from jail, he saw a bullet in his arm and told him his Miranda rights still apply. (R. 357, Book 5, 9/30/22 at 202.) Again, the jail reference was not necessary for Deputy Spiker's testimony, but it added to the improper inference that Hall committed the murder simply because he was jailed.

Sgt. Frank Stewart testified that he received letters from Agent Jenkins that Hall sent from the jail to Trevon Jones. (R. 357, Book 5, 10/3/22 at 146.) There was no need to inform the jury of Hall's pretrial incarceration except to erode the presumption of innocence. *See, e.g., State v. Watters*, 8th Dist. Cuyahoga No. 82451, 2004-Ohio-2405, ¶ 14-15.

In addition, both the prosecution and defense commented on letters Hall sent from jail. (R. 357, Book 5, 10/4/22 at 13, 44-45.)

The numerous references to Hall's incarceration destroyed his presumption of innocence. His incarceration pending trial left the jury with the impression he must be guilty if he was still locked up. It gave the jury the impression that he was a dangerous person who needed to be locked up because he was guilty of the crime for which he was on trial.

However, defense counsel failed to object to any of the foregoing testimony or evidence, did not move for a mistrial, and did not request a limiting instruction. *See State v. Turner*, 5th Dist. Stark No. 2014CA00058, 2014-Ohio-4678, ¶ 47 (finding similar error did not contribute to conviction in part because curative instruction followed and reference was fleeting). This is deficient performance. It eroded the presumption of innocence, and it prejudiced Hall because it contributed to the jury verdicts against him.

4. **Counsel Failed to Object to Narrative Testimony and Improper Opinion Testimony.**

The State repeatedly introduced testimony from law enforcement that was in narrative form and improper opinion testimony, generally without defense objection.

Danielle Runyon, Hall's ex-girlfriend, testified she spoke to Hall the night before the homicide. Without objection she was permitted to say her first instinct was that Hall did it. (R. 356, Book 4, 9/28/22 at 212-214.) She said she *assumed* Hall knew she was messing with Roush, and had a gut feeling Hall committed the murder. *Id.* Runyon's opinions were irrelevant and pure speculation. However, her testimony followed the familiar theme of improper evidence of guilt being admitted during trial. Defense counsel should have objected and moved to strike.

BCI Agent Joe Jenkins was able to testify in narrative form for pages and pages before defense counsel finally uttered an objection, which was sustained but not stricken. (R. 357, Book 5, 9/30/22 at 222-233.) Agent Jenkins basically reiterated the entire investigation, even where he did not have firsthand knowledge. He testified that Roush was tough and had a will to live. *Id.* at

223. Agent Jenkins repeated irrelevant but prejudicial victim impact hearsay from Rousch's parents about how well liked in the community he was, how he was a star athlete, and how everyone wanted to be around him. *Id.* at 222-224. Agent Jenkins was permitted to summarize the relationship between Hall and Runyon, which he had no firsthand knowledge of. *Id.* He went on for pages describing every aspect of the investigation. *Id.* at 222-232.

It was not just a narrative, but repeated hearsay of what others said, and Agent Jenkins' improper opinions. He testified to where Roush was shot, who made a sketch of a person with a red hat, and repeated what was said in the jail letters. *Id.* at 224-5, 244. The court allowed Agent Jenkins to give his irrelevant lay opinion on why he thought Hall wrote the letters. *Id.* at 246. He was allowed to read as many pages of the jail letters as the prosecutor asked him to read, and continued after a late objection was overruled. *Id.* at 250-255.

The speculation and lay opinions continued with Deputy Joe Barnhart. Deputy Barnhart was permitted to repeat hearsay from Hall's mother and sister that he went to Maryland after the incident, which in his opinion made Hall a suspect. (R. 357, Book 5, 10/3/22 at 70.) Deputy Barnhart stated it is not normal for people to turn their phone off for a set period and then turn it back on. *Id.* at 70-72. He opined one only turns their phone off when they have something to hide. *Id.* at 73. This is pure speculation, but very harmful to Hall's case for a jury to hear.

Finally, Sgt. Stewart gave his lay opinion on the jury issue of who authored the jail letters. *Id.* at 136-8. Sgt. Stewart was also permitted to read the entire jail letter to the jury. *Id.* at 142-146.

Most of the aforementioned testimony was not objected to. It allowed the prosecution to bolster other witnesses with testimony from those who had no foundation, relied on hearsay and speculation. The witnesses were able to testify to the ultimate issue for the jury. Failing to

object was deficient performance which prejudiced Hall's right to a fair trial.

**5. Counsel Failed to Object to the Court Asking Questions.**

The right of an accused to be tried by a fair and impartial judge is a basic right of due process. *In re Murchison*, 349 U.S. 133, 136 (1955). A criminal proceeding held before a biased judge is a denial of due process. *State v. Weaver*, 2022-Ohio-4371, ¶59. A trial judge should "sedulously avoid all appearances of advocacy as to those questions which are ultimately to be submitted to the jury." *United States v. Hickman*, 592 F.2d 931, 933 (6th Cir. 1979) (citing *Frantz v. United States*, 62 F.2d 737, 739 (6th Cir. 1933)).

A major part of the defense's focus at trial was that the State had not shown a proper chain of custody or authenticated many items admitted into evidence. The argument was that the jury could not rely on any of the police work due to the numerous issues with evidence collection and training of the law enforcement personnel.

Deputy Thomas Dillard was testifying to chain of custody and evidence collection issues late in the trial. He testified that he had not been appropriately trained on evidence collection and custody of evidence. (R. 357, Book 5, 10/3/22 at 28.) He stated that as of the time he was testifying, he still was not properly trained. *Id.* at 51.

After both sides finished questioning Dillard, the trial court intervened. Without objection, the trial court asked whether any of the evidence Dillard took out of the evidence locker for trial, whether it appeared to have been tampered, destroyed, or mutilated or changed in any way. *Id.* at 52. Dillard answered in the negative. This question and answer made the very important and critical point for the State, a point the prosecution had not brought out prior to the trial court's question. It established that the evidence was as it was when it was collected.

After questioning was done and the parties were prepared to move to the next witness, the

trial court decided to ask a question on one of the key issues for the jury, the chain of custody of critical pieces of evidence and poor police work in evidence collection. The defense repeatedly addressed it in questions to law enforcement and in closing argument. If the evidence was not handled properly, there was reasonable doubt as to Hall's guilt. The trial court destroyed that defense by obtaining crucial testimony that the evidence was not tampered, destroyed, mutilated or changed. This prejudiced Hall's defense. Defense counsel should have objected and moved to strike. The failure to do so deprived Hall of the effective assistance of counsel.

Singularly or collectively, these errors deprived Hall of the effective assistance of counsel.

#### EIGHTH ASSIGNMENT OF ERROR

**PROSECUTORIAL MISCONDUCT DEPRIVED APPELLANT OF HIS RIGHTS TO DUE PROCESS AND TO TRIAL BY AN IMPARTIAL JURY CONTRARY TO THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE OHIO CONSTITUTION.** (R. 355, Book 3, 9/27/22 at 128-9, 147, 157; R. 357, Book 5, 10/4/22 at 10-11; R. 355, Book 3, 9/27/22 at 143-4; 163-8; R. 310, Motion for new trial; R. 319, Reply to motion for new trial; R., 325 Entry denying motion for new trial)

A criminal defendant is entitled to a determination of guilt without prosecutorial misconduct rendering the proceeding fundamentally unfair. *Donnelley v. DeChristoforo*, 416 U.S. 637, 643 (1974). As the government's representative, the prosecutor's "obligation to govern impartially is as compelling as its obligation to govern at all." *Berger v. United States*, 295 U.S. 78, 88 (1935).

The test for prosecutorial misconduct is whether the challenged conduct and/or remarks were improper and, if so, whether they prejudicially affected the accused's substantial rights and denied a fair trial. *Smith v. Phillips*, 455 U.S. 209, 219 (1982); *State v. Lott*, 51 Ohio St.3d 160, 165, 555 N.E.2d 293 (1990); *State v. Apanovitch*, 33 Ohio St.3d 19, 24, 514 N.E.2d 394 (1987);

see also *State v. Fannon*, 4th Dist. Athens No. 17 CA 24, 2018 Ohio 5242 (2018); *State v. Leonard*, 4th Dist. Athens No. 08 CA 24, 2009 Ohio 6191. The touchstone of this analysis “is the fairness of the trial, not the culpability of the prosecutor.” *Smith*, 455 U.S. at 219. As noted by the Supreme Court of Ohio:

While we realize the importance of an attorney’s zealously advocating his or her position, we cannot emphasize enough that prosecutors of this state must take their roles as officers of the court seriously. As such, prosecutors must be diligent in their efforts to stay within the boundaries of acceptable argument and must refrain from the desire to make outlandish remarks, misstate evidence, or confuse legal concepts.

*State v. Fears*, 86 Ohio St.3d 329, 332, 1999-Ohio-111, 715 N.E.2d 136; see also *State v. Smith*, 14 Ohio St.3d 13, 13-15, 470 N.E.2d 883 (1984) (conviction reversed because of prosecutorial misconduct). While a prosecutor “may strike hard blows, he is not at liberty to strike foul ones,” and must “refrain from improper methods.” *Berger*, 295 U.S. at 88.

The Supreme Court in *United States v. Young*, 470 U.S. 1 (1985) identified at least two dangers to determine if the misconduct rises to the level of a due process violation. See also *Anthony v. Louisiana*, 598 U.S. \_\_\_, 143 S.Ct. 29 (2022). “First, a prosecutor may convey to the jury the impression that the prosecutor is aware of information, unknown to the jury, that suggests the defendant’s guilt. Second, the prosecutor’s opinion may carry with it the imprimatur of the Government and may induce the jury to trust the Government’s judgment rather than its own view of the evidence.” *Id.* at 18-19; *Anthony, Id.* at 33.

Initially during opening statement the prosecutor introduced victim impact evidence of all the good qualities about Roush. (R. 355, Book 3, 9/27/22 at 128.) The evidence was irrelevant but very prejudicial to Hall’s case. (See Fifth Assignment of Error.) The prosecutor should not have commented on what type of person Roush was nor solicited victim impact testimony to

engender sympathy towards Roush and anger at Hall as was done here. The error deprived Hall of due process.

The prosecutor also vouched for witnesses and testified during both opening and closing. During opening, the prosecutor explained why he gave the co-defendant, Richard Walker, a deal. *Id.* at 157. The prosecutor emphasized it was his decision, thus injecting himself and his credibility into the case. *Id.* The prosecutor said the victim's parents and law enforcement were consulted about the decision. *Id.* Again, this is not relevant, and would not be evidence that would come out during trial. This statement was made to lend credibility to Walker since others approved his use in trial.

The prosecutor said he agreed to the deal with Walker because the crime scene supported Walkers story. *Id.* The prosecutor is not permitted to vouch for a witness's credibility, nor can he testify, but that is exactly what happened. *State v. Smith*, 14 Ohio St. 3d 13, 14, 470 N.E.2d 883 (1984). The prosecutor told the jury essentially that he believed Walker, why he believed Walker, and that they should too. Credibility is for the jury to decide, and the prosecutor's comments prejudiced Hall's trial.

Finally, the prosecutor told the jury that Walker would not get his deal if "T" (the prosecutor) think he lied on the stand. *Id.* at 158. Again, this injects the prosecutor personally into the case, and asks the jury to believe Walker because the prosecutor has not pulled his deal.

The prosecutor also introduced improper argument contrary to *Bruton v. United States*, 391 U.S. 123 (1968). *Bruton* held it was improper to introduce evidence of a non-testifying co-defendant's confession in a defendant's trial because the defendant has no ability to confront and cross-examine the non-testifying codefendant. Here, in opening the prosecutor said that non-testifying defendant Keonatae Nelson said something incredibly important during one of his

interviews that led to the arrest of third suspect Richard Walker. *Id.* at 147. The prosecutor also said Nelson helped the State with letters Hall sent to him. The prosecutor repeated some of this evidence in closing argument. (R. 357, Book 5, 10/3/22 at 19.) It was improper to suggest that anything Nelson said or did would be or was evidence when he did not testify. The arguments should have been stricken, but instead were used as evidence against Hall. Hall had no way to confront or cross-examine this argument.

Similarly, in closing the prosecutor explained why two witnesses did not testify in the State's case. (R. 356, Book 4, 10/4/22 at 10-11.) Since the witnesses did not testify, there was no evidence to reference, and it was improper for the prosecutor to explain why the State did not present their testimony.

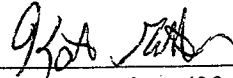
Finally, the prosecution repeatedly introduced evidence contrary to *State v. Leach*, 102 Ohio St.3d 135, 2004-Ohio-2147, 807 N.E.2d 335, ¶¶16-18; *see also Doyle v. Ohio*, 426 U.S. 610, 616-18 (1976). As explained above in the Fourth Assignment of Error, this impacted Hall's right to counsel and to remain silent. Several times the Court sustained objections but it was too late to unring the bell. The prosecution encouraged the jury to use Hall's exercise of his rights against him. This was reversible error.

Singularly or collectively, the prosecutorial misconduct deprived Hall of his State and Federal Constitutional rights to due process and an impartial jury. As a result, a new trial must be ordered.

### CONCLUSION

Defendant-Appellant Jaquan Hall has been convicted and sentenced in violation of his rights guaranteed by the United States and Ohio Constitutions. For the reasons stated herein, Hall's conviction and sentence must be reversed.

Respectfully submitted,

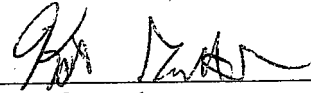


Kort Gatterdam (0040434)  
Michael B. Rogers (0098948)  
CARPENTER LIPPS LLP  
280 Plaza, Suite 1300  
280 North High Street  
Columbus, Ohio 43215  
Telephone: (614) 365-4100  
Facsimile: (614) 365-9145  
E-mail: gatterdam@carpenterlipps.com

Counsel for Defendant-Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that an exact copy of the foregoing was served August 11, 2023, *via* U.S. Mail, upon: James Keith Stanley, Prosecuting Attorney, Meigs County Prosecutor's Office, 117 West Second Street, Pomeroy, Ohio 45769.



Kort Gatterdam

# APPENDIX F

FILED  
COMMON PLEAS COURT

The Supreme Court of Ohio

2025 NOV 18 AM 9:16  
SAMANTHA MUGRAGE  
CLERK OF COURTS  
MEIGS COUNTY, OHIO

FILED  
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CLERK OF COURT  
SUPREME COURT OF OHIO

In re Disqualification of Hon. Linda R. Warner

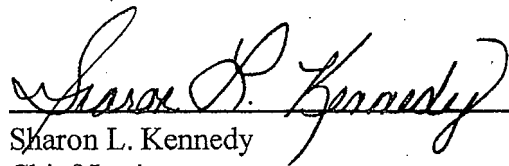
Case No. 25-AP-182

ENTRY

ON AFFIDAVIT OF DISQUALIFICATION in  
*State of Ohio v. JaQuan L. Hall*, Meigs County  
Court of Common Pleas, General and Domestic  
Relations Division, Case No. 21 CR 104

Pursuant to R.C. 2701.03(C)(1)(b), notice is hereby given to the clerk of the Meigs County Court of Common Pleas, General and Domestic Relations Division, that on November 13, 2025, the Clerk of the Supreme Court accepted for filing an affidavit seeking to disqualify Judge Linda R. Warner from the following matter: *State of Ohio v. JaQuan L. Hall*, Meigs County Court of Common Pleas, General and Domestic Relations Division, Case No. 21 CR 104.

R.C. 2701.03(C)(1)(c) requires that upon receipt of this notice, the clerk shall enter the fact of the filing of the affidavit on the docket of the proceeding pending in the Meigs County Court of Common Pleas, General and Domestic Relations Division.

  
Sharon L. Kennedy  
Chief Justice

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COURT OF APPEALS  
2025 NOV 18 AM 9:16  
SAMANTHA MUGRAGE  
CLERK OF COURTS  
MEIGS COUNTY, OHIO

# The Supreme Court of Ohio

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CLERK OF COURT

SUPREME COURT OF OHIO

In re Disqualification of Hon. Linda R.  
Warner

Supreme Court Case No. 25 AP-182

## JUDGMENT ENTRY AND DECISION

ON AFFIDAVIT OF DISQUALIFICATION in *State of Ohio v. JaQuan L. Hall*, Meigs County Court of Common Pleas, General and Domestic Relations Division, Case No. 21 CR 104.

JaQuan L. Hall, the defendant in the underlying criminal case, has filed an affidavit of disqualification pursuant to R.C. 2701.03 seeking to disqualify Judge Linda R. Warner of the Meigs County Court of Common Pleas, General and Domestic Relations Division. Judge Warner was not asked to file a response.

As explained below, Hall has not established that the judge should be disqualified. Therefore, the affidavit of disqualification is denied. The case shall proceed before Judge Warner.

### **Trial-Court Proceedings**

In October 2022, a jury found Hall guilty of aggravated murder with a firearm specification, murder with a firearm specification, complicity to commit aggravated murder or murder, and conspiracy. Judge Warner merged the offenses into aggravated murder with a firearm specification and sentenced Hall to life in prison without the possibility of parole. Hall appealed to the Fourth District Court of

Appeals. While his appeal was pending, he filed a petition for postconviction relief in the trial court seeking to “vacate or set aside judgment of conviction or sentence.” In August 2025, the Fourth District reversed and vacated Hall’s conviction for conspiracy and affirmed his remaining convictions and sentence. *See State v. Hall*, 2025-Ohio-3199, ¶ 354 (4th Dist.).

Hall filed the affidavit of disqualification on November 13, 2025. Judge Warner was not asked to file a response.

### **Affidavit-of-Disqualification Proceedings**

R.C. 2701.03 provides that if a judge of the court of common pleas “allegedly is interested in a proceeding pending before the court, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the court or a party’s counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court,” then that party or the party’s counsel may file an affidavit of disqualification with the clerk of this court.

Hall alleges that Judge Warner should be disqualified because she is biased and prejudiced against him and to avoid the appearance of impropriety. To support his allegations, Hall claims that Judge Warner issued multiple rulings that were adverse to him and violated his constitutional rights. He also asserts that Judge Warner has not ruled on his petition for postconviction relief because she does not

want to correct her decisions that “assisted the prosecution team throughout [his] trial.”

### **Disqualification of a Common-Pleas-Court Judge**

As explained above, R.C. 2701.03(A) provides two specific grounds and a catch-all provision for the disqualification of a judge of the court of common pleas. Granting or denying an affidavit of disqualification turns on whether the chief justice determines that the interest, bias or prejudice, or disqualification alleged in the affidavit exist. R.C. 2701.03(E).

The burden falls on the affiant to submit “specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations.” R.C. 2701.03(B)(1). Therefore, “[a]n affidavit must describe with specificity and particularity those facts alleged to support the claim.”

*In re Disqualification of Mitrovich*, 2003-Ohio-7358, ¶ 4.

As stated above, Hall alleges that Judge Warner is biased and prejudiced and should be disqualified to avoid the appearance of impropriety.

“R.C. 2701.03(A) speaks in terms of *actual* bias and prejudice.” (Emphasis in original.) *In re Disqualification of Berhalter*, 2023-Ohio-4881, ¶ 29. The General Assembly did not define “bias or prejudice” for purposes of the statute. However, as explained in prior disqualification cases, “[t]he term ‘bias or prejudice’ ‘implies a hostile feeling or spirit of ill-will or undue friendship or favoritism toward one of

the litigants or his attorney, with the formation of a fixed anticipatory judgment on the part of the judge, as contradistinguished from an open state of mind which will be governed by the law and the facts.” *In re Disqualification of O’Neill*, 2002-Ohio-7479, ¶ 14, quoting *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 469 (1956). “Bias or prejudice on the part of a judge will not be presumed. In fact, the law presumes that a judge is unbiased and unprejudiced in the matters over which he presides, and bias or prejudice must be strong enough to overcome the presumption of his integrity.” (Cleaned up.) *Id.* at ¶ 16. “A determination of whether a judge is biased or prejudiced is based on the judge’s words and/or actions and whether those words and/or actions convey that the judge is predisposed to an outcome of a case.” *Berhalter* at ¶ 28.

“A judge’s subjective bias, however, is not easy to discern. The United States Supreme Court has recognized that ‘to establish an enforceable and workable framework, the Court’s precedents [also] apply an objective standard that, in the usual case, avoids having to determine whether actual bias is present.’” (Brackets added in *Clark*.) *In re Disqualification of Clark*, 2023-Ohio-4774, ¶ 47, quoting *Williams v. Pennsylvania*, 579 U.S. 1, 8 (2016). Under an objective standard, “[t]he question is “whether the judge’s impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case.”” *United States v. Melton*, 738 F.3d 903, 905 (8th Cir. 2013), quoting *Moran v. Clarke*, 296

F.3d 638, 648 (8th Cir. 2002), quoting *In re Kansas Pub. Emps. Retirement Sys.*, 85 F.3d 1353, 1358 (8th Cir. 1996). “[T]hese outside observers are less inclined to credit judges’ impartiality and mental discipline than the judiciary itself will be.” *In re Nettles*, 394 F.3d 1001, 1002 (7th Cir. 2005), quoting *In re Mason*, 916 F.2d 384, 386 (7th Cir. 1990).

A judge “otherwise is disqualified” under R.C. 2701.03(A) when none of the express bases for disqualification—interest, relation to a party, bias, or prejudice—apply but other grounds for disqualification exist. *In re Disqualification of Navarre*, 2024-Ohio-3336, ¶ 21. “[E]ven in cases in which no evidence of actual bias or prejudice is apparent, a judge’s disqualification may be appropriate to avoid an appearance of impropriety or when the public’s confidence in the integrity of the judicial system is at issue.” *In re Disqualification of Crawford*, 2017-Ohio-9428, ¶ 6. In addition, an ex parte communication between a judge and a party may be a ground for disqualification when the communication “either was initiated by the judge or addressed substantive matters in the pending case.” *In re Disqualification of Calabrese*, 2002-Ohio-7475, ¶ 2. Jud.Cond.R. 2.11 sets forth additional circumstances in which a judge must be disqualified, including when the matter in controversy involves the economic interests of the judge’s family members, Jud.Cond.R. 2.11(A)(3), and when the judge is likely to be a material witness in the proceeding, Jud.Cond.R. 2.11(A)(2)(d).

These examples are not exhaustive, but they illustrate that a judge may still be disqualified under R.C. 2701.03(A) even when the express statutory grounds for disqualification are not applicable.

A judge may be disqualified to avoid an appearance of impropriety. An appearance of impropriety exists when “the [judge’s] conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.” *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 888 (2009), quoting American Bar Association, Annotated Model Code of Judicial Conduct, Canon 2A, Commentary (2004); *see also id.* at 890 (noting that the codes of judicial conduct provide more protection than due process requires). The perspective of the ordinary, reasonable person is considered, and that observer “is presumed to be fully informed of all the relevant facts in the record—not isolated facts divorced from their larger context.” *In re Disqualification of Gall*, 2013-Ohio-1319, ¶ 6.

### Analysis

For the reasons explained below, Hall has not established that Judge Warner’s disqualification is warranted.

With respect to Hall’s allegation that Judge Warner exhibited bias and prejudice against him by issuing multiple rulings that were adverse to him, it is well established that “[a]dverse rulings, without more, are not evidence that a judge is

biased or prejudiced.” *In re Disqualification of Bickerton*, 2023-Ohio-1104, ¶ 9, quoting *In re Disqualification of Russo*, 2005-Ohio-7146, ¶ 5. “Therefore, ‘affidavits of disqualification cannot be used to remove a judge from a case simply because a party is particularly unhappy about a court ruling or a series of rulings.’” *Bickerton* at ¶ 9, quoting *In re Disqualification of D’Apolito*, 2014-Ohio-2153, ¶ 5.

The focus of an affidavit of disqualification is on the judge’s words and conduct. And while “a judge could be disqualified if his or her adverse rulings were accompanied by words or conduct that call into question the manner in which the proceedings are being conducted,” *Clark*, 2023-Ohio-4774, at ¶ 51, quoting *In re Disqualification of Knece*, 2014-Ohio-1414, ¶ 10, Hall provides no record evidence supporting his allegations that Judge Warner is biased and prejudiced or otherwise disqualified. And to the extent that Hall asserts that Judge Warner has violated his constitutional rights, it is well-settled that an affidavit of disqualification may not be used to raise constitutional claims. *See, e.g., In re Disqualification of Griffin*, 2003-Ohio-7356, ¶ 8-9.

As to Hall’s claim that Judge Warner has refused to rule on his petition for postconviction relief because she does not want to correct her prior decisions that benefited the prosecution, “[t]rial judges are entitled to exercise considerable discretion in the management of cases on their dockets,” and “a judge’s determination as to how to proceed with proceedings pending before him [or

her] . . . generally provides no grounds for judicial disqualification.” (Cleaned up.) *In re Disqualification of Sundermann*, 2023-Ohio-4884, ¶ 25. Accordingly, without more, the fact that Hall’s petition for postconviction relief remains pending before Judge Warner is not enough to warrant the judge’s disqualification.

Furthermore, “[a] factual basis is required to disqualify a judge,” and speculation, hearsay, and innuendo are insufficient. *In re Disqualification of Celebrezze*, 2023-Ohio-4383, ¶ 93. Hall, as the affiant, has the burden to not only identify specific allegations of disqualification but to also present record evidence to support the allegations. *See In re Disqualification of Schroeder*, 2023-Ohio-3171, ¶ 48. “It is well settled that a judge who presided at trial will not be disqualified from hearing a petition for postconviction relief in the absence of evidence of bias, prejudice, or a disqualifying interest.” *In re Disqualification of Nastoff*, 2012-Ohio-6339, ¶ 9. Because Hall does not substantiate his assertion that Judge Warner assisted the prosecution during his trial, he has not implicated Judge Warner’s impartiality with respect to the underlying case or his pending petition for postconviction relief.

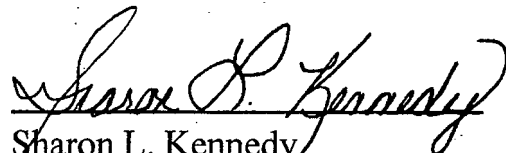
In sum, Hall has not shown that Judge Warner is biased or prejudiced against him, and no reasonable observer with full knowledge of the facts would believe that Judge Warner’s ability to carry out judicial responsibilities with integrity,

impartiality, and competence is impaired. Consequently, the allegations against Judge Warner are meritless.

**Conclusion**

Hall has not established that the judge should be disqualified. Therefore, the affidavit of disqualification is denied. The case shall proceed before Judge Warner.

Dated this 18th day of November, 2025.

  
Sharon L. Kennedy  
Chief Justice

Copies to: Clerk of the Supreme Court  
Hon. Linda R. Warner  
Samantha Mugrage, Clerk  
JaQuan Hall  
James Stanley

# APPENDIX G

**IN THE COURT OF APPEALS  
FOURTH DISTRICT APPELLATE COURT  
MEIGS COUNTY, OHIO**

<b>STATE OF OHIO</b>	:	<b>C.P. Case No. 21 CR 104</b>
<b>PLAINTIFF- Appellee,</b>	:	<b>C.A. Case No. 22 CA 012</b>
<b>- V -</b>	:	<b>Judge Peter B. Abele</b>
<b>JaQuan L. Hall</b>	:	<b>Judge Michael Hess</b>
<b>Defendant - Appellant.</b>	:	<b>Judge Jason P. Smith</b>
		<b>Judge Kristy S. Wilkin</b>

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**MOTION FOR DELAYED RECONSIDERATION  
PURSUANT TO OHIO APP. R. 26(A)(1) AND APP. R. 14(B)**

---

Now comes the Defendant-Appellant, JaQuan L. Hall, in the form of *pro se*, respectfully asking that this Court grant the following delayed reconsideration pursuant to App. R. 26(A)(1) and App. R. 14(B) from the Court decision/judgment entry dated August 29, 2025.

Further details will be explained in attached memorandum in support.

**See exhibits attached.**

*Peace. Love. Positivity,*

JaQuan L. Hall

#  
\_\_\_\_\_  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, Ohio 45601

## Memorandum

Appellant respectfully moves this court to reconsider their direct appeal. App.R. 26(A); The standard for reviewing an application for reconsideration pursuant to App.R. 26(A) is whether the application "calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." State v. Phillips, 7th Dist. Mahoning No. 14 MA 34, 2015-Ohio-69, ¶ 2, quoting Columbus v. Hodge, 37 Ohio App.3d 68, 523 N.E.2d 515 (10th Dist.1987) As described in this application, appellate counsel's inadequate performance compromised the appeal. JaQuan L. Hall suffered severe prejudice, because of appellate counsel's inadequate representation.

Ohio App. Rule 14: (B) Enlargement or reduction of time. For good cause shown, the court, upon motion, may enlarge or reduce the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of the prescribed time. The court may not enlarge or reduce the time for filing a notice of appeal or a motion to certify pursuant to App. R. 25. Enlargement of time to file an application for reconsideration or for *en banc* consideration pursuant to App. R. 26(A) shall not be granted except on a showing of extraordinary circumstances. *See also Deutsche Bank Natl. Trust Co. v. Knox, 7th Dist. No. 09-BE-4, 2011-Ohio-421, ¶ 6.*

Hall is incarcerated at Ross Correctional Institution (RCI), and during this time, within the ten-day period, Hall did not have access to adequate time in the law library to prepare this document. The library was under facility reconstruction and even when he requested additional time, his passes never were granted. The policy at RCI states inmates are allowed additional time upon request if there is a 21-day deadline. When he spoke with the librarian about his appeal

being denied and beginning his other options, she did not grant additional passes because she had forgotten. This was outside of the control of the defendant. Hall is at the hands of the staff at RCI, he does not have *sua potestas*. Hall has submitted a 26(B) motion for page extension, and these claims address some of the claims that he believed need be reconsidered. The application is just 12 pages. These claims are under the same statute and State and Federal claims, just argued in a different manner opposed to his appellant counsel. The matter the defense ask for reconsideration is the same claims presented in the brief, he just believes there were case laws, common laws, and statutes not presented, in which this court could not recognize. These assignment of Errors are what he ask that be reviewed under reconsideration that he believes is mandatory authority as these claims and the defendants' case is on all fours to the case law applied. Hall was not informed by counsel when the judgment entry went in. Hall discovered the entry nearly a week after August 29, 2025. Halls' appellant counsel did not contact the defendant in any form the day of the 29<sup>th</sup> to let him know about the decision or about filing a reconsideration application. Counsel mailed out the decision much later than he should have. Between the mail taking 3-4 days, and the institution having to issue a pass for Hall to receive the mail, which takes a day or up to three days to access the mail room, there's was no way Hall could have prepared an adequate reconsideration motion. The circumstances in which Hall is in, specifically his housing unit, he was not able to access the library due to his unit being on lockdown from fights, stabbings, and GTL movement. All outside the control of the defendant. I ask that these chain of events be considered under App. Rule 14(B).

*See Exhibit A (Four pages), Exhibit B, Exhibit C to support this ruling.*

**I. STANDARD FOR REVIEW FOR RECONSIDERATION-OBVIOUS ERROR AND MISCARRIAGE INJUSTICE.**

Ohio 'App.R. 26(A)(1)(a) states: "*Application for reconsideration of any cause or motion submitted on appeal shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order in question and made a note on the docket of the mailing as required by App.R. 30(A).*"

'App.R. 26(A) provides a mechanism by which a party may prevent miscarriages of justice that could arise when an appellate court makes an obvious error or renders an unsupportable decision under the law.' " Corporex Dev. & Constr. Mgmt. Inc. v. Shook, Inc., 10th Dist. No. 03AP-269, 2004-Ohio-2715, ¶ 2, quoting State v. Owens, 112 Ohio App.3d 334, 336, 678 N.E.2d 956 (11th Dist.1996). When presented with an application for reconsideration, pursuant to App.R. 26(A)(1), an appellate court must determine "whether the [application] calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." Columbus v. Hodge, 37 Ohio App.3d 68, 68, 523 N.E.2d 515 (10th Dist.1987), following Matthews v. Matthews, 5 Ohio App. 3d 140, 5 Ohio B. 320, 450 N.E.2d 278 (10th Dist.1982).

**SIXTH ASIGNMENT OF ERROR**

**"THE TRIAL COURT VIOLATED APPELLANT'S RIGHTS TO DUE PROCESS AND A FAIR TRIAL WHEN IT ENTERED A JUDGMENT OF CONVICTION BASED ON INSUFFICIENT EVIDENCE AND AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE UNITED STATES AND OHIO CONSTITUTIONS."**

**Law (L)** In determining whether a conviction is against the manifest weight of the evidence, the courts of appeals function as the "thirteenth juror", and after "reviewing the entire record, weighs the evidence and all reasonable inference, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost it way and created such a manifest miscarriage of justice that the conviction must be overturned and a new trial ordered." *State v. Thompkins*, supra, 78 Ohio St.3d at 387, 678 N.E.2d 541. Reversing a conviction for only the manifest weight of the evidence and ordering a new trial should be reserved for only the "exceptional case in which the conviction weighs heavily against the conviction."

**ORC. Ann. 2903.01 Aggravated Murder (A)** No person shall **purposely**, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy. **(B)** No person shall purposely cause the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, trespass in a habitation when a person is present or likely to be present, terrorism, or escape. **(C)** No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense. **(D)** No person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention shall purposely cause the death of another. **(E)** No person shall purposely cause the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either of the following applies: **(1)** The victim, at the time of the commission of the offense, is engaged in the victim's duties **(2)** It is the offender's specific purpose to kill a law enforcement officer. **(F)** No person shall purposely cause the death of a first responder or military member whom the offender knows or has reasonable cause to know is a first responder or military member when it is the offender's specific purpose to kill a first responder or military member. **(G)** Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code.

*State v. Walker*, 150 Ohio St. 3d 409 **Holding:** [1] – The appellant court reversed defendants aggravated murder conviction under R.C. 2903.01, as the state showed that it was committed with purpose under R.C. 2903.02(A) during a bar fight, but the separate element of prior calculation and design was not shown because it appeared that the shooting occurred from a spontaneous eruption of events and there was no evidence that the victim and the defendant knew one another or that he considered the murder site ahead of time.

The general assembly explicitly rejected the notion that brief premeditation prior to a murder could establish prior calculation and design.

**Argument (A)** The jury found Hall guilty of a gun specification where no evidence, credible testimony, or facts to support that he brandished, fired, or was in possession of a firearm. Throughout the entire record there is no physical or circumstantial evidence that led to this verdict. The only testimony that was given, was by Walker. The court of appeals affirmed an aggravated murder charge with a gun specification, yet if the defendant is not found guilty of a gun specification, renders the elements to this charge cause for reversal. The thirteenth juror, as the fact finders, may determine if his testimony is credible or not. *Mens rea* was not shown.

On **Oct. 3, 2022**, the defense played a recording to impeach Walkers' testimony. There was a bench conference on *pg. 211*. On *pg. 213* Walker understood that in order to get a deal he would have to tell some kind of story. So he went on to give multiple stories to the detectives. *Pg. 214*, the defense asked **"I want to tell you the story that you want to hear, is that what you told the police?"** and Walker responded **"Yes."** This is also where Hall claims his innocence. The prosecutor immediately asked to approach following his answer. *This supports the Eighth assignment error using perjured testimony.*

*Pg. 217* Walker admits **JaQuan did not have a gun.** *Pg. 219* Walker says the handgun belonged to Roush, not Nelson. Walker claimed the gun to be in the same place as *Tollivers' testimony*. This should be treated as a presumed evidential statement, preponderance of the evidence. Walker did not have any relations to Roush, or where he kept his weapons. He knew like Tolliver, Kane had a firearm located there. There's physical evidence that this dresser drawer was pulled out and fell to its side. Halls' DNA was not on this dresser. The state failed to address this piece of evidence that was introduced as a part of Halls' involvement. This could not favor the prosecution. Walker did not acknowledge this in his testimony but his original statements to

the police. The Jury somehow found Hall guilty of Gun Specification, but during deliberation, the jury notes indicated that they weren't even sure that Hall was in possession of a firearm.

There's no follow up testimony to the 38 revolver that was located in the kitchen cabinet, according to Walker. We did not learn how these firearms entered the vehicle or if he seen them when he entered the vehicle, so again we just have to believe whatever he's alleging, even though he skipped over this crucial part. Walker did not provide sufficient purpose on Halls' behalf. The evidence does not align with his testimony. Telling the police the story they want to hear, doesn't make you a credible witness. The 13<sup>th</sup> juror could not find the defendant guilty of this charge. This falls under a constructive amendment of an indictment. The state established through witness testimony from several officers that (1) Roush shot a firearm, and a theory of Roush shooting Hall was stated by the lead detective and (2) the motive was over an ex-girlfriend of the defendants. The very last witness the state presented to prove the charges against the defendant completely went in a new direction that the judge, jury, and defense was not prepared for based upon the evidence produced at trial. Roush never fired a shot in Walkers' testimony, let alone touch a firearm. Also, the new motive was because "They said" Roush was snitching on them for selling weed and "They wanted" to get him out the way or "something like that." Roush only knew Hall, so who is he referring to when he says "They said". The jury could not have convicted Hall of these charges if the state failed to provide actual evidence of Hall being in possession of a firearm and if they question if Hall had a gun or not. This was in the indictment. Purpose was never established in this case, and I want to remind you that JaQuan Hall was not "some black guy" to Roush.

(L) State v. Shabazz, 2014-Ohio-1828, 2014 Ohio App. LEXIS 1793, 2014 WL 1775686 (Ohio Ct. App., Cuyahoga County May 1, 2014) **HOLDINGS:** [1]-Defendant's conviction for aggravated murder was reversed, because there was no evidence of prior calculation and design

or that defendant was aware that the shooter had a gun; [2]-Since there was no evidence that defendant knew that the shooter had a gun until the shot was fired, there was no evidence to support a finding that defendant aided and abetting the shooter in the murder; [3]-Evidence that defendant chose to engage in the fight after seeking the victim being hit in the head with a bottle, and defendant punched a second victim was sufficient to support two of the counts for felonious assault; [4]-Since there was no evidence that defendant knew that the shooter had a gun until the shot was fired, defendant's conviction for having a weapon while under a disability was vacated.

(A) If Walkers testimony were to be true, on *pg. 178*, Walker claims the only thing "They" said was "[Kane] was snitching on him and he wanted to get him out the way or something like that." What does "out the way" truly mean and him saying "something like that" wouldn't satisfy a scheme designed or calculated. He says the conversation did not last two minutes. The state may argue that Walker claimed Hall said he wanted to "Murder" Kane but without a plan established by Walker, the elements of Agg. Murder does not support the conviction.

During his initial interview with the police, Walker stated that Roush shot JaQuan. The fact that Roush was able to go grab a firearm and fire a weapon does not indicate that Hall had any involvement in any crime being committed but that a spontaneous eruption of events occurred. All statements and testimony showed that Hall was leaving the home with nothing of Roush. The detectives testified that there was evidence discovered at the crime scene that proves Roush fired a weapon. The theory, according to detective Stewart, was officers believed Roush shot JaQuan. If evidence supports this theory, where was it in Walkers' testimony? Roush says some black guy shot him. Not JaQuan, the only man who he knew out of the three suspects involved. If Hall caused his death, he had ample time to say this as he identified a black guy who caused his death. The evidence just proves mere association to the individuals involved.

*Pg. 180* there's no understanding of how this conversation even came about. *Pg. 181* there was no contact until the night Hall, Nelson, and Walker drove to Pomeroy. Still no scheme or plan calculated for over a week at this point. Stanley asked Walker "Did you have a conversation with the defendant then?" Walker responded "No sir." *Pg. 182* Stanley "The defendant, did he [know] what was going to happen?" Walker "Yes, sir." Stanley "How did you know he knew what was going to happen?" Walker "They pulled out guns." The state asked **prior to this was there any conversation as to what was going to happen?** Walker "No sir."

On Cross, Walker says he knew what "they" was going to do when he drove to Pomeroy, he believe the intentions were to kill Roush. As stated above, Walker said there was never a conversation of killing anyone. The state has yet to establish the elements of a scheme being implemented. The only one with ill intent is Walker at this point. *Pg. 187* Stanley "Were you guys talking about anything?" on the walk to Kane's home. Walker "No." Still no scheme. **Without any discussion** Nelson was the one to knock on Kane's door. He claims that Nelson asked Roush to use his phone and he claims he heard Kane say "Yes, I guess so."

I ask the thirteenth juror to pause and placed themselves in this scenario. Around 5 in the morning, a random man comes to your door and ask to use your phone, **with no explanation as to why he needs it in the first place**, are *you* going to say "Yes, I guess so." This does not favor the prosecution.

(L) See *Bailey v. United States*, 516 U.S. 137 (1995). With statues that criminalize varying acts and minds state, the existence of separate crime can only be determined after a careful read of each statue convicted. Compound e.g., *United States v. Combs*, 369 F. 3d 925 (6<sup>th</sup> Cir. 2004) See **R.C. 2925.03** , **2901.22** , and **O.R.C. 2901.03 (B)** *State v. Ford*, 128 Ohio St 3d 398 400 (2011)

(A) The story then turn into what he claimed it to be, but now there can't be nothing but momentary deliberation because there was nothing ever discussed or planned. This is literally Walkers testimony. Walker claimed Hall told Nelson "You know what to do" but failed to establish communication on Halls' behalf to Nelson prior to the shooting. The vagueness from the "Or something like that" statement then claiming Hall said he wanted to murder Kane, but failed to mention any details of how or when, doesn't make Walker a credible witness. None of the elements required were shown, the state failed to establish these elements, but somehow the jury lost their way. The prosecutor did not have any evidence or testimony to support this motive that Walker claimed to be why Hall had purpose to kill Roush. The theory of this being over a girl was repeated over and over again by numerous witnesses to the jury. The biggest mystery is the neighbors being woken up by shouting and arguing, so there's a whole gap in Walkers testimony that doesn't align with two separate witnesses. But the prosecutor vouched for Walker because the "evidence aligned." Again, he deliberately misled the judge, jury, and the defense. The insufficiency of the evidence, elements, and purpose to support the charges of Aggravated murder, murder, complicity to murder, and Gun specification should reverse these convictions. Hall will ask that this court revisit this error as the evidence does not support the conviction or elements that must be proven beyond a reasonable doubt.

**SEVENTH ASSIGNMENT OF ERROR:**

**"APPELLANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN VIOLATION OF APPELLANT'S RIGHTS UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND SECTION 10 AND 16, ARTICLE I OF THE OHIO CONSTITUTION."**

(L) *Kimmelman v. Morrison*, 477 U.S. 365 (1986) - Respondent accused was convicted of raping a 15-year-old girl. The accused's counsel objected to the introduction of a bed sheet that had semen on it and to any testimony concerning it on the ground that it was seized without a search warrant. Because the 30-day deadline under N.J. Ct. R. 3-5:7 had long since expired, the trial judge ruled that counsel's motion was late. After trial, the accused dismissed his attorney and retained new counsel for his appeal. The United States Supreme Court noted that until the first day of trial, the accused's counsel was unaware of the search and of the state's intention to introduce the bed sheet into evidence because the counsel had conducted no pretrial discovery. Thus, the Court determined that the assistance rendered the accused by his trial counsel was constitutionally deficient because his attorney failed to file a timely suppression motion, which was not due to strategic considerations.

In regard to a claim that a criminal defendant has been denied his Sixth Amendment right to effective assistance of counsel, there is a strong presumption that counsel's performance falls within the wide range of professional assistance; the defendant bears the burden of proving that counsel's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy; the reasonableness of counsel's performance is to be evaluated from counsel's perspective at the time of the alleged error and in light of all the circumstances, and the standard of review is highly deferential.

See *Arizona v. Fulminate*, 499 U.S. 279, 310 (1991) and also *Tumey v. Ohio*, 273 U.S. 510 (1927)

See *Mapp v. Ohio*, 367 U.S. 643 (1961) and also *Galbraith v. City of Anta Clara*, 307 F.3d 1119, 1126 (9<sup>th</sup> Cir. 2002)

(A) There's a reasonable probability that if the defendant had an adequate defense against the letters submitted by the state, there would be no conviction. The letters is what the court of appeals recognizes as overwhelming guilt, yet there had to be a separate day throughout trial for a possible suppression hearing. The defense believes that case law was misapplied by the trial court judge and her beliefs were based upon a biased opinion for the town she resides in. I.d. *Tumey*. Halls' counsel stated he was not made aware of these letters. If the counsel was not aware, how could he investigate the integrity of this evidence? His counsel could not question the officer from the jail or subpoena video footage of when this letter was taken out of the mail

drop and taken back to an office to be open. There had been a history of this officer violating the attorney client privilege that the defendant is guaranteed. Around the time this occurred, this office had just place Hall in disciplinary confinement and if his counsel was able to produce the grievances against this officer along with the video footage of what this officer said, I strongly believe these letters would not have been admitted. Taking in consideration of what was produced by the defense the day of that hearing, Officer Elliott threaten the life of the defendant and told him that he would get away with whatever he wanted to because Hall was playing his game. This was documented and the response on the grievance said that the superior officer just talked to him. A clear error by the defendants counsel for missing this critical piece of evidence. Without these letters, the court doesn't assume guilt. Hall is in Federal Court as he filed a claim against said officer. *Please see* Hall v. Wash. Cnty. Jail, 2024 U.S. Dist. LEXIS 122096, 2024 WL 3666365 (Southern Dist. Ohio January 19, 2024)

(L) Hayes v. Idaho Corr. Ctr., 849 F.3d 1204, 2017 U.S. App. LEXIS 3851, 2017 WL 836072 (9th Cir. Idaho March 3, 2017) The panel affirmed in part and reversed in part the district court's dismissal of a complaint pursuant to 28 U.S.C. § 1915A, and remanded in an action brought pursuant to 42 U.S.C. § 1983 by a prisoner who alleged First Amendment claims arising from prison officials opening his legal mail outside his presence. The panel held that prisoners have a protected First Amendment interest in having properly marked legal mail opened only in their presence. The panel further held that a plaintiff need not allege a longstanding practice of violating his First Amendment rights in order to state a claim for relief on a direct liability theory, nor does a plaintiff need to show any actual injury beyond the free speech violation itself to state a constitutional violation. The panel held that the district court properly dismissed two other counts of alleged improper mail opening because plaintiff had not met his burden of plausibly alleging that the item opened outside his presence was legal mail, and because mail from the United States courts is not legal mail. The panel held that plaintiff waived any challenge to the dismissal of his policy-based claims by failing to discuss the claims in his opening brief. Concurring in the judgment, Judge Bybee agreed with the conclusion that prisoners have a

general First Amendment right to be present when legal mail related to a civil matter is inspected. He wrote separately to clarify that merely negligent conduct on the part of prison officials is not sufficient to state a claim.

Michael T. Hayes appeals the dismissal of his First Amendment challenge to prison officials opening his legal mail outside his presence. Hayes's complaint alleged four instances of prison employees delivering legal mail addressed to Hayes that had been opened before delivery. The complaint also alleged that the prison and prison officials maintained a policy or custom of ignoring the improper handling of legal mail. The district court dismissed the complaint at the pre-screening stage pursuant to 28 U.S.C. § 1915A. On appeal, Hayes argues that the district court erred in dismissing his First Amendment claims against Defendant Lisa Burke, a mail room supervisor, and his policy-based claims against Defendants Shannon Cluney, Idaho Department of Corrections ("IDOC"), and Idaho Correctional Center ("ICC"). See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part, reverse in part, and remand.

(A) Presumed prejudice is applied to the original suppression hearing, in regards to the affidavits and warrants. *Grinder v. Schaaf*, 2025-Ohio-4723 stated these affidavits were invalid as the language was incorrect. An oath of an officer was to be performed, and this mirrors the issues presented in this case. Barnhart testified that some were under oath, and some weren't. The state failed to decipher which were under oath and the defense counsel failed to investigate these affidavits prior to the hearing. If counsel could have thrown out certain warrants, then there is a possibility that trial could have went a complete different direction based upon the evidence presented. If the only items, the black shorts and crown royal bag, were to be suppressed then there's nothing that indicated Hall was at the scene of the crime. This was the evidence used by the state that was presented to the grand jury, which is what was relied on as the vehicle to Hall. Undocumented evidence was brought into a crimes scene, not found at one. Prejudice.

When acts of a state actor implicates two or more explicit sources of constitutional protection, the proper question is not which amendment controls but whether either amendment was violated. *United States v. James Daniel Good Real prop.*, 510 U.S. 43, 50 (1993).

Constitutional rights are also to be liberally construed in favor of the individual. See. *Go-Bart Importing Co. v. United States*, 282 U.S. 344 (1932).

Inside these affidavits, the officer who prepared them states that the probable cause was based upon the victim dating the defendants' girlfriend up to the time he was deceased. If counsel were to be of any assistance to the defendant, he would have spoken with this woman and learned that she and the victim were never in a relationship. They would just hook up and go their separate ways. She testified at trial, Hall was never aware of what the victim and she were doing. She should have been called as a witness in this hearing. The woman who the victim was actually dating at the time of his death, Karson Tolliver, would have provided clarity that she and Roush were getting back together and they were "Inseparable" for the last two weeks before his death. She was never aware of Halls' ex-girlfriend or Hall. This excludes the possible motive that was established in all these affidavits. This constitutes a complete misrepresentation of the truth as the information was false.

(L) Vasquez v. Jones, 496 F.3d 564, 2007 U.S. App. LEXIS 17507, 2007 FED App. 0280A (6th Cir.) (6th Cir. Mich. July 24, 2007) See [576-77] the victim was killed by a handgun when a block party became violent and three different firearms were discharged. The inmate claimed that the state trial court erred by admitting a prosecution witness's hearsay testimony after the witness failed to appear at trial. The state trial court declared the witness "unavailable" under MRE 804(a)(5), (b)(1), and admitted preliminary hearing testimony in which the witness stated that he saw the inmate fire a handgun, ruling that MRE 609(a) did not permit defense counsel to impeach the witness with his criminal history. Applying a modified deferential standard of review on appeal, the court held that the state court's rejection of the inmate's impeachment claim was an unreasonable application of the U.S. Supreme Court's Confrontation Clause jurisprudence, specifically, the *Davis v. Alaska* and *Van Arsdall* rules. The State had no legitimate interest in preventing the impeachment of hearsay testimony by means that would have been permitted, had the witness testified at trial. Because no other testimony or physical evidence linked the inmate to the murder weapon, the denial of confrontation was not harmless error under the *Van Arsdall* criteria.

(A) The state and Halls' defense counsel should have called Nelson mother as a witness to verify the integrity of the letter she turned over to the police, and questioned her if there was any additional letter received by Nelson. Hall has a 6<sup>th</sup> Amendment right to confront witnesses in this case. If this person turned over evidence that this court recognizes as guilt, and was used by the state to determine guilt, then he has a right to confront this witness. The state did not present her as a witness nor did Halls' attorney call this woman as a witness. This right is under the *Article I, Section 10 Ohio Constitution*. Due process was violated when Hall was not able to confront this woman to determine if she was withholding any other evidence or if additional evidence was presented and not turned over to the defense.

The officers who took items out of the home from Charleston, WV, where they assumed Hall was staying was not called to the stand, another confrontation clause. These items were admitted into evidence without testimony of who actually recovered these items and who turned them over to the Meigs County Sheriff Department MCSD. *I.d. Mapp*. There's no actual documentation of who was the officer or officers that went into this home and retrieved these items. A private paper was recovered and used to execute a search warrant based upon the several different murder charges. This private paper was established as a fact for probable cause to execute this warrant. The state did not give Hall the opportunity to confront this witness of where exactly was this paper or compare handwriting, this another violation of Halls' State and Federal rights.

The officer at the hospital who questioned Hall, and who he gave impartial statements to, was not called to the stand. The officer that spoke to him, showed him a picture of him to verify his identity was not present during trial. Yet, they used his report in the warrants and statements at trial against Hall. This officer spoke with Hall but did not inform him that his statements could

be brought up later in court. Whether Hall was a suspect or not, he has a right to know if his statements could be used in court. See *State v Farris*, 2006 (The police gave Farris a partial Miranda warning). Hall was not in the right mental state to be questioned, as an event as traumatic as this, his mind may have not been stable or clear enough to decipher facts from his memory. The state of mind and Halls' characteristics should have been at question because if Hall was in a state of fear, and an officer could attest to this, then it would support why he wanted his identity made anonymous and why he was hesitant of cooperation. Hall was not given this right to question this witness. The state should have presented this witness, along with Halls' counsel. These statements were repeated by a source Hall was not able to question. This is prejudicial and extremely harmful.

**(L)** Chapman v. Cal., 386 U.S. 18, 87 S. Ct. 824, 17 L. Ed. 2d 705, 1967 U.S. LEXIS 2198, 24 A.L.R.3d 1065 (U.S. February 20, 1967) The Supreme Court reversed the decision of conviction affirmed by the appeals court and held that the prosecutor's continual reminder to the jury that the petitioners failed to testify, inferring guilt, was not harmless error because the repeated comments affected petitioners' substantial rights and improperly influenced the jury to convict.

**(A)** The Court of appeals acknowledged how many times the jury heard of Halls' lack of cooperation and him being incarcerated. This constant repetition along with a constant instruction to the jury to "disregard" remarks, you cannot un-ring a bell that keeps being rung. Barnhart and Jenkins saying that Hall did not come in after setting a meeting to speak, was used as evidence of guilt in their investigation. Officers spoke of Halls' phone being turned off and that being a sign of someone trying to hide something. Yet, on cross it was asked if the officer knew if his phone was dead or not. The officer said he didn't know. The correlation I am presenting in this argument is that the officers used his lack of cooperation and his silence as determination of guilt, which they used to make him a suspect in this case. It was stated in the

affidavits to establish probable cause. If this was used as probable cause then there's no question that these officers statements were made to infer guilt upon the defendant. You cannot use someone's silence as evidence against his. The jury took the context of the affidavits and the testimony as guilt against Hall. This should have been argued and a mistrial granted. These aren't just harmless errors when the numerous documents to establish probable cause was read by the jury along with lead detectives' testimony using his silence and lack of cooperation as admission of guilt.

See United States v. Blasdel, 2025 U.S. App. LEXIS 22467, 153 F.4th 1069, 2025 LX 325685, \_\_\_ F.4th \_\_\_, 2025 WL 2502304 (10th Cir. Okla. September 2, 2025)

"We generally presume officers executed a search warrant in objective good faith. This presumption disappears when the text of an affidavit supporting a warrant is so facially deficient that the executing officers cannot reasonably presume it to be valid." United States v. Gave, 130 F.4th 865, 872-73 (10th Cir. 2025)

With these testimonies and an adequate defense, Hall would have been granted the suppression hearing and all warrants and affidavits that were used to obtain evidence built against him would have to be suppressed. The state would then have no case. The defense would then move for dismissal of all charges against him. There is a compulsory process that Hall should have went through. No witnesses were called by the defense. I ask this court reconsider this claim of ineffective assistance of counsel.

#### **EIGHTH ASSIGNMENT OF ERROR:**

**"PROSECUTORIAL MISCONDUCT DEPRIVED APPELLANT OF HIS RIGHTS TO DUE PROCESS AND TO TRIAL BY AN IMPARTIAL JURY CONTRARY TO THE FIFTH, SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND CORRESPONDING PROVISIONS OF THE OHIO CONSTITUTION."**

**(L) Criminal trial error and misconduct 2-4(a) Duty Not to Mislead.** A prosecutor has “a special duty not to mislead.” This duty arises from the prosecutor’s dual responsibility not merely to win a case, but to insure that justice is done. The potential for a prosecutor to deliberately mislead the judge, jury, and defense counsel is inherent in every phase of the trial, including offering evidence, questioning witnesses, making comments, and presenting arguments. For example, a prosecutor may engage in misleading conduct by deliberately changing the theory of the prosecution in the middle of the trial, or taking inconsistent positions on the defendant’s role in the same crime. Misleading conduct also may be demonstrated by a prosecutor’s use of police witnesses to provide so-called “overview” testimony that may give the jury a skewed impression of the evidence. Even non-willful misleading conduct is a serious breach, and when sufficient prejudice is demonstrated, a reversal usually follows. Misleading conduct may rise to the level of a due process violation when it involves the knowing use of false evidence, or when the conduct renders the defendant’s trial fundamentally unfair.

**2-4(b) Eliciting False Testimony.** A prosecutor has a duty to alert the defense when a government witness gives false testimony. The deliberate use of perjured testimony to obtain a conviction violates a defendant’s due process rights and denies him a fair trial. The prosecutor’s involvement in false testimony, although analytically distinct from issues of suppression of evidence under *Brady v. Maryland*, is frequently discussed as a component of the broader *Brady* rule. The prosecutorial duty extends not only to the active solicitation of false testimony, but also to the knowing failure to correct false testimony. Moreover, a prosecutor has a duty to investigate allegations that his witness has committed perjury, and may not remain willfully ignorant. It makes no difference whether the false testimony relates to a substantive issue, or to the witness’s credibility. Moreover, a prosecutor can violate due process even if he is unaware of the witness’s perjury, if the prosecutor “should have known” about the perjury.

**(A)** The prosecutor knew through police reports, investigations, evidence, and affidavits that Kane Roush did in fact fire a gun. Affidavits stated “We believe Kane fired back at his attackers.” This was the very first story broke to the public and evidence found in this case. Kane had gun-shot residue (gsr) on his hands. This finding was not told to the jury by the prosecutor. The affidavit stated in the March 25, 2022 portion of the transcripts, which Deputy Barnhart prepared that “BCI was called after Roush was pronounced deceased. Then a search of the crime scene occurred, two fired twelve gauge shotgun shells were found in the street, and four 45 caliber shells casings were found inside Roush home”. *Page 22* states “... **Evidence discovered at the crime scene indicated that Roush likely fired back at his attackers.**” The state then ask

about the relationship between Hall and Runyon, the woman they claimed to be "Dating" Roush up to the time he was deceased. This was their probable cause for Halls' involvement according to all the affidavits and warrants. This information was a lie.

The prosecutor has to clarify what he plans to prove and the defense counsel should have moved for a motion of "Lack of sufficient notice" when the state presented a new theory of Halls' motive the very last day of trial. Nowhere was it investigated if Hall was a drug dealer. It was established that Hall was a client to Roush. No testimony stated Hall sold drugs, even in Walkers' testimony, he did not establish Hall was a drug dealer. The prosecutor gave this jury a new theory without any evidence to back it up or notice to the defense that this is what they were going to try and establish. Hall was not prepared for this and could not build a defense against this alleged "Drug Dealer" label. This was prejudicial and unprofessional.

"A claim of prosecutorial misconduct is waived unless raised at trial, and if so waived, can serve as the basis for relief only if the conduct constitutes plain error." State v. Franklin, 97 Ohio St.3d 1, 2002-Ohio-5304, 776 N.E.2d 26, ¶ 24. Plain error is a discretionary doctrine to be used with the utmost care by the appellate court in exceptional circumstances to avoid a manifest miscarriage of justice where an obvious error affected substantial rights, meaning it was outcome determinative. State v. Noling, 98 Ohio St.3d 44, 2002-Ohio-7044, 781 N.E.2d 88, ¶ 62, applying Crim.R. 52(B).

When Runyon was asked about the relationship between Roush and her, she stated they were never officially a couple, they would hook up and go their separate ways. Karson Tolliver testified to her and Kane being **inseparable the last two weeks before his death**. This supports the false information reported by the officer, along with falsifying her statements claiming she knew Kane had sold the defendant marijuana. Runyon mentioned the relationship with the defendant, and how she was still seeing him before Roush was deceased. And after, because she

did not believe Hall had anything to do with his death. She admitted that the hook ups with Roush was hidden from Hall and Hall was never aware prior to Roush death.

Tolliver was not aware of the Runyon and Roush relationship either. The "Love Triangle" theory was then diminished. In a matter of a few questions, the two of their testimonies provided clarity that Hall did not know about her and Roush. Roush and Tolliver were inseparable the last two weeks before his death. Yet, Barnhart and the prosecutor ignored the fact against this motive before filing affidavits and executing search warrants. They could have provided clarity just as fast if he had done what he was obligated to do. Instead they provided false information with reckless disregard for the truth. There is reason to believe this was done with malice intent.

There was a 12-gauge shotgun found in Roush home, multiple unfired shell casings, there was also a nine millimeter shell casing found in the road, further away from the home. Roush was suspected to own a 38 revolver, nowhere in the affidavit had it said he own any shotguns. Tolliver and Runyon testified to Roush owning multiple guns. This was not shared in the affidavits or search warrants. Kane fired a gun, him owning multiple guns would build a different narrative. The prosecutor was well aware of this. Only two guns were fired, a 45 caliber gun and a 12-gauge shotgun. This is where the defendant claims his innocence. This information plays a vital role in this case. The prosecutor did not provide which gun Kane shot from the evidence. The question remains unanswered, insufficiency of evidence to provide clarity upon this invites suspicion. The prosecutor, James Stanley took advantage of a witness who was willing to "say whatever you want me to", and misled the jury to believe Kane did not fire, brandish, or was in possession of any gun. Knowing that evidence says otherwise. Evidence from the beginning of the investigation led officers to Kane firing a gun, this is reported in all affidavits. The prosecutor gave walker a deal that did not match this evidence.

Officers contaminated the crime scene by removing undocumented evidence, losing it for hours, then eventually, someone placed it back. There is no actual knowing of who was in possession of the evidence because Sgt. Mohlar claims he placed it in Hutton's car but Hutton says it was never in his car. Mohlar says the BCI detective placed the evidence back but the BCI detective says Mohlar placed it back. Berry testified to witnessing the evidence being picked up by an officer from behind a retaining wall, during the daylight, after EMS had left with Roush. Stanley didn't provide clarity during Mohlar testimony. Mohlar lied on the stand about when and why he removed the shell casing.

The prosecutor had this special duty, and failed to abide by it. Nowhere in Walkers proffer agreement, or testimony did Kane fire a gun. In his original statements to the police, which the defense played in court, Roush did have a gun. It was the handgun that he went for in the guest bedroom. This was supported by Tollivers' testimony. Also, Walker stated Hall "did not have a gun." The theory as to why Hall wanted to kill Kane was not supported by any of the evidence or foundational testimony leading up to this alleged motive. Through deception, using perjured testimonies, intentional ignorance to the evidence, and statements made in his opening and closing arguments, Stanley got his "win". As the record reflects numerous times throughout voir dire, his office received a lot of criticism from the community. This may have been the cause for his ethical views to become clouded from the affidavits, the evidence, to the "say whatever you want me to" witness. This was not fair or respectable towards the defendant or the court.

In the opening statements, the state will argue that the jury cannot determine his statements as evidence. Which is not what Hall wants this court to be misled by today. In this moment, the courts acknowledges that what he said had nothing to do with the investigation. The prosecutor saying Roush planned on taking over his fathers' business one day, was undeniably

inexcusable. The intent was there and he known better to push this sentiment card further than he did. The state did not mention that Roush was bringing in thousands and thousands of dollars of drug money. Who's to say he was going to plan to take over his fathers' business? The prosecutor cannot testify for Mr. Roush. This was not a harmless mistake when the results was consequential towards the life of the defendant. The state painted a picture of Hall being this mastermind, but failed to paint the picture of him being a drug dealer to support his star witness theory. Him stating he was trying to help people get out or jury duty doesn't support the defense. The contract between the state and the jury was flawed when he planted the seed of Kane Roush following in his fathers' footsteps but his life was taken from him early because of the defendant. If Hall told Nelson "You know what to do" in front of Kane, then Hall would be the cause of his death. Kane did not say Hall was the cause of his death, even though we know Hall was absolutely there. Some black guy shot him. The prosecutor did not establish that Hall was in any agreement of what was going to happen. I ask that this court reconsider this assignment of error.

## **II. Conclusion**

For the above stated reason, the Appellant would ask that this Court to reconsider its decision previously entered to prevent any miscarriage of justice. This Appellate Court should also find that the Appellant has shown an obvious error in this Court's decision to avoid a manifest injustice.

*Peace. Love. Positivity.*

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JaQuan L. Hall#808-049  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, Ohio 4560

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this motion was mailed by regular U.S. to the: Meigs County Prosecutor's Office at: 112 East Memorial Drive Suite B Pomeroy, OH 45769  
Meigs County on this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_.

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JAQUAN L. HALL - PRO SE

DEFENDANT. A#808-049

RCI.

P.O. Box 7010

Chillicothe, OH 45601

# APPENDIX H

IN THE COURT OF APPEALS  
FOURTH DISTRICT APPELLATE COURT  
MEIGS COUNTY, OHIO

STATE OF OHIO	:	C.P. Case No. 21 CR 104
PLAINTIFF- Appellee,	:	C.A. Case No. 22 CA 012
- V -	:	Judge Peter B. Abele
JaQuan L. Hall	:	Judge Michael Hess
Defendant - Appellant.	:	Judge Jason P. Smith
		Judge Kristy S. Wilkin

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**MOTION FOR 26B PAGE EXTENSION**

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Now comes the Defendant, JaQuan L. Hall in the form of pro se to request this court's permission to grant his **MOTION FOR 26B PAGE EXTENSION** by 3 (three) pages. The Certificate of Services is solely the Thirteenth page, so Halls' defense extends to the twelfth, making it just 2 (two) pages over the 10 (ten) page limit.

A **Memorandum** is attached in support.

An **Exhibit** is attached in support.

*Peace. Love. Positivity.*

**JaQuan L Hall A#808-049 Pro se**  
**Ross Correctional Institution**  
**P.O. Box 7010 Chillicothe, OH 45601**

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## Memorandum

As this court recognizes, there is a plethora amount of pages in the transcripts that exceeds 2,000 (Two-Thousand) pages. The Fourth District Court of Appeals held oral argument in March, of 2024. It was close to 19 (nineteen) months before a decision was made in this case. There was a lot to review and a lot to discuss. The entry by this court was 181 (one-hundred eighty-one) pages. The appellant court addressed 8 (eight) assignments of errors, that the defendant raised on appeal. Hall has raised just 3 (three) assignment of errors that this court may acknowledge very much worthy to hear, based upon his arguments that proves his innocence's. Hall has acknowledged that this court believed there was no prosecutorial misconduct, yet in his First Assignment of Error he believes there is, based upon the prosecutor changing the theory throughout trial and misleading the Judge, jury, defense counsel, and the appellant court. The court of appeals believed a motive that had no foundational support. The Second Assignment of Error, Hall believes the jury lost their way, and the court of appeals believes there was sufficient evidence to support these charges he was convicted of. Hall argues how the letter that this court recognizes strongly as guilt against him, is actual proof of his innocence in this case. There was evidence that this court over looked and did not acknowledge in their entry as to why they believed there was sufficient evidence to convict Hall of these charges. There were numerous of Detectives and Deputies who testified that Kane Roush fired a gun and they believed, from the evidence, he did in fact shoot JaQuan throughout the entire case. In Walker testimony, he failed to address Kane firing a gun, arguing that the neighbors heard that woke them up, and what happened to the 38 revolver that belonged to Kane. In this Second assignment of error Hall intends to prove how the jury lost their way and how the letters actually proves his innocence in this case. The Third Assignment of Error, and the last, Hall addresses the structural errors

throughout this case. One in particular being the suppression hearing. These affidavits proved to be made with reckless disregard for the truth and evidence discovered at trial indicated that police falsified statements in police reports. This Error will also prove there was misconduct done by a witness of the state. These errors would be deemed very much worth a discussion.

See Exhibit A

**Conclusion**

These three assignment of errors are very much vital to the legal and ethical boundaries set in place that would guarantee any citizen a fair and justified right to trial. Again, the extent of the case built in this 26B reaches just two pages over the ten page limit, and the third solely being the certificate of services. The articulation in these assignment of errors will provided clarity on this vast transcript record and directly address these violations that deprived the defendant a fair trial. I ask that this court grants this motion for a remedy of Hall having a just appeal, and him proving his innocence to all parties.

**Certificate of Services**

I hereby certify that a true copy of the foregoing **MOTION FOR 26B PAGE EXTENSION** has been sent by regular U.S. mail to the office of the Meigs County Prosecutor, James Stanley, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Mailed to: \_\_\_\_\_.

*Peace. Love. Positivity.*

**JaQuan L Hall A#808-049 Pro se**  
**Ross Correctional Institution**  
**P.O. Box 7010 Chillicothe, OH 45601**

**IN THE COURT OF APPEALS  
FOURTH DISTRICT APPELLATE COURT  
MEIGS COUNTY, OHIO**

<b>STATE OF OHIO</b>	:	<b>C.P. Case No. 21 CR 104</b>
<b>PLAINTIFF- Appellee,</b>	:	<b>C.A. Case No. 22 CA 012</b>
<b>- V -</b>	:	<b>Judge Peter B. Abele</b>
<b>JaQuan L. Hall</b>	:	<b>Judge Michael Hess</b>
<b>Defendant - Appellant.</b>	:	<b>Judge Jason P. Smith</b>
		<b>Judge Kristy S. Wilkin</b>

**APPELLANTS APPLICATION FOR REOPENING**

Appellant respectfully moves this court to reopen their direct appeal. App.R. 26(B); *State v. Murnhan*, 63 Ohio St.3d 60, 584 N.E.2d 1204 (1992). As described in this application, prior appellate counsel's inadequate performance compromised the appeal. Because JaQuan L. Hall has suffered severe prejudice, because of prior appellate counsel's inadequate representation, this court should reopen the direct appeal.

**I. Statement of the case and Facts**

Hall was convicted October 4, 2022 and sentenced on November 14, 2022. Hall filed a notice of Appeal and his appeal was submitted to the fourth district appellate court. Oral argument took place on March 7, 2024. A decision was made by the appellate court August 29, 2025. There were 8 assignments of errors raised and the court of appeal affirmed the decision and did not deem any of the assignments cause for reversal. A conspiracy charge against Hall was vacated.

## II. **Applicable Standard of Review**

An application for reopening must be granted “if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal.” App.R. 26(B)(5). The appropriate standard to determine whether a defendant has received ineffective assistance of appellate counsel is the two-pronged analysis found in *Strickland*. *State v. Simpson*, Slip opinion No. 2020-Ohio-6719 1, citing *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed.2d 674 (1984). Under *Strickland*, Applicants who wish to reopen their direct appeal must show “a genuine issue as to whether [they have] a colorable claim that [their] appellate counsel’s performance was deficient and that the deficient performance caused [them] prejudice.” *Simpson*.

## III. **Assignment of Error Not Considered on Appeal Due to Counsel’s Ineffectiveness**

### **FIRST ASSIGNMENT OF ERROR**

**Prosecution Misconduct deprived the defendant a fair trial and Due Process which violated his 4<sup>th</sup>, and 14<sup>th</sup> Constitutional Rights.**

**Law (L) Criminal trial error and misconduct 2-4(a) Duty Not to Mislead.** A prosecutor has “a special duty not to mislead.” This duty arises from the prosecutor’s dual responsibility not merely to win a case, but to insure that justice is done. The potential for a prosecutor to deliberately mislead the judge, jury, and defense counsel is inherent in every phase of the trial, including offering evidence, questioning witnesses, making comments, and presenting arguments. For example, a prosecutor may engage in misleading conduct by deliberately changing the theory of the prosecution in the middle of the trial, or taking inconsistent positions on the defendant’s role in the same crime. Misleading conduct also may be demonstrated by a prosecutor’s use of police witnesses to provide so-called “overview” testimony that may give the jury a skewed impression of the evidence. Even non-willful misleading conduct is a serious breach, and when sufficient prejudice is demonstrated, a reversal usually follows. Misleading conduct may rise to the level of a due process violation when it involves the knowing use of false evidence, or when the conduct renders the defendant’s trial fundamentally unfair.

**2-4(b) Eliciting False Testimony.** A prosecutor has a duty to alert the defense when a government witness gives false testimony. The deliberate use of perjured testimony to obtain a conviction violates a defendant’s due process rights and denies him a fair trial. The prosecutor’s involvement in false testimony, although analytically distinct from issues of suppression of evidence under *Brady v. Maryland*, is frequently discussed as a component of the broader *Brady* rule. The prosecutorial duty extends not only to the active solicitation of false testimony, but also to the knowing failure to correct false testimony. Moreover, a prosecutor has a duty to investigate allegations that his witness has committed perjury, and may not remain

willfully ignorant. It makes no difference whether the false testimony relates to a substantive issue, or to the witness's credibility. Moreover, a prosecutor can violate due process even if he is unaware of the witness's perjury, if the prosecutor "should have known" about the perjury.

**Argument (A)** The prosecutor knew through police reports, investigations, evidence, and affidavits that Kane Roush did in fact fire a gun. Affidavits stated "We believe Kane fired back at his attackers." This was the very first story broke to the public and evidence found in this case. Kane had gun-shot residue (gsr) on his hands. This finding was not told to the jury by the prosecutor. The affidavit stated in the March 25, 2022 portion of the transcripts, which Deputy Barnhart prepared that "BCI was called after Roush was pronounced deceased. Then a search of the crime scene occurred, two fired twelve gauge shotgun shells were found in the street, and four 45 caliber shells casings were found inside Roush home". *Page 22* states "... **Evidence discovered at the crime scene indicated that Roush likely fired back at his attackers.**" The state then ask about the relationship between Hall and Runyon, the woman they claimed to be "Dating" Roush up to the time he was deceased. This was their probable cause for Halls' involvement according to all the affidavits and warrants. This information was a lie. *Argument is supported in the Second Assignment Error and Third Assignment Error.*

When Runyon was asked about the relationship between Roush and her, she stated they were never officially a couple, they would hook up and go their separate ways. Karson Tolliver testified to her and Kane being **inseparable the last two weeks before his death.** This supports the false information reported by the officer, along with falsifying her statements claiming she knew Kane had sold the defendant marijuana. Runyon mentioned the relationship with the defendant, and how she was still seeing him before Roush was deceased. And after, because she did not believe Hall had anything to do with his death. She admitted that the hook ups with Roush was hidden from Hall and Hall was never aware prior to Roush death.

Tolliver was not aware of the Runyon and Roush relationship either. The "Love Triangle" theory was then diminished. In a matter of a few questions, the two of their testimonies provided clarity that Hall did not know about her and Roush. Roush and Tolliver were inseparable the last two weeks before his death. Yet, Barnhart ignored the fact against this motive before filing affidavits and executing search warrants. He could have provided clarity just as fast if he had done what he was obligated to do. Instead he provided false information with reckless disregard for the truth. There is reason to believe this was done with malice intent. *See affidavit.*

There was a 12-gauge shotgun found in Roush home, multiple unfired shell casings, there was also a nine millimeter shell casing found in the road, further away from the home. Roush was suspected to own a 38 revolver, nowhere in the affidavit had it said he own any shotguns. Tolliver and Runyon testified to Roush owning multiple guns. This was not shared in the affidavits or search warrants. Kane fired a gun, him owning multiple guns would build a different narrative. The prosecutor was well aware of this. Only two guns were fired, a 45 caliber gun and a 12-gauge shotgun. This is where the defendant claims his innocence. This information plays a vital role in this case. The prosecutor did not provide which gun Kane shot from the evidence. The question remains unanswered, insufficiency of evidence to provide clarity upon this invites suspicion. The prosecutor, James Stanley took advantage of a witness who was willing to "say whatever you want me to", and misled the jury to believe Kane did not fire, brandish, or was in possession of any gun. Knowing that evidence says otherwise. Evidence from the beginning of the investigation led officers to Kane firing a gun, this is reported in all affidavits. The prosecutor gave walker a deal that did not match this evidence. *Argued in detail in affidavit.*

Officers contaminated the crime scene by removing undocumented evidence, losing it for hours, then eventually, someone placed it back. There is no actual knowing of who was in possession of the evidence because Sgt. Mohlar claims he placed it in Hutton's car but Hutton says it was never in his car. Mohlar says the BCI detective placed the evidence back but the BCI detective says Mohlar placed it back. Berry testified to witnessing the evidence being picked up by an officer from behind a retaining wall, during the daylight, after EMS had left with Roush. Stanley didn't provide clarity during Mohlar testimony. Mohlar lied on the stand about when and why he removed the shell casing.

The prosecutor had this special duty, and failed to abide by it. Nowhere in Walkers proffer agreement, or testimony did Kane fire a gun. In his original statements to the police, which the defense played in court, Roush did have a gun. It was the handgun that he went for in the guest bedroom. This was supported by Tollivers' testimony. Also, Walker stated Hall "did not have a gun." The theory as to why Hall wanted to kill Kane was not supported by any of the evidence or foundational testimony leading up to this alleged motive. Through deception, using perjured testimonies, intentional ignorance to the evidence, and statements made in his opening and closing arguments, Stanley got his "win". As the record reflects numerous times throughout voir dire, his office received a lot of criticism from the community. This may have been the cause for his ethical views to become clouded from the affidavits, the evidence, to the "say whatever you want me to" witness. This was not fair or respectable towards the defendant or the court. The defendant ask that this court reverse/vacate this conviction.

### **Second Assignment of Error**

**The jury lost their way through the manifest weight of the evidence and miscarriage of justice. This violated Halls' State and Federal Constitutional rights to due process. 4<sup>th</sup> 6<sup>th</sup> 14<sup>th</sup> Amendment violation.**

(L) In determining whether a conviction is against the manifest weight of the evidence, the courts of appeals function as the “thirteenth juror”, and after “reviewing the entire record, weighs the evidence and all reasonable inference, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be overturned and a new trial ordered.” *State v. Thompkins*, supra, 78 Ohio St.3d at 387, 678 N.E.2d 541. Reversing a conviction for only the manifest weight of the evidence and ordering a new trial should be reserved for only the “exceptional case in which the conviction weighs heavily against the conviction.”

(A) The jury found Hall guilty of a gun specification where no evidence, credible testimony, or facts to support that he brandished, fired, or was in possession of a firearm. Throughout the entire record there is no physical or circumstantial evidence that led to this verdict. The only testimony that was given, was by Walker. The thirteenth juror may determine if his testimony is credible or not. *See the last portion of the affidavit as it refers to the 38 Revolver.* Walker did not provide any testimony of how any firearms got in the car.

On Oct. 3, 2022, the defense played a recording to impeach Walker's testimony. There was a bench conference on pg. 211. On pg. 213 Walker understood that in order to get a deal he would have to tell some kind of story. So he went on to give multiple stories to the detectives. Pg. 214, the defense asked **“I want to tell you the story that you want to hear, is that what you told the police?”** and Walker responded **“Yes.”** This is also where Hall claims his innocence. The prosecutor immediately asked to approach following his answer. *This supports the first assignment error using perjured testimony.* Pg. 217 Walker admits JaQuan did not have a gun. Pg. 219 Walker says the handgun belonged to Roush, not Nelson. Walker claimed the gun to be in the same place as Tolliver's testimony. Walker did not have any relations to Roush, or where he kept his weapons. He knew like Tolliver, Kane had a firearm located there. The Jury somehow found Hall guilty of Gun Spec. Telling the police the story they want to hear, doesn't make you a credible witness. The 13<sup>th</sup> juror could not find the defendant guilty of this charge.

(L) **Aggravated Murder** [Elements] – Proof of prior calculation and design for aggravated murder purpose requires proof of a scheme designed to implement the calculated decision to kill. The amount of time that the defendant spends in the planning, analyzing the crime are not critical factors in themselves; however, they must amount to more than momentary deliberation.

(A) If Walkers testimony were to be true, on *pg. 178*, Walker claims the only thing “They” said was “[Kane] was snitching on him and he wanted to get him out the way or something like that.” What does “out the way” truly mean and him saying “something like that” wouldn’t satisfy a scheme designed or calculated. We discovered that Kane was a major drug dealer through physical evidence and testimony. If he had any run in with the law, they would want his supplier, not the people buying weed from him. *Pg. 180* there’s no understanding of how this conversation even came about. *Pg. 181* there was no contact until the night Hall, Nelson, and Walker drove to Pomeroy. Still no scheme or plan calculated for over a week at this point. Stanley asked Walker “Did you have a conversation with the defendant then?” Walker responded “No sir.” *Pg. 182* Stanley “The defendant, did he [know] what was going to happen?” Walker “Yes, sir.” Stanley “How did you know he knew what was going to happen?” Walker “They pulled out guns.” The state asked **prior to this was there any conversation as to what was going to happen?** Walker “No sir.”

On Cross, Walker says he knew what “they” was going to do when he drove to Pomeroy, he believe the intentions were to kill Roush. As stated above, there was never a conversation of where they were going or killing anyone. The state has yet to establish the elements of a scheme being implemented. *Pg. 187* Stanley “Were you guys talking about anything?” on the walk to Kane’s home. Walker “No.” Still no scheme. **Without any discussion** Nelson was the one to knock on Kane’s door. He claims that Nelson asked Roush to use his phone and he claims he heard Kane say “Yes, I guess so.”

I ask the thirteenth juror to pause and placed themselves in this scenario. Around 5 in the morning, a random man comes to your door and ask to use your phone, **with no explanation as to why he needs it in the first place**, are *you* going to say "Yes, I guess so."

The story then turn into what he claimed it to be, but now there can't be nothing but momentary deliberation because there was nothing ever discussed or planned. This is literally Walkers testimony. None of the elements required were shown, the state failed to establish these elements, but somehow the jury lost their way. The prosecutor did not have any evidence or testimony to support this motive that Walker claimed to be why Hall had purpose to kill Roush. The theory of this being over a girl was repeated over and over again by numerous witnesses to the jury. The biggest mystery is the neighbors being woken up by shouting and arguing, so there's a whole gap in Walkers testimony that doesn't align with two separate witnesses. But the prosecutor vouched for Walker because the "evidence aligned." Again, he deliberately misled the judge, jury, and the defense. The insufficiency of the evidence, elements, and purpose to support the charges of Aggravated murder, murder, complicity to murder, and Gun specification should reverse these convictions.

### **Third assignment of Error**

#### **Halls 4<sup>th</sup> 5<sup>th</sup> 6<sup>th</sup> and 14<sup>th</sup> State and Federal Constitutional rights were violated through Due Process and Structural Errors.**

(L) Quoting a case from the Supreme Court Ruling in *State v. Colon*, 118 Ohio St. 3d. 26; Structural errors are "constitutional defects that "'defy analysis by 'harmless error' standards" because they "affect the framework within which the trial proceeds, rather than simply [being] an error in the trial process itself.'" (Brackets added in Fisher.) *State v. Perry*, 101 Ohio St.3d 118, 2004 Ohio 297, 802 N.E.2d 643, at P 17, quoting *State v. Fisher*, 99 Ohio St.3d 127, 2003 Ohio 2761, 789 N.E.2d 222, at P 9, quoting *Arizona v. Fulminante* (1991), 499 U.S. 279, 309, 310, 111 S.Ct. 1246, 113 L.Ed.2d 302. "Such errors permeate '[t]he entire conduct of the trial from beginning to end' so that the trial cannot "'reliably serve its function as a vehicle for determination of guilt or innocence.'" Id., quoting *Arizona* at 309-310, quoting *Rose v. Clark* (1986), 478 U.S.

570, 577-578, 106 S.Ct. 3101, 92 L.Ed.2d 460. "[A] structural error *mandates* a finding of 'per se prejudice.'" (Emphasis sic.) *State v. Fisher*, 99 Ohio St.3d 127, 2003 Ohio 2761, 789 N.E.2d 222, at P 9.

We have previously cautioned against applying a structural-error analysis in cases that would otherwise be governed by Crim.R. 52(B) because the defendant did not raise the error in the trial court. See *State v. Perry*, 101 Ohio St.3d 118, 2004 Ohio 297, 802 N.E.2d 643, at P 23. "This caution is born of sound policy. For to hold that an error is structural even when the defendant does not bring the error to the attention of the trial court would be to encourage defendants to remain silent at trial only later to raise the error on appeal where the conviction would be automatically reversed." (Emphasis omitted.) Id.

(A) The court admitted evidence of a letter confiscated from mail Hall allegedly sent out from jail. The defense argued the integrity of the letter, even though you could identify that Hall was building a defense strategy for two charges for his attorney. The state argued that just because it did not identify Halls attorney there's no actual knowing that it was intended for his attorney. Hall testified to these letters saying that Joshua Elliott, the officer from the county jail who submitted it to BCI, had a pattern of violating Halls' Constitutional and Federal rights to attorney-client privilege. Hall provided evidence of a grievance he filed on the officer pertaining to Elliott continuously going through his legal mail and discussing evidence in this case with other individuals in the jail. The response given was that the officer was addressed about this. Hall testified to the envelope being marked as legal mail and not sending certain pages out, grouped together. Halls' attorney was not prepared for this because he admitted he did not see this letter, so there for he could not build a defense to suppress this evidence. *This supports the ineffectiveness of assistance of trial counsel that should have been mentioned on appeal.* This court strongly recognizes the letters as weight of the evidence against Hall. The defendant did not have an adequate defense against the letter. *The affidavit will argue Halls' innocence pertaining to this evidence.*

**(L) Search Warrants** – Hamilton, *Circuit Judge*. If police officers obtain a search warrant by deliberately or recklessly providing the issuing court with false, material information, the search warrant is invalid. In *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), the Supreme Court held that when a defendant makes a substantial preliminary showing that the police procured a warrant to search his property with deliberate or reckless misrepresentations in the warrant affidavit, and where such statements were necessary to the finding of probable cause, the Fourth Amendment entitles the defendant to an evidentiary hearing to show the warrant was invalid. In this appeal we attempt to clarify some issues

concerning the procedures a district court may or must use in evaluating a criminal defendant's motion to suppress evidence under *Franks*. Also see *State v. Taylor*, 174 Ohio App. 3d 477, 482

In *State v. Mobley*, 1989 WL 63604 OH Ct. App. 12<sup>th</sup> Dist. where the 12<sup>th</sup> dist. of appeals simply refused to believe the police were capable of deliberate misstatements in an affidavit. In *Mobley*, a magistrate issued a search warrant based on an affidavit that offered two facts: That police had made a controlled purchase of cocaine from the defendant's home, and the entire transaction had been recorded on tape. At trial, it was established that the purchases was actually made at another persons' home and that the contact with the defendant was not recorded. The affiant, claimed inadvertent error, citing the confusion of several ongoing investigation on the day the affidavits was prepared. However, further testimony established that (1) the officer prepared the affidavits only 90minutes after the event in question and (2) he was reminded twice by other participants that no recording was made of the defendant's activities. The 12<sup>th</sup> Dist. Court reversed this factual finding of the lower court on the basis that it was "entirely possible" that the misstatements were the result of "confusion or oversight." Also see **5:3 Purpose of requirement – Antecedent justification and 8:3 judicial preference for a warrant.**

(A) I will be refereeing to the March 25, 2022 portion of the transcripts *Suppression Hearing*. As Barnhart reads the affidavit he claims that Roush did not own a 45 caliber firearm, but he did own a 38 revolver. They claimed to never locate it though. Walker never testified to what happened to it. Barnhart lied about the relationship between Runyon and Roush, *as stated in the First Error*. Throughout trial we discovered that to be false. Roush and Tolliver were together before he passed. Runyon called Hall as soon as she found out Roush was deceased because Hall was her best friend, not because she assumed he had something to do with it. Barnhart added the charges of Agg. Murder to the Apple search Warrant. He used the same information in all the affidavits. He did not provide any evidence to support a scheme planned that supports this charge. He gave several search warrants to Judge Powell at one time to sign. Later when questioned on cross, Barnhart claims that some of the conversations were recorded, as he was under oath. He then says he can't remember if they were. When he was at Judge Powell's' home, it was under renovations so he doesn't believe those were. So we don't know which warrants were under oath or not. Lt. Zirkle went "word for word" from his affidavit for him to execute his search warrant. These falsified affidavits and invalid warrants controlled the

direction of this entire case built against Hall. As mentioned above Tolliver, through her testimony, her statements were falsified by detectives.

Pg. 52 Barnhart states, all the evidence obtained by Police officers in WV from a home Hall was "believed to have been". Nothing indicated that all the items seized belonged to Hall. He implies Hall was staying there but there no evidence to support this. He says officers obtained this after the U.S. Marshalls arrested Hall, then continues to say "While searching for Hall at 2410 Kanawha Blvd. East, investigators discovered a hand written note of various types of murder charges and potential years in prison... and various phones and laptops in the room Hall had been staying." Again, there was no evidence he stayed in that room, and said that there were items seized after the defendant was in custody. They were "searching for Hall", not evidence. They did not have a search warrant to go through any backpacks and find private papers. The private papers could strongly been from Halls' legal counsel.

Barnhart testified to having officers looking over the affidavits, along with the prosecuting attorney. Nothing in these affidavits indicated Hall was at the crime scene. Probable cause was based upon a "Love triangle" theory that proved to be false, as mentioned in the *First Assignment Error*. Pg. 62 showed the timestamps on the affidavits are not accurate. "Just because it says it's during working hours it may have been a Saturday." Affidavits and search warrants are to be signed and notarized in a true timely/dated manner, not with false dates and times. The DNA search warrant was requested for the crime of Rape, and someone's entire social security number that was not the defendants'. Rape had nothing to do with this case and no information in the affidavit claimed Roush was sexually assaulted. They used the wrong crime and another mans' Social Security Identification number to execute another search warrant, this being for the Black shorts and 'Crown Royal' bag which was the vehicle to Halls' arrest warrant.

Another falsified affidavit and invalid warrant that drove this case. There is a continuous pattern of this throughout the entire case. Officers had spoken with Halls' sister, that's when Hall said he would come in, as officers testified to. Again, disregarding the truth in the affidavits knowing Hall said he would come in to talk, and knowing that his attorney was the one to cancel the interview, not him. The affidavit says he fled. That was a lie. Walker did not testify to any additional firearms taken from the home. According to him, everyone left with the same gun.

These affidavits were made with reckless disregard for the truth, no attention to facts established from the investigation, and evidence at trial did not support any of these allegations. Misstatements were made intentionally to execute an arrest warrant and search warrants, which is not moral, ethical, or legal. These items should have been suppressed and should be suppressed now that we learned at trial the information was false. The 12<sup>th</sup> dist. Ruled on this exact circumstance and I ask that this court reverse this conviction.

#### **IV. Conclusion**

Appellant has demonstrated that counsel was deficient for failing to raise the issue now presented, and that had those claims been presented on appeal, there was a reasonable "probability" that they would have been successful. *State v. Spivey*, 84 Ohio St.3d 24, 25 1998-Ohio-704, 701 N.E.2d 696 (1998). For all the foregoing reasons JaQuan L. Hall Respectfully request this court to grant the Application for Reopening. Please refer to the affidavit attached that argued these claims in detailed and proves Hall is innocent because the evidence is there.

*Peace. Love. Positivity.*

**JaQuan L Hall A#808-049 Pro se**  
**Ross Correctional Institution**  
**P.O. Box 7010 Chillicothe, OH 45601**

Certificate of services

I hereby certify that a true copy of the foregoing **APPELLANT'S APPLICATION FOR REOPENING** has been sent by regular U.S. mail to the office of the Meigs County

Prosecutor, James Stanley, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Mailed to: \_\_\_\_\_.

\_\_\_\_\_  
**Defendant – Appellant, *Pro Se***

JaQuan L Hall A#808-049 *Pro se*

Ross Correctional Institution

P.O. Box 7010 Chillicothe, OH 45601

# APPENDIX I

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS

JAQUAN L. HALL

PLAINTIFF

- V -

Washington County Jail, et al.,

Defendant.

: Case No. 2:23-cv-3742  
:  
: District Judge James L. Graham  
: Magistrate Judge Elizabeth P. Deavers  
:

**PLAINTIFF OBJECTION PURSUANT TO USCS FED R. CIV. PROC. R 72**

Now comes JaQuan L. Hall, in the form of pro se to submit **PLAINTIFF OBJECTION PURSUANT TO USCS FED R. CIV. P. 72** in this case. Hall believes that there is enough reason to believe that the law was misapplied, along with mandatory authority that directs the claims presented towards the favor of the plaintiff.

Memorandum in attached,

*Peace. Love. Positivity,*

JaQuan L. Hall

#  
\_\_\_\_\_  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, Ohio 45601

## Memorandum

**Law (L) – USCS Fed Rules Civ Proc R 72 – (a) Nondispositive Matters.** When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

Under USCS Fed Rules Civ Proc R 56 – (e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

- (1) Give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (4) Issue any other appropriate order.

**Argument (A) –** The plaintiff objects to the recommended judgment in favor of the defendants. The plaintiff has provided amplified evidence to support all of the claims raised. The court has acknowledge that some of Halls' grievances were not filed by officers at the jail. A clear First Amendment violation. A grievance is the only defense a prisoner has against prison staff. Therefore, when officers destroy and not file his complaints, how is the court to rule in favor of prison staff. The review of the evidence presented and lack thereof, falls on the defendants in this case. Hall has requested documents from the defendants, along with giving the defense counsel a list of everything he request to be turn over prior to summary judgment. USCS Fed Rules Civ Proc R 26. Hall requested from the defense that they turn over all of the legal mail documentation that he had to sign in order for him to mail out, and receive, his mail. This was not turned over by the defendants, which assisted the case built against them. This court lack of evidence towards the amount of legal mail received by Hall, and the dates and time when it was received, prohibits justice and a true judgment to be made in this case.

The plaintiff requested all complaints filed against the defendants in this case to establish a pattern of misconduct and illegal acts. Hall was not the only one to file complaints against these officers. Establishing a pattern against the defendants is crucial in this matter. The plaintiff filed a grievance on behalf of the dorm he was in. This grievance had dozens of signatures. Many filed their own individual complaints on the defendants, which would further support the claims presented. Without the production of the evidence from the defense, how could this court rule in favor of the defendants.

Hall filed a motion and the proper documents to correct the deposition. He informed the court that this was not a true and accurate version of what was said. The record was not corrected, nor was his request for audio granted. Hall endured many obstacles as a prisoner, mainly being given an opportunity to depose the defendants. Hall gave the defense counsel a written deposition for his clients that was never answered. Hall also spoke to the defense counsel on the phone. In the presence of his case manager, they spoke about the audio recording that his client Carr was in possession of that needed to be turned for evidence. At deposition, the defense counsel began to state Carr was not aware a recording, until I reminded him of what he said a day prior on the phone. He then corrected himself and informed Hall that Carr mentioned the tape recorder, and it was on the table, but Carr claimed to not record the conversation. So Hall was not given an opportunity to investigate what was on the tape recorder, even though his client mentioned this tape recorder to him. He did not turn over potential evidence in this case.

In regards to the legal mail, I urge this court to reject the recommendation. Hall came forth and stated that his friend was not legal counsel, at his trial. This does not negate the fact that these officer were aware his mail being used as potential evidence in an ongoing investigation.

The Constitutional Rights for pretrial detainees and those incarcerated addresses legal mail is to be open in the presence of the prisoner.

There are two different circumstances that occurred and this being a criminal one. The alteration and removal of this letter from the envelope would fall under ORC Ann. 2921.12 (A) No person, knowing that an official proceeding or investigation is in progress, or is about to be or likely to be instituted, shall do any of the following: **(1)** Alter, destroy, conceal, or remove any record, document, or thing, with purpose to impair its value or availability as evidence in such proceeding or investigation; **(2)** Make, present, or use any record, document, or thing, knowing it to be false and with purpose to mislead a public official who is or may be engaged in such proceeding or investigation, or with purpose to corrupt the outcome of any such proceeding or investigation. **(B)** Whoever violates this section is guilty of tampering with evidence, a felony of the third degree.

Elliott should have been in the presence of an officer of the law. This county jail is the base for the Marietta police department, so finding an officer to be present would not have been difficult. Elliot did not photograph, provide a criminal report, or inform law enforcement, **prior to**, opening the mail being used as evidence in an ongoing investigation. Elliott did not investigate who the friend was, or testify to verifying the address. Hall testified to the envelope being marked as legal mail, and all the pages copied by Elliott, that he turned over to the Detectives, were not in that small envelope. Elliott seen Halls' name on an envelope, concealed it, took it to an office with no cameras, and opened it. The integrity of the evidence is flawed.

Elliott is the same man who said he would assure Hall would spend the rest of his life in prison. Elliott had a prior complaint from Hall stating Elliott said he would "get away with whatever he wanted to." This was presented as evidence.

Elliott did not inform any higher authority or police agencies of this letter until after he removed, alter, and concealed this evidence. The defendant became aware of an ongoing investigation of Halls' mail. Therefore, procedure shifts from "jail policy", to ensuring Constitutional Rights are followed. Elliotts' action violated Halls' due process, and was criminal.

As you will see below, the case laws, common laws, and the criteria to the cases mentioned, are either "on all fours" to the subject matter in the claims Hall has presented, or shows the contrast that were denied but applies in this case. With the arguments presented, you will see through an extensive research on the claims, Hall would sway a jury of their peers to favor the plaintiff in this case.

#### A. Legal Mail

(L) – Hayes v. Idaho Corr. Ctr., 849 F.3d 1204, 2017 U.S. App. LEXIS 3851, 2017 WL 836072 (9th Cir. Idaho March 3, 2017) The panel affirmed in part and reversed in part the district court's dismissal of a complaint pursuant to 28 U.S.C. § 1915A, and remanded in an action brought pursuant to 42 U.S.C. § 1983 by a prisoner who alleged First Amendment claims arising from prison officials opening his legal mail outside his presence. The panel held that prisoners have a protected First Amendment interest in having properly marked legal mail opened only in their presence. The panel further held that a plaintiff need not allege a longstanding practice of violating his First Amendment rights in order to state a claim for relief on a direct liability theory, nor does a plaintiff need to show any actual injury beyond the free speech violation itself to state a constitutional violation. The panel held that the district court properly dismissed two other counts of alleged improper mail opening because plaintiff had not met his burden of plausibly alleging that the item opened outside his presence was legal mail, and because mail from the United States courts is not legal mail. The panel held that plaintiff waived any challenge to the dismissal of his policy-based claims by failing to discuss the claims in his opening brief. Concurring in the judgment, Judge Bybee agreed with the conclusion that prisoners have a general First Amendment right to be present when legal mail related to a civil

matter is inspected. He wrote separately to clarify that merely negligent conduct on the part of prison officials is not sufficient to state a claim.

Michael T. Hayes appeals the dismissal of his First Amendment challenge to prison officials opening his legal mail outside his presence. Hayes's complaint alleged four instances of prison employees delivering legal mail addressed to Hayes that had been opened before delivery. The complaint also alleged that the prison and prison officials maintained a policy or custom of ignoring the improper handling of legal mail. The district court dismissed the complaint at the pre-screening stage pursuant to 28 U.S.C. § 1915A. On appeal, Hayes argues that the district court erred in dismissing his First Amendment claims against Defendant Lisa Burke, a mail room supervisor, and his policy-based claims against Defendants Shannon Cluney, Idaho Department of Corrections ("IDOC"), and Idaho Correctional Center ("ICC"). See Monell v. Dep't of Soc. Servs., 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). We have jurisdiction under 28 U.S.C. § 1291, and we affirm in part, reverse in part, and remand.

(A) – Judge Deavers addressed the situations with the letters being separate circumstances. The letter that Hall sent to a friend was a part of an investigation in connection to a murder. As Deavers stated, the defendants do not deny that they were aware prior to opening Halls' mail, and there could be a possibility that this mail could be used as evidence in a criminal trial.

“Apparently, according to the transcript from that proceeding submitted by Defendants in support of their summary judgment motion, a detective investigating the murder of Kane Roush contacted the Washington County Jail with concerns regarding Plaintiff's outgoing mail.”

With that being said, that points back to the opening argument in this document. The defendant was well aware of an investigation and had opened this critical piece of evidence that was used against Hall in his criminal trial, without documenting the envelope prior to opening it, reading it, and withholding it from being sent out. Consequently, Elliott admitted to his action and admitted that he was aware that the envelope and the contents inside could be used as evidence against the defendant.

Hall testified to marking the envelope as legal mail and his friend never received the letter. This goes beyond the jail policy once he acted as a potential witness in a criminal case in which Hall is guaranteed due process, along with other Constitutional Rights within the State of Ohio and U.S. *This would also be included in the **Equal Protection of the law.***

Elliott and Flowers had a history of going through Halls' legal mail and in the evidence submitted by the plaintiff, there is no denial of such allegations. Instead, these officers were addressed about going through Halls' legal mail and speaking about his case to other individuals in the jail. Hall had wrote a grievance twice following the classroom incident, because the first one was never filed by officers at the jail. This violates Halls First Amendment rights. *Watison v. Carter, 668 F.3d 1108, 2012 U.S. App. LEXIS 2818, 2012 WL 432296 (9th Cir. Nev. February 13, 2012)* ( Prisoners have a First Amendment right to file grievances against prison officials **and** to be free from retaliation for doing so. *Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009).*) When Hall asserted that his complaints were not getting filed, this goes beyond the disciplinary actions of the jail and moves to a Constitutional Right being violated. These officers were destroying evidence that could be used against them later in civil, and possible criminal, proceedings.

Allowing this action to favor the defendants in this case would be consequential towards the entire justice system. Hall has established a pattern of his attorney-client privileges being violated, a pattern of his grievances "coincidentally" not being filed, along with an aggressive and malicious pattern of intent on the defendant Elliott and Flowers behalf.

In regards to the mail sent to the news stations. Hall has a right to address the press and seek help to shed light to the corruption in his case and the illegal conduct by jail staff. The letter addressed criminal acts and misconduct by the defendants in this case. I believe the Magistrate Judge misconstrued what the record reflected. Hall addressed the contexts of the letters as he

spoke about his innocence, and legal steps he was taking in his criminal proceedings. Hall did in fact identify this as legal mail, which is why it was opened outside his presence.

The reason why the jail did not recognize it as legal mail was because it was not going to his attorney, probation officer, or judge. Yet, as you see in **Exhibit A7** and **B7** attached to this document, the innocent projects Hall reached out to, does consider mail sent to, and from them, as confidential and legal mail. The same information the innocent project asked for, is the same information in the mail sent to the news station. The context is the same. In the eyes of the defense, they would have had a right to open both letters, sent to and from the innocent projects and news stations, because they were neither Halls' attorney, probation officer, or judge.

Hall wrote in the grievance, he refused legal mail because they were opened prior to him signing for them. He was not in the presence of the defendants' when they opened legal mail he received, so he refused it. Hall has a Constitutional Right to be in the presence of the any staff member who opens **any** mail marked as legal mail. The defendants did not inform Hall that his mail was being opened or withheld. A question for the jury would be, *why would the defendants open this mail and not inform Hall to resend it?* Answer is simply because it incriminates the defendants. Circumstantial evidence would support this. *Bruce* clearly established that prison officials may not abuse a valid procedure "as a cover or a ruse to silence and punish" an inmate. 351 F.3d at 1289. Bruce v. Ylst, 351 F.3d 1283, 2003 U.S. App. LEXIS 24772, 63 Fed. R. Evid. Serv. (Callaghan) 221 (9th Cir. Cal. December 10, 2003)

Even though the circumstances are different, the defendants attempted to cover up their illegal actions and violated multiple Constitutional Rights. Again, the defendants did not deny these allegations in any of the grievances. They did not deny it then, so how could they deny it now. The plaintiff objects to the recommendation stated by the magistrate in this matter.

## **B. Classroom Claim/ Retaliation Claim**

*The magistrate stated the following:*

Further, construing all available facts in Plaintiff's favor, his own testimony confirms that he remained in that classroom for not more than a few hours. Such a brief segregation is not so excessive as to constitute a punishment. *See, e.g., Elliot v. Conner*, No. 3:23-CV-01008, 2023 U.S. Dist. LEXIS 202738, 2023 WL 7545036, at \*3 (M.D. Tenn. Nov. 13, 2023) (45-day placement in segregation was not excessive following plaintiff's involvement in a fight). Similarly, Plaintiff's suggestions of verbal abuse or harassment, in connection with this claim or otherwise, do not support any Fourteenth Amendment claim. "As a matter of law, a prison official defendant's verbal abuse and harassment towards a confined plaintiff do not constitute cruel and unusual punishment under the Eighth Amendment—applicable to convicted inmates—nor under the Fourteenth Amendment—applicable to pretrial detainees." *Green v. Eddy*, No. 1:24-CV-12086, 2025 U.S. Dist. LEXIS 49198, 2025 WL 845176, at \*2 (E.D. Mich. Mar. 18, 2025) (citing *Johnson v. Unknown Dellatifa*, 357 F.3d 539, 546 (6th Cir. 2004)

(L) – *Shepard v. Quillen*, 840 F.3d 686, 2016 U.S. App. LEXIS 19352 (9th Cir. Cal. October 26, 2016) In fact, the harm suffered by prisoners in administrative segregation is significantly more than minimal. According to Shepard, his time in the ASU featured reduced access to phone calls and recreation. He also says he was confined to his cell for "all but 2 hours per week." This is plausible. Prior to 2013, inmates in California ASUs were deprived of all family visits; their only access to recreation or entertainment was "[y]ard access limited by local institution/facility security needs"; and they could use the phone "on an emergency basis only as determined by institution/facility staff." *Coleman v. Brown*, 28 F. Supp. 3d 1068, 1096 (E.D. Cal. 2014). District Judge Karlton, deeming ASU conditions to be "harsh, restrictive and non-therapeutic," found that keeping mentally ill inmates there for non-disciplinary reasons violated their Eighth Amendment rights. *Id.* at 1099.

*Shepard v. Quillen*, 840 F.3d 686, 2016 U.S. App. LEXIS 19352 (9th Cir. Cal. October 26, 2016) Shepard does not challenge the constitutionality of section 3335, which, as he recognizes, "ha[s] nothing to do with placing an inmate in ad seg for making allegations." On this record, we cannot conclude whether officers automatically apply the regulation to all inmates who allege serious staff misconduct. But we seriously doubt that such a policy, if it in fact exists, would withstand constitutional scrutiny. *Cf. Fair Housing Council of San Fernando*

Valley v. Roommate.com, LLC, 666 F.3d 1216, 1222 (9th Cir. 2012) (explaining that when a statute "can reasonably be read" in two ways, "we can and must choose the construction that avoids raising constitutional concerns"). Inmates must be able to complain about staff; doing so provides a crucial check against those who are in a position to abuse them. Forcing inmates to choose between exercising that constitutional right and going into administrative segregation for an indefinite period of time impermissibly burdens that right.

*Please see Sprau v. Coughlin*, 997 F. Supp. 390, 1998 U.S. Dist. LEXIS 3298 (Western Dist. N.Y. March 3, 1998)

(A) – The complaints against said officers in regards to the classroom claim are documented and clearly established in the timeline of events that led up to the verbal threats and threats of injustice done by the defendants. It's undeniably disgusting that a pretrial detainee can file a complaint against an officer claiming they'll "get away with whatever they want" because the plaintiff was playing their game and still have a job. I'm sure a juror would ask how they kept their jobs.

(L) – Prisoners have a First Amendment right to file grievances against prison officials and to be free from retaliation for doing so. Brodheim v. Cry, 584 F.3d 1262, 1269 (9th Cir. 2009). A retaliation claim has five elements. **First**, the plaintiff must allege that the retaliated-against conduct is protected. The filing of an inmate grievance is protected conduct. Rhodes v. Robinson, 408 F.3d 559, 568 (9th Cir. 2005). **Second**, the plaintiff must claim the defendant took adverse action against the plaintiff. *Id.* at 567. The adverse action need not be an independent constitutional violation. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995). "[T]he mere *threat* of harm can be an adverse action . . ." Brodheim, 584 F.3d at 1270. **Third**, the plaintiff must allege a causal connection between the adverse action and the protected conduct. Because direct evidence of retaliatory intent rarely can be pleaded in a complaint, allegation of a chronology of events from which retaliation can be inferred is sufficient to survive dismissal. *See Pratt*, 65 F.3d at 808 ("timing can properly be considered as circumstantial evidence of retaliatory intent"); Murphy v. Lane, 833 F.2d 106, 108-09 (7th Cir. 1987). **Fourth**, the plaintiff must allege that the "official's acts would chill or silence a person of ordinary firmness from future First Amendment activities." Robinson, 408 F.3d at 568 (internal quotation marks and emphasis omitted). "[A] plaintiff who fails to allege a chilling effect may still state a claim if he alleges he suffered some other harm," Brodheim, 584 F.3d at 1269, that is "more than

minimal," Robinson, 408 F.3d at 568 n.11. That the retaliatory conduct did not chill the plaintiff from suing the alleged retaliator does not defeat the retaliation claim at the motion to dismiss stage. Id. at 569. **Fifth**, the plaintiff must allege "that the prison authorities' retaliatory action did not advance legitimate goals of the correctional institution . . . ." Rizzo v. Dawson, 778 F.2d 527, 532 (9th Cir. 1985). A plaintiff successfully pleads this element by alleging, in addition to a retaliatory motive, that the defendant's actions were arbitrary and capricious, *id.*, or that they were "unnecessary to the maintenance of order in the institution," Franklin v. Murphy, 745 F.2d 1221, 1230 (9th Cir. 1984).

(A) – The elements are laid out and falls in the favor of the plaintiff in this claim. The classroom incident did not result in just a few hours in a cold room from after 10pm until sometime after 5AM. Hall was removed from his dorm and placed in a lock down cell. The defendants are claiming they just wanted to counsel JaQuan. How does a counseling session from the defendants result in JaQuan being moved to a new dorm, and placed in a lock down cell? Hall was up for close to 24hours by the time he was placed in this new dorm. Hall stated he wrote two complaints about this, because the first one was never filed. He had done this after he was moved again from the lockdown cell. So from the time he was in that cell, none of his complaints were filed. And when he finally did get his complaint filed, only a conversation was had and no disciplinary action was done towards the defendants. They continued to get away with their harassment and bullying towards the plaintiff. The amount of complaints filed after this event satisfies the 4<sup>th</sup> and 5<sup>th</sup> requirement. If the defense counsel wants to raise the issue of Halls' rule infractions, well I ask this court to please compare Halls' behavior prior to the classroom event, to after.

*Magistrate stated:*

To summarize, the parties have failed to address in any serious way the second and third elements of Plaintiff's retaliation claim relating to Plaintiff's being placed in "the hole" following the shakedown of his dorm in September 2022. Further, Defendants have not addressed whether Plaintiff would have been sent to administrative segregation for possessing an extra bed sheet

regardless of his September 2022 grievance and Defendant Carr's response. Thus, on the current record, neither party has established that no genuine issue of material fact exists as to this specific, limited claim such that summary judgment in their favor is warranted. For this reason, it is **RECOMMENDED** that both Motions for Summary Judgment be **DENIED** as to Plaintiff's First Amendment retaliation claim against arising from this specific incident.

Hall goes to this classroom, he goes through this inappropriate counseling session, and Hall gets moved to a new dorm and placed in a lock down cell. Hall files a grievance against the defendants, his grievances were not filed. Hall eventually was moved to a new dorm. Hall then filed another complaint. No disciplinary action was taken, or no report was filed on these officers. Hall continued to write the defendants up for harassment, making racial remarks, violating his rights, and targeting. Every time he filed a complaint, he would get harassed and he would get sent to disciplinary/administrative segregation. A jury would not find having an extra bed sheet cause for someone to go into isolation for 14-days. There was motive behind this. The Plaintiff objects to the recommended judgment in favor of the defendant.

### C. Equal Protection Claim/ "Blue Ink" Claim

*Magistrate stated:* (Equal Protection)

In this case, Plaintiff has not set forth any specific facts supporting a finding of disparate treatment. To the extent he claims that he was punished where others were not, he provides no evidentiary support. At most, for purposes of an equal protection claim, he has offered only vague allegations that other unidentified individuals were not punished for similar infractions. Importantly, for summary judgment purposes, a bare assertion that a plaintiff "was treated one way and everyone else another ... has never been thought to raise an equal protection claim." *Green Genie, Inc. v. City of Detroit, Michigan*, 63 F.4th 521, 529 (6th Cir. 2023). That is, at most, all Plaintiff has offered here. Because disparate treatment is a necessary element for an equal protection claim, Plaintiff cannot establish the violation of any constitutional right and the Court need not address whether that right was clearly established. Accordingly, it is **RECOMMENDED** that summary judgment be granted in favor of Defendants [\*38] Elliot and Flowers on Plaintiff's claim for an equal protection violation.

(A) – The plaintiff filed grievances that establishes a different type of treatment by the defendants. If the defense had turned over all complaints filed against the defendants, as requested verbally and in writing, then it would be construed in a very simple manner that these officers had never violated any other pretrial detainee/prisoners' attorney-client privileges, used racial slurs, or constantly harassed them. Hall has rights protected under law.

When he filed the initial complaint of his criminal case being exploited by these two officers, informing staff they had obtained this privy knowledge through violation of the law, the only remedy was a talk with them. No investigation was held to deny the multiple grievances filed against these two officers. An admission of guilt was established when the superior officer repeatedly had to speak to these officers about the same issue. The numerous of grievances filed by plaintiff about his Rights being violated, established that no other prisoner went through this type of treatment. Due diligence was not ensure to protect Halls' Constitutional Rights that everyone else was guaranteed. Through lack of documentation of these officers misconduct, and lack of documentation by the defense, they cannot dispute that any other prisoner, besides Hall went through this.

No other prisoner was taken out of a dorm to be counseled by the two defendants. The only one pretrial detainee/prisoner to be counseled while Hall was held there, from 2021-2022 was him. There's no disciplinary report to dispute this. The only person to be taken out the dorm, counseled, placed in a lockdown cell, and not have his grievances filed, was Hall.

The grievance Hall filed on behalf of his peers, that majority of D dorm signed, Hall was the only one Carr spoke to. The magistrate judge acknowledges through the bed sheet, there is a connection from the grievance to the harassment against Hall, as he was sent to administration segregation. Hall is protected under to First Amendment from retaliation. They did not send Hall to the hole for tossing another prisoners' items around the floor, but sent him to the hole for having one extra bed sheet. Circumstantial evidence supports the motive behind the retaliation was due to a First Amendment protect right. Nobody else who signed the grievance and was caught with contraband was sent to the hole.

Hall was the only one to suffer racial remarks made by the defendant Flowers. In the email report, you are able to see the defendant Flowers name, and next to it you see in writing, Elliott acknowledged Flowers was the one to make racial remarks. Elliott reported that none of the prisoners had told them who made the racial remarks. Circumstantial evidence again would support Elliott was aware of Flowers racial bias since nobody informed him about who made the racial remarks. No other pretrial detainee/prisoner had ever reported Flowers making racial remarks towards them, besides Hall. A new policy was established because Hall was the only pretrial detainee/prisoner to suffer through this.

An investigation was held. The reporting officer declared that Flowers had never made racial remarks to anyone before and concluded the investigation in favor of Flowers. Well in light of this evidence provided, this established (1) Hall was the only one to ever report Flowers for making racial remarks to and (2) Someone outside of the

prisoners was aware of Flowers racial remarks, as it was identified through the email report marked on the page next to his name. *Eight amendment would apply also.*

Hall was denied his Constitutional Right under the First Amendment. Hall filed grievances that were never filed. Hall filed a complaint informing staff of his grievances not being filed. Hall was the only pretrial detainee/prisoner to suffer through this. In a matter of where these grievances are used as evidence, to possible convict someone in a criminal proceeding, not filing these grievances falls under tampering with evidence. This may bring an entire new way to perceive this case but, this is in fact a Seminal Case. The acts by each defendant involved would coincide under 18 USCS § 1961.

Hall was going to go to disciplinary segregation due to a note being placed in his food. Administration reviewed the camera and was going to only punish Hall. Ison did not discipline Hall after he spoke with administration about the incident book that he had read. Someone attempted to poison and cause life threatening harm to the plaintiff. Where was the protection he is guaranteed to ensure his life is secured inside a Federal holding facility? When Hall reported this to an officer that someone tried to possibly kill him, does Hall lose his rights to report a criminal complaints? Does Hall not have Human rights to ensure his food will be safe to eat? No investigation was held, thus nobody was held accountable. Which is why Hall was not sure who placed the note in his food. An attempt on a prisoner's life was made and nobody cared enough to investigate. This is a significant case of public interest. Is nobody going to be held accountable for not finding out who tried to cover up this possible attempt to kill Hall? If someone can get away with a note, they can get away with liquid poison. Why was Hall going to be the only one punished for this?

He reported this and was not held to the protections he is guaranteed under the 14<sup>th</sup> Amendment. *This falls under an Eight Amendment claim.* This could not Favor the Defendnats.

*Magistrate stated:*

Similarly, any claim that Defendant Ison failed to investigate Plaintiff's claim regarding blue ink in his food also fails. The failure to investigate a prisoner's complaint or grievance does not state a claim for relief. *Smith v. Wash.*, No. 2:23-CV-12903, 2024 U.S. Dist. LEXIS 11203, 2024 WL 233730, at \*3 (E.D. Mich. Jan. 22, 2024) (citing *Carlton v. Jondreau*, 76 F. App'x 642, 644 (6th Cir. 2003)). Accordingly, because Plaintiff has not established the violation of a constitutional right based on an alleged failure to investigate, it is **RECOMMENDED** that summary judgment be **GRANTED** in favor of Defendant Ison as to any claim under this theory.

Plaintiff's own allegations confirm that Defendant Ison accepted Plaintiff's explanation of the incident and did not take him to "the hole" for corresponding with other inmates.

Accordingly, because Plaintiff has not established Defendant Ison's violation of any constitutional right, it is **RECOMMENDED** that summary judgment be **GRANTED** in favor of Defendant Ison on Plaintiff's "blue ink" claim in its entirety.

Well I believe this was misconstrued as nobody was placed in disciplinary confinement for this, nor was any staff disciplined for this. As stated above, Hall was going to be the only one punished for this supports that he was being targeted. Ison neglected to do his obligated duty to protect Hall as Ison was a deputized Officer of the law. Hall does have a Constitutional (and Human) Right to eat, and make sure that his food is not poised while in custody of the State or Federal Government. I'm sure a jury would agree.

The fact that James Warner was not disciplined for this indicates that he was not responsible for this note. The fact that Hall verbally grieved this complaint and showed proof in writing to this officer of this complaint, and it not being taken into consideration under protecting Hall shows neglect and supports an organized act to retaliate against Hall. The only act by Ison and Administration, was taking Hall to the hole, not finding out who had done this. Red herring.

Preponderance of the evidence shows this was an act of retaliation, and A 14<sup>th</sup> Amendment Claim. This complaint not being investigated also shows a cruel and unusual punishment placed upon Hall. Hall lost any rights to find out who had done this to him because nobody care whether he lived or died.

You send an officer to take Hall to the segregation, but when he explains he was not a participant in his food getting poisoned, and he wants something done to ensure this doesn't happen again, nobody cares. Morally, ethically, and legally, how does the defense intend on proving that Hall does not have a Constitutional (or Human) Rights to safe food. If an inmate did not do this, then a staff member did and was not disciplined for it. A great general public interest would apply. For all reason stated, the court could not side in favor of the defendants.

#### **D. Supervisor Liability Claim**

*Magistrate stated:*

Moreover, to the extent that Plaintiff asserts that Defendant Carr failed to properly act upon Plaintiff's grievances, § 1983 liability may not be imposed upon Defendant Carr on this basis. Smith v. Par., No. 1:22-CV-978, 2023 U.S. Dist. LEXIS 38908, 2023 WL 2399827, at \*3 (W.D. Mich. Mar. 8, 2023) (citing Shehee v. Luttrell, 199 F.3d 295, 300 (6th Cir. 1999)) simply because a supervisor denied an administrative grievance or failed to act based upon information contained in a grievance.). The same is true as to any claim that Defendant Carr violated institutional policy. As stated above, violations of institutional policy do not rise to the level of a constitutional claim. Rush, 2024 U.S. Dist. LEXIS 1980, 2024 WL 54599, at \*2.

(L) – Singleton v. City of Deltona, 2025 U.S. Dist. LEXIS 78556, 2025 LX 140718, 2025 WL 1183976 (Middle Dist. Fla. April 1, 2025) ~ "'Proof of a single incident of unconstitutional activity is not sufficient to impose liability' on a governmental entity as part of either a policy or custom unless the challenged policy itself is unconstitutional." Ireland v. Prummell, 53 F.4th 1274, 1289 (quoting City of Oklahoma City v. Tuttle, 471 U.S. 808, 823-24, 105 S. Ct. 2427, 85 L. Ed. 2d 791 (1985) (plurality opinion)). A custom or policy is deliberately indifferent to a constitutional right when a "plainly obvious consequence" of the custom or policy violates a constitutional right. Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown, 520 U.S. 397, 411 (1997). "[D]eliberate indifference' is a stringent standard of fault, requiring proof that a municipal actor disregarded a known or obvious consequence of his action." Id. at 410.

(A) – As stated throughout this entire document, the role of the defendant Carr cannot be ignore as he became aware of the multiple Constitutional violations along with being the orchestrator to impose discipline on the plaintiff. The power of Administration segregation is held by administration. Carr abused his power to discipline Hall for filing Constitutional protected, legitimate, sever, criminal, and inhumane grievances. Carr became the principal offender. He could have put a stop to Halls' attorney-client privileges being violated, but did not. Instead he protected his co-defendants. He became complicit to Elliott tampering with evidence, which was used in an investigation against the plaintiff, when he did not ensure due process was applied in collecting evidence. Carr became aware of the Food that was poisoned and aware of the incident book. No other pretrial detainee/prisoner food has ever been poisoned. He failed to ensure safety for Hall after he was made aware of this. Carr ignored his obligations and protected whoever had done this crime by not further investigating Halls' complaint. Carr promoted this constant harassment and orchestrated it to where Hall would be placed on Administrative segregation.

All of Halls' complaints were not filed. Legal Mail Hall marked that was being sent to WTAP news station was opened and read without Hall being present. This mail was concealed due to multiple officers, including Carrs' name, being mentioned. A grievance was filed and he does not deny his awareness, or history of officers going through the plaintiff mail. Hall has a Constitutional Right as a pretrial detainee/prisoner to be present. Instead of disciplining this officer, he again became complicit and protected his co-defendants. *Bruce* clearly established that prison officials may not abuse a valid procedure "as a cover or a ruse to silence and punish" an inmate. 351 F.3d at 1289. Bruce v. Ylst, 351 F.3d 1283, 2003 U.S. App. LEXIS 24772, 63 Fed. R. Evid. Serv. (Callaghan) 221 (9th Cir. Cal. December 10, 2003)

The bedsheet situation is just the tip of the flag pole. He became personally involved when he spoke directly to Hall and placed a tape recorded on the table and informed Hall this could be used later in court. The defense counsel does not deny the tape recorded being present. Once Carr had done this and became aware of the criminal acts and constitutional violations by his employees, he had a choice. His choice was to protect, aid and abet, and become complicit to his co-defendants actions. His next steps were to target Hall for filing grievances. Investigating who poisoned Halls food was not a priority to him. The plaintiff objects to the recommendation in favor of the defendant.

In review of the evidence, I ask this court to acknowledge the several motions Hall has filed in attempt to depose witnesses, obtain evidence, and establish facts under the law. In light of what has been produced, Hall believes the evidence in this case could be brought forth in front of a jury. With a jury trial set, Hall would have an opportunity to properly file motions, depose witnesses and defendants in this case, and produce newly discovered evidence in this case. Hall would like to reserve the right to preserve a motion for Jury trial.

**(L) – Notes of Advisory Committee on 1948 amendments. Note to Subdivision (b).** With the time for appeal to a circuit court of appeals reduced in general to 30 days by the proposed amendment of Rule 73(a), the utility of the original “except” clause, which permits a motion for a new trial on the ground of newly discovered evidence to be made before the expiration of the time for appeal, would have been seriously restricted. It was thought advisable, therefore, to take care of this matter in another way. By amendment of Rule 60(b), newly discovered evidence is made the basis for relief from a judgment, and the maximum time limit has been extended to one year. Accordingly the amendment of Rule 59(b) eliminates the “except” clause and its specific treatment of newly discovered evidence as a ground for a motion for new trial. This ground remains, however, as a basis for a motion for new trial served not later than 10 days after the entry of judgment. See also Rule 60(b). **Notes of Advisory Committee.** This rule represents an amalgamation of the petition for rehearing of former Equity Rule 69 (Petition for Rehearing) and the motion for new trial of U.S.C., Title 28, formerly § 391 (now § 2111) (New trials; harmless error), made in the light of the experience and provision of the code States. Compare Calif. Code Civ. Proc. (Deering, 1937) §§ 656–663a, U.S.C., Title 28,

formerly § 391 (now § 2111) (New trials; harmless error) is thus substantially continued in this rule. U.S.C., Title 28, former § 840 (Executions; stay on conditions) is modified insofar as it contains time provisions inconsistent with Subdivision (b). For the effect of the motion for new trial upon the time for taking an appeal, see Morse v. United States, 270 U.S. 151, 46 S. Ct. 241, 70 L. Ed. 518 (1926); Aspen Mining and Smelting Co. v. Billings, 150 U.S. 31, 14 S. Ct. 4, 37 L. Ed. 986 (1893).

For partial new trials which are permissible under Subdivision (a), see Gasoline Products Co. Inc. v. Champlin Refining Co., 283 U.S. 494, 51 S. Ct. 513, 75 L. Ed. 1188 (1931); Schuerholz v. Roach, 58 F.2d 32 (4th Cir. 1932); Simmons v. Fish, 210 Mass. 563, 97 N.E. 102, Ann. Cas. 1912D, 588 (1912) (sustaining and recommending the practice and citing Federal cases and cases in accord from about sixteen States and contra from three States).

### Conclusion

For above reason, this is not a case that this court should recommend in the favor of the defense. The plaintiff would move this court under USCS Fed Rules Civ Proc R 72 to reject the recommendation and rule in favor of the plaintiff in this matter.

*Peace. Love. Positivity,*

JaQuan L. Hall

\_\_\_\_\_  
# \_\_\_\_\_  
Ross Correctional Institution  
P.O. Box 7010  
Chillicothe, Ohio 45601

### CERTIFICATE OF SERVICE

I hereby certify that a true copy of this PLAINTIFF OBJECTION PURSUANT TO USCS FED R. CIV. PROC. R 72 was mailed by regular U.S. to: Mathew Teetor 200 E. Campus View Blvd., ste 200 Columbus OH 43235 on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
JAQUAN L. HALL – PRO SE DEFENDANT. A#808-049 RCI. P.O. Box 7010 Chillicothe, OH 45601

# APPENDIX J

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION AT COLUMBUS

JAQUAN L. HALL,

Plaintiff,

vs.

WASHINGTON COUNTY JAIL, *et al.*,

Defendants.

: Case No. 2:23-cv-3742

:  
: District Judge James L. Graham

: Magistrate Judge Elizabeth P. Deavers

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ORDER and  
REPORT AND RECOMMENDATION

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This civil rights case is before the Court for the required initial screening of JaQuan L. Hall's Amended Complaint. (ECF No. 5.) For the reasons that follow, the undersigned Magistrate Judge concludes that some of Plaintiff's claims may **PROCEED** to further development at this time. The Undersigned **RECOMMENDS** that the Court **DISMISS** the remainder.

**I. Parties and Background**

Plaintiff JaQuan Hall is currently a prisoner at Ross Correctional Institution. (ECF No. 5, PageID 51.) His claims appear to concern his time as pretrial detainee at the Washington County Jail. He is proceeding in this case without the assistance of counsel.

The case began when Plaintiff filed a pro se "Notice of Intent to File Complaint for Violation of Civil Rights" in the Washington County, Ohio, Court of Common Pleas on October 14, 2023. (*See* ECF No. 2 (instituting Case No. 23 OT 271).) He named five Defendants: Washington County Jail, Officer Joshua Elliott, Officer T.J. Flowers, Officer Ison, and Cpt. Carr. (*Id.*)

On November 6, 2023, Defendants together filed a Notice of Removal to this Court. (ECF No. 1.) The Undersigned found that removal appeared proper but that the Complaint was insufficient, and ordered Plaintiff to file an Amended Complaint. (ECF No. 4.) Plaintiff did so. (ECF No. 5.) Defendants filed an Answer. (ECF No. 6.)

In the Amended Complaint, Plaintiff names the same five Defendants. (ECF No. 5, PageID 49, 52.) Among other things, he alleges that Officers Elliot and Flowers harassed him, threatened him, put him in danger, violated his attorney-client privilege, opened his legal mail, refused to send out his mail to the news media, and violated his right to the equal protection of the law. (ECF No. 5, PageID 53.) Factually, Plaintiff alleges that Elliot kept him in a cold classroom until 4:00 a.m. the night before Plaintiff had to go to court, made fun of him, his (unexplained) disorder, and his family, told other inmates details about his criminal charges, and told Plaintiff that Elliot was going to make sure Plaintiff spent the rest of his life in prison. (*Id.*) Plaintiff alleges Elliot committed perjury and lied on the stand. (*Id.*)

Flowers was allegedly with Elliot the night in the classroom, and the incident allegedly occurred because of him. (*Id.*) Plaintiff says that Flowers also used racial slurs, wanted to fight Plaintiff in a bathroom, told other inmates about his criminal case, said he had a target on his back after Plaintiff filed a grievance against him, and put him in “the hole” for minor rule infractions for which other inmates would not get similarly punished. (*Id.*)

Plaintiff appears to allege that Officer Ison was involved in an incident where Plaintiff discovered “blue ink” inside his food after he complained about Flowers. (ECF No. 5, PageID 55.) He also alleges that Ison repeated or was present for Flower’s statement that he had a target on his back, told him to stay off the radar, and admitted that Plaintiff was being closely watched. (*Id.*)

Plaintiff alleges that he reported Flowers to Captain Carr, who told Plaintiff that Flowers was the reason he was being “targeted.” (*Id.*) Plaintiff also alleges that Carr accused Plaintiff of trying to start a riot, and that Carr neglected his duties to ensure that his staff members were following the rules and policies. (*Id.*)

Finally, Plaintiff alleges that this “lawsuit is against Washington County Jail.” (*Id.*, PageID 52.) He says that the Jail:

Allowed these claims to happen without disciplinary action to their staff. Ignored my grievances, did not file every one of my complaints/grievances, and allowed violations of their policies to go unpunished. I’ve complain[ed] to administration about my Federal and Constitutional Rights being violated. Grievance officers failed to investigate and/or solve these issues.

(*Id.*, PageID 56.)

As relief, Plaintiff seeks \$1 million in damages from all Defendants, as well as a \$5,000 donation to a designated college fund, and several types of non-financial orders.

## II. Screening Standard

Because Plaintiff is a prisoner seeking “redress from a governmental entity or officer or employee of a governmental entity,” the Court is required to screen his Amended Complaint. 28 U.S.C. § 1915A(a); *see also Ra-El v. Shelby Cnty.*, No. 16-cv-2082, 2017 WL 1048099, at \*1 (W.D. Tenn. Mar. 17, 2017) (“Notwithstanding the fact that this case was removed from state court, the Court is required to screen prisoner complaints . . .”). The Court must dismiss the Amended Complaint, or any portion of it, that is frivolous, malicious, fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

A complaint may be dismissed as frivolous when the plaintiff cannot make any claim with a rational or arguable basis in fact or law. *Neitzke v. Williams*, 490 U.S. 319, 328-29

(1989); *see also* *Lawler v. Marshall*, 898 F.2d 1196, 1198 (6th Cir. 1990). An action has no arguable *legal* basis when the defendant is immune from suit or when plaintiff claims a violation of a legal interest which clearly does not exist. *Neitzke*, 490 U.S. at 327. An action has no arguable *factual* basis when the allegations are delusional or rise to the level of the irrational or “wholly incredible.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992); *Lawler*, 898 F.2d at 1199. The Court need not accept as true factual allegations that are “fantastic or delusional” in reviewing a complaint for frivolousness. *Hill v. Lappin*, 630 F.3d 468, 471 (6th Cir. 2010) (quoting *Neitzke*, 490 U.S. at 328).

A complaint must also be dismissed if it fails to state a claim on which relief may be granted. 28 U.S.C. §§ 1915A(b)(1). To state a claim for relief, a complaint must set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Court must construe the complaint in plaintiff’s favor, accept all well-pleaded factual allegations as true, and evaluate whether the complaint contains “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

“A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). However, a complaint that consists of “labels and conclusions” or “a formulaic recitation of the elements of a cause of action” is insufficient. *Id.* (quoting *Twombly*, 550 U.S. at 555).

In the interest of justice, this Court is also required to construe a pro se complaint liberally and hold it “to less stringent standards than formal pleadings drafted by lawyers.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976))

and citing Fed. R. Civ. P. 8(f) [now (e)]). Even with such a liberal construction, a pro se complaint must still adhere to the “basic pleading essentials.” *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989). Specifically, a pro se “complaint ‘must contain either direct or inferential allegations respecting all the material elements’ to recover under some viable legal theory.” *Barhite v. Caruso*, 377 F. App’x 508, 510 (6th Cir. 2010) (quoting *Mezibov v. Allen*, 411 F.3d 712, 716 (6th Cir. 2005).

### III. Discussion

The Undersigned reads the Amended Complaint (ECF No. 5) as raising federal civil rights claims under 42 U.S.C. § 1983, which in general requires Plaintiff to plead and show “(1) a deprivation of a right secured by the Constitution or laws of the United States (2) caused by a person acting under color of state law.” *Hunt v. Sycamore Cmty. Sch. Dist. Bd. of Educ.*, 542 F.3d 529, 534 (6th Cir. 2008) (citation omitted).

With the benefit of briefing on the merits of the issues presented in the Amended Complaint, the Undersigned concludes that Plaintiff may **PROCEED** further on the following claims:

1. The legal mail/attorney-client privilege claim(s) against Elliot and Flowers (First Amendment and/or Sixth Amendment);<sup>1</sup>
2. The “classroom” claim against Elliot and Flowers (First Amendment and/or Fourteenth Amendment);<sup>2</sup>

<sup>1</sup> This claim or claims may relate to Plaintiff’s assertion that Defendants refused to send out his mail to the news media, or they may relate to a claim that these officers read his incoming legal mail from his criminal defense attorney, which is how they knew details about his case. Further development is appropriate.

<sup>2</sup> It is unclear whether Plaintiff presents this claim as a First Amendment access-to-courts type claim, or a Fourteenth Amendment unconstitutional-punishment type claim. See *Washington v. Davenport*, No. 4:20-cv-P148, 2021 WL 666965, at \*3 (W.D. Ky. Feb. 19, 2021) (quoting *Bell v. Wolfish*, 441 U.S. 520, 535 (1979)) (“As a pretrial detainee rather than a convicted prisoner, Plaintiff has a Fourteenth Amendment right not to “be punished prior to an

3. The retaliation claim(s) against Elliot, Flowers, Ison, and Carr concerning their alleged response to Plaintiff's grievances (First Amendment);
4. The related equal protection claim against Elliot and Flowers (Fourteenth Amendment);
5. The claim about blue ink in Plaintiff's food against Ison (presumably, the Fourteenth Amendment);<sup>3</sup> and
6. The supervisory liability claim against Carr concerning Flowers' actions.<sup>4</sup>

These claims, as presented in the Amended Complaint and reviewed for screening purposes, appear worthy of further development. (ECF No. 5.) The Undersigned expresses no opinion on the merits at this time, or whether there may be defenses to them or procedural bars that will prevent Plaintiff from ultimately obtaining relief.

The Undersigned will **RECOMMEND** that the remaining claims be **DISMISSED**.

First, the Undersigned clarifies that while the retaliation claim(s) may proceed, the alleged denial of Plaintiff's grievances or Defendants' failure to file, investigate, or respond to his grievances does not independently state a constitutional claim. "Although this practice would indeed be frustrating, 'there is no inherent constitutional right to an effective prison grievance procedure.'" *Culberson v. Franklin Cnty. Corr. Ctr. II*, No. 2:22-cv-3671, 2022 WL 17600955, at \*9 (S.D.

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adjudication of guilt in accordance with due process of law."). Further development is appropriate.

<sup>3</sup> It is not clear from the Amended Complaint whether Plaintiff is alleging that Ison put the blue ink in his food, or that Ison failed to appropriately respond when Plaintiff complained about the blue ink in his food. Further development is appropriate.

<sup>4</sup> See *Peatross v. City of Memphis*, 818 F.3d 233, 241-42 (6th Cir. 2016) ("a supervisor cannot be held liable simply because he or she was charged with overseeing a subordinate who violated the constitutional rights of another," but may be held liable if it is shown that (among other things) he or she "at least implicitly authorized, approved, or knowingly acquiesced in the unconstitutional conduct of the offending officers").

Ohio Dec. 13, 2022), *report and recommendation adopted*, 2023 WL 3180755 (S.D. Ohio May 1, 2023) (quoting *Argue v. Hofmeyer*, 80 F. App'x 427, 430 (6th Cir. 2003)). "The mere denial of a prisoner's grievance states no claim of constitutional dimension." *Alder v. Corr. Med. Servs.*, 73 F. App'x 839, 841 (6th Cir. 2003); *see also Grinter v. Knight*, 532 F.3d 567, 576 (6th Cir. 2008) (quoting *Shehee v. Luttrell*, 199 F.3d 295, 300 (6th Cir. 1999)) ("The 'denial of administrative grievances or the failure to act' by prison officials does not subject supervisors to liability under § 1983."); *Mitchell v. McNeil*, 487 F.3d 374, 378 (6th Cir. 2007) ("There is no statutory or common law right, much less a constitutional right, to an investigation."). Thus, to the extent Plaintiff raises claims based solely on the handling of his grievances, those claims should be dismissed.

Any claims against Elliot and Flowers based on the alleged use of harassing and/or threatening language should also be dismissed. "Harassing or degrading language by a prison official, while unprofessional and despicable, does not amount to a constitutional violation." *Mallory v. Smith*, No. 3:17-cv-P253, 2017 WL 3484690, at \*3 (W.D. Ky. Aug. 14, 2017) (collecting cases); *Wingo v. Tenn. Dep't of Corr.*, 499 F. App'x 453, 455 (6th Cir. 2012) (citing *Ivey v. Wilson*, 832 F.2d 950, 955 (6th Cir. 1987)) ("Verbal harassment or idle threats by a state actor do not create a constitutional violation and are insufficient to support a section 1983 claim for relief."). Likewise, "verbal harassment or threats by prison officials toward an inmate do not constitute punishment within the meaning of the Eighth Amendment." *Snelling v. Smith*, No. 1:16-cv-656, 2016 WL 6518264, at \*6 (W.D. Mich. Nov. 3, 2016) (citing *Ivey*, 832 F.2d at 955). This includes the use of racial slurs. *See Millay v. Wiggins*, No. 4:21-cv-P116, 2021 WL 5763562, at \*2 (W.D. Ky. Dec. 3, 2021) (and cases cited therein) (defendant's use of a racial slur was "unprofessional and deplorable" but "fails to give rise to a constitutional claim"). Here,

while the Court does not approve of this alleged behavior, the allegation that Elliot and Flowers made harassing or threatening comments, or that one of them used a racial slur, does not itself state a § 1983 claim.

Plaintiff further alleges that Elliot and Flower put him in danger. (ECF No. 5, PageID 53.) This allegation may be related to the allegations that they told other inmates about Plaintiff's criminal case.<sup>5</sup> (*Id.*) Plaintiff may intend this allegation to raise a failure-to-protect claim against Elliot and Flowers.

“Prison officials have a duty to protect prisoners from violence suffered at the hands of other prisoners.” *Dellis v. Corr. Corp. of Am.*, 257 F.3d 508, 512 (6th Cir. 2001) (citing *Farmer v. Brennan*, 511 U.S. 825, 833 (1994)); *Wilson v. Yaklich*, 148 F.3d 596, 600 (6th Cir. 1998). Here, however, there are no allegations in the Amended Complaint that Plaintiff was injured or harmed by other inmates because of Elliot and Flowers' comments. Without any alleged physical injury, he does not state a claim for a failure to protect. *See Mitchell v. Washington*, No. 2:19-cv-10633, 2019 WL 2005916, at \*3 (E.D. Mich. May 7, 2019) (and the cases cited therein) (“The major problem with plaintiffs [failure to protect] claim is that he was not actually physically assaulted at the [prison] as a result of the defendants' alleged acts. To state a failure-to-protect claim, a plaintiff must allege physical injury.”). This claim should be dismissed.

Plaintiff alleges that Elliot committed perjury and “lied on the stand.” (ECF No. 5, PageID 53.) Plaintiff cannot succeed on this claim:

for [purposes of] perjury claims, “all witnesses—police officers as well as lay witness—are absolutely immune from civil liability based on their trial testimony in judicial proceedings.” *Briscoe v. LaHue*, 460 U.S. 325, 328 (1983). A witness

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<sup>5</sup> The Amended Complaint is not clear on this point. It may be that these are unrelated allegations, and that Plaintiff intended the statement about Elliot and Flowers telling other inmates about his criminal case as proof that they had in fact opened and read his legal mail. As noted above, the legal mail claim is proceeding. Any failure-to-protect claim should be dismissed.

is entitled to testimonial immunity “no matter how egregious or perjurious that testimony was alleged to have been.” *Spurlock v. Satterfield*, 167 F.3d 995, 1001 (6th Cir. 1999). Accordingly, Plaintiff’s perjury claims fail.

*Parker v. W. Carroll Special Sch. Dist.*, No. 1:18-cv-1236, 2019 WL 2323632, at \*3 (W.D. Tenn. Apr. 11, 2019), *report and recommendation adopted*, No., 2019 WL 1783053 (W.D. Tenn. Apr. 23, 2019), *aff’d*, No. 19-5456, 2020 WL 2070281 (6th Cir. Apr. 1, 2020) (“§ 1983 ‘does not allow recovery of damages against a private party for testimony in a judicial proceeding’ even if the testimony constituted perjury.”) (internal citations omitted). This claim should be dismissed.

To the extent that Plaintiff suggests that Defendants wrote false conduct reports against him, those claims should also be dismissed. (See, e.g., ECF No. 5, PageID 55 (Captain Carr accused Plaintiff of starting a riot).) The Sixth Circuit has said that “[a] prisoner has no constitutional right to be free from false accusations of misconduct.” *Brown v. McCullick*, No. 18-2226, 2019 WL 5436159, at \*4 (6th Cir. Apr. 23, 2019) (quoting *Jackson v. Hamlin*, 61 F. App’x 131, 132 (6th Cir. 2003)); see also *Johnson v. Osborne*, No. 1:21-cv-3, 2021 WL 2077908, at \*3 (S.D. Ohio Apr. 27, 2021), *report and recommendation adopted*, 2021 WL 2093258 (S.D. Ohio May 24, 2021) (“Erroneous or even fabricated allegations of misconduct by an inmate, standing alone, do not constitute a deprivation of a constitutional right.”). These allegations may be relevant to the retaliation claims that are proceeding, but do not state a separate claim on their own.

Some allegations in the Amended Complaint describe events occurring in the Jail but do not include enough information to present an identifiable claim. For example, Plaintiff alleges that Officer Flowers “wanted to fight me while I was in the bathroom, and stepped inside to incite me to swing on him.” (ECF No. 5, PageID 53.) He does not allege that Flowers used force or excessive force against him, or otherwise took any physical or disciplinary action

against him as a result of this incident. (*Id.*) Even reading the Amended Complaint liberally, the Undersigned is unable to identify a plausible constitutional violation in this allegation, and so will recommend that it be dismissed.

Plaintiff also alleges that Officer Ison did *not* take him to segregation because Ison learned the Plaintiff had been keeping an “incident report book” of what had happened to him. (ECF No. 5, PageID 55.) While this information may be relevant to other claims, no separate discernable constitutional claim is stated within this allegation.

Finally, all claims against the Washington County Jail should be dismissed. A jail is not a “person” who can be sued under Section 1983. See *Hughes v. Donini*, No. 1:13-cv-569, 2013 WL 5521671, at \*4 (S.D. Ohio Oct. 3, 2013) (and the cases cited therein) (dismissing all claims against the Scioto County Jail because it is not a legal entity capable of being sued); *Watson v. Gill*, 40 F. App’x 88, 89 (6th Cir. 2002) (affirming the dismissal of a complaint on screening for failure to state an actionable claim under § 1983, because a county jail was a “department of the county” and “not a legal entity susceptible to suit”); *Switek v. Midland Cnty. Jail*, No. 21-cv-12711, 2022 WL 19004342, at \*2 (E.D. Mich. Apr. 26, 2022) (finding that the plaintiff’s claims against the county jail “are frivolous and fail to state a viable claim because ‘a jail is not a “person” subject to suit under § 1983.’”). All claims against the Washington County Jail should therefore be dismissed.<sup>6</sup>

<sup>6</sup> Even if this Court were to construe the Complaint as having sued Washington County, it fails to state a claim. “[A] local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government’s policy or custom . . . inflicts the injury that the government as an entity is responsible under § 1983.” *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658, 694 (1978). “To state a municipal-liability claim under § 1983, the plaintiff must allege the deprivation (1) of a right secured by the Constitution or laws of the United States, (2) that was directly caused by a municipal policy or custom.” *Nichols v. Wayne Cnty. Mich.*, 822 F. App’x 445, 448 (6th Cir. 2020) (citing *Hardrick v. City of Detroit*, 876 F.3d 238, 243 (6th Cir. 2017)). A plaintiff may prove an unconstitutional “policy” or “custom” by demonstrating: “(1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the

IV. Pending Motions

Defendants have filed a motion for leave to manually filed two exhibits referenced in their Answer. (ECF No. 7.) This motion is **GRANTED**.

Plaintiff has filed a letter asking for counsel to appointed, for a pretrial conference, and for discovery, among other things. (ECF No. 9.) First, there is no constitutional right to appointed counsel in a civil case. *Patmon v. Parker*, 3 F. App'x 337, 339 (6th Cir. 2001). The law does not require the appointment of counsel for indigent plaintiffs in cases such as this, see *Lavado v. Keohane*, 992 F.2d 601, 604-05 (6th Cir. 1993), nor has Congress provided funds with which to compensate lawyers who might agree to represent those plaintiffs. The appointment of counsel in a civil proceeding is justified only by exceptional circumstances. *Id.* at 605-06. See also *Lanier v. Bryant*, 332 F.3d 999, 1006 (6th Cir. 2003). Moreover, there are not enough lawyers who can absorb the costs of representing persons on a voluntary basis to permit the Court to appoint counsel for all who file cases on their own behalf. The Court makes every effort to appoint counsel in those cases which proceed to trial and in exceptional circumstances will attempt to appoint counsel at an earlier stage of the litigation. No such circumstances appear in this case. Accordingly, Plaintiff's request for appointed counsel (ECF No. 9) is **DENIED** at this time. If this matter proceeds past motions to dismiss and motions for summary judgment, Plaintiff may renew his motion. See *Henry v. City of Detroit Manpower Dep't.*, 763 F.2d 757, 760 (6th Cir. 1985) (district courts considering motions for appointment of counsel "should at

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existence of a custom of tolerance or acquiescence of federal rights violations." *Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir. 2013) (citing *Thomas v. City of Chattanooga*, 398 F.3d 426, 429 (6th Cir. 2005)). Here, Plaintiff has not alleged sufficient facts upon which the Court could rely to conclude that an official policy or custom of Washington County resulted in the violation of his constitutional rights. He simply alleges that the Jail allowed his injuries to happen and did not remedy his complaints. (ECF No. 5, PageID 56.) Any construed claims against Washington County therefore would also be subject to dismissal.

least consider plaintiff's financial resources, the efforts of plaintiff to obtain counsel, and whether plaintiff's claim appears to have any merit").

Plaintiff's request for a pretrial conference appears to be based on his allegation that Defendants' Answer shows that they violated his rights. (See ECF No. 9, PageID 92.) The Undersigned determines that a conference is not needed at this time; Defendants have indicated they will file a motion for judgment on the pleadings (see ECF No. 7, PageID 87), to which Plaintiff will have the opportunity to respond. At this time, the request is **DENIED**.

Finally, Plaintiff asks that evidence from Meigs County (not Washington County, with which Defendants are affiliated) be turned over to a family member. This request is also **DENIED** at this time. Requests for discovery are generally not to be filed with the Court. Fed. R. Civ. P. 5(d)(1). Information about conducting discovery and may be found in the Court's Guide for Pro Se Civil Litigants and the Court's local rules may be accessed online at the Court's website <https://www.ohsd.uscourts.gov/pro-se>

V. **Summary and Conclusion**

Having screened the Amended Complaint under 28 U.S.C. § 1915A, the Undersigned determines that the following six claims may **PROCEED** to further development:

1. The legal mail/attorney-client privilege claim(s) against Elliot and Flowers (First Amendment and/or Sixth Amendment);
2. The "classroom" claim against Elliot and Flowers (First Amendment and/or Fourteenth Amendment);
3. The retaliation claim(s) against Elliot, Flowers, Ison, and Carr concerning their alleged response to Plaintiff's grievances (First Amendment);

4. The related equal protection claim against Elliot and Flowers (Fourteenth Amendment);
5. The claim about blue ink in Plaintiff's food against Ison (presumably, the Fourteenth Amendment); and
6. The supervisory liability claim against Carr concerning Flowers' actions.

The Undersigned **RECOMMENDS** that the Court **DISMISS** the remaining claims (including all of claims against Washington County Jail), for the reasons discussed above.

Defendants' motion to manually file exhibits is **GRANTED**. (ECF No. 7.) Plaintiff's motion for counsel, a conference, and discovery is **DENIED** at this time. (ECF No. 9.)

Plaintiff is reminded that he must keep this Court informed of his current address, and promptly file a Notice of New Address if he is released or transferred.

#### **VI. Notice Regarding Objections to this Report and Recommendation**

If any party objects to this Report and Recommendations ("R&R"), the party may serve and file specific, written objections to it within fourteen days after being served with a copy thereof. Fed. R. Civ. P. 72(b). All objections shall specify the portion(s) of the R&R objected to and shall be accompanied by a memorandum of law in support of the objections. The Court may extend the fourteen-day objections period if a timely motion for an extension of time is filed.

A Judge of this Court will make a de novo determination of those portions of the R&R to which objection is made. Upon proper objection, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the R&R will result in a waiver of the right to have the District Judge review the R&R de novo, and will also operate as a waiver of the right to appeal the decision of the District Court adopting the R&R. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

**IT IS SO ORDERED.**

January 19, 2024

s/ Elizabeth A. Preston Deavers  
ELIZABETH A. PRESTON DEAVERS  
UNITED STATES MAGISTRATE JUDGE